

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 204

SPONSOR: Criminal Justice Committee and Senator Silver

SUBJECT: Firearm Possession by a Minor

DATE: January 20, 1999 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>White</u>	<u>Cannon</u>	<u>CJ</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>FP</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

The Committee Substitute for Senate Bill 204 requires that minors charged with simple unlawful possession of a firearm shall be placed in secure detention prior to arraignment.

The CS increases the mandatory secure detention period for a non-residentially committed minor who commits any offense involving the use or possession of a firearm, except for simple unlawful possession of a firearm by a minor. For a first offense, secure detention will be increased from 5 to 15 days. For a second offense, secure detention will be increased from 10 to 21 days, with a maximum of 3 months. Further, the CS provides that community service ordered under this subsection shall, if possible, be performed in a medical facility that treats gunshot wounds, and that the minor shall not receive credit for time served in detention prior to adjudication.

The CS requires that a minor, who is charged with or commits the offense of unlawful possession or discharge of a weapon or firearm at school, have his or her fingerprints filed with the Florida Department of Law Enforcement (FDLE).

The CS expands the offense of possession or discharge of a weapon or firearm on school property by adding that the possession or discharge of a weapon or firearm at a school-sponsored event is also prohibited.

The CS provides the state attorney with discretion to determine whether to prosecute a minor as a juvenile or an adult, if the minor is charged with possessing or discharging a firearm or weapon at school. Moreover, the CS requires public and non-public schools to provide students with written notice, at the beginning of each school year, indicating that it is unlawful to possess weapons or firearms in the manner statutorily proscribed. This notice must be signed by the child's legal guardian and retained in the school's records.

This CS substantially amends the following sections of the Florida Statutes: 790.22, 943.051, 985.212, and 790.115.

II. Present Situation:

Section 790.22(1), F.S., provides that a minor, under 16 years of age, is prohibited from using BB guns, air or gas-operated guns, or electric weapons or devices, unless the minor is acting under the supervision of an adult with the consent of the minor's parent. Section 790.22(2), F.S., provides that an adult responsible for a minor, who violates subsection (1), commits a second degree misdemeanor, punishable by a maximum of 60 days incarceration and a \$500 fine. In *J.J. v. State*, 620 So.2d 1139, 1140 (Fla. 3rd DCA 1993), the court held that the Legislature did not intend to subject juveniles to criminal sanctions under subsection (1); instead, the Legislature intended only that adults be sanctioned under subsection (2).

Section 790.22(3), F.S., provides that it is a first degree misdemeanor for a minor under 18 years of age to possess a firearm, other than an unloaded firearm at his or her home, except in the following circumstances:

- The minor is engaged in a lawful hunting activity and is at least 16 years of age, or if under 16, is 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 if under 16, is 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 a lawful hunting or marksmanship event.

The penalties for both the minor who violates subsection (3) and his parent are set forth in ss. 790.22(4) and 790.22(5), F.S. A parent who knowingly and willfully permits a violation commits a third degree felony, punishable by a maximum of five years incarceration and/or a fine not exceeding \$5,000. For the minor's first conviction under subsection (3), the court may require a parent to participate in parenting education classes approved by the Department of Juvenile Justice (DJJ). Further convictions of the minor may result in the court ordering the parent to continue parenting education classes or perform community service hours with the minor.

For a minor who violates subsection (3), the court must order him or her to perform 100 hours of community service and must direct the Department of Highway Safety and Motor Vehicles to suspend or withhold the issuance of his or her driver's license for up to one year. If the minor commits a second or subsequent violation, he or she is required to perform between 100 and 250 hours of community service and have his or her driver's license suspended or not issued for up to two years. Section 790.22, F.S., does not currently authorize the placement of a minor in secure detention if the minor is charged with or found to have committed simple possession of a firearm.

Section 790.22(8), F.S., on the other hand, requires that a minor charged with an offense that involves the use or possession of a firearm, other than simple possession of a firearm, initially be detained in a secure detention center, unless the state attorney allows the release of the minor. The detained minor is required to have a court hearing within 24 hours, at which time the court

may continue to hold the minor in secure detention if the youth meets detention criteria or if the court finds that the minor presents a clear and convincing danger to himself or the community.

Section 790.22(9), F.S., requires that if the minor is adjudicated, but not residentially committed to the DJJ for committing an offense involving the use or possession of a firearm, other than simple possession of a firearm, the court must order the minor into secure detention for 5 days and to perform 100 hours community service. For a second offense, the minor must be ordered to serve 10 days in secure detention and perform between 100 and 250 hours of community service. In addition, the minor's driver's license must be suspended or not issued for up to two years. The section further provides that the minor shall receive credit for time served before adjudication.

Sections 943.051(3)(b), and 985.212(1)(b), F.S., provide that the fingerprints of a minor or child, who is charged with certain enumerated misdemeanors, including possession of a firearm in violation of s. 790.22(5), F.S., must be submitted to the FDLE.

Section 790.115(1), F.S., provides that it is a third degree felony for a person to exhibit a weapon in a rude, careless, angry or threatening manner on the grounds or facilities of any school, school bus, or school bus stop, or within 1,000 feet of a school, during the hours of school or a school sanctioned activity, unless the exhibition of the weapon is in support of school-sanctioned activities or in self-defense.

