

## HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

**BILL #:** CS/CS/HB 1181 Juvenile Justice

**SPONSOR(S):** Judiciary Committee and Criminal Justice Subcommittee, Jacques and others

**TIED BILLS:** **IDEN./SIM. BILLS:** CS/CS/SB 1274

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**FINAL HOUSE FLOOR ACTION:** 84 Y's

25 N's

**GOVERNOR'S ACTION:** Approved

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### SUMMARY ANALYSIS

CS/CS/HB 1181 passed the House on February 22, 2024. The bill was amended in the Senate on March 7, 2024, and returned to the House. The House concurred in the Senate amendment and subsequently passed the bill, as amended, March 7, 2024.

The bill amends several statutes relating to the Department of Juvenile Justice (DJJ), the juvenile justice system, and juvenile firearm possession and use. Specifically, the bill:

- Amends s. 790.22, F.S., to require a court, if a minor is found to have committed the offense of unlawfully possessing a firearm three or more times, to adjudicate the minor delinquent and commit the minor to a DJJ residential program.
- Amends s. 901.15, F.S., to authorize a law enforcement officer to arrest a minor without a warrant for unlawfully possessing a firearm in violation of s. 790.22(3), F.S., if the officer has probable cause to believe the minor committed such an offense.
- Amends s. 985.12, F.S., to:
  - Change the term "civil citation" to "delinquency citation;"
  - Prohibit a juvenile charged with an offense involving the use or possession of a firearm from being issued a delinquency citation; and
  - Authorize civil citation or similar prearrest diversion programs existing before July 1, 2024, to continue to operate as a delinquency citation program if such program has been approved by the local State Attorney.
- Amends s. 985.25, F.S., to:
  - Require a juvenile who violates the terms of his or her electronic monitoring to be held in secure detention until a detention hearing; and
  - Require a juvenile who is on probation for committing a felony firearm offense to be held in secure detention for up to 21 days if he or she is taken into custody for a specified violation of probation.
- Amends s. 985.255, F.S., to:
  - Require a court to *consider*, rather than use, the results of DJJ's risk assessment instrument in making a determination of whether to continue to detain a juvenile; and
  - Create a presumption that a juvenile must be held in secure detention if the court finds probable cause that he or she committed murder or other specified offenses involving the use or possession of a firearm.
- Amends s. 985.433, F.S., to:
  - Require a juvenile who is adjudicated delinquent by a court for committing any offense or attempted offense involving a firearm to be placed on conditional release for one year following his or her release from a juvenile commitment program; and
  - Prohibit a court from withholding adjudication if a juvenile previously had adjudication withheld for specified offenses and requiring a court to adjudicate such a juvenile delinquent and sentence the juvenile to a DJJ residential program.
- Creates s. 985.438, F.S., to authorize DJJ to create a "graduated response matrix" by administrative rule.
- Amends s. 985.441, F.S. to authorize a court to commit a juvenile to residential programs for a misdemeanor violation of unlawfully possessing a firearm in violation of s. 790.22(3), F.S.
- Amends s. 985.46, F.S., to provide minimum standards and requirements for conditional release.
- Amends s. 985.601, F.S., to require DJJ to establish a class on the consequences of committing firearm offenses.
- Amends s. 985.711, F.S., to increase the penalty for introducing contraband into a DJJ facility to a second degree felony; to prohibit a person from introducing any currency, cigarettes, or tobacco products into a DJJ facility; and to authorize DJJ staff to use canine units in a DJJ facility to locate and seize contraband.
- Amends s. 1002.221, F.S., to authorize a juvenile's educational records to be introduced in court proceedings.

The bill may have an indeterminate fiscal impact on state and local government through the increased number of juveniles that will be required to be held in secure detention and through the expanded number of juveniles that would be eligible for DJJ supervision and services. See Fiscal Analysis & Economic Impact Statement.

The bill was approved by the Governor on April 26, 2024, ch. 2024-130, L.O.F., and will become effective on July 1, 2024.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

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DATE: 5/2/2024

# I. SUBSTANTIVE INFORMATION

## A. EFFECT OF CHANGES:

### Juvenile Detention

#### Background

In Florida, the Department of Juvenile Justice (DJJ) administers the juvenile justice system. When a child is alleged to have committed a delinquent act, DJJ must review the sufficiency of the probable cause affidavit or report and complete an intake screening to make an initial determination whether detention care is necessary.<sup>1</sup> Detention care is the temporary care of a child in secure detention<sup>2</sup> or supervised release detention care<sup>3</sup> pending a court adjudication or disposition of his or her case.<sup>4</sup>

Section 985.24, F.S., requires the use of detention care to be based primarily upon 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 illegal firearm possession;
- Presents history of committing a property offense prior to adjudication, disposition, or placement;
- Has committed a specified offense of contempt of court; or
- Requests protection from imminent bodily harm.<sup>5</sup>

#### *Initial Detention*

DJJ utilizes the Detention Risk Assessment Instrument (DRAI) to make the initial determination of the need for detention.<sup>6</sup> The tool was developed after considering the latest statistical analysis techniques and risk-prediction methods in Florida's juvenile criminal justice setting<sup>7</sup> and is designed to determine the likelihood that a child will fail to appear in court or commit a new offense within a short window of time.<sup>8</sup> The DRAI uses a point system, based on factors such as:

