

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/SB 656

INTRODUCER: Judiciary Committee and Senator Pizzo

SUBJECT: Arrests

DATE: February 5, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cellon</u>	<u>Jones</u>	<u>CJ</u>	Favorable
2.	<u>Stallard</u>	<u>Cibula</u>	<u>JU</u>	Fav/CS
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 656 authorizes a law enforcement officer to execute a warrantless arrest on a minor who unlawfully possesses a firearm.

More specifically, the bill permits an officer to execute a warrantless arrest for a violation of s. 790.22(3), F.S., which makes it a first degree misdemeanor for a minor who is:

- At least 16 years of age to possess a firearm unless he or she is hunting or target shooting.
- Less than 16 years of age to possess a firearm unless he or she is hunting or target shooting and is supervised by an adult.

However, s. 790.22(3), F.S., expressly does not prohibit any minor from possessing an unloaded firearm at home or when traveling to or from hunting or target practice.

A warrantless arrest authorized by the bill will remain subject to the constitutional limits on warrantless arrests of a person in his or her home.

The bill is effective October 1, 2020.

II. Present Situation:

News articles have reported a number of recent incidents in which children and teens have been killed with a firearm. Recently, in south Miami-Dade, teens were playing with a firearm when a

15-year-old fired a shot that killed two of his friends with one bullet.¹ In Jacksonville, during a short period of time in 2018, two 7-year-old children died in separate incidents when they were caught in the crossfire of open-air gun battles; a 16-year-old was charged with murder in the point-blank shooting of a 19-year-old after a high school football game; and then a 17-year-old high school student was critically wounded in a drive-by shooting while he waited to catch a school bus.² In a Broward County classroom, someone pointed a handgun at unsuspecting students. The act was captured on video and posted on a 16-year-old boy's social media account with a caption asking whether to "carry my pistol with me like last year" just before the 2019-20 school year started. He was later arrested.³ Finally, the escalating levels of arrests for violent crime among young offenders has led Leon County prosecutors to seek adult penalties for young repeat offenders.⁴

Section 790.22, F.S.

Section 790.22(3), F.S., prohibits a minor under the age of 18 from possessing a firearm, other than an unloaded firearm at his or her home. The exceptions to this general prohibition are limited to circumstances where:

- The minor is engaged in a lawful hunting activity and is at least 16 years of age; or is under 16 years of age and supervised by an adult;
- The minor is engaged in a lawful marksmanship competition or practice or other lawful recreational shooting activity and is at least 16 years of age; or under 16 years of age and supervised by an adult who is acting with the consent of the minor's parent or guardian; or
- The firearm is unloaded and is being transported by the minor directly to or from an event described above.⁵

Section 790.22, F.S., as one court has stated, was "designed to get the immediate attention of all juveniles and to issue a 'wake-up call' that the state deems their firearm offenses to be serious enough to warrant the automatic deprivation of their liberty for a period of time, even on a first offense. Its intent clearly is to have a deterrent effect to hopefully prevent the juvenile's escalation into the adult criminal justice system."⁶ As such, s. 790.22, F.S., contains a continuum of consequences for juveniles within the juvenile justice system, and their parents or guardians potentially in the criminal justice system, tailored to have a deterrent effect.

¹ NBC 6 South Florida, *2 Teens Killed by Single Bullet in South Miami-Dade*, November 26, 2019, available at <https://www.nbcmiami.com/news/local/2-teens-killed-by-single-bullet-in-south-miami-dade-police/2129088/> (last visited January 15, 2020).

² David Bauerlein, The Florida Times-Union, Jacksonville.com, *Duval County faced again with how to stem a rising tide of crime*, September 29, 2018; available at <https://www.jacksonville.com/news/20180929/duval-county-faced-again-with-how-to-stem-rising-tide-of-crime> (last visited January 15, 2020).

³ Paul Scicchitano, Patch.com, *Florida Teen Arrested After Posting Video Of Gun In Classroom*, August 15, 2019, available at <https://patch.com/florida/miami/amp/28237379/florida-teen-arrested-after-posting-video-of-gun-in-classroom> (last visited January 15, 2020).

