

By Representative Bloom

1                                   A bill to be entitled  
2           An act relating to offenses involving use or  
3           possession of firearms by minors; amending s.  
4           790.22, F.S.; relating to certain offenses  
5           involving use or possession of a firearm by a  
6           minor or offenses during the commission of  
7           which the minor possessed a firearm; providing  
8           that possession of a firearm by a minor in  
9           violation of specified provisions constitutes a  
10          felony of the third degree instead of a  
11          misdemeanor of the first degree; authorizing  
12          secure detention for a specified period;  
13          providing or revising penalties for specified  
14          offenses; requiring secure detention for  
15          specified periods, or increasing detention  
16          periods imposed, for commission of specified  
17          initial, second, or subsequent offenses;  
18          providing for performance of community service  
19          in a manner involving a hospital emergency room  
20          or other medical environment dealing on a  
21          regular basis with trauma patients and gunshot  
22          wounds; providing that the minor offender may  
23          not receive credit for time served before  
24          adjudication of certain offenses; reenacting  
25          ss. 943.051(3)(b) and 985.212(1)(b), F.S.,  
26          relating to criminal justice information and  
27          fingerprinting, and s. 985.215(2), F.S.,  
28          relating to detention, to incorporate said  
29          amendment in references; providing an effective  
30          date.  
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1 Be It Enacted by the Legislature of the State of Florida:

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3 Section 1. Section 790.22, Florida Statutes, 1998  
4 Supplement, is amended to read:

5 790.22 Use of BB guns, air or gas-operated guns, or  
6 electric weapons or devices by minor under 16; limitation;  
7 possession of firearms by minor under 18 prohibited;  
8 penalties.--

9 (1) The use for any purpose whatsoever of BB guns, air  
10 or gas-operated guns, or electric weapons or devices, by any  
11 minor under the age of 16 years is prohibited unless such use  
12 is under the supervision and in the presence of an adult who  
13 is acting with the consent of the minor's parent.

14 (2) Any adult responsible for the welfare of any child  
15 under the age of 16 years who knowingly permits such child to  
16 use or have in his or her possession any BB gun, air or  
17 gas-operated gun, electric weapon or device, or firearm in  
18 violation of the provisions of subsection (1) of this section  
19 commits a misdemeanor of the second degree, punishable as  
20 provided in s. 775.082 or s. 775.083.

21 (3) A minor under 18 years of age may not possess a  
22 firearm, other than an unloaded firearm at his or her home,  
23 unless:

24 (a) The minor is engaged in a lawful hunting activity  
25 and is:

- 26 1. At least 16 years of age; or  
27 2. Under 16 years of age and supervised by an adult.

28 (b) The minor is engaged in a lawful marksmanship  
29 competition or practice or other lawful recreational shooting  
30 activity and is:

- 31 1. At least 16 years of age; or

1           2. Under 16 years of age and supervised by an adult  
2 who is acting with the consent of the minor's parent or  
3 guardian.

4           (c) The firearm is unloaded and is being transported  
5 by the minor directly to or from an event authorized in  
6 paragraph (a) or paragraph (b).

7           (4)(a) Any parent or guardian of a minor, or other  
8 adult responsible for the welfare of a minor, who knowingly  
9 and willfully permits the minor to possess a firearm in  
10 violation of subsection (3) commits a felony of the third  
11 degree, punishable as provided in s. 775.082, s. 775.083, or  
12 s. 775.084.

13           (b) Any natural parent or adoptive parent, whether  
14 custodial or noncustodial, or any legal guardian or legal  
15 custodian of a minor, if that minor possesses a firearm in  
16 violation of subsection (3) may, if the court finds it  
17 appropriate, be required to participate in classes on  
18 parenting education which are approved by the Department of  
19 Juvenile Justice, upon the first conviction of the minor. Upon  
20 any subsequent conviction of the minor, the court may, if the  
21 court finds it appropriate, require the parent to attend  
22 further parent education classes or render community service  
23 hours together with the child.

