

By Senator Silver

38-522-98

1 A bill to be entitled
2 An act relating to the unlawful possession of a
3 firearm; amending s. 790.22, F.S.; providing an
4 enhanced penalty for the unlawful possession of
5 a firearm by a minor; requiring that a minor
6 who commits such offense serve a mandatory
7 period of detention in a secure detention
8 facility in addition to certain other
9 sanctions; providing requirements for the
10 community service that a court orders a minor
11 to perform as a sanction for unlawfully
12 possessing a firearm or for committing an
13 offense that involves the use or possession of
14 a firearm; providing an effective date.

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16 Be It Enacted by the Legislature of the State of Florida:

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18 Section 1. Section 790.22, Florida Statutes, is
19 amended to read:

20 790.22 Use of BB guns, air or gas-operated guns, or
21 electric weapons or devices by minor under 16; limitation;
22 possession of firearms by minor under 18 prohibited;
23 penalties.--

24 (1) The use for any purpose whatsoever of BB guns, air
25 or gas-operated guns, or electric weapons or devices, by any
26 minor under the age of 16 years is prohibited unless such use
27 is under the supervision and in the presence of an adult who
28 is acting with the consent of the minor's parent.

29 (2) Any adult responsible for the welfare of any child
30 under the age of 16 years who knowingly permits such child to
31 use or have in his or her possession any BB gun, air or

1 gas-operated gun, electric weapon or device, or firearm in
2 violation of the provisions of subsection (1) of this section
3 commits a misdemeanor of the second degree, punishable as
4 provided in s. 775.082 or s. 775.083.

5 (3) A minor under 18 years of age may not possess a
6 firearm, other than an unloaded firearm at his or her home,
7 unless:

8 (a) The minor is engaged in a lawful hunting activity
9 and is:

- 10 1. At least 16 years of age; or
11 2. Under 16 years of age and supervised by an adult.

12 (b) The minor is engaged in a lawful marksmanship
13 competition or practice or other lawful recreational shooting
14 activity and is:

- 15 1. At least 16 years of age; or
16 2. Under 16 years of age and supervised by an adult
17 who is acting with the consent of the minor's parent or
18 guardian.

19 (c) The firearm is unloaded and is being transported
20 by the minor directly to or from an event authorized in
21 paragraph (a) or paragraph (b).

22 (4)(a) Any parent or guardian of a minor, or other
23 adult responsible for the welfare of a minor, who knowingly
24 and willfully permits the minor to possess a firearm in
25 violation of subsection (3) commits a felony of the third
26 degree, punishable as provided in s. 775.082, s. 775.083, or
27 s. 775.084.

28 (b) Any natural parent or adoptive parent, whether
29 custodial or noncustodial, or any legal guardian or legal
30 custodian of a minor, if that minor possesses a firearm in
31 violation of subsection (3) may, if the court finds it

1 appropriate, be required to participate in classes on
2 parenting education which are approved by the Department of
3 Juvenile Justice, upon the first conviction of the minor. Upon
4 any subsequent conviction of the minor, the court may, if the
5 court finds it appropriate, require the parent to attend
6 further parent education classes or render community service
7 hours together with the child.

8 (c) ~~No later than July 1, 1994,~~The district juvenile
9 justice boards or county juvenile justice councils or the
10 Department of Juvenile Justice shall establish appropriate
11 community service programs to be available to the alternative
12 sanctions coordinators of the circuit courts in implementing
13 this subsection. The boards or councils or department shall
14 propose the implementation of a community service program in
15 each circuit, and may submit a circuit plan, to be implemented
16 upon approval of the circuit alternative sanctions
17 coordinator.

18 (d) For the purposes of this section, community
19 service may be provided on public property as well as on
20 private property with the expressed permission of the property
21 owner. Any community service provided on private property is
22 limited to such things as removal of graffiti and restoration
23 of vandalized property.