⁴ Karl Eters, Tallahassee Democrat, Tallahassee.com, *Guns and teens lead to adult criminal charges*, March 30, 2019, available at <https://www.tallahassee.com/story/news/2019/03/30/guns-and-teens-lead-adult-criminal-charges/3239891002/> (last visited January 15, 2020).

⁵ Section 790.22(3), F.S.

⁶ *T.M. v. State*, 689 So.2d 443, 446 (Fla. 3d DCA, 1997).

A minor who violates the prohibition against possession of a firearm commits a misdemeanor of the first degree.⁷ For a first offense, the minor may serve up to 3 days in a Department of Juvenile Justice secure detention facility and will be required to perform 100 hours of community service.⁸ Based upon his or her age and eligibility for a driving license or privilege, or the status of that license or privilege, the court may direct the Department of Highway Safety and Motor Vehicles to delay or withhold the license or privilege for up to 1 year.⁹

Any parent or guardian of a minor, or other adult responsible for the welfare of a minor, who knowingly and willfully permits the minor to possess a firearm under circumstances other than those listed above commits a felony of the third degree.¹⁰

Additionally, any natural parent or adoptive parent, whether custodial or noncustodial, or any legal guardian or legal custodian of a minor, if that minor possesses a firearm under circumstances other than those listed above, may be required by the court to participate in parenting education classes approved by the Department of Juvenile Justice, upon the minor's first conviction. Upon any subsequent conviction of the minor, the court may require the parent to attend further parent education classes or perform community service hours together with the child.¹¹

Any firearm that is possessed or used by a minor in violation of this section shall be promptly seized by a law enforcement officer.¹²

For a second or subsequent offense, the minor commits a felony of the third degree and is required to serve a period of detention of up to 15 days in a secure detention facility and to perform between 100 and 250 hours of community service.¹³ Based upon his or her age and eligibility for a driving license or privilege, or the status of that license or privilege, the court may direct the Department of Highway Safety and Motor Vehicles to delay or withhold the license or privilege for up to 2 years.¹⁴

If a minor is found to have committed an offense that involves the use or possession of a firearm *including a violation of s. 790.22(3), F.S.*, or any offense during the commission of which the minor possessed a firearm, unless the state attorney authorizes the release of the minor, the minor shall be detained in secure detention and shall be given a hearing within 24 hours after being

⁷ Section 790.22(5)(a), F.S.

⁸ *Id.* A secure detention facility is a facility used pending court adjudication or disposition or execution of court order for the temporary care of a child alleged or found to have committed a violation of law. A detention center or facility may provide secure custody. Section 985.03, F.S. Community service shall be performed, if possible, in a manner involving a hospital emergency room or other medical environment that deals on a regular basis with trauma patients and gunshot wounds. Section 790.22(5)(a), F.S.

⁹ Section 790.22(5)(a), F.S.

¹⁰ Section 790.22(4)(b), F.S. A felony of the third degree is punishable by up to 5 years' imprisonment and a fine of up to \$5,000. Sections 775.082 and 775.083, F.S.

¹¹ Section 790.22(4)(b), F.S.

¹² Section 790.22(6), F.S. Any firearm that is possessed or used by a minor in violation of this section shall be promptly seized by a law enforcement officer and disposed of in accordance with s. 790.08, F.S.

¹³ Community service shall be performed, if possible, in a manner involving a hospital emergency room or other medical environment that deals on a regular basis with trauma patients and gunshot wounds. Section 790.22(5)(b), F.S.