24           (c) No later than July 1, 1994, the district juvenile  
25 justice boards or county juvenile justice councils or the  
26 Department of Juvenile Justice shall establish appropriate  
27 community service programs to be available to the alternative  
28 sanctions coordinators of the circuit courts in implementing  
29 this subsection. The boards or councils or department shall  
30 propose the implementation of a community service program in  
31 each circuit, and may submit a circuit plan, to be implemented

1 upon approval of the circuit alternative sanctions  
2 coordinator.

3 (d) For the purposes of this section, community  
4 service may be provided on public property as well as on  
5 private property with the expressed permission of the property  
6 owner. Any community service provided on private property is  
7 limited to such things as removal of graffiti and restoration  
8 of vandalized property.

9 (5)(a) A minor who violates subsection (3) commits a  
10 felony misdemeanor of the third first degree; for a first  
11 offense, may serve a period of detention of up to 3 days in a  
12 secure detention facility;~~and~~, in addition to any other  
13 penalty provided by law, shall be required to perform 100  
14 hours of community service;~~and~~:

15 1. If the minor is eligible by reason of age for a  
16 driver license or driving privilege, the court shall direct  
17 the Department of Highway Safety and Motor Vehicles to revoke  
18 or to withhold issuance of the minor's driver license or  
19 driving privilege for up to 1 year.

20 2. If the minor's driver license or driving privilege  
21 is under suspension or revocation for any reason, the court  
22 shall direct the Department of Highway Safety and Motor  
23 Vehicles to extend the period of suspension or revocation by  
24 an additional period of up to 1 year.

25 3. If the minor is ineligible by reason of age for a  
26 driver license or driving privilege, the court shall direct  
27 the Department of Highway Safety and Motor Vehicles to  
28 withhold issuance of the minor's driver license or driving  
29 privilege for up to 1 year after the date on which the minor  
30 would otherwise have become eligible.

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1 (b) For a second or subsequent offense, the minor may  
2 serve a period of detention of up to 15 days in a secure  
3 detention facility and shall be required to perform not less  
4 than 100 nor more than 250 hours of community service, and:

5 1. If the minor is eligible by reason of age for a  
6 driver license or driving privilege, the court shall direct  
7 the Department of Highway Safety and Motor Vehicles to revoke  
8 or to withhold issuance of the minor's driver license or  
9 driving privilege for up to 2 years.

10 2. If the minor's driver license or driving privilege  
11 is under suspension or revocation for any reason, the court  
12 shall direct the Department of Highway Safety and Motor  
13 Vehicles to extend the period of suspension or revocation by  
14 an additional period of up to 2 years.

15 3. If the minor is ineligible by reason of age for a  
16 driver license or driving privilege, the court shall direct  
17 the Department of Highway Safety and Motor Vehicles to  
18 withhold issuance of the minor's driver license or driving  
19 privilege for up to 2 years after the date on which the minor  
20 would otherwise have become eligible.

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22 For the purposes of this subsection, community service shall  
23 be performed, if possible, in a manner involving a hospital  
24 emergency room or other medical environment that deals on a  
25 regular basis with trauma patients and gunshot wounds.

26 (6) Any firearm that is possessed or used by a minor  
27 in violation of this section shall be promptly seized by a law  
28 enforcement officer and disposed of in accordance with s.  
29 790.08(1)-(6).

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1           (7) The provisions of this section are supplemental to  
2 all other provisions of law relating to the possession, use,  
3 or exhibition of a firearm.

4           (8) Notwithstanding s. 985.213 or s. 985.215(1), if a  
5 minor under 18 years of age is charged with an offense that  
6 involves the use or possession of a firearm, as defined in s.  
7 790.001, including ~~other than~~ a violation of subsection (3),  
8 or is charged for any offense during the commission of which  
9 the minor possessed a firearm, the minor shall be detained in  
10 secure detention, unless the state attorney authorizes the  
11 release of the minor, and shall be given a hearing within 24  
12 hours after being taken into custody. At the hearing, the  
13 court may order that the minor continue to be held in secure  
14 detention in accordance with the applicable time periods  
15 specified in s. 985.215(5), if the court finds that the minor  
16 meets the criteria specified in s. 985.215(2), or if the court  
17 finds by clear and convincing evidence that the minor is a  
18 clear and present danger to himself or herself or the  
19 community. The Department of Juvenile Justice shall prepare a  
20 form for all minors charged under this subsection that states  
21 the period of detention and the relevant demographic  
22 information, including, but not limited to, the sex, age, and  
23 race of the minor; whether or not the minor was represented by  
24 private counsel or a public defender; the current offense; and  
25 the minor's complete prior record, including any pending  
26 cases. The form shall be provided to the judge to be  
27 considered when determining whether the minor should be  
28 continued in secure detention under this subsection. An order  
29 placing a minor in secure detention because the minor is a  
30 clear and present danger to himself or herself or the  
31 community must be in writing, must specify the need for