- The current alleged offense;
- Prior referrals to DJJ, including whether the child has another case pending;
- Prior delinquency history, including whether the child has previously failed to appear for court hearings or escaped from supervision;
- Whether the child has unlawfully possessed or used a firearm; and
- The child's age.<sup>9</sup>

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<sup>1</sup> In counties that do not have an assessment center, the law enforcement officer calls a DJJ "on-call screener" to assess the juvenile's risk and determine if detention is necessary. Office of the State Court's Administrator, *Florida's Juvenile Delinquency Benchbook* (June 2021), <https://www.flcourts.org/content/download/752754/file/Delinquency%20Benchbook%20-%20Final%20June%202021.pdf> (last visited Mar. 14, 2024).

<sup>2</sup> "Secure detention" means temporary custody of the child while the child is under the physical restriction of a secure detention center or facility pending adjudication, disposition, or placement. S. 985.03(18)(a), F.S.

<sup>3</sup> "Supervised release detention" means temporary, nonsecure custody of the 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 department staff pending adjudication or disposition, through programs that include, but are not limited to, electronic monitoring, day reporting centers, and nonsecure shelters. Supervised release detention may include other requirements imposed by the court. S. 985.03(18)(b), F.S.

<sup>4</sup> S. 985.03(18), F.S.

<sup>5</sup> S. 985.24(1), F.S.

<sup>6</sup> S. 985.245(1), F.S.

<sup>7</sup> Florida Department of Juvenile Justice, *Detention Risk Assessment Instrument* (effective July 1, 2019), <https://www.djj.state.fl.us/research/detention-risk-assessment-instrument> (last visited Mar. 14, 2024).

<sup>8</sup> Florida Department of Juvenile Justice, *Detention Risk Assessment Instrument-Frequently Asked Questions*, <https://www.djj.state.fl.us/research/detention-risk-assessment-instrument/frequently-asked-questions> (last visited Mar. 14, 2024).

<sup>9</sup> S. 985.245(2)(b), F.S.

A child is required to be placed into secure detention after being taken into custody if the child is a “prolific juvenile offender” under s. 985.255(1)(f), F.S., or if the child is charged with possessing or discharging a firearm on school property in violation of s. 790.115, F.S.<sup>10</sup>

### *Detention Hearing*

A child taken into custody and placed in detention care must be given a hearing within 24 hours to determine the existence of probable cause that the child has committed the delinquent act or violation of law for which he or she is charged and the need for continued detention.<sup>11</sup> The court determines the need for continued detention based on the results of the DRAI and may order a continued detention status if the DRAI indicates secure or supervised release detention.<sup>12</sup>

### *Length of Detention*

Section 985.26, F.S., controls the time period for which a court can order a child to be placed in detention care. Generally, a child may not be held in detention care for more than 21 days unless an adjudicatory hearing for the case has been commenced in good faith by the court.<sup>13</sup> However, when good cause is shown that the nature of the charge requires additional time for prosecution or defense of the case or if the totality of the circumstances, including the preservation of public safety, warrant an extension, the court may extend the length of detention for an additional 21 days if the child is charged with an offense that, if committed by an adult, would be a:

- Capital felony;
- Life felony;
- First-degree felony;
- Second-degree felony;
- Third degree felony involving violence against any person; or
- Any other offense involving the use or possession of a firearm.<sup>14</sup>

The court may order additional extensions of secure detention, in up to 21-day increments, but only after conducting a hearing prior to the expiration of the child’s current secure detention period and making written findings that there is a need for the child’s continued secure detention.<sup>15</sup> If a court extends the period of secure detention, it must ensure that an adjudicatory hearing in the child’s case commences as soon as is reasonably possible and must prioritize the disposition of any child’s case who has been held in secure detention for 60 days or more.<sup>16</sup>

## Effect of the Bill – Juvenile Detention

### *Initial Detention*

The bill amends s. 985.25, F.S., to require a court to place a juvenile who is on supervised release detention care and who is arrested for violating the terms of his or her electronic monitoring supervision in secure detention until a detention hearing.

The bill also amends s. 985.25, F.S., to require a juvenile who is on probation for an underlying felony firearm offense and who is taken into custody for violating the conditions of his or her probation in any manner that does not involve a new law violation to be held in secure detention to allow the state attorney to review the violation. Under the bill, if the state attorney notifies the court that commitment to a DJJ program will be sought, the juvenile must remain in secure detention for 21 days. Upon a motion

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<sup>10</sup> S. 985.25(1)(b), F.S.

<sup>11</sup> Ss. 985.255(1) and (3)(a), F.S.

<sup>12</sup> *Id.*

<sup>13</sup> S. 985.26(2)(a), F.S.

<sup>14</sup> S. 985.26(2)(b), F.S.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

by the state attorney, the juvenile may be held for an additional 21 day period if the court finds that the totality of the circumstances, including the preservation of public safety, warrants such an extension. If the court releases the juvenile from secure detention, the bill requires the juvenile to be placed on supervised release with electronic monitoring.

