

By the Committee on Criminal Justice and Senator Silver

307-779-99

1 A bill to be entitled
2 An act relating to the unlawful possession or
3 use of a firearm by a minor; amending s.
4 790.22, F.S.; providing that a minor who
5 violates s. 790.22(3), F.S., must be detained
6 in a secure detention facility; providing that
7 a minor who commits an offense that involves
8 the use or possession of a firearm may not
9 receive credit for time served; providing
10 requirements for the community service that a
11 court orders a minor to perform as a sanction
12 for committing an offense that involves the use
13 or possession of a firearm; amending ss.
14 943.051, 985.212, F.S., relating to
15 fingerprinting of a minor; revising provisions
16 to conform to changes made by the act;
17 providing that a minor who violates s. 790.115,
18 F.S., must be fingerprinted; amending s.
19 790.115, F.S.; providing that weapons and
20 firearms may not be possessed or discharged at
21 a school-sponsored event or on school property;
22 providing that the state attorney has
23 discretion in prosecuting a minor as an adult
24 for a violation of s. 790.115(2), F.S.;
25 requiring that schools notify students in
26 writing that unlawfully possessing a weapon or
27 a firearm is a violation of state law;
28 providing an effective date.

30 Be It Enacted by the Legislature of the State of Florida:
31

1 Section 1. Subsections (8) and (9) of section 790.22,
2 Florida Statutes, 1998 Supplement, are amended to read:

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

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

1 placing a minor in secure detention because the minor is a
2 clear and present danger to himself or herself or the
3 community must be in writing, must specify the need for
4 detention and the benefits derived by the minor or the
5 community by placing the minor in secure detention, and must
6 include a copy of the form provided by the department. The
7 Department of Juvenile Justice must send the form, including a
8 copy of any order, without client-identifying information, to
9 the Office of Economic and Demographic Research.

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

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

21 (b) For a second or subsequent offense, that the minor
22 serve a mandatory period of detention of at least 21 ~~10~~ days
23 but not more than 3 months in a secure detention facility and
24 perform at least ~~not less than~~ 100 but not ~~nor~~ more than 250
25 hours of community service.

26
27 The minor shall not receive credit for time served before
28 adjudication. Any community service ordered under this
29 subsection shall, if possible, be performed in conjunction
30 with the hospital emergency room or other medical facility
31 that regularly treats trauma patients and gunshot wounds.

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

4 943.051 Criminal justice information; collection and
5 storage; fingerprinting.--

6 (3)

7 (b) A minor who is charged with or found to have
8 committed the following offenses ~~misdemeanors~~ shall be
9 fingerprinted and the fingerprints shall be submitted to the
10 department:

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

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

13 3. Carrying a concealed weapon, as defined in s.
14 790.01(1).

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

17 5. Negligent treatment of children, as defined in s.
18 827.05.

19 6. Assault or battery on a law enforcement officer, a
20 firefighter, or other specified officers, as defined in s.
21 784.07(2)(a) and (b).

22 7. Open carrying of a weapon, as defined in s.
23 790.053.

24 8. Exposure of sexual organs, as defined in s. 800.03.

25 9. Unlawful possession of a firearm, as defined in s.
26 790.22(5).

27 10. Petit theft, as defined in s. 812.014(3).

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

29 12. Arson, as defined in s. 806.031(1).

30
31

1 13. Unlawful possession or discharge of a weapon or
2 firearm at a school-sponsored event or on school property as
3 defined in s. 790.115.

4 Section 3. Paragraph (b) of subsection (1) of section
5 985.212, Florida Statutes, is amended to read:

6 985.212 Fingerprinting and photographing.--

7 (1)

8 (b) A child who is charged with or found to have
9 committed one of the following offenses ~~misdemeanors~~ shall be
10 fingerprinted and the fingerprints shall be submitted to the
11 Department of Law Enforcement as provided in s. 943.051(3)(b):

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

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

14 3. Carrying a concealed weapon, as defined in s.
15 790.01(1).

