

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 Fiscal Policy

BILL: CS/SB 1456

INTRODUCER: Fiscal Policy Committee and Senator Avila

SUBJECT: Firearm Offenses

DATE: April 14, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Stokes</u>	<u>CJ</u>	Favorable
2.	<u>Erickson</u>	<u>Yeatman</u>	<u>FP</u>	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1456 expands the scope of the “10-20-Life” statute (s. 775.087, F.S.) to provide for mandatory minimum terms of imprisonment for firearm-related human trafficking, enhances punishment for theft and repeat theft of a firearm, and enhances the detention assessment process and secure detention period for juveniles who unlawfully possess or use firearms. Specifically, the bill:

- Amends the “10-20-Life” statute to provide for mandatory minimum terms of imprisonment for committing human trafficking while possessing or discharging a firearm or other specified weapon;
- Increases the Criminal Punishment Code offense severity level ranking (from level 4 to level 6) for theft of a firearm;
- Creates a level 7 second degree felony for repeat theft of a firearm;
- Increases from 3 days to 5 days the period of secure detention available for a juvenile who unlawfully possesses a firearm, and also increases the secure detention period from 15 days to 21 days for a repeat violation;
- Requires that a juvenile’s unlawful use of a firearm be considered in all determinations and court orders regarding the use of detention care;
- Requires the juvenile risk assessment instrument to consider a juvenile’s unlawful use of a firearm;
- Requires that a juvenile charged with any offense involving possession or use of a firearm be placed in secure detention until the juvenile’s detention hearing; and

- Provides that upon good cause or if the totality of the circumstances warrants an extension, a court may extend the length of secure detention care for up to an additional 21 days if a juvenile is charged with an offense involving the possession or use of a firearm.

The Legislature's Office of Economic and Demographic Research preliminary estimates that the bill will have a "positive indeterminate" prison bed impact (an unquantifiable increase in prison beds). See Section V. Fiscal Impact Statement.

The bill takes effect October 1, 2023.

II. Present Situation:

"10-20-Life" Statute

Section 775.087, F.S., the "10-20-Life" statute, in part, requires a judge to sentence a person convicted of a specified offense to a mandatory minimum term of imprisonment if, while committing the offense, the person possesses or discharges a firearm or destructive device¹ or if the discharge results in death or great bodily harm. Specified offenses include such offenses as murder, sexual battery, robbery, and burglary.²

Under s. 775.087, F.S., a person convicted of a specified offense, or the attempt to commit such offense, must be sentenced to the following mandatory minimum term of imprisonment:

- 10 years for possession of a firearm;
- 15 years for possession of a semi-automatic/machine gun;
- 20 years for discharge of a firearm (any type); and
- 25 years to life imprisonment for discharge with great bodily injury or death.³

However, s. 775.087(2)(a)1., F.S., provides for a minimum mandatory sentence of 3 years, instead of 10 years, for the possession of a firearm by a felon or burglary of a conveyance if the possession occurred during the commission of the offense.

Currently, the crime of human trafficking is not a specified offense that would require a mandatory minimum term of imprisonment under the "10-20-Life" statute. Florida law defines "human trafficking" as transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, purchasing, patronizing, procuring, or obtaining another person for the purpose of exploitation of that person.⁴

Possession of a Firearm by a Minor

Section 790.22(3), F.S., prohibits a minor under 18 years of age from possessing a firearm, other than an unloaded firearm at his or her home, unless:

- The minor is engaged in a lawful hunting activity and is:
 - At least 16 years of age; or

¹ The terms "firearm" and "destructive device" are defined in s. 790.001, F.S.

² For a complete list of offenses, see s. 775.087(3)(a)1., F.S.

³ Section 775.087(2)(a)1.-3. and (3)(a)1.-3., F.S.

⁴ Section 787.06(2)(d), F.S.

