

STORAGE NAME: h0137d.cp

DATE: March 5, 1999

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
CRIME AND PUNISHMENT
ANALYSIS**

BILL #: HB 137

RELATING TO: Possession of firearms/minors

SPONSOR(S): Representative Bloom

COMPANION BILL(S):

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) JUVENILE JUSTICE YEAS 10 NAYS 0
- (2) CRIME AND PUNISHMENT YEAS 6 NAYS 0
- (3) CRIMINAL JUSTICE APPROPRIATIONS
- (4)
- (5)

I. SUMMARY:

Unlawful Possession of a Firearm by a Minor

Current law does not authorize secure detention, either as part of the sentence or upon arrest, for juveniles who unlawfully possess firearms in violation of section 790.22, F.S. The bill provides that a minor charged with unlawful possession of a firearm in violation of 790.22(3), F.S., may be detained in secure detention. Secure detention prior to the resolution of a case is generally permitted for a maximum of 21 days. The bill provides that the first time a juvenile is sentenced for unlawful possession of a firearm the circuit court may order a juvenile to be held in secure detention facility for three days and up to 15 days for a second or subsequent violation.

The bill increases the criminal penalty for a minor who unlawfully possesses a firearm from a first degree misdemeanor to a third degree felony.

Use or Possession of a Firearm During the Commission of a Crime

The bill amends s. 790.22(9), F.S., by increasing the mandatory time in detention from five to 10 days for a minor found to have committed an offense that involves the use or possession of a firearm, other than unlawful possession of a firearm in violation of s. 790.22(3), F.S. For a second or subsequent offense, the mandatory minimum time in detention is increased from 10 to 15 days. The bill also requires a first or subsequent offender be committed to the DJJ for placement on community control supervision or in a nonresidential or residential commitment program.

Community Service for Offenses Involving Possession or Use of a Firearm

The bill requires that the community service required by section 790.23 to 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.

Fiscal The bill's estimated fiscal impact is \$1,673,820.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Section 790.22(3), F.S., makes it a first degree misdemeanor for a minor under the age of 18 to possess a firearm (other than an unloaded firearm at his or her home) unless:

- (a) The minor is engaged in a lawful hunting activity and is at least 16 years of age or if under age 16, is supervised by an adult;
- (b) 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 if under age 16, is supervised by an adult who is acting with the consent of the minor's parent or guardian; or
- (c) The firearm is unloaded and is being transported by the minor directly to or from a hunting event or a lawful marksmanship event.

If a child violates this subsection, the court must order the child to perform 100 hours of community service. The court must also direct the Department of Motor Vehicles to suspend or withhold the issuance of a driver license for up to one year. If the child is adjudicated for a second or subsequent offense, the child shall be required to perform between 100 and 250 hours of community service. The youth shall also have his driver's license suspended or not issued for up to two years.

Detention Prior to Sentencing

Section 790.22(8) and 985.215(5), F.S., provide that a child charged with an offense that involves the use or possession of a firearm, other than unlawful possession of a firearm under section 790.22, shall be detained in a juvenile detention center for up to 21 days pending the resolution of the offense.

Mandatory Detention Sentence

Section 790.22 requires that any minor not committed to a residential program for committing an offense involving the use or possession of a firearm, in addition to any other punishment imposed, shall be ordered by the court into secure detention for five days and shall perform 100 hours of community service. For a second offense, the child can be ordered to serve 10 days in detention and perform no less than 100 and up to 250 hours of community service. The mandatory detention provision does not apply to the unlawful possession of a firearm by a minor in violation of section 790.22, F.S. Except as authorized by this provision, placement in a secure detention facility occurs before the resolution of the case and is not authorized as part of a juvenile sanction.

Parental Responsibility

A parent who knowingly and willfully permits a minor to unlawfully possess a firearm commits a felony of the third degree. Upon the first conviction of a minor for unlawful possession of a firearm, the court may require a parent(s) to participate in parenting education classes approved by the DJJ. Any subsequent conviction of the minor may result in the court ordering the parent(s) to continue parenting education classes or perform community services hours with the child.

It is a second degree misdemeanor for any adult responsible for a child under the age of 16 to knowingly permit the child to possess a BB gun, air or gas-operated gun, or electric weapon unless the child is under the supervision and in the presence of the adult.

