

STORAGE NAME: h0137z.jj

DATE: May 6, 1999

****FINAL ACTION****

****SEE FINAL ACTION STATUS SECTION****

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
JUVENILE JUSTICE
FINAL ANALYSIS**

BILL #: HB 137 (Passed as Sections 1 and 2 of HB 349)

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 (W/D)
- (4)
- (5)

I. FINAL ACTION STATUS:

HB 137 did not pass the 1999 Legislative session, but passed in HB 349. On June 8, 1999, HB 349 was approved by the Governor and became Chapter 99-284, Laws of Florida. See the Comments section for bill history.

II. SUMMARY:

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.

III. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Section 790.022, F.S., provides that a minor who violates subsection (3) commits a misdemeanor of the first degree. Subsection (3) states that a minor under the age of 18 may not 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.

A parent who knowingly and willfully permits the violation of subsection (3) commits a felony of the third degree. Upon the first conviction of a minor for a violation of subsection (3), 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.

If a child violates subsection (3), 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.

Section 790.22(8), F.S., provides that a child charged with an offense that involves the use or possession of a firearm, other than a violation of subsection (3), shall be detained in a juvenile detention center. Subsection (9) states that any minor committing an offense involving the use or possession of a firearm, as defined in s. 790.001, F.S., or an offense during which the minor possessed a firearm and is not committed to a residential commitment program 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. Offenses violating subsection (3), simple possession, are excluded from the provisions of subsection (9).

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

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

In a 1997 updated version of the report, a random sample of seven sites throughout the United States,² reported arrest information on juveniles arrested or detained in the first six months of 1995. The results of this study were skewed to more severe offenses because five of the seven sites limited the study to juveniles held in detention-not all juveniles arrested.

Those youth arrested were disproportionately black or Hispanic and 15 years of age or older. Twenty percent of the male respondents reported carrying a gun all of the time in comparison to 14% of all arrestees (juveniles and adults) held for gun possession. Juveniles, drug sellers and gang members were more likely to carry and use guns than the general arrested population. In the updated report, respondents were asked their reasons for carrying a gun. Again the number one response was protection, but the second reason was respect. Carrying a gun for respect was an even more prevalent for drug sellers and gang members.

In a June 1996 study reported in the Journal of the American Medical Association (JAMA) entitled Gun Acquisition and Use by Juvenile Offenders, 63 juvenile offenders (forty-two males and 21 females) were interviewed in an Atlanta, Georgia, detention center. Overall, 53 respondents (41 boys and 12 girls) had owned handguns at some point in the past. Eighty-four percent of the gun carriers had acquired their first handgun before they were 15-years-old with some obtaining their first gun as young as nine-years-old. All juvenile offenders interviewed knew personally of at least one person who had been shot and 76% had witnessed at least one shooting. Almost three-fourths had been threatened by an armed offender and 48% had been shot at themselves.

Forty-two percent of the juvenile offenders interviewed in the JAMA study were given their first gun by a peer, an older youth, or a relative, often with the admonition that they needed it for protection. Those juvenile offenders interviewed who said they purposefully acquired their first firearm were more likely to become frequent or constant carriers of guns.

When asked where they were most likely to carry a gun, the most common response was "when going to a club" (35% of the carriers). Accurate rates of carrying a gun to school were difficult to assess because of high truancy and school dropout rates. Most respondents expressed concern about serious repercussions if they were caught carrying a gun in school, and they stated that, as a result, they usually hid the gun outside the building.

Authors of the study reported in the JAMA concluded their report with the following recommendations:

- If boys and girls are acquiring firearms as young as age 8 or 9 years, education about the dangers of guns must be initiated in elementary school.
- Programs which enhance survival skills and self-esteem may reduce the demand for guns for those children who acquire guns for protection and to enhance a sense of power.
- Increased law enforcement could increase an adolescent's fear of arrest for carrying guns.
- Efforts to reduce the demand for illegal guns should be matched by efforts to reduce the supply.
- Safe storage of guns in the home could decrease diversion through burglary and theft.
- Adults who illegally supply guns to juveniles should be identified and prosecuted.
- Programs to reduce gun carrying by adolescents should be rigorously evaluated to determine their effectiveness.