Section 790.115(2)(a) through (c), F.S., provides that it is a third degree felony for a person to willfully and knowingly possess any firearm, electric weapon or device, destructive device, or other weapon, including a razor blade, box cutter, or knife on the property of any school, school bus, or school bus stop, except in the following circumstances:

- The weapon is for school-sanctioned activities;
- The firearm is required for a class; or
- The firearm is lawfully possessed by a person over eighteen years of age in his or her private conveyance.

Section 790.115(2)(d), F.S., further provides that a person commits a second degree felony if he or she discharges a weapon or firearm in violation of s.790.115(2)(a), F.S.

The term "school" as used in s. 790.115, F.S., means, "any preschool, elementary school, middle school, junior high school, secondary school, vocational school, or postsecondary school, whether public or nonpublic."

III. Effect of Proposed Changes:

The CS amends s.790.22(8), F.S., to include the offense of simple possession of a firearm by a minor within those offenses which require that the minor be placed in secure detention prior to arraignment.

The CS amends s. 790.22(9), F.S., to increase the mandatory secure detention period for a non-residentially committed minor who commits an offense involving the use or possession of a firearm, except for simple possession of a firearm by a minor. For a first offense, secure detention will be increased from 5 to 15 days. For a second offense, secure detention will be increased from 10 to 21 days, with a maximum of 3 months. Community service is still required (100 hours for a first offense and between 100 and 250 hours for a second or subsequent offense); as is the suspension or non-issuance of a driver's license for up to two years. The CS adds that any community service ordered pursuant to this subsection shall, if possible, be performed in a medical facility that treats gunshot wounds, and that the minor shall not receive credit for time served in detention prior to adjudication.

The CS amends ss. 943.051(3)(b), and 985.212(1)(b), F.S., to require that a minor, who is charged with or is found to have committed the offense of possession or discharge of a weapon or firearm at a school-sponsored event or on school property in violation of s. 790.115 F.S., have his or her fingerprints filed with the FDLE.

The CS amends s. 790.115(1) and (2), F.S., to expand the offense of possession of a weapon or firearm on school property by also specifying that the possession of a weapon or firearm at a school-sponsored event is prohibited.

The CS creates s. 790.115(2)(f), F.S., to provide that a state attorney has the discretion to prosecute a minor as a juvenile or an adult, notwithstanding ss. 985.226(2)(b) and 985.227(2), F.S., if the minor is charged with possessing or discharging a firearm or weapon at school in violation of s. 790.115(2), F.S. Moreover, the CS creates s. 790.115(4), F.S., to require that public and non-public schools provide each student with written notice, at the beginning of each school year, indicating that it is unlawful to possess weapons or firearms in the manner proscribed by s. 790.115, F.S. The notice must be signed by the child's legal guardian and retained in the school's records.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Projected Fiscal Impact of SB 204 (Reported by DJJ)				
Year	# of Detention Beds Needed	Recurring Costs	Non-Recurring Costs	Total Costs
July 1, 1999 -- June 30, 2000	18	\$644,100	\$1,312,200	\$1,956,300

The DJJ data indicate that 273 youth were detained in fiscal year 1997-1998 for gun law violations, other than the possession offenses discussed above. Consequently, DJJ estimates that 273 first time offenders will be subject to the mandatory 15 day detention requirement in s. 790.22(9), F.S. Presently, the mandatory detention requirement is 5 days. As such, the CS increases the mandatory detention period by 10 days, which could result in a projected fiscal impact of \$769,650. This was determined by multiplying 10 (the increased number of detention days) times 273 (the number of offenders) times \$95 (the cost per day of detention), for a total operational cost of \$259,350. Moreover, the DJJ estimates that seven new beds would have to be provided at a cost of \$72,900 each, for a total non-recurring cost of \$510,300.

Based on the DJJ’s statistics which indicate that 33 percent of all youth referred to the DJJ are reoffenders, the DJJ estimates that this portion of the CS could affect 90 second time offenders, which would result in a fiscal impact of \$1,186,650. This was determined by multiplying 45 (the average number of detention days required for a second time offender) times \$95 (the cost per day of detention) times 90 (the number of second time offenders), for a total operational cost of \$384,750. Furthermore, the DJJ estimates that eleven new detention beds would have to be provided at a cost of \$72,900 each, for a total non-recurring cost of \$801,900.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The CS creates s. 790.115(4), F.S., to require public and non-public schools to provide students with written notice, at the beginning of each school year, indicating that it is unlawful to possess weapons or firearms in the manner proscribed by s. 790.115, F.S. This notice provision appears to be unnecessary because s. 230.23, F.S., currently requires school boards to adopt a code of student conduct for elementary and secondary schools which includes notice that the possession of a firearm, knife, a weapon, or any item which can be used as a weapon by a student is grounds for disciplinary action and may result in criminal prosecution.

Moreover, the CS's notice provision could be construed as creating a defense to a violation of s. 790.115, F.S. In other words, a minor may assert that he or she is innocent when charged with a weapon or firearm violation at school because he or she allegedly did not receive notice from his or her school. Accordingly, staff recommends that if the Legislature does not intend to create a defense based on a lack of notice that s. 790.115(4), F.S., be amended by adding the following sentence to the subsection: Evidence that the school failed to provide this notice shall not prevent a finding that a person committed an offense proscribed by this section.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