### *Detention Hearing*

The bill amends s. 985.255, F.S., to require a court to *consider*, rather than use, the results of the DRAI in determining whether to continue to detain a juvenile. The bill also explicitly authorizes a court to order a detention placement that is more or less restrictive than that indicated by the results of the DRAI.

### *Length of Detention*

The bill amends s. 985.255, F.S., to authorize a court to continue to detain a juvenile in secure detention if the court finds probable cause that a juvenile committed one or more of the following offenses:

- Murder in the first degree under s. 782.04(1)(a), F.S.;
- Murder in the second degree under s. 782.04(2), F.S.;
- Armed robbery under s. 812.13(2)(a), F.S., that involves the use or possession of a firearm as defined in s. 790.001, F.S.;
- Armed carjacking under s. 812.133(2)(a), F.S., that involves the use or possession of a firearm as defined in s. 790.001, F.S.;
- Having a firearm while committing a felony under s. 790.07(2), F.S.;
- Armed burglary under s. 810.02(2)(b), F.S., that involves the use or possession of a firearm as defined in s. 790.001, F.S.;
- Delinquent in possession of a firearm under s. 790.23(1)(b), F.S.; or
- An attempt to commit any offense listed in this paragraph under s. 777.04, F.S.

The bill creates a presumption that a juvenile who commits any of the offenses listed above is a risk to public safety and a danger to the community and requires a court to hold such a juvenile in secure detention prior to his or her adjudicatory hearing unless the court finds by clear and convincing evidence that such a juvenile does not pose a risk to public safety or is a danger to the community. If a juvenile is held in secure detention for committing the offenses listed above and an adjudicatory hearing is not held within 60 days, the bill requires the court to hold a review hearing within each successive seven day period until the juvenile's adjudicatory hearing or until the juvenile is placed on supervised release with electronic monitoring.

Under the bill, if a court makes a finding that the juvenile does *not* pose a risk to public safety or is *not* a danger to the community and the court decides to release the juvenile from secure detention, the court must place the juvenile on supervised release detention care with electronic monitoring and enter a written order listing the juvenile's prior adjudications, prior dispositions, and prior violations of pretrial release orders. Such written order must be provided to the victim, to the law enforcement agency that arrested the juvenile, and to the law enforcement agency with primary jurisdiction over the juvenile's primary residence.

The bill amends s. 985.26, F.S., to conform to the changes made by the bill to s. 985.255(1)(g) and (h), F.S.

## **Disposition Hearings and Residential Commitment**

### Background

After a juvenile is found to have committed a delinquent act, the court must hold a disposition hearing.<sup>17</sup> A juvenile disposition hearing is comparable to criminal sentencing. The court must review DJJ's predisposition report which recommends the most appropriate placement and treatment plan.<sup>18</sup> The court may deviate from DJJ's recommendations but must include appropriate written findings in the disposition order.<sup>19</sup>

A juvenile disposition order is similar to a judgment and sentence in criminal court. Under s. 985.433, F.S., if the court finds that a child should be adjudicated delinquent, the court may order the child into:

- Residential commitment with DJJ at a specified restrictiveness level;<sup>20</sup>
- Residential commitment with DJJ at a specified restrictiveness level, followed by community-based sanctions;<sup>21</sup> or
- A probation program which must include a penalty component, such as community-based sanctions,<sup>22, 23</sup> and a rehabilitative component.<sup>24</sup>

Community-based sanctions may include, but are not limited to:

- Participation in substance abuse treatment;
- Participation in a day-treatment program;
- Restitution in money or in kind;
- A curfew;
- Revocation or suspension of the child's driver license;
- Community service; and
- Appropriate educational programs.<sup>25</sup>

Section 985.441, F.S., authorizes a court to commit a juvenile who has been adjudicated delinquent to specified DJJ programs and authorizes DJJ to transfer the juvenile between such programs when appropriate. Generally, a court is prohibited from committing a juvenile who has been adjudicated delinquent for committing a misdemeanor offense, or a juvenile who is on misdemeanor probation who commits a technical violation of probation, to a restrictiveness level other than minimum-risk nonresidential.<sup>26, 27</sup> However, a court may commit a juvenile to a nonsecure residential placement<sup>28</sup> if:

- The juvenile has previously been adjudicated or had adjudication withheld for a felony offense;
- The juvenile has previously been adjudicated or had adjudication withheld for three or more misdemeanor offenses within the previous 18 months;

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<sup>17</sup> S. 985.433, F.S.

<sup>18</sup> S. 985.433(7)(a), F.S.

<sup>19</sup> S. 985.433(7)(b), F.S.

<sup>20</sup> *Id.*

<sup>21</sup> S. 985.433(7)(c), F.S.

<sup>22</sup> S. 985.433(8), F.S.

<sup>23</sup> S. 985.435(2), F.S.

<sup>24</sup> S. 985.435(3), F.S.

<sup>25</sup> *Id.*

<sup>26</sup> S. 985.441(2), F.S.

<sup>27</sup> A "minimum-risk nonresidential" restrictiveness level includes programs that "work with youth who remain in the community and participate at least five days per week in a day treatment program. Youth assessed and classified for programs at this commitment level represent a minimum risk to themselves and public safety and do not require placement and services in residential settings. Youth in this level have full access to, and reside in, the community. Youth who have been found to have committed delinquent acts that involve firearms, that are sexual offenses, or that would be life felonies or first degree felonies if committed by an adult may not be committed to a program at this level." S. 985.03(44)(a), F.S.