24 (5)(a) A minor who violates subsection (3) commits a
25 felony of the third ~~misdemeanor of the first~~ degree, and, for
26 a first offense, shall serve a mandatory period of detention
27 of 5 days in a secure detention facility in addition to any
28 ~~other penalty provided by law~~, shall be required to perform
29 100 hours of community service, and:

30 1. If the minor is eligible by reason of age for a
31 driver license or driving privilege, the court shall direct

1 the Department of Highway Safety and Motor Vehicles to revoke
2 or to withhold issuance of the minor's driver license or
3 driving privilege for up to 1 year.

4 2. If the minor's driver license or driving privilege
5 is under suspension or revocation for any reason, the court
6 shall direct the Department of Highway Safety and Motor
7 Vehicles to extend the period of suspension or revocation by
8 an additional period of up to 1 year.

9 3. If the minor is ineligible by reason of age for a
10 driver license or driving privilege, the court shall direct
11 the Department of Highway Safety and Motor Vehicles to
12 withhold issuance of the minor's driver license or driving
13 privilege for up to 1 year after the date on which the minor
14 would otherwise have become eligible.

15 (b) For a second or subsequent offense, the minor
16 shall serve a mandatory period of detention of at least 10
17 days but not more than 30 days in a secure detention facility,
18 shall be required to perform at least ~~not less than~~ 100 hours
19 but not ~~nor~~ more than 250 hours of community service, and:

20 1. If the minor is eligible by reason of age for a
21 driver license or driving privilege, the court shall direct
22 the Department of Highway Safety and Motor Vehicles to revoke
23 or to withhold issuance of the minor's driver license or
24 driving privilege for up to 2 years.

25 2. If the minor's driver license or driving privilege
26 is under suspension or revocation for any reason, the court
27 shall direct the Department of Highway Safety and Motor
28 Vehicles to extend the period of suspension or revocation by
29 an additional period of up to 2 years.

30 3. If the minor is ineligible by reason of age for a
31 driver license or driving privilege, the court shall direct

1 the Department of Highway Safety and Motor Vehicles to
2 withhold issuance of the minor's driver license or driving
3 privilege for up to 2 years after the date on which the minor
4 would otherwise have become eligible.

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6 Any community service ordered under this subsection shall, if
7 possible, be performed in conjunction with a hospital
8 emergency room or other medical facility that regularly treats
9 trauma patients and gunshot wounds.

10 (6) Any firearm that is possessed or used by a minor
11 in violation of this section shall be promptly seized by a law
12 enforcement officer and disposed of in accordance with s.
13 790.08(1)-(6).

14 (7) The provisions of this section are supplemental to
15 all other provisions of law relating to the possession, use,
16 or exhibition of a firearm.

17 (8) Notwithstanding s. 985.213 ~~s. 39.042~~ or s.
18 985.215(1)~~s. 39.044(1)~~, if a minor under 18 years of age is
19 charged with an offense that involves the use or possession of
20 a firearm, as defined in s. 790.001, including other than a
21 violation of subsection (3), or is charged for any offense
22 during the commission of which the minor possessed a firearm,
23 the minor shall be detained in secure detention, unless the
24 state attorney authorizes the release of the minor, and shall
25 be given a hearing within 24 hours after being taken into
26 custody. ~~Effective April 15, 1994,~~At the hearing, the court
27 may order that the minor continue to be held in secure
28 detention in accordance with the applicable time periods
29 specified in s. 985.215(5)~~s. 39.044(5)~~, if the court finds
30 that the minor meets the criteria specified in s. 985.215(2)
31 ~~s. 39.044(2)~~, or if the court finds by clear and convincing

1 evidence that the minor is a clear and present danger to
2 himself or herself or the community. The Department of
3 Juvenile Justice shall prepare a form for all minors charged
4 under this subsection that states the period of detention and
5 the relevant demographic information, including, but not
6 limited to, the sex, age, and race of the minor; whether or
7 not the minor was represented by private counsel or a public
8 defender; the current offense; and the minor's complete prior
9 record, including any pending cases. The form shall be
10 provided to the judge to be considered when determining
11 whether the minor should be continued in secure detention
12 under this subsection. An order placing a minor in secure
13 detention because the minor is a clear and present danger to
14 himself or herself or the community must be in writing, must
15 specify the need for detention and the benefits derived by the
16 minor or the community by placing the minor in secure
17 detention, and must include a copy of the form provided by the
18 department. The Department of Juvenile Justice must send the
19 form, including a copy of any order, without
20 client-identifying information, to the Division of Economic
21 and Demographic Research of the Joint Legislative Management
22 Committee.

