Pending Florida Legislation

Florida Senate Bill 234 and Florida House Bill 517, which would amend Florida Statutes Chapter 790, would allow open- and concealed-carry of weapons and firearms on Florida’s college and university campuses.

 Colleges and universities occupy a special place in American society. They are much more than a series of buildings and collection of individuals. Instead, they are dynamic living and learning environments where individuals with varying levels of maturity interact, often under stressful circumstances. While recognizing the right of responsible individuals to possess firearms under other circumstances, the unique characteristics of a university campus make the presence of firearms problematic. For these reasons, if Chapter 790 is amended, the law should continue to include colleges and universities on the list of places where a person with a concealed-weapons license may not carry a weapon or firearm.

When considering the pending bills, lawmakers are urged to consider the following factors:

- The potential impact of guns given the dynamics of the college campus environment;
- The impact of multiple individuals with weapons when law enforcement officers respond during campus emergencies;
- The actual likelihood of criminal deterrence;
- The associated potential liability and administrative costs; and
- Federal and state constitutional issues, including individual rights and institutional autonomy.2

The recent shootings on university campuses across our country have been tragic. Educators and lawmakers alike seek to curb this violence and provide reasonably safe and secure educational environments, especially for our students. The research and other information presented below are designed to help legislators and others analyze this most important issue.

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National Context

Currently, 26 states plus the District of Columbia ban concealed weapons on college and university property.\(^3\) Twenty-three states allow individual campuses to decide.\(^4\) Only Utah allows guns on the campuses at public institutions; the state allows private institutions to set their own policies.\(^5\)

In November 2008, the American Association of State Colleges and Universities issued a higher-education policy brief titled “Concealed Weapons on State College Campuses: In Pursuit of Individual Liberty and Collective Security.” The organization aptly framed the issue of guns on campus as follows:

The tragic events at Virginia Tech and Northern Illinois University have policymakers, campus officials and citizens looking for solutions to prevent future attacks. Violent shootings that have occurred on a few college campuses in recent years have provoked a debate over the best ways to ensure the safety of students, faculty and staff. Lawmakers in several states have advanced the idea allowing citizens with concealed weapons permits to carry their weapons on campus. . . . These legislative proposals have been met with considerable controversy, evoking strong emotion on both sides. Thus far, Utah is the only state to have adopted this policy. All other state legislatures where similar bills have been introduced have rejected the idea.

The Second Amendment—the right to keep and bear arms as established by the U.S. Constitution and many state constitutions—is not at issue in this controversy. Rather, this is a policy debate over how best to ensure public safety, as the Second Amendment is subject to reasonable restrictions, such as bans on guns in schools. The majority opinion of the U.S. Supreme Court recently concluded in District of Columbia vs. Heller:

> Although we do not undertake an exhaustive historical analysis today of the full scope of the Second Amendment, nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings [emphasis added], or laws imposing conditions and qualifications on the commercial sale of arms.

\(^3\) The 26 states with legislation that bans guns from campus are: Arkansas, California, Florida, Georgia, Hawaii, Illinois, Louisiana, Massachusetts, Michigan, Minnesota, Mississippi, Nebraska, Nevada, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Rhode Island, South Carolina, Tennessee, Texas, and Wyoming.

\(^4\) The 23 states that permit colleges and universities to establish their own policies regarding firearms on campus are: Alabama, Alaska, Arizona, Colorado (litigation pending), Connecticut, Delaware, Idaho, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Missouri, Montana, New Hampshire, Pennsylvania, South Dakota, Vermont, Virginia, Washington, West Virginia, and Wisconsin.

\(^5\) In University of Utah v. Shurtleff, 144 P.3d 1109 (Utah 2006), the Utah Supreme Court upheld the statute on state-law grounds.
The majority also noted: “We identify these presumptively lawful regulatory measures only as examples; our list does not purport to be exhaustive.” While striking down the District of Columbia’s strict ban on handguns, the justices did not call into question any of the existing gun bans on college campuses.

