

STORAGE NAME: h4433zjj
DATE: June 29, 1998

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

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
JUVENILE JUSTICE
FINAL BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: HB 4433
RELATING TO: Possession of Firearms/Minors
SPONSOR(S): Representative Bloom
COMPANION BILL(S): SB 588

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

- (1) JUVENILE JUSTICE
- (2) CRIMINAL JUSTICE APPROPRIATIONS
- (3)
- (4)
- (5)

I. FINAL ACTION STATUS:

HB 4433 did not pass the 1998 Legislative session. See Comments for bill history.

II. SUMMARY:

The bill increases the penalty for a minor charged with simple possession of a firearm from a first degree misdemeanor to a third degree felony and for a first violation requires the court to place the minor in secure detention for five days. For a second and subsequent offense, the minor shall be placed in secure detention for a minimum of 10 days and up to 30 days. Placement in secure detention is in addition to requiring the minor to perform community service hours and, if applicable, restrictions placed on the minor's driver's license.

The bill defines "community service" for the purpose of dispositions for a minor charged with simple possession of a firearm or for an offense involving the possession a firearm as service performed, if possible, in a hospital emergency room or other medical environment that deals on a regular basis with trauma patients and gunshot wounds.

The bill increases the current mandatory time in detention from 5 to 15 days for a minor found to have committed an offense that involves the use of a firearm other than simple possession. For a second and subsequent offense, the mandatory time in detention is increased from 10 days to 21 days at a minimum and an upper limit of 90 days in detention is added to the statutes. Any detention time served prior to an adjudication shall not be counted or credited towards a disposition where the minor is placed in detention.

Based on estimates from the Department of Juvenile Justice, this bill will result in a fiscal impact of \$2,515,517. This cost is for the construction of additional secure detention beds and operational funding needed to detain youth affected by provisions of this bill.

III. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

An August 1997 federal Office of Juvenile Justice and Delinquency Prevention (OJJDP) report entitled Juvenile Offenders and Victims: 1997 Update on Violence cites a recent National Institute of Justice (NIJ) study where arrested juvenile and adult offenders were interviewed about gun acquisition and use. Although the study sites varied (District of Columbia, St. Louis, Phoenix, San Diego, and Los Angeles), the juvenile males interviewed reflected juvenile offenders nationwide.

The NIJ study found that the proportion of juveniles who were charged with a weapons offense ranged from 1% to 12% across study sites. Among the juvenile offenders interviewed, however, 20% said they carried a gun all or most of the time. In comparison, the overall proportion of all arrestees (adults and juveniles) who carried guns all or most of the time was 14%. The proportion of juvenile arrestees who reported stealing a gun was 25% compared to 13% for all arrestees. Juvenile arrestees were more likely than arrestees overall to report they have been shot at (about 50%). Among those juvenile arrestees claiming to be in gangs, about 80% reported they had been shot at.

Two-thirds of the juvenile arrestees in the NIJ study reported that they carried a gun for protection/self defense. About 30% of all arrestees said they carry a gun because the crowd they run with respects them if they carry a gun. When asked when using a gun was appropriate, 18% of the juvenile offenders agreed that "It is okay to shoot someone who disrespected you."

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, Ga. 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 has 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.

Florida statutes do not currently authorize the placement of a child in a secure detention facility for the simple possession of a firearm. 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 to participate in parenting education classes approved by the Department of Juvenile Justice. Any subsequent conviction of the minor may result in the court ordering the parent 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 no less than 100 hours and up to 250 hours of community service and have their driver license suspended or not issued for up to 2 years.

Section 790.22(8), F.S., requires 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) requires that if the child is adjudicated but not committed to DJJ, the court shall order the child into secure detention for 5 days and 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.

Section 790.115, F.S., provides that a person who exhibits a firearm in the presence of one or more persons 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 school hours or during a school related activity, commits a felony of the third degree.