- Under 16 years of age and supervised by an adult; or
- 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 previously described.⁵

A minor who violates subsection (3) commits a first degree misdemeanor,⁶ and may serve a period of detention up to 3 days in a secure detention facility for a first offense.⁷ For a second or subsequent offense, the minor commits a third degree felony and must serve a period of detention of up to 15 days in a secure detention facility.⁸

Theft of a Firearm

Section 812.014, F.S., provides that a person commits theft if he or she knowingly obtains or uses, or endeavors to obtain or use, the property of another with intent to, either temporarily or permanently:

- Deprive the other person of a right to the property or a benefit from the property; or
- Appropriate the property to his or her own use or to the use of any person not entitled to the use of the property.⁹

Third degree grand theft, a third degree felony,¹⁰ includes theft of a firearm, regardless of its value.¹¹

Detention of Children in Florida - Intake and Assessment

Every child under the age of 18 charged with a crime in Florida is referred to the Department of Juvenile Justice (DJJ).¹² The DJJ serves as the primary case manager responsible for managing, coordinating, and monitoring services provided to the child.¹³ Intake and screening services for a child referred to the DJJ are performed at a Juvenile Assessment Center.¹⁴ The purpose of the intake process is to assess the child's needs and risks and to determine the most appropriate

⁵ Section 790.22(3), F.S.

⁶ A first degree misdemeanor is punishable by not more than 1 year in county jail and a fine not exceeding \$1,000. Sections 775.082 and 775.083, F.S.

⁷ Section 790.22(5)(a), F.S.

⁸ Section 790.22(5)(b), F.S.

⁹ Section 812.014(1), F.S.

¹⁰ A third degree felony is generally punishable by not more than 5 years in state prison and a fine not exceeding \$5,000. Sections 775.082 and 775.083, F.S.

¹¹ Section 812.014(2)(c)5., F.S. The offense is ranked in level 4 of the Criminal Punishment Code offense severity ranking level chart. Section 921.0022(3)(d), F.S.

¹² A referral is similar to an arrest in the adult criminal justice system. *See Probation and Community Intervention, Overview*, Department of Juvenile Justice, available at <http://www.djj.state.fl.us/services/probation> (last visited on March 20, 2023).

¹³ Section 985.145(1), F.S.

¹⁴ Section 985.135(4), F.S.

treatment plan and setting for the child's programmatic need and risks.¹⁵ Once a child is in the custody of the DJJ, the DJJ determines whether detention care is appropriate.¹⁶

The DJJ makes an initial decision regarding detention care placement using the "Detention Risk Assessment Instrument."¹⁷ This instrument takes into consideration, but need not be limited to, the following:

- Pending felony and misdemeanor offenses;
- Offenses committed pending adjudication;
- Prior offenses;
- Unlawful possession of a firearm;
- Prior history of failure to appear;
- Supervision violations;
- Supervision status at the time the child is taken into custody;
- All statutory mandates for detention care; and
- Any information on the child's history of abuse and neglect.¹⁸

A child taken into custody and placed in detention care is entitled to a detention hearing within 24 hours of being taken into custody. At the hearing, the court may order continued detention care under certain circumstances, including but not limited to, the result of the risk assessment instrument indicates secure or supervised release detention.¹⁹ However, a child must be placed in secure detention care until the child's detention hearing if the child is a prolific juvenile offender²⁰ or is charged with possessing or discharging a firearm on school property in violation of s. 790.115, F.S.²¹

¹⁵ Section 985.14(2), F.S. The intake process consists of a preliminary screening and may be followed by a comprehensive assessment, consisting of a full mental health, cognitive impairment, substance abuse, or psychosexual evaluation.

¹⁶ Section 985.25(1), F.S.

¹⁷ Sections 985.25(1) and 985.245, F.S. Section 985.245, F.S., outlines with whom the Detention Risk Assessment Instrument must be developed, when and how it must be updated, and what factors the assessment instrument should identify when evaluating a child to determine whether detention placement is appropriate. "The [DJJ] ... utilizes the Detention Risk Assessment Instrument (DRAI) to determine the most appropriate placement for youth upon arrest. The DRAI was developed by the department in partnership with representatives appointed by the Conference of Circuit Judges, the Prosecuting Attorneys Association, the Public Defenders Association, the Florida Sheriff's Association, and the Florida Association of Chiefs of Police. Initially, the DRAI was conducted manually." *2023 Agency Legislative Analysis (SB 1456)* (March 23, 2023), Department of Juvenile Justice (on file with the Senate Committee on Criminal Justice).

¹⁸ Section 985.245(2)(b), F.S. "Youth taken into custody (arrested) by law enforcement are screened by the department's detention screening staff using the DRAI to determine whether a youth, prior to their detention hearing, should be detained in a secure detention facility, placed on supervised release (community-based detention status), or released without any additional supervision. The DRAI uses a criteria-based point system. Youth are held in secure detention if they score 13 points or more. In accordance with the DRAI, youth charged with "any offense involving the use or possession of firearm" score 20 points and are therefore held in secure detention until their detention hearing. Youth with a detention status appear before the court within 24 hours of being taken into custody, at which time the juvenile judge determines whether there is a need for continued detention supervision." *Supra*, at n. 16.