1 detention and the benefits derived by the minor or the  
2 community by placing the minor in secure detention, and must  
3 include a copy of the form provided by the department. The  
4 Department of Juvenile Justice must send the form, including a  
5 copy of any order, without client-identifying information, to  
6 the Office of Economic and Demographic Research.

7 (9) Notwithstanding s. 985.214, if the minor is found  
8 to have committed an offense that involves the use or  
9 possession of a firearm, as defined in s. 790.001, other than  
10 a violation of subsection (3), or an offense during the  
11 commission of which the minor possessed a firearm, and the  
12 minor is not committed to a residential commitment program of  
13 the Department of Juvenile Justice, in addition to any other  
14 punishment provided by law, the court shall order:

15 (a) For a first offense, that the minor shall serve a  
16 ~~minimum mandatory~~ period of detention of 10 ~~5~~ days in a secure  
17 detention facility; and

- 18 1. Perform 100 hours of community service; and-  
19 2. Be committed to the department for placement on  
20 community control or in a nonresidential or residential  
21 commitment program.

22 (b) For a second or subsequent offense, that the minor  
23 shall serve a mandatory period of detention of at least 15 ~~10~~  
24 days in a secure detention facility; and

- 25 1. Perform not less than 100 nor more than 250 hours  
26 of community service; and-  
27 2. Be committed to the department for placement on  
28 community control or in a nonresidential or residential  
29 commitment program.

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1 The minor shall not receive credit for time served before  
2 adjudication. For the purposes of this subsection, community  
3 service shall be performed, if possible, in a manner involving  
4 a hospital emergency room or other medical environment that  
5 deals on a regular basis with trauma patients and gunshot  
6 wounds.

7 (10) If a minor is found to have committed an offense  
8 under subsection (9), the court shall impose the following  
9 penalties in addition to any penalty imposed under paragraph  
10 (9)(a) or paragraph (9)(b):

11 (a) For a first offense:

12 1. If the minor is eligible by reason of age for a  
13 driver license or driving privilege, the court shall direct  
14 the Department of Highway Safety and Motor Vehicles to revoke  
15 or to withhold issuance of the minor's driver license or  
16 driving privilege for up to 1 year.

17 2. If the minor's driver license or driving privilege  
18 is under suspension or revocation for any reason, the court  
19 shall direct the Department of Highway Safety and Motor  
20 Vehicles to extend the period of suspension or revocation by  
21 an additional period for up to 1 year.

22 3. If the minor is ineligible by reason of age for a  
23 driver license or driving privilege, the court shall direct  
24 the Department of Highway Safety and Motor Vehicles to  
25 withhold issuance of the minor's driver license or driving  
26 privilege for up to 1 year after the date on which the minor  
27 would otherwise have become eligible.

28 (b) For a second or subsequent offense:

29 1. If the minor is eligible by reason of age for a  
30 driver license or driving privilege, the court shall direct  
31 the Department of Highway Safety and Motor Vehicles to revoke



1 or to withhold issuance of the minor's driver license or  
2 driving privilege for up to 2 years.

3           2. If the minor's driver license or driving privilege  
4 is under suspension or revocation for any reason, the court  
5 shall direct the Department of Highway Safety and Motor  
6 Vehicles to extend the period of suspension or revocation by  
7 an additional period for up to 2 years.

8           3. If the minor is ineligible by reason of age for a  
9 driver license or driving privilege, the court shall direct  
10 the Department of Highway Safety and Motor Vehicles to  
11 withhold issuance of the minor's driver license or driving  
12 privilege for up to 2 years after the date on which the minor  
13 would otherwise have become eligible.