<sup>28</sup> A "nonsecure residential" restrictiveness level includes programs or program models that "are residential but may allow youth to have supervised access to the community. Facilities at this commitment level are either environmentally secure, staff secure, or are hardware-secure with walls, fencing, or locking doors. Residential facilities at this commitment level shall have no more than 90 beds each, including campus-style programs, unless those campus-style programs include more than one treatment program using different treatment protocols, and have facilities that coexist separately in distinct locations on the same property. Facilities at this commitment level shall provide 24-hour awake supervision, custody, care, and treatment of residents. Youth assessed and classified for placement in programs at this commitment level represent a low or moderate risk to public safety and require close supervision. The staff at a facility at this commitment level may seclude a child who is a physical threat to himself or herself or others. Mechanical restraint may also be used when necessary. S. 985.03(44)(b), F.S.

- The juvenile is before the court for disposition of a violation of s. 800.03, F.S., for exposure of sexual organs; s. 806.031, F.S., for arson resulting in injury to another person; or s. 828.12, F.S., for cruelty to animals; or
- The court finds by a preponderance of the evidence that the protection of the public requires such placement or that the particular needs of the juvenile would be best served by such placement and such a finding is made by the court in writing.<sup>29</sup>

### Effect of the Bill – Disposition Hearings and Residential Commitment

The bill amends s. 985.433, F.S., to require that any juvenile who is adjudicated by the court and committed to a DJJ program for an offense or attempted offense involving a firearm be placed on conditional release for a period of one year after his or her release from such commitment program. The conditional release program must include electronic monitoring by DJJ for the first six months following the juvenile's release, at times and under terms and conditions set by DJJ.

Under the bill, if a juvenile is found to have committed an offense that involves the use or possession of a firearm, other than a violation of s. 790.22(3), F.S., or an offense during the commission of which the juvenile possessed a firearm, and the court has decided not to commit the juvenile to a DJJ residential commitment program, the court must:

- Place the juvenile on probation for a period of at least one year;
- Require the juvenile to be supervised by electronic monitoring during his or her term of probation;
- Order the juvenile to serve a minimum period of detention of 30 days in a secure detention facility, with credit for time served in secure detention prior to disposition; and
- Require the juvenile to perform 100 hours of community service or paid work as determined by DJJ.

In addition to these penalties, the court may revoke or suspend the juvenile's driver license for up to one year.

The bill requires a court, if a juvenile previously received a withhold of adjudication of delinquency for committing specified offenses, to adjudicate a juvenile delinquent and sentence a juvenile to a DJJ residential program. These offenses include:

- Armed robbery involving the use of a firearm under s. 812.13(2)(a), F.S.;
- Armed carjacking under s. 812.133(2)(a), F.S., involving the use or possession of a firearm as defined in s. 790.001, F.S.;
- Having a firearm while committing a felony under s. 790.07(2), F.S.;
- Armed burglary under s. 810.02(2)(b), F.S., involving the use or possession of a firearm as defined in s. 790.001, F.S.;
- Delinquent in possession of a firearm under s. 790.23(1)(b), F.S.; or
- An attempt to commit any offense listed in this paragraph under s. 777.04, F.S.

The bill amends s. 985.441, F.S., to create an exception to the provision prohibiting a court from committing a juvenile to a program, other than a minimum-risk nonresidential program, for committing a misdemeanor violation or technical violation of misdemeanor probation if a juvenile is adjudicated delinquent for a first offense of unlawfully possessing a firearm in violation of s. 790.22(3), F.S. Thus, under the bill, a court may commit a juvenile who is found to have unlawfully possessed a firearm to a greater restrictiveness level than which is authorized under current law for other misdemeanor offenses, including a residential commitment program.

### **Juvenile Probation**

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<sup>29</sup> S. 985.441(2), F.S.

## Background

### *Post-commitment Probation/Conditional Release*

Under s. 985.435, F.S., a court may sentence a juvenile who was adjudicated delinquent and committed to a DJJ program to serve a term of postcommitment probation following his or her release from such a program. DJJ retains jurisdiction over the juvenile on postcommitment probation until he or she reaches 19 years of age.<sup>30</sup> If a juvenile on postcommitment probation violates the terms of such probation, DJJ or the state attorney may file a petition alleging a violation of probation and the juvenile may, in some circumstances, have his or her probation revoked by the court and be recommitted to a DJJ program.<sup>31</sup>

As an alternative to postcommitment probation, a court may sentence a juvenile who was adjudicated delinquent and committed to a DJJ program to be placed on conditional release following his or her release from the DJJ program. DJJ retains jurisdiction over a juvenile on conditional release supervision until he or she reaches 21 years of age.<sup>32</sup> A juvenile who is under conditional release supervision remains “committed” to DJJ even though he or she is no longer in a residential DJJ program.<sup>33</sup> Thus, if a juvenile is on conditional release supervision and violates the terms of his or her release, DJJ may initiate a transfer staffing and recommit the juvenile to a DJJ program without an order from a court.<sup>34</sup>

### *Violation of Probation*

If a juvenile who is on probation violates the terms of his or her probation, both DJJ and the state attorney are authorized to file a petition with the court alleging such a violation.<sup>35</sup>

### *Alternative Consequences*

A probation program may include an alternative consequence component to address instances in which a child is noncompliant with technical conditions of his or her probation but has not committed any new law violations. The alternative consequence component is designed to provide swift and appropriate consequences to any noncompliance with technical conditions of probation. Examples of technical violations include missing classes at school or missing curfew. When responding to these violations, some juvenile probation officers (JPOs) are able to use an Effective Response Matrix to ensure the most appropriate responses are considered prior to a formal violation being filed. This can include increased community supervision, community service, truancy court and other rehabilitative alternatives.