¹⁹ Section 985.255(1), F.S.

²⁰ A "prolific juvenile offender" is a child that is charged with a delinquent act that would be a felony if committed by an adult, has a prior adjudication or adjudication withheld for a delinquent act that would be a felony if committed by an adult, and has 5 or more arrests, adjudications, or adjudications withheld, 3 of which must have been felony offenses. Sections 985.255(1)(f), F.S.

²¹ Section 985.25(1)(b), F.S.

“Detention care” means “the temporary care of a child in secure or supervised release detention, pending a court adjudication or disposition or execution of a court order.”²² There are two types of detention care, including:

- “Secure detention,” which is the temporary custody of a child while he or she is under the physical restriction of a secure detention center or facility pending adjudication, disposition, or placement.
- “Supervised release detention,” which is the temporary, nonsecure custody of a child while the child is released to the custody of the parent, guardian, or custodian in a physically nonrestrictive environment under the supervision of the DJJ staff pending adjudication or disposition, through programs that include, but are not limited to, electronic monitoring, day reporting centers, and nonsecure shelters, in addition to other court-imposed requirements.²³

The use of detention care must be based primarily on findings that the child:

- Presents a substantial risk of not appearing at a subsequent hearing;
- Presents a substantial risk of inflicting bodily harm on others as evidenced by recent behavior, including the illegal possession of a firearm;
- Presents a history of committing a property offense prior to adjudication, disposition, or placement;
- Has committed contempt of court by:
 - Intentionally disrupting the administration of the court;
 - Intentionally disobeying a court order; or
 - Engaging in a punishable act or speech in the court’s presence which shows disrespect for the authority and dignity of the court; or
- Requests protection from imminent bodily harm.²⁴

Additionally, the use of detention care may not be used for the following reasons:

- To allow a parent to avoid his or her legal responsibility;
- To permit more convenient administrative access to the child;
- To facilitate further interrogation or investigation; or
- Due to a lack of more appropriate facilities.²⁵

Further, a child who is alleged to be dependent under ch. 39, F.S., but who is not alleged to have committed a delinquent act or violation of law, may not, under any circumstances, be placed into secure detention care.²⁶

Generally, a child may not be held in secure detention care under a special detention order for more than 21 days, unless an adjudicatory hearing for the case has been commenced in good faith by the court. The court may extend the length of detention for an additional 21 days if there is good cause shown that the nature of the charge requires additional time for the prosecution or defense of the case or that the totality of the circumstances, including the preservation of public safety, warrants an extension, and the child is charged with one of the following offenses:

²² Section 985.03(18), F.S.

²³ *Id.*

²⁴ Section 985.24(1), F.S.

²⁵ Section 985.24(3), F.S.

²⁶ Section 985.24(4), F.S.

- Capital felony;
- Life felony;
- First degree felony;
- Second degree felony; or
- Third degree felony involving violence against any individual.²⁷

The court may continue to extend the period of secure detention care in increments of up to 21 days each by conducting a hearing before the expiration of the current period to determine the need for continued secure detention of the child.²⁸

A prolific juvenile offender must be placed on supervised release detention care with electronic monitoring or in secure detention care under a special detention order until disposition.²⁹ If secure detention care is ordered by the court for a prolific juvenile offender, such secure detention care must not exceed 21 days unless an adjudicatory hearing for the case has been commenced in good faith, or 15 days after the entry of an order of adjudication.³⁰

Except as previously described, a child may not be held in detention care for more than 15 days after the entry of an order of adjudication.³¹

Time limitations on detention care do not include periods of delay resulting from a continuance granted by the court. Upon an order granting a continuance, the court must conduct a hearing at the end of each 72-hour period to determine the need for continued detention and for further continuance of proceedings for the child or for the state.³²

III. Effect of Proposed Changes:

The bill expands the scope of the “10-20-Life” statute (s. 775.087, F.S.) to provide for mandatory minimum terms of imprisonment for firearm-related human trafficking, enhances punishment for theft and repeat theft of a firearm, and enhances the detention assessment process and secure detention period for juveniles who unlawfully possess or use firearms.

The bill amends s. 775.087, F.S., to provide for the following mandatory minimum terms of imprisonment for committing human trafficking while possessing or discharging a firearm or other specified weapon:

- 10 years for possession of a firearm;
- 15 years for possession of a semi-automatic/machine gun;
- 20 years for discharge of a firearm (any type); and
- 25 years to life imprisonment for discharge with great bodily injury or death.