¹⁴ *Id.*

taken into custody.¹⁵ At the hearing, the court may order that the minor continue to be held in secure detention.¹⁶

If the juvenile offender is found to have committed an offense that involves the use or possession of a firearm *other than a violation of s. 790.22(3), F.S.*, or any offense during the commission of which the minor possessed a firearm:

- For a first offense, the minor shall serve a minimum period of detention of 15 days in a secure detention facility. The minor must perform 100 hours of community service and may be placed on community control or in a nonresidential commitment program under the supervision of the Department of Juvenile Justice.¹⁷
- For a second or subsequent offense, the minor shall serve a mandatory period of detention of at least 21 days in a secure detention facility, perform not less than 100 nor more than 250 hours of community service, and he or she may be placed on community control or in a nonresidential commitment program under the supervision of the Department of Juvenile Justice.¹⁸

As with the offenses under s. 790.22(3), F.S., offenses in s. 790.22(9), F.S., contain consequences related to the minor's driver license or privilege.¹⁹

Use of BB guns, Air or Gas-Operated Guns, or Electric Weapons by Minor

Section 790.22(1), F.S., prohibits a minor under the age of 16 from using, for any purpose, a BB gun, air or gas-operated gun, or electric weapon or device unless such use is under the supervision and in the presence of an adult with the consent of the minor's parent.²⁰

Any adult responsible for the welfare of any minor under 16 years of age who knowingly allows the minor to use or have in his or her possession any BB gun, air or gas-operated gun, electric weapon or device, or firearm in violation of the prohibition in s. 790.22(1), F.S., commits a second degree misdemeanor.²¹

¹⁵ Section 790.22(8), F.S.

¹⁶ In order to keep the minor in secure detention, the juvenile court must make certain findings according to ss. 985.26 and 985.255, F.S., which may also include finding by clear and convincing evidence that the minor is a clear and present danger to himself or herself or the community. Section 790.22(8), F.S.

¹⁷ The minor shall not receive credit for time served before adjudication. Community service shall be performed, if possible, in a manner involving a hospital emergency room or other medical environment that deals on a regular basis with trauma patients and gunshot wounds. Section 790.22(9), F.S. "Community control" in the juvenile delinquency system is a delinquency program; the definition of minimum risk nonresidential programs can be found in s. 985.03(44), F.S.

¹⁸ *Id.*

¹⁹ Section 790.22(10), F.S.

²⁰ Electric weapon or device means any device which, through the application or use of electrical current, is designed, redesigned, used, or intended to be used for offensive or defensive purposes, the destruction of life, or the infliction of injury. Section 790.001(14), F.S.

²¹ A misdemeanor of the second degree is punishable by up to 60 days in the county jail, 6 months' probation, and a \$500 fine. Sections 775.082 and 775.083, F.S.

Arrest without an Arrest Warrant

Under s. 901.15, F.S., a law enforcement officer may arrest a person without an arrest warrant under any of a list of circumstances. The first four of these circumstances are relatively broad, in that they do not reference a particular crime as a basis for the arrest:

- The person has committed a felony or misdemeanor or violated a local ordinance in the officer's presence; however, the arrest for a misdemeanor or local ordinance must be made immediately or in fresh pursuit.
- A felony has been committed, and the officer reasonably believes the person committed it.
- The officer reasonably believes that a felony has been or is being committed, and that the person has committed or is committing it.
- A warrant for the arrest has been issued and is held by another officer for execution.²²

From there, the list continues with twelve relatively particular circumstances, often referencing particular crimes, under which an officer may arrest a person without an arrest warrant. These include circumstances in which an officer has probable cause to believe the person being arrested has committed:

- A violation of an injunction for protection against domestic violence, dating violence, sexual violence, repeat violence, exploitation of a vulnerable adult or a foreign protection order.²³
- An act of domestic violence or dating violence.²⁴
- Child abuse or luring or enticing a child for unlawful purposes.²⁵
- Battery.²⁶
- Criminal mischief or graffiti-related offenses.²⁷
- Violation of a safety zone, security zone, regulated navigation area, or naval vessel protection zone.²⁸
- A racing violation.²⁹
- An act that violates a condition of pretrial release when the original arrest was for an act of domestic violence or dating violence.³⁰
- Trespass in a posted secure area of an airport.³¹
- Assault upon a law enforcement officer, a firefighter, an emergency medical care provider, public transit employee or agent, or other specified officer who is engaged in the lawful performance of his or her duties.³²

²² Section 901.15(1), (2), (3), and (4), F.S. Also, a law enforcement officer who witnesses a violation of ch. 316, F.S. (State Uniform Traffic Control), may relay that information to another officer who can then make the arrest when reasonable and proper identification of the vehicle and the violation has been communicated to the arresting officer. Section 901.15(5), F.S.