The most recent published case regarding guns on campus was issued by the Virginia Supreme Court on January 13, 2011. In *DiGiacinto v. Rector & Visitors of George Mason University,* a visitor to the public university claimed that the university’s policy prohibiting possession of firearms on campus violated his constitutional rights. Relying on the conclusion in *Heller* that the right to keep and bear arms is not absolute, the court held that the Second Amendment does not prevent the government from prohibiting firearms in sensitive places, such as George Mason’s campus and events.

In determining that the university was a “sensitive place” under *Heller,* the court relied on the parties’ stipulation that George Mason has 30,000 students enrolled ranging from age 16 to senior citizens, that more than 350 incoming freshman would be under 18, that elementary and high school students attend summer camps on campus, and that children attend an on-campus preschool. All of these individuals use George Mason’s buildings and attend on-campus events. The court also emphasized that “[u]nlike a public street or park, a university traditionally has not been open to the general public, ‘but instead is an institute of higher learning that is devoted to its mission of public education.’ . . . Moreover, parents who send their children to a university have a reasonable expectation that the university will maintain a campus free of foreseeable harm.”

In October 2010, the Colorado Supreme Court granted certiorari in *Regents of the University of Colorado v. Students for Concealed Carry on Campus, LLC* to consider “[w]hether the General Assembly intended the Concealed Carry Act to divest the Board of Regents of its constitutional and statutory authority to enact safety and welfare measures for the University of Colorado’s campuses” and “[w]hether a constitutional challenge to a statute or ordinance regulating the right to bear arms is governed by the deferential rational basis standard of review or a more stringent reasonable exercise standard of review.” In the underlying case, a student-interest group sued the university alleging that its weapons control policy violated Colorado’s Concealed Carry Act (CCA) and the right to bear arms in self-defense under the Colorado Constitution. Although the trial court dismissed the claims, the Colorado Court of Appeals reversed and remanded for further proceedings. The case does not yet appear on the state supreme court’s public oral-argument calendar.

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7 Id. at **4–5.

Incidents of Targeted Violence on College Campuses

The tragedies at Virginia Tech, Northern Illinois, Appalachian School of Law, and the University of Alabama in Huntsville, among others, illustrate that our campuses are not immune from violence. Studies reflect that violence on campus is most commonly perpetrated by students, against students. In response to the Virginia Tech shooting, the U.S. Secret Service, Department of Education, and F.B.I. studied violence at institutions of higher education. As part of this study, 272 incidents of targeted violence were identified through a comprehensive search of open-source reports from 1900 to 2008. The incidents include various forms of targeted violence, ranging from domestic violence to mass murder. Most incidents occurred during the 1990s and 2000s. Across these 272 incidents, the perpetrators killed 281 people and injured 247 more. The perpetrators used guns 54% of the time, knives or bladed instruments 21% of the time, and a combination of weapons 10% of the time. Florida had the fourth highest number of incidents in the study.9

International Association of Campus Law Enforcement Officers

In 2008, the International Association of Campus Law Enforcement Administrators, Inc. (IACLEA) issued a statement in response to various state legislative initiatives to allow persons to carry concealed weapons on college and university campuses.10 Below are excerpts from the IACLEA statement:

IACLEA’s Board of Directors believes “concealed carry” initiatives do not make campuses safer. There is no credible evidence to suggest that the presence of students carrying concealed weapons would reduce violence on our college campuses.

- There is no credible statistical evidence demonstrating that laws allowing the carrying of concealed firearms reduce crime. In fact, the evidence suggests that permissive concealed carry laws generally will increase crime. . . .
- Use of a gun in self-defense appears to be a rare occurrence. For example, of the 30,694 Americans who died by gunfire in 2005, only 147 were killed by firearms in justifiable homicides by private citizens. . . .