14           Section 2. For the purpose of incorporating the  
15 amendment to section 790.22, Florida Statutes, 1998  
16 Supplement, in references thereto, the following sections or  
17 subdivisions of Florida Statutes or Florida Statutes, 1998  
18 Supplement, are reenacted to read:

19           943.051 Criminal justice information; collection and  
20 storage; fingerprinting.--

21           (3)

22           (b) A minor who is charged with or found to have  
23 committed the following misdemeanors shall be fingerprinted  
24 and the fingerprints shall be submitted to the department:

25           1. Assault, as defined in s. 784.011.

26           2. Battery, as defined in s. 784.03.

27           3. Carrying a concealed weapon, as defined in s.  
28 790.01(1).

29           4. Unlawful use of destructive devices or bombs, as  
30 defined in s. 790.1615(1).

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- 1           5. Negligent treatment of children, as defined in s.  
2 827.05.
- 3           6. Assault or battery on a law enforcement officer, a  
4 firefighter, or other specified officers, as defined in s.  
5 784.07(2)(a) and (b).
- 6           7. Open carrying of a weapon, as defined in s.  
7 790.053.
- 8           8. Exposure of sexual organs, as defined in s. 800.03.
- 9           9. Unlawful possession of a firearm, as defined in s.  
10 790.22(5).
- 11          10. Petit theft, as defined in s. 812.014(3).
- 12          11. Cruelty to animals, as defined in s. 828.12(1).
- 13          12. Arson, as defined in s. 806.031(1).
- 14          985.212 Fingerprinting and photographing.--  
15          (1)  
16          (b) A child who is charged with or found to have  
17 committed one of the following misdemeanors shall be  
18 fingerprinted and the fingerprints shall be submitted to the  
19 Department of Law Enforcement as provided in s. 943.051(3)(b):  
20          1. Assault, as defined in s. 784.011.  
21          2. Battery, as defined in s. 784.03.  
22          3. Carrying a concealed weapon, as defined in s.  
23 790.01(1).  
24          4. Unlawful use of destructive devices or bombs, as  
25 defined in s. 790.1615(1).  
26          5. Negligent treatment of children, as defined in  
27 former s. 827.05.  
28          6. Assault on a law enforcement officer, a  
29 firefighter, or other specified officers, as defined in s.  
30 784.07(2)(a).  
31

- 1           7. Open carrying of a weapon, as defined in s.  
2 790.053.
- 3           8. Exposure of sexual organs, as defined in s. 800.03.
- 4           9. Unlawful possession of a firearm, as defined in s.  
5 790.22(5).
- 6           10. Petit theft, as defined in s. 812.014.
- 7           11. Cruelty to animals, as defined in s. 828.12(1).
- 8           12. Arson, resulting in bodily harm to a firefighter,  
9 as defined in s. 806.031(1).

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11 A law enforcement agency may fingerprint and photograph a  
12 child taken into custody upon probable cause that such child  
13 has committed any other violation of law, as the agency deems  
14 appropriate. Such fingerprint records and photographs shall be  
15 retained by the law enforcement agency in a separate file, and  
16 these records and all copies thereof must be marked "Juvenile  
17 Confidential." These records shall not be available for public  
18 disclosure and inspection under s. 119.07(1) except as  
19 provided in ss. 943.053 and 985.04(5), but shall be available  
20 to other law enforcement agencies, criminal justice agencies,  
21 state attorneys, the courts, the child, the parents or legal  
22 custodians of the child, their attorneys, and any other person  
23 authorized by the court to have access to such records. These  
24 records may, in the discretion of the court, be open to  
25 inspection by anyone upon a showing of cause. The fingerprint  
26 and photograph records shall be produced in the court whenever  
27 directed by the court. Any photograph taken pursuant to this  
28 section may be shown by a law enforcement officer to any  
29 victim or witness of a crime for the purpose of identifying  
30 the person who committed such crime.

