

1                                   A bill to be entitled  
2           An act relating to weapons and firearms;  
3           amending s. 790.22, F.S.; relating to certain  
4           offenses involving use or possession of a  
5           firearm by a minor or offenses during the  
6           commission of which the minor possessed a  
7           firearm; providing that possession of a firearm  
8           by a minor in violation of specified provisions  
9           constitutes a felony of the third degree  
10          instead of a misdemeanor of the first degree;  
11          authorizing secure detention for a specified  
12          period; providing or revising penalties for  
13          specified offenses; requiring secure detention  
14          for specified periods, or increasing detention  
15          periods imposed, for commission of specified  
16          initial, second, or subsequent offenses;  
17          providing for performance of community service  
18          in a manner involving a hospital emergency room  
19          or other medical environment dealing on a  
20          regular basis with trauma patients and gunshot  
21          wounds; providing that the minor offender may  
22          not receive credit for time served before  
23          adjudication of certain offenses; reenacting  
24          ss. 943.051(3)(b) and 985.212(1)(b), F.S.,  
25          relating to criminal justice information and  
26          fingerprinting, to incorporate said amendment  
27          in references; amending s. 790.115, F.S.;  
28          requiring a minor charged with certain  
29          activities to be detained in secure detention;  
30          requiring a hearing within a time certain;  
31          authorizing a court to order continued secure

1           detention for a certain period; providing  
2           requirements for such detention; amending s.  
3           985.215, F.S.; requiring secure detention care  
4           placement for a child charged with certain  
5           activities; authorizing a court to continue  
6           detaining a child charged with certain  
7           activities; amending s. 985.227, F.S.;  
8           providing for discretionary direct file for the  
9           offense of possessing or discharging firearms  
10          on school property; providing an effective  
11          date.

12  
13 Be It Enacted by the Legislature of the State of Florida:

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15           Section 1. Section 790.22, Florida Statutes, 1998  
16 Supplement, is amended to read:

17           790.22 Use of BB guns, air or gas-operated guns, or  
18 electric weapons or devices by minor under 16; limitation;  
19 possession of firearms by minor under 18 prohibited;  
20 penalties.--

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

26           (2) Any adult responsible for the welfare of any child  
27 under the age of 16 years who knowingly permits such child to  
28 use or have in his or her possession any BB gun, air or  
29 gas-operated gun, electric weapon or device, or firearm in  
30 violation of the provisions of subsection (1) of this section  
31

1 commits a misdemeanor of the second degree, punishable as  
2 provided in s. 775.082 or s. 775.083.

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

6 (a) The minor is engaged in a lawful hunting activity  
7 and is:

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

10 (b) The minor is engaged in a lawful marksmanship  
11 competition or practice or other lawful recreational shooting  
12 activity and is:

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

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

20 (4)(a) Any parent or guardian of a minor, or other  
21 adult responsible for the welfare of a minor, who knowingly  
22 and willfully permits the minor to possess a firearm in  
23 violation of subsection (3) commits a felony of the third  
24 degree, punishable as provided in s. 775.082, s. 775.083, or  
25 s. 775.084.

26 (b) Any natural parent or adoptive parent, whether  
27 custodial or noncustodial, or any legal guardian or legal  
28 custodian of a minor, if that minor possesses a firearm in  
29 violation of subsection (3) may, if the court finds it  
30 appropriate, be required to participate in classes on  
31 parenting education which are approved by the Department of

1 Juvenile Justice, upon the first conviction of the minor. Upon  
2 any subsequent conviction of the minor, the court may, if the  
3 court finds it appropriate, require the parent to attend  
4 further parent education classes or render community service  
5 hours together with the child.

6 (c) No later than July 1, 1994, the district juvenile  
7 justice boards or county juvenile justice councils or the  
8 Department of Juvenile Justice shall establish appropriate  
9 community service programs to be available to the alternative  
10 sanctions coordinators of the circuit courts in implementing  
11 this subsection. The boards or councils or department shall  
12 propose the implementation of a community service program in  
13 each circuit, and may submit a circuit plan, to be implemented  
14 upon approval of the circuit alternative sanctions  
15 coordinator.