## Effect of the Bill – Juvenile Probation

### *Postcommitment Probation/Conditional Release*

The bill amends ss. 985.101, 985.245, 985.439, 985.46, 985.48, and 985.4815, F.S., to repeal all references to postcommitment probation, thus eliminating postcommitment probation as a sentencing option. As such, a court will only have the option of sentencing a juvenile to conditional release supervision following commitment in a DJJ program.

The bill also amends s. 985.46, F.S., to provide minimum standards for conditional release supervision. A juvenile on conditional release supervision:

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<sup>30</sup> S. 985.0301(5)(b), F.S.

<sup>31</sup> S. 985.439(4)(d), F.S.

<sup>32</sup> S. 985.0301(5)(b)2., F.S.

<sup>33</sup> S. 985.46(4), F.S.

<sup>34</sup> S. 985.441(4), F.S.

<sup>35</sup> S. 985.439, F.S.

- Must participate in an educational program;
- Must observe a curfew;
- Is prohibited from having contact with victims, co-defendants, or known gang members;
- Is prohibited from using controlled substances; and
- Is prohibited from possessing a firearm.

Under the bill, a violation of the terms of conditional release supervision must be resolved using the “graduated response matrix” created by the bill. The bill requires DJJ to recommit a juvenile who fails to move into compliance to a residential facility.

#### *Violation of Probation*

The bill amends s. 985.439, F.S., to require a state attorney, upon receiving notice of a violation of probation from DJJ, to either file the violation within five days or provide written reasons to the court and DJJ why he or she is not filing the violation of probation.

#### *Alternative Consequences*

The bill creates s. 985.438, F.S., to require DJJ to create, by rule, a statewide “graduated response matrix” (GRM) to address technical violations of probation as part of the alternative consequence component of a juvenile’s probation. The GRM must: be based upon the principle that sanctions must reflect the seriousness of the violation, provide immediate accountability for violations, consider the assessed criminogenic needs and risks of the child, and consider the child’s age and maturity level. As such, the GRM is designed to provide swift and appropriate consequences or incentives to a child who is alleged to be noncompliant with or in violation of probation.

The bill requires the GRM to provide sanctions for a juvenile who commits a technical violation of his or her probation based on the juvenile’s risk to reoffend and must include, but not be limited to:

- Increased contacts.
- Increased drug tests.
- Curfew reductions.
- Increased community service.
- Additional evaluations.
- Addition of electronic monitoring.

The bill amends s. 985.435, F.S., to require the alternative consequence component of a juvenile’s probation to be aligned with the GRM, and amends s. 985.439, F.S., to remove provisions authorizing the creation of local alternative consequences programs.

## **Possession or Use of Firearms or Specified Weapons by a Minor**

### Background

#### *Possessing or Discharging Firearms on School Property*

Section 790.115, F.S., prohibits a person from willfully and knowingly possessing or discharging any firearm at a school-sanctioned event or on the property of any school,<sup>36</sup> school bus, or school bus

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<sup>36</sup> “School” means any preschool, elementary school, middle school, junior high school, secondary school, career center, or postsecondary school, whether public or nonpublic. S. 790.115(2)(a), F.S.



stop.<sup>37</sup> Generally, a violation is punishable as a third degree felony.<sup>38</sup> A person who discharges a firearm at a school-sanctioned event or on the property of any school, school bus, or school bus stop commits a second degree felony.<sup>39</sup> A minor under 18 years of age who is charged with possessing or discharging a firearm on school property must be detained in secure detention unless the state attorney authorizes the release of the minor, and such minor must be given a detention hearing within 24 hours.<sup>40</sup> The court may order the minor to be held in secure detention for a period of 21 days.<sup>41</sup>

#### *Use of Certain Guns or Weapons by a Minor Under 16*

Section 790.22(1), F.S., prohibits a minor under the age of 16 from using a BB gun, air or gas-operated gun, or electric weapon or device<sup>42</sup> unless he or she is under the supervision of and in the presence of an adult who is acting with the consent of the minor's parent.

#### *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
  - Under 16 years of age and 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
  - Under 16 years of age and supervised by an adult who is acting with the consent of the minor's parent or guardian.
- The firearm is unloaded and is being transported by the minor directly to or from a lawful hunting or recreational shooting event.