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

18 5. Negligent treatment of children, as defined in
19 former s. 827.05.

20 6. Assault on a law enforcement officer, a
21 firefighter, or other specified officers, as defined in s.
22 784.07(2)(a).

23 7. Open carrying of a weapon, as defined in s.
24 790.053.

25 8. Exposure of sexual organs, as defined in s. 800.03.

26 9. Unlawful possession of a firearm, as defined in s.
27 790.22(5).

28 10. Petit theft, as defined in s. 812.014.

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

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

1 13. Unlawful possession or discharge of a weapon or
2 firearm at a school-sponsored event or on school property as
3 defined in s. 790.115.

4
5 A law enforcement agency may fingerprint and photograph a
6 child taken into custody upon probable cause that such child
7 has committed any other violation of law, as the agency deems
8 appropriate. Such fingerprint records and photographs shall be
9 retained by the law enforcement agency in a separate file, and
10 these records and all copies thereof must be marked "Juvenile
11 Confidential." These records shall not be available for public
12 disclosure and inspection under s. 119.07(1) except as
13 provided in ss. 943.053 and 985.04(5), but shall be available
14 to other law enforcement agencies, criminal justice agencies,
15 state attorneys, the courts, the child, the parents or legal
16 custodians of the child, their attorneys, and any other person
17 authorized by the court to have access to such records. These
18 records may, in the discretion of the court, be open to
19 inspection by anyone upon a showing of cause. The fingerprint
20 and photograph records shall be produced in the court whenever
21 directed by the court. Any photograph taken pursuant to this
22 section may be shown by a law enforcement officer to any
23 victim or witness of a crime for the purpose of identifying
24 the person who committed such crime.

25 Section 4. Section 790.115, Florida Statutes, is
26 amended to read:

27 790.115 Possessing or discharging weapons or firearms
28 at a school-sponsored event or on school property prohibited;
29 penalties; exceptions.--

30 (1) A person who exhibits any sword, sword cane,
31 firearm, electric weapon or device, destructive device, or

1 other weapon, including a razor blade, box cutter, or knife,
2 except as authorized in support of school-sanctioned
3 activities, in the presence of one or more persons in a rude,
4 careless, angry, or threatening manner and not in lawful
5 self-defense, at a school-sponsored event or on the grounds or
6 facilities of any school, school bus, or school bus stop, or
7 within 1,000 feet of the real property that comprises a public
8 or private elementary school, middle school, or secondary
9 school, during school hours or during the time of a sanctioned
10 school activity, commits a felony of the third degree,
11 punishable as provided in s. 775.082, s. 775.083, or s.
12 775.084. This subsection does not apply to the exhibition of a
13 firearm or weapon on private real property within 1,000 feet
14 of a school by the owner of such property or by a person whose
15 presence on such property has been authorized, licensed, or
16 invited by the owner.

17 (2)(a) A person shall not possess any firearm,
18 electric weapon or device, destructive device, or other
19 weapon, including a razor blade, box cutter, or knife, except
20 as authorized in support of school-sanctioned activities, at a
21 school-sponsored event or on the property of any school,
22 school bus, or school bus stop; however, a person may carry a
23 firearm:

24 1. In a case to a firearms program, class or function
25 which has been approved in advance by the principal or chief
26 administrative officer of the school as a program or class to
27 which firearms could be carried;

28 2. In a case to a vocational school having a firearms
29 training range; or

30 3. In a vehicle pursuant to s. 790.25(5); except that
31 school districts may adopt written and published policies that

1 waive the exception in this subparagraph for purposes of
2 student and campus parking privileges.

3

4 For the purposes of this section, "school" means any
5 preschool, elementary school, middle school, junior high
6 school, secondary school, vocational school, or postsecondary
7 school, whether public or nonpublic.

