

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

Date: April 9, 1998 Revised: _____

Subject: Juveniles/Unlawful Possession of Firearms

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	Dugger	Miller	CJ	Favorable
2.	_____	_____	WM	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

The bill increases the penalty for a minor charged with mere possession of a firearm from a first degree misdemeanor to a third degree felony. The first offense requires the court to place the minor in secure detention for five days. A second or subsequent offense requires the minor to be placed in secure detention for at least 10 days but not exceeding 30 days. Placement in secure detention is in addition to the current requirement of a minor performing community service hours and having restrictions placed on his or her driver's license.

The bill also includes mere possession of a firearm as one of the offenses that requires the minor committing such offense to be placed in secure detention initially after the offense has been committed and continued to be held in secure detention under certain circumstances.

The bill also increases the current mandatory time in secure detention from 5 days to 15 days for a minor found to have committed an offense that involves the use or possession of a firearm, other than mere possession, when that minor has not been committed to a residential program of the Department of Juvenile Justice (DJJ). For a second and subsequent offense, the mandatory time in secure detention is increased from a minimum of 10 days to 21 days, with a maximum of up to 90 days. The bill provides that any detention time served prior to an adjudication cannot be credited towards a disposition when the minor is placed in detention.

The bill also provides that the required community service hours under s. 790.22, F.S., be performed, if possible, in a hospital emergency room or other medical facility that treats trauma patients and gunshot wounds on a regular basis.

This bill substantially amends section 790.22 of the Florida Statutes.

II. Present Situation:

Section 790.22(3), F.S., provides that it is a first degree misdemeanor for a minor under 18 years of age to possess a firearm, other than an unloaded firearm at his or her home, except under the following circumstances:

- ▶ The minor is engaged in a lawful hunting activity and is at least 16 years of age, or if under the age of 16, is supervised by an adult during the lawful hunting activity;
- ▶ 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 the age of 16, is supervised by an adult who is acting with the consent of the minor's parent or guardian;
or
- ▶ The firearm is unloaded and is being transported by the minor directly to or from a hunting or a lawful marksmanship event.

A parent who knowingly and willfully permits the violation of this subsection commits a third degree felony, punishable by potential imprisonment up to 5 years and/or a fine not exceeding \$5,000. Upon the first conviction of a minor for a violation of this subsection, the court may require a parent to participate in parenting education classes approved by the DJJ. Any subsequent conviction of the minor may result in the court ordering the parent to continue parenting education classes or perform community service hours with the youth.

If a youth violates this subsection, the court is required to order him or her to perform 100 hours of community service. The court must also direct the Department of Highway Safety and Motor Vehicles to suspend or withhold the issuance of a driver's license for up to 1 year. If the youth is adjudicated for a second or subsequent offense, he or she is required to perform between 100 and 250 hours of community service and have his or her driver's license suspended or not issued for up to 2 years. However, s. 790.22, F.S., does not currently authorize the placement of a youth in a secure detention facility for the mere possession of a firearm.

Section 790.22(8), F.S., on the other hand, does require that a youth charged with an offense that involves the use or possession of a firearm, other than mere possession of a firearm, be initially detained in a secure juvenile detention center, unless the state attorney allows the release of the youth. The detained youth is required to have a court hearing after 24 hours, at which time the court may continue to hold the youth in secure detention, in accordance with applicable detention time limitations, if the youth meets detention criteria or if the court finds that the youth presents a clear and convincing danger to himself or the community.

Section 790.22(9), F.S., requires that if the youth is adjudicated but not committed to the DJJ for committing an offense involving the use or possession of a firearm, other than mere possession of a firearm, the court is required to order the youth into secure detention for 5 days and perform 100 hours of community service. For a second offense, the youth must be ordered to serve 10

days in secure detention and perform between 100 and 250 hours of community service. In addition, these youths are required to have their driver's license suspended or not issued for up to 2 years.

III. Effect of Proposed Changes:

The bill amends s. 790.22(5), F. S., by increasing the criminal penalty for a minor under 18 years of age who unlawfully possesses a firearm from a first degree misdemeanor to a third-degree felony. Committing this offense for the first time will require a minor to serve 5 days in a secure detention facility, in addition to performing the currently required 100 hours of community service and having the driver's license revoked or not issued for up to 1 year.

For a second or subsequent violation of unlawful possession of a firearm by a minor, the bill will require placement in a secure detention facility for at least 10 days but not more than 30 days. This sanction is in addition to performing at least 100 hours and not more than 250 hours of community service as is currently required.

The bill also includes mere possession of a firearm as one of the offenses that requires the minor committing such offense to be placed in secure detention initially after the offense has been committed and continued to be held in secure detention under certain circumstances.

The bill amends s. 790.22(9), F.S., by increasing the current mandatory time in secure detention from 5 days to 15 days for a minor found to have committed an offense that involves the use or possession of a firearm, other than mere possession of a firearm, when the minor has not been committed to a residential program of the DJJ. For a second and subsequent offense, the mandatory time in secure detention is increased from a minimum of 10 days to 21 days, with a maximum of up to 90 days. The bill also provides that any detention time served prior to an adjudication cannot be credited towards a disposition when the minor is placed in secure detention. Community service is still required (100 hours for the first offense and between 100 and 250 hours for the second or subsequent offense), as is the suspension or non-issuance of a driver's license for up to 2 years.

The bill also provides that the required community service hours under s. 790.22, F.S., be performed, if possible, in a hospital emergency room or other medical facility that treats trauma patients and gunshot wounds on a regular basis.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Based on data from the DJJ, 186 youths were placed in a secure juvenile detention center for gun law violations during an eleven month period from November, 1996 through September, 1997. These cases do not include possession of a firearm. The DJJ does not keep data on juveniles referred to the department for possession of a firearm. The DJJ can only estimate the number of youths impacted by this bill. Since the 186 youths detained for gun law violations were detained for charges more serious than merely possession, the DJJ estimates that twice as many youths (372) could be affected by the bill.

The DJJ estimates that if 372 youths were referred for possession of a firearm in violation of s. 790.22(3), F.S., 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 youths for total operational costs of \$470,022. The DJJ estimates it would need to build 14 additional detention beds (13.3 days times 372 youths divided by 365 days) to detain these youths at a cost of \$1,020,600.

The DJJ estimates that if the 372 youths 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 required in the bill. If 186 youths 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 the DJJ.

SUMMARY OF FISCAL IMPACT	
Capital Outlay	\$1,603,800
Operating Costs	\$ 911,772
Total Costs	\$2,515,572

Please see “Related Issues” for a further potential fiscal impact on the state.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Under the federal Juvenile Justice and Delinquency Prevention (JJDP) Act of 1974, s. 223, 42 U.S.C. s. 5633 (1996), Florida is eligible to receive prevention funds for its juvenile justice system by being 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 children-in-need-of-services (CINS), commonly referred to as “status offenders,” in secure detention facilities, unless they have violated a valid court order and are found in contempt of court. (A status offender is a youth that did something that is not a crime if committed by an adult, but by virtue of the youth’s status, he or she is being handled by the judicial system.) 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.

The bill may violate the federal JJDP Act’s provision that prohibits the placement of status offenders in secure detention facilities, which could jeopardize federal funds that the state receives on an annual basis. In FY 1997-98, for instance, Florida received about \$5.4 million under this law. However, there is pending federal legislation that would allow status offenders to be held in secure facilities, so that if this federal legislation passes, it would no longer jeopardize federal funds to place a youth possessing a firearm in secure detention.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