The bill amends s. 921.0022, F.S., to increase the Criminal Punishment Code offense severity level ranking (from level 4 to level 6) for theft of a firearm.

²⁷ Section 985.26, F.S.

²⁸ *Id.*

²⁹ Section 985.26, F.S.

³⁰ Section 985.26(2)(c), F.S.

³¹ Section 985.26(3), F.S.

³² Section 985.26(4), F.S.

The bill amends ss. 812.014 and 921.0022, F.S., to create a level 7 second degree felony³³ for repeat theft of a firearm.

The bill amends s. 790.22, F.S., to increase from 3 days to 5 days the period of secure detention available for a juvenile who unlawfully possesses a firearm, and also increases the secure detention period from 15 days to 21 days for a repeat violation.

The bill amends s. 985.24, F.S., to require that a juvenile's unlawful use of a firearm be considered in all determinations and court orders regarding the use of detention care.

The bill amends s. 985.245, F.S., to require the juvenile risk assessment instrument to consider a juvenile's unlawful use of a firearm.

The bill amends s. 985.25, F.S., to require that a juvenile charged with any offense involving possession or use of a firearm be placed in secure detention until the juvenile's detention hearing.

Finally, the bill amends s. 985.26, F.S., to provide that upon good cause or if the totality of the circumstances warrants an extension, a court may extend the length of secure detention care for up to an additional 21 days if a juvenile is charged with an offense involving the possession or use of a firearm.

The bill takes effect October 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not appear to require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by Article VII, s. 18, of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

³³ A second degree felony is punishable by not more than 15 years in state prison and a fine not exceeding \$10,000. Sections 775.082 and 775.083, F.S.

E. Other Constitutional Issues:

None identified

V. **Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Office of Economic and Demographic Research

The Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation, has not yet reviewed the bill. The Legislature's Office of Economic and Demographic Research (EDR) preliminary estimated that the original would have a "positive indeterminate" prison bed impact (an unquantifiable increase in prison beds).³⁴

The EDR provided the following information relevant to its estimate:

In FY 18-19, the incarceration rate for a Level 6, 3rd degree felony was 26.6%, and in FY 19-20 the incarceration rate was 24.4%. In FY 20-21, the incarceration rate for a Level 6, 3rd degree felony was 23.5%, and in FY 21-22 the incarceration rate was 23.8%. In FY 18-19, the incarceration rate for a Level 7, 2nd degree felony was 47.7%, and in FY 19-20 the incarceration rate was 44.5%. In FY 20-21, the incarceration rate for a Level 7, 2nd degree felony was 43.3%, and in FY 21-22 the incarceration rate was 43.8%.

Per [Department of Corrections or] DOC, there were 20 new commitments to prison for human trafficking violations in FY 18-19, and there were 8 new commitments in FY 19-20. There were 8 new commitments in FY 20-21, and there were 28 new commitments in FY 21-22. Additionally, of the human trafficking offenders committed to prison over the last three fiscal years, there were 2 offenders who also had a firearm charge.

Per DOC, in FY 18-19, there were 18 new commitments to prison for grand theft of a firearm. In FY 19-20, there were 18 new commitments, and there were 14 new commitments in FY 20-21. There were 16 new commitments in FY 21-22. Incarceration rates for these offenses varied considerably, with 17.3% going to

³⁴ *HB 1465 – Firearm and Destructive Device Offenses (Identical SB 1456)*, Office of Economic and Demographic Research (on file with the Senate Committee on Criminal Justice).

prison in FY 18-19, 14.0% going to prison in FY 19-20, 15.2% going to prison in FY 20-21, and 25.6% going to prison in FY 21-22. It is not known how many of these offenders were committing grand theft of a firearm for a second time.³⁵

Department of Juvenile Justice

The DJJ did not indicate that the bill would have a fiscal impact on the department that could not be absorbed within existing resources.³⁶

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 775.087, 790.22, 812.014, 985.24, 985.245, 985.25, 985.26, and 921.0022.

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 Fiscal Policy on April 13, 2023:

The committee substitute provides that upon good cause or if the totality of the circumstances warrants an extension, a court may extend the length of secure detention care for up to an additional 21 days if a juvenile is charged with an offense involving the possession or use of 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.

³⁵ *Id.*

³⁶ *Supra*, at n. 16.