

By Senator Silver

38-140A-99

1 A bill to be entitled
2 An act relating to the unlawful possession of a
3 firearm by a minor; amending s. 790.22, F.S.;
4 providing that it is a third-degree felony for
5 a minor to possess a firearm on school property
6 or at a school-sponsored event; requiring that
7 a minor who commits such offense serve a
8 mandatory period of detention in a secure
9 detention facility in addition to certain other
10 sanctions; providing requirements for the
11 community service that a court orders a minor
12 to perform as a sanction for possessing a
13 firearm on school property or for committing an
14 offense that involves the use or possession of
15 a firearm; requiring schools to notify students
16 in writing that possessing a firearm on school
17 property or at a school-sponsored event is a
18 violation of state law; providing that,
19 notwithstanding other laws, the state attorney
20 has discretion in prosecuting a child as an
21 adult for a violation of s. 790.22(5); amending
22 ss. 943.051, 985.212, F.S., relating to the
23 fingerprinting of a minor; revising provisions
24 to conform to changes made by the act;
25 providing an effective date.

26
27 Be It Enacted by the Legislature of the State of Florida:

28
29 Section 1. Section 790.22, Florida Statutes, 1998
30 Supplement, is amended to read:

31

1 790.22 Use of BB guns, air or gas-operated guns, or
2 electric weapons or devices by minor under 16; limitation;
3 possession of firearms by minor under 18 prohibited;
4 penalties.--

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

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

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

20 (a) The minor is engaged in a lawful hunting activity
21 and is:

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

24 (b) The minor is engaged in a lawful marksmanship
25 competition or practice or other lawful recreational shooting
26 activity and is:

- 27 1. At least 16 years of age; or
- 28 2. Under 16 years of age and supervised by an adult
29 who is acting with the consent of the minor's parent or
30 guardian.

31

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

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

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

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

31

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

7 (5)(a) A minor who possesses a firearm on school
8 property or at a school-sponsored event ~~violates subsection~~
9 ~~(3)~~ commits a felony of the third misdemeanor of the first
10 degree, and, for a first offense, shall serve a mandatory
11 period of detention of 20 days in a secure detention facility
12 ~~in addition to any other penalty provided by law~~, shall be
13 required to perform 100 hours of community service, and:

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

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

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

30 (b) For a second or subsequent offense, the minor
31 shall serve a mandatory period of detention of at least 20

1 days but not more than 50 days in a secure detention facility,
2 shall be required to perform at least 150 hours but not ~~not~~
3 ~~less than 100 nor~~ more than 250 hours of community service,
4 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.

21
22 Any community service ordered under this subsection shall, if
23 possible, be performed in conjunction with a hospital
24 emergency room or other medical facility that regularly treats
25 trauma patients and gunshot wounds.

26 (c) At the beginning of every school year each
27 elementary and secondary school in the state, whether public
28 or nonpublic, shall provide notice to each student that it is
29 unlawful to possess a firearm on school property or at a
30 school-sponsored event. The notice must be in writing and
31 clearly indicate that this prohibition is imposed by a state

1 law that carries severe penalties and is not imposed merely by
2 school policy. The notice must be signed by the child's parent
3 or legal guardian and retained by the school in the child's
4 records.

5 (6) Any firearm that is possessed or used by a minor
6 in violation of this section shall be promptly seized by a law
7 enforcement officer and disposed of in accordance with s.
8 790.08(1)-(6).

9 (7) The provisions of this section are supplemental to
10 all other provisions of law relating to the possession, use,
11 or exhibition of a firearm. However, notwithstanding s.
12 985.226(2)(b) or s. 985.227(2), the state attorney need not
13 request that a child be prosecuted as an adult for a violation
14 of subsection (5) if the state attorney determines that it is
15 in the best interest of the child and the public to prosecute
16 the child as a juvenile.

17 (8) Notwithstanding s. 985.213 or s. 985.215(1), if a
18 minor under 18 years of age is charged with an offense that
19 involves the use or possession of a firearm, as defined in s.
20 790.001, including other than a violation of subsection (3),
21 or is charged for any offense during the commission of which
22 the minor possessed a firearm, the minor shall be detained in
23 secure detention, unless the state attorney authorizes the
24 release of the minor, and shall be given a hearing within 24
25 hours after being taken into custody. At the hearing, the
26 court may order that the minor continue to be held in secure
27 detention in accordance with the applicable time periods
28 specified in s. 985.215(5), if the court finds that the minor
29 meets the criteria specified in s. 985.215(2), or if the court
30 finds by clear and convincing evidence that the minor is a
31 clear and present danger to himself or herself or the