²Sites responding to the survey were District of Columbia, Indianapolis, St. Louis, Denver, Phoenix, San Diego, and Los Angeles.

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:

Sections 790.22, F.S., 985.051, F.S.

E. SECTION-BY-SECTION ANALYSIS:

Refer to the final analysis of HB 349. (Sections 1 and 2 of the bill).

IV. 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:**

In FY 1997-98 182 youth were detained for simple possession of a firearm and 273 were detained for more serious gun law violations. To hold youth in detention for three days (\$95 per day) for a violation of s. 790.22 (3), F.S., would cost the state \$51,870 in recurring dollars. This figure is derived by estimating that the 182 youth would generate an additional 546 resident days. The DJJ would also need to construct one new bed, \$72,900 (non recurring). The total cost for detaining a youth for simple possession would be \$124,770.

DJJ's records show 273 youth detained for more serious gun law violations in FY 1997-98 (s. 790.22 (9), F.S.). By using a base daily rate of \$95 for detaining a youth for 10 days, the DJJ estimates a \$259,350 recurring cost to the state. With 2,730 additional resident days generated by the new provisions of the bill, the DJJ would need to build an additional 7 beds at \$510,300 non-recurring. Total cost to the state would be \$769,650.

Previous data provided by the DJJ revealed that 33% of all juveniles arrested once are re-arrested; therefore, by multiplying 33% by 182 and 273, the DJJ estimates the state will incur an additional \$231,300 and \$419,850 respectively; however, there is no tracking system in place to determine the number of youth securely detained due to gun law violations on two or more occasions.

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

A. **APPLICABILITY OF THE MANDATES PROVISION:**

N/A

B. **REDUCTION OF REVENUE RAISING AUTHORITY:**

N/A

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

N/A

VI. COMMENTS:

12/08/98 H Prefiled

**12/18/98 H Referred to Juvenile Justice (CRC); Crime & Punishment (CRC);
Criminal Justice Appropriations (FRC)**

**01/08/99 H On Committee agenda-- Juvenile Justice (CRC), 01/20/99, 1:00 pm,
102-HOB**

01/20/99 H Comm. Action: Unanimously Favorable by Juvenile Justice (CRC)

01/21/99 H Now in Crime & Punishment (CRC)

**02/23/99 H On Committee agenda-- Crime & Punishment (CRC), 03/03/99, 1:00 pm,
214C**

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03/02/99 H Introduced, referred to Juvenile Justice (CRC); Crime & Punishment (CRC); Criminal Justice Appropriations (FRC) -HJ 00028; On Committee agenda-- Juvenile Justice (CRC), 01/20/99, 1:00 pm, 102-HOB; Comm. Action: Unanimously Favorable by Juvenile Justice (CRC) -HJ 00101; Now in Crime & Punishment (CRC) -HJ 00101; On Committee agenda-- Crime & Punishment (CRC), 03/03/99, 1:00 pm, 214C
03/03/99 H Comm. Action: Unanimously Favorable by Crime & Punishment (CRC) -HJ 00286
03/10/99 H Now in Criminal Justice Appropriations (FRC) -HJ 00286
04/14/99 H On Committee agenda-- Criminal Justice Appropriations (FRC), 04/16/99, 9:30 am, 116K --Temporarily deferred
04/21/99 H Withdrawn from Criminal Justice Appropriations (FRC) -HJ 00741; Placed on calendar, available for General Calendar
04/30/99 Died on Calendar, Iden./Sim./Compare Bill(s) passed, refer to HB 349 (Ch. 99-284)

VII. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VIII. SIGNATURES:

COMMITTEE ON JUVENILE JUSTICE:

Prepared by:

Bridget Edmond

Staff Director:

David De La Paz

AS REVISED BY THE COMMITTEE ON CRIME AND PUNISHMENT:

Prepared by:

J. Willis Renuart

Staff Director:

J. Willis Renuart

FINAL ANALYSIS PREPARED BY THE COMMITTEE ON JUVENILE JUSTICE:

Prepared by:

Bridget Edmond

Staff Director:

David De La Paz