B. EFFECT OF PROPOSED CHANGES:

Unlawful Possession of a Firearm by a Minor

The bill amends section 790.22(5)(a), F.S., by increasing the criminal penalty for a minor sentenced for unlawfully possessing a firearm in violation of section 720.22, F.S., from a first degree misdemeanor to a third degree felony. For a first violation, the bill authorizes the circuit court to hold a minor in secure detention facility for three days and up to 15 days for a second or subsequent violation.

The bill provides that a minor charged with unlawful possession of a firearm in violation of 790.22(3), F.S., may be detained in secure detention. Secure detention prior to the resolution of a case is generally permitted for a maximum of 21 days.

Offenses Involving Possession or Use of a Firearm

The bill amends s. 790.22(9), F.S., by increasing the mandatory time in detention from five to 10 days for a minor found to have committed an offense that involves the use or possession of a firearm, other than unlawful possession of a firearm in violation of s. 790.22(3), F.S. For a second or subsequent offense, the mandatory minimum time in detention is increased from 10 to 15 days. The bill also requires a first or subsequent offender be committed to the DJJ for placement on community control supervision or in a nonresidential or residential commitment program. Any detention time served prior to adjudication under these provisions would not be credited towards the mandatory detention ordered by the court at disposition.

Community Service

Section 790.22(5) and (9), F.S., currently requires minors who commits the offense of unlawful possession of a firearm by a minor or any offense involving the use or possession of a firearm to perform 100 hours of community service for a first offense and 100 to 250 hours for a second or subsequent offense. The bill requires that the community service 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.

Miscellaneous

For the purpose of incorporating the amendment to s. 790.22, F.S., ss. 943.051 and 985.215, F.S., are reenacted. The enactment date for this bill is October 1, 1999.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

N/A

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

N/A

(3) any entitlement to a government service or benefit?

N/A

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

N/A

b. Does the bill require or authorize an increase in any fees?

N/A

c. Does the bill reduce total taxes, both rates and revenues?

N/A

d. Does the bill reduce total fees, both rates and revenues?

N/A

e. Does the bill authorize any fee or tax increase by any local government?

N/A

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

N/A

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

N/A

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

N/A

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

- (4) Are families required to participate in a program?

N/A

- (5) Are families penalized for not participating in a program?

N/A

- b. Does the bill directly affect the legal rights and obligations between family members?

N/A

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

- (1) parents and guardians?

N/A

- (2) service providers?

N/A

- (3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

N/A

E. SECTION-BY-SECTION ANALYSIS:

SECTION 1. Amends s. 790.22, F.S., related to prohibiting firearms use or possession by minor under age 16; authorizes placement in secure detention for three days for a minor who violates subsection (3) and increases the penalty from a first degree misdemeanor to a third degree felony; allows for placement in secure detention for up to 15 days for a minor who has a second or subsequent violation of subsection (3); requires and defines "community service" to be performed in a hospital emergency room or other medical environment dealing with trauma patients and gunshot wounds; increases the time placed in secure detention from five to 10 days for a first offense and from 10 to at least 15 days for a minor found to have committed an offense that involves the use of a firearm other than a violation of subsection (3).

SECTION 2. Reenacts s. 943.051 and s. 985.215 for the purpose of incorporating amendments to s. 790.22.

SECTION 3. Provides an enacting date of October 1, 1999.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

FY 1999-2000

\$1,148,850

2. Recurring Effects:

FY 1999-2000

FY 2000-2001

FY 2001-2002

\$524,970

\$524,970

\$524,970

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

FY 1999-2000

FY 2000-2001

FY 2001-2002

\$1,673,820

\$524,970

\$524,970

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

N/A

2. Direct Private Sector Benefits:

N/A

3. Effects on Competition, Private Enterprise and Employment Markets:

N/A

D. FISCAL COMMENTS:

The Department of Juvenile Justice estimates that there are \$309,795 in recurring costs associated with the bill and \$583,995 in nonrecurring costs. The following is the Department's analysis:

Data collected from the Department of Juvenile Justice revealed 182 youth were detained due to simple possession of a firearm during FY 97/98. Based on the proposed bill and utilizing the above collected data, the proposed bill would effect 182 youth and cost the state \$124,770. At a cost of \$95 per day to detain a youth for a length of stay in secure detention of 3 days would generate \$51,870 in recurring costs. The 182 youth will generate 546 resident days equally distributed over a fiscal year (182 x 3). This will generate the need for the building of 1 new bed (546 resident days divided by 365 days) at a cost to the state of \$72,900 (1 x 72,900). The fiscal impact on the state will be \$72,900 in non-recurring expenses with recurring costs of \$51,870 per year for a total start up cost of \$124,770.