IACLEA is concerned that concealed carry laws have the potential to dramatically increase violence on college and university campuses that our Members are empowered to protect. Among the concerns with concealed carry laws or policies are: the potential for accidental discharge or misuse of firearms at on-campus or off-campus parties where large numbers of students are gathered or at student gatherings where alcohol or drugs are being consumed, as well as the potential for guns to be used as a means to settle disputes between or among students. There is also a real concern that campus police officers responding to a situation involving

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10 IACLEA, Concealed Carrying of Firearms Proposals on College Campuses (Aug. 12, 2008).
an active shooter may not be able to distinguish between the shooter and others with firearms.

- Public safety is threatened by student gun owners. One study found that two-thirds of gun-owning college students engage in binge drinking. Gun-owning students are more likely than unarmed college students to drink “frequently and excessively” and then engage in risky activities, such as driving when under the influence of alcohol, vandalizing property, and getting into trouble with police. . . .

- Another study similarly discovered that college student gun owners are more likely than those who do not own guns to engage in activities that put themselves and others at risk for severe or life-threatening injuries, including reckless behavior involving alcohol, driving while intoxicated, and suffering an alcohol-related injury. . . .

Suicides accounted for 55 percent of the nation’s nearly 31,000 firearms deaths in 2005, the most recent year statistics are available from the Center for Disease Control and Prevention. . . . Public Health researchers have concluded that in homes where guns are present, the likelihood that someone in the home will die from suicide or homicide is much greater.

We urge public policy makers to weigh heavily the concerns of IACLEA regarding the unintended consequences of any proposals to allow college students and any other persons to carry concealed weapons on campus. We believe that the research we have cited shows that these unintended consequences include:

1. Likely increase in reckless shooting incidents resulting in injuries and deaths from firearms on campus;
2. Likely increase in both homicides and suicides;
3. Increased exposure of campus police to injuries;
4. Unfunded mandates resulting from policy changes, including resources necessary to investigate firearms incidents, thefts of firearms, and checking for underage/prohibited possessors . . . .
Crisis Reality Training

The work of Jesus Villahermosa, founder of Crisis Reality Training and a S.W.A.T. officer in Washington State, also reflects the wisdom of restricting guns on campus. Officer Villahermosa has first-hand experience responding to gun-related violence in schools. In an essay published in the Chronicle of Higher Education, he concluded:

I have been a deputy sheriff for more than 26 years and was the first certified master defensive-tactics instructor for law-enforcement personnel in the state of Washington. In addition, I have been a firearms instructor and for several decades have served on my county sheriff's SWAT team, where I am now point man on the entry team. Given my extensive experience dealing with violence in the workplace and at schools and colleges, I do not think professors and administrators, let alone students, should carry guns.1

Weapons Policies at Florida Colleges and Universities

Virtually all colleges and universities have a firearms or weapons policy. This is true at institutions of higher education in Florida. Below are links to weapons policies at a sampling of public and private institutions in Florida. All listed colleges and universities prohibit weapons on campus, although some have limited exceptions. The more common exceptions are summarized in later sections of this White Paper.

- Florida A&M University (Section 10(k));
- Florida International University;
- Florida State University (Section 5(e));
- University of Central Florida (Section 12);
- University of Florida;
- University of North Florida (Section E(4));
- University of South Florida;
- University of West Florida;
- Barry University;
- Bethune-Cookman University;
- Eckerd College (page 39);
- Embry-Riddle Aeronautical University;

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1 Jesus M. Villahermosa, Jr., Guns Don't Belong in the Hands of Administrators, Professors, or Students, Chron. Higher Educ. (Apr. 18, 2008).
Exceptions for Shooting and Hunting Clubs, and Recreational Hunters

Many universities with policies prohibiting guns on campus also realize that at least some of their students may own and want to use guns for club sports or recreational hunting; these universities have developed policies and procedures to allow students to register and store rifles and other weapons traditionally used in sport in a locked vault maintained by campus police. Good examples of these policies are the ones at the University of Florida, the University of South Florida, the University of Pittsburgh at Johnstown, and the University of Tennessee.