Florida participates in the federal Juvenile Justice and Delinquency Prevention (JJDP) Act Formula Grant Program. The JJDP Act of 1994, [s. 223, 42 U.S.C., s. 5633], requires that a state wanting to receive federal funds for its juvenile justice system must be in substantial compliance with the requirements of the JJDP Act. The JJDP Act prohibits states from placing dependent children (abused or neglected) into secure detention facilities or secure correctional facilities. The JJDP Act prohibits any child (delinquent or non-delinquent) from being detained in any institution where they would have contact with adults who are awaiting trial or are convicted of criminal charges, unless the child is transferred for prosecution as an adult on felony charges.

The JJDP Act also prohibits the placement of CINS youth (status offenders) in secure detention facilities, unless they have violated a valid court order and are found in contempt of court. A CINS youth can be placed in a secure detention facility for violating a valid court order if such placement is in accordance with the federal rules and regulations which establish the basic framework and guidelines for implementing the valid court order provision of the JJDP Act.

B. EFFECT OF PROPOSED CHANGES:

The bill amends s. 790.22(5) (a), F. S., by increasing the criminal penalty for a minor who violates subsection (3) which is the unlawful possession of a firearm from a first degree misdemeanor to a third degree felony. For a first violation, the bill requires a minor to serve 5 days in a secure detention facility in addition to performing 100 hours of community service and, if applicable, revoke or not issue their driver license for up to one year.

For a second and subsequent violation of unlawful possession of a firearm by a minor, the bill requires placement in a secure juvenile detention facility for a minimum of 10 days and no more than 30 days, in addition to performing no less than 100 hours and no more than 250 hours of community service as current law provides.

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By permitting the placement of a child in a secure detention facility for an offense which would not be an offense for an adult, the bill may place the state in violation of the federal JJDP Act's requirement that a state receiving federal JJDP Act funds shall not place a status offender in a secure detention facility.

The bill defines "community service" for purposes of subsection (5) of s. 790.22, F.S., as service performed, if possible, in a "hospital emergency room or other medical environment that deals on a regular basis with trauma patients and gunshot wounds."

The bill amends S. 790.22(9), F.S., by increasing the mandatory time in detention from 5 to 15 days for a minor found to have committed an offense that involves the use of a firearm, other than a violation of subsection (3) of s. 790.22, F.S. For a subsequent similar offense, the mandatory minimum time in detention is increased from 10 days to 21 days and a new maximum time of 90 days is added to the statute. Any detention time served prior to adjudication under these provisions shall not be credited towards the mandatory detention ordered by the court at disposition. Community service is still required (100 hours for the first offense and between 100 and 250 hours for second and subsequent offenses) and is defined as above.

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

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?

No.

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

No.

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

No.

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?

No.

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

No.

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

No.

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

No.

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

No.

3. Personal Responsibility:

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

No.

- 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?

Although current law provides for the simple possession of a firearm by a minor to be referred to DJJ and the state attorney to file a petition and the court to order community services hours, the bill would expand the state's authority over the minor by requiring his or her placement in a secure detention facility.

5. Family Empowerment:

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

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

Department of Juvenile Justice and the court.

- (2) Who makes the decisions?

The circuit court.

- (3) Are private alternatives permitted?

No.

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

Yes, if court ordered to participate in parenting education programs and perform community service hours along with the minor.

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

Possibly, should parents refuse to participate in parenting classes or perform community service hours.

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

No.

- 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?

No.

(2) service providers?

No.

(3) government employees/agencies?

DJJ and the circuit court.

D. STATUTE(S) AFFECTED:

Section 790.22, F.S.

E. SECTION-BY-SECTION RESEARCH:

SECTION 1. Amends s. 790.22, F.S., related to prohibiting of firearms by minor under age 16; provides for a mandatory placement in secure detention of 5 days for a minor who violates subsection (3) and increases the penalty from a first degree misdemeanor to a third degree felony; provides for a mandatory placement in secure detention of 10 days for a minor who has a second or subsequent violation of subsection (3); requires and defines "community service" to be performed in a hospital emergency room or other medical environment dealing with trauma patients and gunshot wounds; increases the time placed in secure detention from 5 to 15 days for a first offense and from 10 to no less than 21 and no more than 90 days for a minor found to have committed an offense that involves the use of a firearm other than a violation of subsection (3).