A first violation is punishable as a first degree misdemeanor.<sup>43</sup> A second or subsequent violation is punishable as a third degree felony.<sup>44</sup>

A court is required to sentence a minor who unlawfully possesses a firearm as follows:

- For a first violation, a court must require a minor to perform 100 hours of community service, and may require a minor to serve up to five days in secure detention and may suspend a minor's driver license for up to one year.<sup>45</sup>
- For a second or subsequent violation, a court must require a minor to serve up to 21 days in a secure detention facility, must order a minor to perform at least 100 but not more than 250 hours of community service, and may suspend a minor's driver license for up to two years.<sup>46</sup>

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<sup>37</sup> A person may carry a firearm at a school or school-related location:

- In a case to a firearms program, class or function which has been approved in advance by the principal or chief administrative officer of the school as a program or class to which firearms could be carried;
- In a case to a career center having a firearms training range; or
- In a vehicle pursuant to s. 790.25(5), F.S., except that school districts may adopt written and published policies that waive the exception in this subparagraph for purposes of student and campus parking privileges. S. 790.115(2)(a)1.-3., F.S.

<sup>38</sup> S. 790.115(b), (c), and (e), F.S.

<sup>39</sup> A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. Ss. 775.082, 775.083, or 775.084, F.S.

<sup>40</sup> S. 790.115(4), F.S.

<sup>41</sup> *Id.*

<sup>42</sup> "Electric weapon or device" means any device which, through the application or use of electrical current, is designed, redesigned, used, or intended to be used for offensive or defensive purposes, the destruction of life, or the infliction of injury. S. 790.001(7), F.S.

<sup>43</sup> A first degree misdemeanor is punishable by up to one year in jail and a \$1,000 fine. Ss. 775.082 and 775.083, F.S.

<sup>44</sup> A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Ss. 775.082, 775.083, or 775.084, F.S.

<sup>45</sup> S. 790.22(5)(a), F.S.

<sup>46</sup> S. 790.22(5)(b), F.S.

Under s. 790.22(8), F.S., unless a state attorney authorizes his or her release, a juvenile must be held in secure detention and provided a detention hearing within 24 hours if he or she is found to have committed an offense that involves the use or possession of a firearm, or is charged for any offense during the commission of which the juvenile possessed a firearm. A court may continue to hold such a juvenile in secure detention if the court finds by clear and convincing evidence that the juvenile is a clear and present danger to himself or herself or the community.<sup>47</sup>

Under s. 790.22(9) and (10), F.S., if a juvenile is found to have committed an offense that involves the use or possession of a firearm other than a violation of s. 790.22(3), F.S., or an offense during the commission of which the juvenile possessed a firearm, and the juvenile is not committed to a DJJ residential commitment program, the court must sentence such a juvenile as follows:

- For a first offense, the court must order the juvenile to serve a minimum period of detention of 15 days in a secure detention facility, require the juvenile to perform 100 hours of community service, and revoke or suspend the juvenile's driver license for up to one year. In addition, the court may place such a juvenile on community control or in a nonresidential commitment program.
- For a second or subsequent offense, the court must order the juvenile to serve a mandatory period of detention of at least 21 days in a secure detention facility, require the juvenile to perform at least 100 but not more than 250 hours of community service, and must revoke or suspend the juvenile's driver license for up to two years. In addition, the court may place such a juvenile on community control or in a nonresidential commitment program.

### *Arrest Authority*

A judge may issue a warrant authorizing a person's arrest for a felony or misdemeanor crime upon finding probable cause that the person committed a crime within the judge's jurisdiction.<sup>48</sup> However, the United States Supreme Court has held that the Fourth Amendment to the United States Constitution does not forbid warrantless arrest, even for a misdemeanor offense.<sup>49</sup>

In Florida, a law enforcement officer may arrest a person without a warrant under certain statutorily enumerated circumstances, including when:

- An officer reasonably believes a person committed a felony;
- There is probable cause to believe a person has committed certain enumerated misdemeanor offenses, such as a battery, criminal mischief or graffiti, an act of domestic violence, an injunction violation, or sexual cyberharassment; or
- A person commits a misdemeanor in an officer's presence and the arrest is made immediately or in fresh pursuit after the officer observes the offense.<sup>50</sup>

As such, since the first offense of unlawful possession of a firearm by a minor is a misdemeanor, unless the offense occurs in the officer's presence, an officer must seek a warrant to arrest a juvenile for committing such a violation. If a law enforcement officer receives a report of a minor unlawfully in possession of a firearm, the time it takes for an officer to obtain an arrest warrant and respond to the incident may result in the officer being too late to prevent the minor from harming himself or herself, or others, or from committing another offense with the firearm.

## Effect of the Bill – Possession or Use of Firearms or Specified Weapons by a Minor

### *Possessing or Discharging Firearms on School Property*

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<sup>47</sup> S. 790.22(8), F.S.

<sup>48</sup> S. 901.02, F.S.

<sup>49</sup> *Atwater v. City of Lago Vista*, 532 U.S. 318 (2001).

<sup>50</sup> S. 901.15, F.S.

The bill amends s. 790.115, F.S., to delete the provision requiring a minor be held in secure detention for possessing or discharging a firearm on school property, which is duplicative of the provision in s. 985.25(1)(b), F.S., which requires a minor to be placed in secure detention care until a detention hearing if he or she is charged with any offense involving the possession or use of a firearm.