16 (d) For the purposes of this section, community  
17 service may be provided on public property as well as on  
18 private property with the expressed permission of the property  
19 owner. Any community service provided on private property is  
20 limited to such things as removal of graffiti and restoration  
21 of vandalized property.

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

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

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

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 of up to 1 year.

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 1 year after the date on which the minor  
13 would otherwise have become eligible.

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

18           1. If the minor is eligible by reason of age for a  
19 driver license or driving privilege, the court shall direct  
20 the Department of Highway Safety and Motor Vehicles to revoke  
21 or to withhold issuance of the minor's driver license or  
22 driving privilege for up to 2 years.

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

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

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

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

8 (6) Any firearm that is possessed or used by a minor  
9 in violation of this section shall be promptly seized by a law  
10 enforcement officer and disposed of in accordance with s.  
11 790.08(1)-(6).

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

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

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

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

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

29 1. Perform 100 hours of community service; ~~and-~~

30  
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1           2. Be committed to the department for placement on  
2 community control or in a nonresidential or residential  
3 commitment program.

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

7           1. Perform not less than 100 nor more than 250 hours  
8 of community service; and-

9           2. Be committed to the department for placement on  
10 community control or in a nonresidential or residential  
11 commitment program.

12  
13 The minor shall not receive credit for time served before  
14 adjudication. For the purposes of this subsection, community  
15 service shall be performed, if possible, in a manner involving  
16 a hospital emergency room or other medical environment that  
17 deals on a regular basis with trauma patients and gunshot  
18 wounds.

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

23           (a) For a first offense:

24           1. If the minor is eligible 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 revoke  
27 or to withhold issuance of the minor's driver license or  
28 driving privilege for up to 1 year.

29           2. If the minor's driver license or driving privilege  
30 is under suspension or revocation for any reason, the court  
31 shall direct the Department of Highway Safety and Motor

1 Vehicles to extend the period of suspension or revocation by  
2 an additional period for up to 1 year.

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

9           (b) For a second or subsequent offense:

10           1. If the minor is eligible by reason of age for a  
11 driver license or driving privilege, the court shall direct  
12 the Department of Highway Safety and Motor Vehicles to revoke  
13 or to withhold issuance of the minor's driver license or  
14 driving privilege for up to 2 years.

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

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

26           Section 2. For the purpose of incorporating the  
27 amendment to section 790.22, Florida Statutes, 1998  
28 Supplement, in references thereto, the following sections or  
29 subdivisions of Florida Statutes or Florida Statutes, 1998  
30 Supplement, are reenacted to read:

31

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

- 1 1. Assault, as defined in s. 784.011.
- 2 2. Battery, as defined in s. 784.03.
- 3 3. Carrying a concealed weapon, as defined in s.
- 4 790.01(1).
- 5 4. Unlawful use of destructive devices or bombs, as
- 6 defined in s. 790.1615(1).
- 7 5. Negligent treatment of children, as defined in
- 8 former s. 827.05.
- 9 6. Assault on a law enforcement officer, a
- 10 firefighter, or other specified officers, as defined in s.
- 11 784.07(2)(a).
- 12 7. Open carrying of a weapon, as defined in s.
- 13 790.053.
- 14 8. Exposure of sexual organs, as defined in s. 800.03.
- 15 9. Unlawful possession of a firearm, as defined in s.
- 16 790.22(5).
- 17 10. Petit theft, as defined in s. 812.014.
- 18 11. Cruelty to animals, as defined in s. 828.12(1).
- 19 12. Arson, resulting in bodily harm to a firefighter,
- 20 as defined in s. 806.031(1).