²³ Section 901.15(6), F.S.

²⁴ Section 901.15(7), F.S.

²⁵ Section 901.15(8), F.S.

²⁶ Section 901.15(9), F.S.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ Section 901.15(13), F.S.

³¹ Section 901.15(14), F.S.

³² Section 901.15(15), F.S.

- Assault or battery upon an employee of a receiving facility who is engaged in the lawful performance of his or her duties.³³
- Cyberharrassment.³⁴

Constitutional Law

Under the Fourth Amendment to the United States Constitution, a person has the right to be free from an unreasonable search or seizure, including an unreasonable arrest.³⁵ To be “reasonable,” an arrest in a public place must be based on probable cause, though no arrest warrant is required.³⁶ To make an arrest in a home, an officer generally also needs an arrest warrant. However, the courts have recognized a number of exceptions to this warrant requirement, such as “exigent circumstances” or when the officer has consent to enter the home.³⁷

Section 901.15, F.S., is not an exception and does not supersede the constitutional requirements for a lawful arrest.³⁸ Accordingly, courts have held the statute unconstitutional *as applied* in situations in which s. 901.15, F.S., was proffered as a basis for a warrantless arrest in a home.³⁹

III. Effect of Proposed Changes:

The bill authorizes a law enforcement officer to execute a warrantless arrest on a minor who unlawfully possesses a firearm.

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However, s. 790.22(3), F.S., expressly does not prohibit any minor from possessing an unloaded firearm at home or when traveling to or from hunting or target practice.

³³ *Id.*

³⁴ Section 901.15(16), F.S.

³⁵ U.S. CONST. amend. IV.

³⁶ *State v. Ramos*, 378 So. 2d 1294 (Fla. 3d DCA 1979)

³⁷ See e.g., *U.S. v. Standridge*, 810 F.2d 1034 (11 Cir. 1987) (citing *Payton v. New York*, 445 U.S. 573 (1980)). The court set forth the factors that indicate exigent circumstances:

(1) the gravity or violent nature of the offense with which the suspect is to be charged; (2) a reasonable belief that the suspect is armed; (3) probable cause to believe that the suspect committed the crime; (4) strong reason to believe that the suspect is in the premises being entered; (5) a likelihood that delay could cause the escape of the suspect or the destruction of essential evidence, or jeopardize the safety of officers or the public.

Id. at 1037 (citing *Dorman v. United States*, 435 F.2d 385, 392–93 (D.C.Cir.1970) (en banc); *United States v. Campbell*, 581 F.2d 22, 25–27 (2d Cir.1978); *United States v. Newbern*, 731 F.2d 744, 748–49 (11th Cir.1984); *United States v. Roper*, 681 F.2d 1354, 1357 n. 1 (11th Cir.1982) (dictum), *cert. denied sub nom. Newton v. United States*, 459 U.S. 1207, 103 S.Ct. 1197, 75 L.Ed.2d 440 (1983).

³⁸ See e.g., *Bratt v. Genovese*, 660 Fed Appx. 837 (11th Cir. 2016).

³⁹ See e.g., *State v. Perez*, 277 So. 2d 778 (Fla. 1973).

Finally, under the bill and the United States Constitution, a warrantless arrest authorized by the bill must nonetheless be based on probable cause that the minor violated s. 790.22(3), F.S.

The bill is effective October 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

This bill appears likely to result in an indeterminate increase in costs associated with the criminal justice system.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 901.15 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Judiciary on February 4, 2020:

The committee substitute removes the bill's authorization for the warrantless arrest of an adult who permits a minor to unlawfully possess a firearm.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