#### *Use of Certain Guns or Weapons by a Minor Under 16*

The bill amends s. 790.22(1), F.S., to authorize a minor under the age of 16 to use a BB gun, air or gas-operated gun, or electric weapon or device under adult supervision if a minor's guardian, in addition to a minor's parent, consents to such use.

#### *Possession of a Firearm by a Minor*

The bill amends s. 790.22(5), F.S., to revise the sentencing requirements for a minor who unlawfully possesses a firearm by:

- Authorizing a minor who was sentenced to secure detention for unlawfully possessing a firearm to receive credit for time served prior to the disposition of his or her case;
- Authorizing a minor to substitute paid work hours, as determined by DJJ, for community service hours; and
- Requiring a court, for a third or subsequent violation, to adjudicate the minor delinquent and commit such a minor to a DJJ residential program.

The bill amends s. 790.22(8), F.S., by deleting that subsection and moving the substance of that subsection to s. 985.255(1)(h), F.S.

The bill amends s. 790.22(9), and (10), F.S., by deleting those subsections and moving the substance of those subsections to s. 985.433(8), F.S.

The bill amends s. 985.601, F.S., to require DJJ to establish a class focused on the risk and consequences of youthful firearm offending, and requires DJJ to provide such a class to any juvenile who is found to have committed any offense involving the use or possession of a firearm.

#### *Arrest Authority*

The bill amends s. 901.15, F.S., to authorize a law enforcement officer to arrest a minor without a warrant for unlawfully possessing a firearm in violation of s. 790.22(3), F.S., if the officer has probable cause to believe that the minor committed such an offense.

### **Juvenile Civil Citation Programs**

#### Background

Generally, a “diversion” program is designed to keep a juvenile from entering the juvenile justice system through the traditional legal process by placing him or her on a less restrictive track that affords more opportunities for rehabilitation and restoration.<sup>51</sup> The goal of diversion is to maximize the opportunity for a juvenile's success and minimize the likelihood of recidivism.<sup>52</sup>

Section 985.12, F.S., requires each judicial circuit to create a civil citation or similar prearrest diversion program and develop policies and procedures for such a program, which must specify the following:

- The misdemeanor offenses that qualify a juvenile for participation in the program;

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<sup>51</sup> Florida Department of Juvenile Justice, *Glossary*, <https://www.djj.state.fl.us/youth-families/glossary> (last visited Mar. 14, 2024).

<sup>52</sup> Center for Health & Justice, *No Entry: A National Survey of Criminal Justice Diversion Programs and Initiatives*, [https://www.centerforhealthandjustice.org/tascblog/Images/documents/Publications/CHJ%20Diversion%20Report\\_web.pdf](https://www.centerforhealthandjustice.org/tascblog/Images/documents/Publications/CHJ%20Diversion%20Report_web.pdf) (last visited Mar. 14, 2024).

- The eligibility criteria for the program;
- The program's implementation and operation;
- The program's requirements, including, but not limited to, the completion of community service hours, payment of restitution, if applicable, and intervention services indicated by a needs assessment of the juvenile, approved by the department, such as family counseling, urinalysis monitoring, and substance abuse and mental health treatment services; and
- A program fee, if any, to be paid by a juvenile participating in the program. If the program imposes a fee, the clerk of the court of the applicable county must receive a reasonable portion of the fee.<sup>53</sup>

The state attorney in each judicial circuit is responsible for administering the civil citation program.<sup>54</sup> A sheriff, police department, county, municipality, locally authorized entity, or public or private educational institution may operate an independent civil citation or similar prearrest diversion program if such a program was operating as of October 1, 2018, and if the state attorney determines that the independent program is substantially similar to the civil citation or similar prearrest diversion program developed by the circuit.<sup>55</sup>

Section 985.126, F.S., requires each diversion program,<sup>56</sup> which includes a civil citation program, to submit specified data about each participant in a diversion program to DJJ. DJJ is required to publish such data on its website semiannually.<sup>57</sup>

### Effect of the Bill – Juvenile Civil Citation Programs

The bill amends s. 985.12, F.S., to rename “civil citation” programs “prearrest delinquency citation” programs. The bill makes conforming changes to ss. 943.051, 985.11, and 1006.07, F.S., to reflect the name change.

The bill makes other changes to the prearrest delinquency citation program by:

- Prohibiting a prearrest delinquency citation from being issued for an offense that involves the use or possession of a firearm;
- Authorizing a prearrest delinquency citation program to require a juvenile to complete classes established by DJJ or the entity responsible for administering the prearrest delinquency citation program;
- Authorizing a civil citation or similar prearrest diversion program that existed before July 1, 2024, to continue to operate as a prearrest delinquency citation program if such program is approved by the state attorney and complies with the statutory requirements for a prearrest delinquency citation program; and
- Deleting a provision that authorizes, but does not require, a judicial circuit to model its civil citation program on a program created by another entity that operates such a program.

The bill amends s. 985.126, F.S., to require DJJ to provide a quarterly report to be published on its website listing the entities that use prearrest delinquency citations for less than 70 percent of first-time misdemeanor offenses. The bill also requires DJJ to submit the quarterly report to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

## **Driver License Suspension**

### Background

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<sup>53</sup> S. 985.12(2)(b), F.S.

<sup>54</sup> S. 985.12(2)(c), F.S.