1 community. The Department of Juvenile Justice shall prepare a
2 form for all minors charged under this subsection that states
3 the period of detention and the relevant demographic
4 information, including, but not limited to, the sex, age, and
5 race of the minor; whether or not the minor was represented by
6 private counsel or a public defender; the current offense; and
7 the minor's complete prior record, including any pending
8 cases. The form shall be provided to the judge to be
9 considered when determining whether the minor should be
10 continued in secure detention under this subsection. An order
11 placing a minor in secure detention because the minor is a
12 clear and present danger to himself or herself or the
13 community must be in writing, must specify the need for
14 detention and the benefits derived by the minor or the
15 community by placing the minor in secure detention, and must
16 include a copy of the form provided by the department. The
17 Department of Juvenile Justice must send the form, including a
18 copy of any order, without client-identifying information, to
19 the Office of Economic and Demographic Research.

20 (9) Notwithstanding s. 985.214, if the minor is found
21 to have committed an offense that involves the use or
22 possession of a firearm, as defined in s. 790.001, other than
23 a violation of subsection (3), or an offense during the
24 commission of which the minor possessed a firearm, and the
25 minor is not committed to a residential commitment program of
26 the Department of Juvenile Justice, in addition to any other
27 punishment provided by law, the court shall order:

28 (a) For a first offense, that the minor serve a
29 mandatory period of detention of 15 5 days in a secure
30 detention facility and perform 100 hours of community service.

31

1 (b) For a second or subsequent offense, that the minor
2 serve a mandatory period of detention of at least 21 ~~to~~ days
3 but not more than 3 months in a secure detention facility and
4 perform at least ~~not less than~~ 100 hours but not ~~nor~~ more than
5 250 hours of community service.

6
7 The minor may not ~~shall~~ receive credit for time served before
8 adjudication. Any community service ordered under this
9 subsection shall, if possible, be performed in conjunction
10 with a hospital emergency room or other medical facility that
11 regularly treats trauma patients and gunshot wounds.

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

16 (a) For a first offense:

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

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

27 3. If the minor is ineligible by reason of age for a
28 driver license or driving privilege, the court shall direct
29 the Department of Highway Safety and Motor Vehicles to
30 withhold issuance of the minor's driver license or driving
31

1 privilege for up to 1 year after the date on which the minor
2 would otherwise have become eligible.

3 (b) For a second or subsequent offense:

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

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

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

20 Section 2. Paragraph (b) of subsection (3) of section
21 943.051, Florida Statutes, 1998 Supplement, is amended to
22 read:

23 943.051 Criminal justice information; collection and
24 storage; fingerprinting.--

25 (3)

26 (b) A minor who is charged with or found to have
27 committed the following offenses ~~misdemeanors~~ shall be
28 fingerprinted and the fingerprints shall be submitted to the
29 department:

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

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

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

1 5. Negligent treatment of children, as defined in
2 former s. 827.05.

3 6. Assault on a law enforcement officer, a
4 firefighter, or other specified officers, as defined in s.
5 784.07(2)(a).

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.

12 11. Cruelty to animals, as defined in s. 828.12(1).

13 12. Arson, resulting in bodily harm to a firefighter,
14 as defined in s. 806.031(1).

15

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

1 directed by the court. Any photograph taken pursuant to this
2 section may be shown by a law enforcement officer to any
3 victim or witness of a crime for the purpose of identifying
4 the person who committed such crime.

5 Section 4. This act shall take effect July 1, 1999.

6
7 *****

8 SENATE SUMMARY

9 Provides that it is a third-degree felony for a minor to
10 possess a firearm on school property or at a
11 school-sponsored event. Deletes a provision that
12 specifies that the unlawful possession of a firearm by a
13 minor is a first-degree misdemeanor. For the offense of
14 possessing a firearm on school property, requires that a
15 minor serve at least 20 days but not more than 50 days in
16 a secure detention facility. Requires that a minor who
17 commits an offense that involves the unlawful possession
18 of a firearm serve 15 days, rather than 5 days, in secure
19 detention for a first offense and at least 21 days but
20 not more than 3 months, rather than 10 days, for a second
21 or subsequent offense. Provides that the minor may not
22 receive credit for time served before adjudication.
23 Requires that any community service required by the court
24 as a sanction for the unlawful possession of a firearm by
25 a minor be performed, if possible, in conjunction with an
26 emergency room or medical facility that treats trauma
27 patients and gunshot wounds. Requires elementary and
28 secondary schools to notify students in writing that it
29 is unlawful to possess a firearm on school property or at
30 a school-sponsored event. Requires that the notice be
31 signed by the child's guardian and retained in the
child's record. Provides that, notwithstanding other
provisions of law, the state attorney is not required to
request that a child charged with unlawful possession of
a firearm be prosecuted as an adult.