23 (9) Notwithstanding s. 985.214 ~~s. 39.043~~, if the minor
24 is found to have committed an offense that involves the use or
25 possession of a firearm, as defined in s. 790.001, other than
26 a violation of subsection (3), or an offense during the
27 commission of which the minor possessed a firearm, and the
28 minor is not committed to a residential commitment program of
29 the Department of Juvenile Justice ~~Health and Rehabilitative~~
30 ~~Services~~, in addition to any other punishment provided by law,
31 the court shall order:

1 (a) For a first offense, that the minor serve a
2 mandatory period of detention of 15 5 days in a secure
3 detention facility and perform 100 hours of community service.

4 (b) For a second or subsequent offense, that the minor
5 serve a mandatory period of detention of at least 21 ~~10~~ days
6 but not more than 3 months in a secure detention facility and
7 perform at least ~~not less than~~ 100 hours but not ~~nor~~ more than
8 250 hours of community service.

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10 The minor may not ~~shall~~ receive credit for time served before
11 adjudication. Any community service ordered under this
12 subsection shall, if possible, be performed in conjunction
13 with a hospital emergency room or other medical facility that
14 regularly treats trauma patients and gunshot wounds.

15 (10) If a minor is found to have committed an offense
16 under subsection (9), the court shall impose the following
17 penalties in addition to any penalty imposed under paragraph
18 (9)(a) or paragraph (9)(b):

19 (a) For a first offense:

20 1. If the minor is eligible by reason of age for a
21 driver license or driving privilege, the court shall direct
22 the Department of Highway Safety and Motor Vehicles to revoke
23 or to withhold issuance of the minor's driver license or
24 driving privilege for up to 1 year.

25 2. If the minor's driver license or driving privilege
26 is under suspension or revocation for any reason, the court
27 shall direct the Department of Highway Safety and Motor
28 Vehicles to extend the period of suspension or revocation by
29 an additional period for up to 1 year.

30 3. If the minor is ineligible by reason of age for a
31 driver license or driving privilege, the court shall direct

1 the Department of Highway Safety and Motor Vehicles to
2 withhold issuance of the minor's driver license or driving
3 privilege for up to 1 year after the date on which the minor
4 would otherwise have become eligible.

5 (b) For a second or subsequent offense:

6 1. If the minor is eligible by reason of age for a
7 driver license or driving privilege, the court shall direct
8 the Department of Highway Safety and Motor Vehicles to revoke
9 or to withhold issuance of the minor's driver license or
10 driving privilege for up to 2 years.

11 2. If the minor's driver license or driving privilege
12 is under suspension or revocation for any reason, the court
13 shall direct the Department of Highway Safety and Motor
14 Vehicles to extend the period of suspension or revocation by
15 an additional period for up to 2 years.

16 3. If the minor is ineligible by reason of age for a
17 driver license or driving privilege, the court shall direct
18 the Department of Highway Safety and Motor Vehicles to
19 withhold issuance of the minor's driver license or driving
20 privilege for up to 2 years after the date on which the minor
21 would otherwise have become eligible.

22 Section 2. This act shall take effect July 1, 1998.
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SENATE SUMMARY

Provides that the unlawful possession of a firearm by a minor is a third-degree felony rather than a first-degree misdemeanor. Requires that a minor serve 5 days in a secure detention facility for a first offense and serve at least 10 days but not more than 30 days in a secure detention facility for a second or subsequent offense. Requires that a minor who commits an offense that involves the unlawful possession of a firearm serve 15 days, rather than 5 days, in secure detention for a first offense and at least 21 days but not more than 3 months, rather than 10 days, for a second or subsequent offense. Provides that the minor may not receive credit for time served before adjudication. Requires that any community service required by the court as a sanction for the unlawful possession of a firearm by a minor be performed, if possible, in conjunction with an emergency room or medical facility that treats trauma patients and gunshot wounds.