Exceptions for R.O.T.C. Programs and Law Enforcement Officers

Universities that otherwise prohibit weapons on campus have also developed policies to account for R.O.T.C. programs and law-enforcement officers taking courses or attending programs on campus. Some examples include policies at Florida State University (Section 5(e)), Nova Southeastern University, Stetson University College of Law, the University of South Florida, and the University of West Florida.
Open Carry

Although legislation to permit open-carry of weapons is or recently has been pending in a few states, including Arizona, Arkansas, Oklahoma, Texas, and Utah, no legislature to date has authorized open-carry on college or university campuses. In states where open-carry legislation has been debated, university faculty and presidents have expressed concerns for their own safety and the nature of the academic environment. This fear is understandable, especially since faculty members must often interact with students who may be disappointed in their evaluations and grades. Engaging in difficult, but necessary, conversations with students to help them develop professionally and personally can be challenging under normal circumstances, but adding a weapon—especially one displayed openly—into the mix can quickly turn a constructive meeting into one filled with fear and intimidation.

Brain Development Studies

Although most traditional-age college students appear to be physically mature, their brains are still developing. Over the past decade, researchers have discovered that the human brain changes significantly during adolescence—often defined as the second decade of life—and is not fully developed until about 24.\(^\text{12}\)

The areas of the brain that develop last include the pre-frontal cortex. Described as the “CEO of the body,” this area “allows us to prioritize thoughts, imagine, think in the abstract, anticipate consequences, plan, and control impulses.”\(^\text{13}\) Because the brain develops back to front, “judgment” is last to mature.\(^\text{14}\) As Dr. Ken Winters of the University of Minnesota has explained, “By age 18, the adolescent’s judgment for structured challenges is roughly equal to that of adults. But judgment that involves resisting impulses or delaying gratification is still under construction during late adolescence and early adulthood.”\(^\text{15}\)

From these new studies, we have learned that, as a general rule, individuals in their late teens and early 20s:

- prefer physical activities;
- prefer high-excitement and low-effort activities;
- prefer novelty;
- exhibit poor planning and judgment;
- often fail to consider negative consequences of their actions; and
- seek riskier, impulsive behaviors.\(^\text{16}\)

\(^\text{12}\) Material in this section is excerpted from Darby Dickerson, *The Millennial Brain and Risk*, Campus Activities Programming 10 (Nov. 2008).


\(^\text{15}\) *Id.* at slide 24.

\(^\text{16}\) *Id.* at slide 25.
Therefore, conduct most adults perceive as dangerous and risky, they perceive as fun. In addition, some evidence exists that “being in a group accentuates risk taking,” which has tremendous implications for student affairs professionals.\footnote{Id.} Moreover, the research underscores that alcohol and other drug use not only impedes brain development, but can have long-term negative consequences on brain structure.

High-risk alcohol and other drug use among our student populations represent the number one risk for our students. This is true even for students who do not drink or take drugs, as they can—and frequently are—the victims of others’ abuse. The grim statistics include:

- 1,700 college students between the ages of 18 and 24 die each year from alcohol-related unintentional injuries, including motor vehicle crashes.
- 599,000 students between the ages of 18 and 24 are unintentionally injured under the influence of alcohol.
- More than 696,000 students between the ages of 18 and 24 are assaulted by another student who has been drinking.
- More than 97,000 students between the ages of 18 and 24 are victims of alcohol-related sexual assault or date rape.\footnote{College Drinking—Changing the Culture, A Snapshot of Annual High-Risk College Drinking Consequences.}

As IACLEA has predicted, adding accessibility to guns and other weapons to this mix is likely to lead to additional incidents of self-injury, accidental shootings, and homicides.

**Conclusion**

Our collective goal should be to make our college and university campuses as safe as possible. Allowing guns and other weapons on campus will not advance that goal; indeed, it will have the opposite effect and lead to additional deaths and injuries. The best way to keep our campuses safe is to retain colleges and universities on the list of places where individuals may not bring firearms, and to amend Florida Senate Bill 234 and Florida House Bill 517 accordingly.