8 (b) A person who willfully and knowingly possesses any
9 electric weapon or device, destructive device, or other
10 weapon, including a razor blade, box cutter, or knife, except
11 as authorized in support of school-sanctioned activities, in
12 violation of this subsection commits a felony of the third
13 degree, punishable as provided in s. 775.082, s. 775.083, or
14 s. 775.084.

15 (c)1. A person who willfully and knowingly possesses
16 any firearm in violation of this subsection commits a felony
17 of the third degree, punishable as provided in s. 775.082, s.
18 775.083, or s. 775.084.

19 2. A person who stores or leaves a loaded firearm
20 within the reach or easy access of a minor who obtains the
21 firearm and commits a violation of subparagraph 1. commits a
22 misdemeanor of the second degree, punishable as provided in s.
23 775.082 or s. 775.083; except that this does not apply if the
24 firearm was stored or left in a securely locked box or
25 container or in a location which a reasonable person would
26 have believed to be secure, or was securely locked with a
27 firearm-mounted push-button combination lock or a trigger
28 lock; if the minor obtains the firearm as a result of an
29 unlawful entry by any person; or to members of the Armed
30 Forces, National Guard, or State Militia, or to police or
31 other law enforcement officers, with respect to firearm

1 possession by a minor which occurs during or incidental to the
2 performance of their official duties.

3 (d) A person who discharges any weapon or firearm
4 while in violation of paragraph (a), unless discharged for
5 lawful defense of himself or herself or another or for a
6 lawful purpose, commits a felony of the second degree,
7 punishable as provided in s. 775.082, s. 775.083, or s.
8 775.084.

9 (e) The penalties of this subsection shall not apply
10 to persons licensed under s. 790.06. Persons licensed under
11 s. 790.06 shall be punished as provided in s. 790.06(12),
12 except that a licenseholder who unlawfully discharges a weapon
13 or firearm on school property as prohibited by this subsection
14 commits a felony of the second degree, punishable as provided
15 in s. 775.082, s. 775.083, or s. 775.084.

16 (f) Notwithstanding section 985.226(2)(b) or s.
17 985.227(2), the state attorney need not request that a minor
18 charged under this subsection be prosecuted as an adult if the
19 state attorney determines that it is in the best interest of
20 the child and the public to prosecute the minor as a juvenile.

21 (3) This section does not apply to any law enforcement
22 officer as defined in s. 943.10(1), (2), (3), (4), (6), (7),
23 (8), (9), or (14).

24 (4) At the beginning of each school year each
25 elementary and secondary school in the state, whether public
26 or nonpublic, shall provide notice to each student that it is
27 unlawful to possess weapons or firearms in the manner
28 proscribed by this section. The notice must be in writing and
29 clearly indicate that this prohibition is imposed by a state
30 law that carries severe penalties and is not imposed merely by
31 school policy. The notice must be signed by the child's parent

1 or legal guardian and retained by the school in the child's
2 records.

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

4
5 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
6 COMMITTEE SUBSTITUTE FOR
7 Senate Bill 204

- 8 - Amends s. 790.115, F.S., to expand the offense of
9 possession of a weapon or firearm on school property to
10 also prohibit this activity at school-sponsored events.
11 - Requires schools to provide students with written notice
12 of this offense.
13 - Requires minors charged with this offense to be
14 fingerprinted.
15 - Provides that the state attorney may prosecute the minor
16 as a juvenile or adult.
17 - Provides that minors charged with any offense involving
18 the use or possession of a firearm should be securely
19 detained when taken into custody.
20 - Requires minors found to have committed an offense
21 involving the use or possession of a firearm, excepting
22 simple possession of a firearm, to perform community
23 service to be served at a facility, if available, which
24 treats gunshot victims.
25 - Requires such minors to be securely detained for 15 days
26 for a first offense, and 21 days to 3 months for a second
27 or subsequent offense.
28 - Eliminates the bill's duplication of the same offense
29 that is currently provided in s. 790.115, F.S.
30
31