21

22 A law enforcement agency may fingerprint and photograph a  
23 child taken into custody upon probable cause that such child  
24 has committed any other violation of law, as the agency deems  
25 appropriate. Such fingerprint records and photographs shall be  
26 retained by the law enforcement agency in a separate file, and  
27 these records and all copies thereof must be marked "Juvenile  
28 Confidential." These records shall not be available for public  
29 disclosure and inspection under s. 119.07(1) except as  
30 provided in ss. 943.053 and 985.04(5), but shall be available  
31 to other law enforcement agencies, criminal justice agencies,

1 state attorneys, the courts, the child, the parents or legal  
2 custodians of the child, their attorneys, and any other person  
3 authorized by the court to have access to such records. These  
4 records may, in the discretion of the court, be open to  
5 inspection by anyone upon a showing of cause. The fingerprint  
6 and photograph records shall be produced in the court whenever  
7 directed by the court. Any photograph taken pursuant to this  
8 section may be shown by a law enforcement officer to any  
9 victim or witness of a crime for the purpose of identifying  
10 the person who committed such crime.

11 Section 3. Subsection (4) is added to section 790.115,  
12 Florida Statutes, to read:

13 790.115 Possessing or discharging weapons or firearms  
14 on school property prohibited; penalties; exceptions.--

15 (4) Notwithstanding s. 985.213, s. 985.214, or s.  
16 985.215(1), any minor under 18 years of age who is charged  
17 under this section with possessing or discharging a firearm on  
18 school property shall be detained in secure detention, unless  
19 the state attorney authorizes the release of the minor, and  
20 shall be given a probable cause hearing within 24 hours after  
21 being taken into custody. At the hearing, the court may order  
22 that the minor continue to be held in secure detention for a  
23 period of 21 days, during which time the minor shall receive  
24 medical, psychiatric, psychological, or substance abuse  
25 examinations pursuant to s. 985.224 and a written report shall  
26 be completed.

27 Section 4. Paragraph (b) of subsection (1) and  
28 subsection (2) of section 985.215, Florida Statutes, 1998  
29 Supplement, are amended to read:

30 985.215 Detention.--

31

1           (1) The juvenile probation officer shall receive  
2 custody of a child who has been taken into custody from the  
3 law enforcement agency and shall review the facts in the law  
4 enforcement report or probable cause affidavit and make such  
5 further inquiry as may be necessary to determine whether  
6 detention care is required.

7           (b) The juvenile probation officer shall base the  
8 decision whether or not to place the child into secure  
9 detention care, home detention care, or nonsecure detention  
10 care on an assessment of risk in accordance with the risk  
11 assessment instrument and procedures developed by the  
12 Department of Juvenile Justice under s. 985.213. However, a  
13 child charged with possessing or discharging a firearm on  
14 school property in violation of s. 790.115 shall be placed in  
15 secure detention care.

16  
17 Under no circumstances shall the juvenile probation officer or  
18 the state attorney or law enforcement officer authorize the  
19 detention of any child in a jail or other facility intended or  
20 used for the detention of adults, without an order of the  
21 court.

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

26           (a) The child is alleged to be an escapee or an  
27 absconder from a commitment program, a community control  
28 program, furlough, or aftercare supervision, or is alleged to  
29 have escaped while being lawfully transported to or from such  
30 program or supervision.

31

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

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

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

10 (e) The child is charged with possession or  
11 discharging a firearm on school property in violation of  
12 790.115.

13 ~~(f)(e)~~ The child is charged with a capital felony, a  
14 life felony, a felony of the first degree, a felony of the  
15 second degree that does not involve a violation of chapter  
16 893, or a felony of the third degree that is also a crime of  
17 violence, including any such offense involving the use or  
18 possession of a firearm.