Available data does not identify those youth with multiple firearm possessions or violations from single violators. However, previous data provided by the Department of Juvenile Justice revealed that 1/3 (33%) of all youth referred are re-offenders. Utilizing the above data the proposed bill will effect 60 youth annually (33% of 182) who are alleged to have committed simple possession a firearm on two or more occasions. The cost to the state is estimated to be \$231,000. At a cost of \$95 per day to detain a youth for a length of stay in secure detention of 15 days would generate \$85,500 in recurring costs. The 60 youth will generate 900 resident days equally distributed over a fiscal year (60 x 15). This will generate the need for the building of 2 new beds (900 resident days divided by 365 days) at a cost to the state of \$145,800 (2 x 72,900). The fiscal impact on the state will be \$145,800 in non-recurring expenses with recurring costs of \$85,500 per year for a total start up cost of \$231,300.

Data collected from the 1997/1998, Profile of Delinquency Cases of Youths Referred, revealed a total of 273 youth detained due to a gun law violation. Based on the proposed bill and utilizing the above data collected, this will effect 273 youth and cost the state \$421,275. At a cost of \$95 per day to detain a youth for a minimum length of stay in detention of 10 days (current law is 5 days), this would generate \$129,675 in additional recurring costs for 5 additional days of detention. The 273 youth will generate an additional 1365 resident days equally distributed over a fiscal year (273 x 5). This will generate the need for the building of 4 new beds (1365 resident days divided by 365) at a cost to the state of \$291,600 (4 beds x 72,900). The fiscal impact on the state will be \$291,600 in non-recurring expenses with recurring costs of \$129,675 per year for a total start up cost of \$421,275.

Data provided by the Department of Juvenile Justice revealed that 1/3 (33%) of all youth referred are re-offenders. Data collected from the 1997/1998, Profile of Delinquency Cases of Youths Referred, revealed a total of 273 youth were detained due to a gun violation. Based on the proposed bill and utilizing the above data collected, it is reasonable to estimate that (at a minimum) the proposed bill will effect 90 youth (33% of 273) and cost the state \$419,850. At a cost of \$95 per day for a mandatory length of stay in detention of 15 days (current law is 10 days), it would cost the state \$42,750 in recurring costs for the additional 5 days. The 90 youth will

generate an additional 450 resident days equally distributed over a fiscal year (90 x 5). This will generate the need for the building of 1 new bed (450 resident days divided by 365) at a cost to the state of \$72,900 (1 beds x 72,900). The fiscal impact on the state will be \$72,900 in non-recurring expenses with recurring costs of \$42,750 per year for a total start up cost of \$115,650.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill is exempt from the requirements of Article VII, section 18 of the Florida Constitution because it is a criminal law.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

Gun Use and Possession Among Youth

The Office of Juvenile Justice and Delinquency Prevention studied the patterns of youth using or possessing guns in its 1995 report titled *Juvenile Offenders and Victims: A National Report*. The respondents in the survey were inmates of maximum security juvenile correctional facilities and inner-city high school students. According to the survey results, obtaining a gun was not considered a difficult task for 87% of inmates and 65% of students. Of the inmates obtaining a gun, 55% said they carried it all or most of the time and 12% of students said they carried a gun

all or most of the time. The five primary reasons for carrying a gun were (1) protection, (2) enemies had guns, (3) to "get someone", (4) to use in crimes and (5) friends had one.¹

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON JUVENILE JUSTICE:

Prepared by:

Staff Director:

Bridget Edmond

David De La Paz

AS REVISED BY THE COMMITTEE ON CRIME AND PUNISHMENT:

Prepared by:

Staff Director:

J. Willis Renuart

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¹*Juvenile Offenders and Victims: A National Report*, Office of Juvenile Justice and Delinquency Prevention. August 1995.