<sup>55</sup> *Id.*

<sup>56</sup> “Diversion program” means a program under ss. 985.12, 985.125, 985.155, or 985.16, F.S., or a program to which a referral is made by a state attorney under s. 985.15, F.S. S. 943.0582, F.S.

<sup>57</sup> S. 985.126(4), F.S.

Under ss. 985.433(8), 985.35(4)(a) and 985.435(2)(d), F.S., a court has the authority to revoke or suspend a juvenile's driver license, regardless of whether the court adjudicates a juvenile delinquent or withholds such an adjudication.

### Effect of the Bill – Driver License Suspension

The bill amends s. 985.455, F.S., to authorize a court, upon a finding of a compelling circumstance that warrants such an exception, to direct the Department of Highway Safety and Motor Vehicles to issue a license for driving privileges restricted to business<sup>58</sup> or employment purposes only if the court previously suspended a juvenile's driver license as part of the disposition in a juvenile case.<sup>59</sup>

### **Introduction of Contraband into a DJJ Facility**

#### Background

Section 985.711, F.S., generally prohibits a person from introducing specified contraband articles into or upon the grounds of a juvenile detention facility or commitment program. The penalty for introducing such contraband articles varies depending on the type of contraband introduced. A person commits:

- A first degree misdemeanor for introducing:
  - Any cellular telephone or other portable communication device as described in s. 944.47(1)(a)6., F.S., that is intentionally and unlawfully introduced inside the secure perimeter of any juvenile detention facility or commitment program.
  - Any vapor-generating electronic device as defined in s. 386.203, F.S., that is intentionally and unlawfully introduced inside the secure perimeter of any juvenile detention facility or commitment program.
- A third degree felony for introducing any unauthorized article of food or clothing.
- A second degree felony for introducing:
  - Any intoxicating beverage or any beverage that causes or may cause an intoxicating effect.
  - Any controlled substance as defined in s. 893.02(4), F.S., marijuana as defined in s. 381.986, F.S., hemp as defined in s. 581.217, F.S., industrial hemp as defined in s. 1004.4473, F.S., or any prescription or nonprescription drug that has a hypnotic, stimulating, or depressing effect.
  - Any firearm or weapon of any kind or any explosive substance.

### Effect of the Bill – Introduction of Contraband into a DJJ Facility

The bill amends s. 985.711, F.S., to make the penalty for introducing *any* type of contraband into a juvenile detention facility or commitment program a second degree felony. The bill also adds the following to the list of contraband articles enumerated in s. 985.711, F.S.:

- Any currency or coin given or transmitted, or intended to be given or transmitted, to any youth in any juvenile detention facility or commitment program.
- Any cigarettes, as defined in s. 210.01(1), F.S., or tobacco products, as defined in s. 210.25, F.S., given, or intended to be given, to any youth in a juvenile detention facility or commitment program.

The bill also authorizes DJJ staff to utilize canine units on the grounds of a juvenile detention facility or commitment program to locate and seize contraband and ensure security within such a facility or program.

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<sup>58</sup> "A driving privilege restricted to business purposes only" means a driving privilege that is limited to any driving necessary to maintain livelihood, including driving to and from work, necessary on-the-job driving, driving for educational purposes, and driving for church and for medical purposes. S. 322.271(1)(c)1., F.S.

<sup>59</sup> "A driving privilege restricted to employment purposes only" means a driving privilege that is limited to driving to and from work and any necessary on-the-job driving required by an employer or occupation. S. 322.271(1)(c)2., F.S.

## Education Records

### Background

Section 1002.221, F.S., generally prohibits the release of a student's education records without the written consent of the student or parent, except as permitted by the Family Educational Rights and Privacy Act (FERPA) under 20 U.S.C. §1232(g). In accordance with the provisions of FERPA, a student's education records *may* be released without the written consent of the student or parent to parties to an interagency agreement among DJJ, the school, law enforcement authorities, and other agencies.<sup>60</sup> However, under Florida law, such records are inadmissible in any court proceeding before a dispositional hearing unless written consent is provided by a parent or other responsible adult on behalf of a juvenile.

### Effect of the Bill – Education Records

The bill amends s. 1002.221, F.S., to delete the provision in current law that makes education records inadmissible in a court proceeding and specifically authorizes such education records to be used for juvenile proceedings initiated under ch. 984 and 985, F.S. By authorizing education records to be used in juvenile proceedings without the consent of a parent or responsible adult, DJJ will be able to more accurately determine whether a juvenile who is placed on probation by a court is complying with the terms of his or her probation by regularly attending school and meeting other educational requirements.

The effective date of the bill is July 1, 2024.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None.

#### 2. Expenditures:

The bill may have an indeterminate fiscal impact on DJJ expenditures by requiring additional secure detention, supervision, or residential commitment for specified juveniles. Based on current funding and utilization rates, any initial impacts resulting can likely be absorbed within existing resources. Future needs could be addressed through the Legislative Budget Request process.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

None.

#### 2. Expenditures:

The bill may have an indeterminate fiscal impact to local government expenditures by increasing the number of juveniles that are required to be held in secure detention.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

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<sup>60</sup> S. 1002.221(2)(c), F.S.

D. FISCAL COMMENTS:

None.