19 ~~(g)(f)~~ The child is charged with any second degree or  
20 third degree felony involving a violation of chapter 893 or  
21 any third degree felony that is not also a crime of violence,  
22 and the child:

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

26 2. Has a record of law violations prior to court  
27 hearings;

28 3. Has already been detained or has been released and  
29 is awaiting final disposition of the case;

30 4. Has a record of violent conduct resulting in  
31 physical injury to others; or

1           5. Is found to have been in possession of a firearm.  
 2           (h)~~(g)~~ The child is alleged to have violated the  
 3 conditions of the child's community control or aftercare  
 4 supervision. However, a child detained under this paragraph  
 5 may be held only in a consequence unit as provided in s.  
 6 985.231(1)(a)1.c. If a consequence unit is not available, the  
 7 child shall be placed on home detention with electronic  
 8 monitoring.

9  
 10 A child who meets any of these criteria and who is ordered to  
 11 be detained pursuant to this subsection shall be given a  
 12 hearing within 24 hours after being taken into custody. The  
 13 purpose of the detention hearing is to determine the existence  
 14 of probable cause that the child has committed the delinquent  
 15 act or violation of law with which he or she is charged and  
 16 the need for continued detention. Unless a child is detained  
 17 under paragraph (d) or paragraph (e), the court shall utilize  
 18 the results of the risk assessment performed by the juvenile  
 19 probation officer and, based on the criteria in this  
 20 subsection, shall determine the need for continued detention.  
 21 A child placed into secure, nonsecure, or home detention care  
 22 may continue to be so detained by the court pursuant to this  
 23 subsection. If the court orders a placement more restrictive  
 24 than indicated by the results of the risk assessment  
 25 instrument, the court shall state, in writing, clear and  
 26 convincing reasons for such placement. Except as provided in  
 27 s. 790.22(8) or in subparagraph (10)(a)2., paragraph (10)(b),  
 28 paragraph (10)(c), or paragraph (10)(d), when a child is  
 29 placed into secure or nonsecure detention care, or into a  
 30 respite home or other placement pursuant to a court order  
 31 following a hearing, the court order must include specific

1 instructions that direct the release of the child from such  
2 placement no later than 5 p.m. on the last day of the  
3 detention period specified in paragraph (5)(b) or paragraph  
4 (5)(c), or subparagraph (10)(a)1., whichever is applicable,  
5 unless the requirements of such applicable provision have been  
6 met or an order of continuance has been granted pursuant to  
7 paragraph (5)(d).

8 Section 5. Paragraph (a) of subsection (1) of section  
9 985.227, Florida Statutes, is amended to read:

10 985.227 Prosecution of juveniles as adults by the  
11 direct filing of an information in the criminal division of  
12 the circuit court; discretionary criteria; mandatory  
13 criteria.--

14 (1) DISCRETIONARY DIRECT FILE; CRITERIA.--

15 (a) With respect to any child who was 14 or 15 years  
16 of age at the time the alleged offense was committed, the  
17 state attorney may file an information when in the state  
18 attorney's judgment and discretion the public interest  
19 requires that adult sanctions be considered or imposed and  
20 when the offense charged is:

- 21 1. Arson;
- 22 2. Sexual battery;
- 23 3. Robbery;
- 24 4. Kidnapping;
- 25 5. Aggravated child abuse;
- 26 6. Aggravated assault;
- 27 7. Aggravated stalking;
- 28 8. Murder;
- 29 9. Manslaughter;
- 30 10. Unlawful throwing, placing, or discharging of a  
31 destructive device or bomb;

- 1           11. Armed burglary in violation of s. 810.02(2)(b) or  
2 specified burglary of a dwelling or structure in violation of  
3 s. 810.02(2)(c);  
4           12. Aggravated battery;  
5           13. Lewd or lascivious assault or act in the presence  
6 of a child;  
7           14. Carrying, displaying, using, threatening, or  
8 attempting to use a weapon or firearm during the commission of  
9 a felony; ~~or~~  
10           15. Grand theft in violation of s. 812.014(2)(a); or—  
11           16. Possessing or discharging any weapon or firearm on  
12 school property in violation of s. 790.115.

13           Section 6. This act shall take effect October 1, 1999.  
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