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

SECTION 3. Provides an enacting date of October 1 of the year in which the bill is enacted.

IV. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

See Fiscal Comments.

2. Recurring Effects:

See Fiscal Comments.

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

See Fiscal Comments.

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:

Based on data from the Department of Juvenile Justice (DJJ), 186 youth were placed in a secure juvenile detention center for gun law violations during an 11th month period from November 1996 through September 1997. These cases do not include possession of a firearm. DJJ does not keep data on nor track juveniles referred to the department for possession of a firearm. DJJ can only estimate the number of youth impacted by this bill. Since the 186 youth detained for gun law violations were detained for charges more serious than merely possession, DJJ estimates that twice as many youth (372) could be affected by the bill.

DJJ estimates that if 372 youth were referred for possession of a firearm in violation of s. 790.22(3) and detained as required by this bill, a fiscal impact of \$1,491,093 would be incurred. This was determined by using the cost of detention, \$95 per day, times 13.3 days (which is the average length of stay in secure detention) times 372 youth for total operational costs of \$470,022. DJJ estimates it would need to build 14 additional detention beds (13.3 days times 372 youth divided by 365 days) needed to detain these youth at a cost of \$1,020,600.

DJJ estimates that if the 372 youth were adjudicated the first time for possession of a firearm and placed in secure detention for 5 days, there would be operational costs in the amount of \$176,700. No additional beds would be required since they would be built to accommodate the initial detention proposed in the bill. If 186 youth were ordered by the court to serve 15 days in secure detention for an offense involving the use or possession of a firearm, a fiscal impact of \$583,200 for the construction of 8 new detention beds and operational costs of \$265,050 would be incurred by DJJ.

Summary of fiscal impact:

FCO -	\$1,603,800	(22 new detention beds)
Operating -	<u>\$ 911,772</u>	
Total Costs -	<u>\$2,515,572</u>	

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

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to expend funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority of counties or municipalities to raise revenues.

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

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

VI. COMMENTS:

The bill may place the state in violation of the federal JJDP Act's provision which prohibits the placement of status offenders in secure detention facilities. The 1997 Legislature passed legislation which authorized the placement of CINS youth in a physical secure detention facility (as a pilot project) which, according to DJJ, may have placed the state in violation of the federal JJDP Act. Because of pending federal legislation regarding the re-authorization of the JJDP Act which may permit status offenders to be placed in secure detention facilities, this issue is uncertain at this time.

Requiring juvenile offenders to perform their community service hours in a hospital emergency room or other medical setting where trauma patients and gunshot wounds are treated may present difficulties for the medical staff in these settings. It is not clear how juvenile offenders will be permitted to be present in such settings without interfering with the provision of medical services. Also, if the purpose of exposing youth to the harmful effects of the illegal use of firearms is to deter them from such use or educate them about the danger of improperly using firearms, there may be alternative methods and programs to which youth may be referred.

03/25/98 H Filed; Introduced -HJ 00355

04/03/98 H Referred to Juvenile Justice (JC); Criminal Justice Appropriations -HJ 00448; On Committee agenda-- Juvenile Justice (JC), 04/08/98, 2:45 pm, 317C --Meeting cancelled

04/08/98 H On Committee agenda-- Juvenile Justice (JC), 04/14/98, 1:30 pm, 317C

04/14/98 H Comm. Action: Favorable with 1 amendment(s) by Juvenile Justice (JC) -HJ 00690

04/16/98 H Now in Criminal Justice Appropriations -HJ 00690

05/01/98 H Died in Committee on Criminal Justice Appropriations

VII. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VIII. SIGNATURES:

COMMITTEE ON JUVENILE JUSTICE:

Prepared by:

Legislative Research Director:

Ken Winker

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FINAL RESEARCH PREPARED BY COMMITTEE ON JUVENILE JUSTICE:

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