31           985.215 Detention.--

1           (2) Subject to the provisions of subsection (1), a  
2 child taken into custody and placed into nonsecure or home  
3 detention care or detained in secure detention care prior to a  
4 detention hearing may continue to be detained by the court if:

5           (a) The child is alleged to be an escapee or an  
6 absconder from a commitment program, a community control  
7 program, furlough, or aftercare supervision, or is alleged to  
8 have escaped while being lawfully transported to or from such  
9 program or supervision.

10          (b) The child is wanted in another jurisdiction for an  
11 offense which, if committed by an adult, would be a felony.

12          (c) The child is charged with a delinquent act or  
13 violation of law and requests in writing through legal counsel  
14 to be detained for protection from an imminent physical threat  
15 to his or her personal safety.

16          (d) The child is charged with committing an offense of  
17 domestic violence as defined in s. 741.28(1) and is detained  
18 as provided in s. 985.213(2)(b)3.

19          (e) The child is charged with a capital felony, a life  
20 felony, a felony of the first degree, a felony of the second  
21 degree that does not involve a violation of chapter 893, or a  
22 felony of the third degree that is also a crime of violence,  
23 including any such offense involving the use or possession of  
24 a firearm.

25          (f) The child is charged with any second degree or  
26 third degree felony involving a violation of chapter 893 or  
27 any third degree felony that is not also a crime of violence,  
28 and the child:

29           1. Has a record of failure to appear at court hearings  
30 after being properly notified in accordance with the Rules of  
31 Juvenile Procedure;

1           2. Has a record of law violations prior to court  
2 hearings;  
3           3. Has already been detained or has been released and  
4 is awaiting final disposition of the case;  
5           4. Has a record of violent conduct resulting in  
6 physical injury to others; or  
7           5. Is found to have been in possession of a firearm.  
8           (g) The child is alleged to have violated the  
9 conditions of the child's community control or aftercare  
10 supervision. However, a child detained under this paragraph  
11 may be held only in a consequence unit as provided in s.  
12 985.231(1)(a)1.c. If a consequence unit is not available, the  
13 child shall be placed on home detention with electronic  
14 monitoring.  
15  
16 A child who meets any of these criteria and who is ordered to  
17 be detained pursuant to this subsection shall be given a  
18 hearing within 24 hours after being taken into custody. The  
19 purpose of the detention hearing is to determine the existence  
20 of probable cause that the child has committed the delinquent  
21 act or violation of law with which he or she is charged and  
22 the need for continued detention. Unless a child is detained  
23 under paragraph (d), the court shall utilize the results of  
24 the risk assessment performed by the juvenile probation  
25 officer and, based on the criteria in this subsection, shall  
26 determine the need for continued detention. A child placed  
27 into secure, nonsecure, or home detention care may continue to  
28 be so detained by the court pursuant to this subsection. If  
29 the court orders a placement more restrictive than indicated  
30 by the results of the risk assessment instrument, the court  
31 shall state, in writing, clear and convincing reasons for such

1 placement. Except as provided in s. 790.22(8) or in  
2 subparagraph (10)(a)2., paragraph (10)(b), paragraph (10)(c),  
3 or paragraph (10)(d), when a child is placed into secure or  
4 nonsecure detention care, or into a respite home or other  
5 placement pursuant to a court order following a hearing, the  
6 court order must include specific instructions that direct the  
7 release of the child from such placement no later than 5 p.m.  
8 on the last day of the detention period specified in paragraph  
9 (5)(b) or paragraph (5)(c), or subparagraph (10)(a)1.,  
10 whichever is applicable, unless the requirements of such  
11 applicable provision have been met or an order of continuance  
12 has been granted pursuant to paragraph (5)(d).

13 Section 3. This act shall take effect October 1, 1999.

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15 HOUSE SUMMARY

16  
17 Revises the penalties for certain offenses involving use  
18 or possession of a firearm by a minor. Provides that  
19 certain offenses constitute third degree felonies and  
20 provides for secure detention for specified periods for a  
21 first or subsequent offense. Provides for performance of  
22 community service in a manner involving a hospital  
23 emergency room or other medical environment dealing on a  
24 regular basis with trauma patients and gunshot wounds.  
25 Provides that the minor offender may not receive credit  
26 for time served before adjudication of certain offenses.  
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