

STORAGE NAME: h0349b.jj

DATE: February 18, 1999

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
JUVENILE JUSTICE
ANALYSIS**

BILL #: HB 349 (PCB LECP 99-02)

RELATING TO: School Children Possessing Weapons On School Property

SPONSOR(S): Committee on Law Enforcement and Crime Prevention

COMPANION BILL(S): None

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) LAW ENFORCEMENT AND CRIME PREVENTION YEAS 9 NAYS 0
 - (2) JUVENILE JUSTICE YEAS 10 NAYS 0
 - (3) CRIMINAL JUSTICE APPROPRIATIONS
 - (4)
 - (5)
-

I. SUMMARY:

This bill is intended to reduce the possibility that a child might be charged with possession of a firearm on school property, yet be released from custody or escape from non-secure custody only to return to the school and perhaps use a weapon or firearm causing injury or death to others. The bill provides that a minor charged with possessing or discharging weapons or firearms on school property be held in secure detention, and a probable cause hearing be held within 24 hours after the child is taken into custody. At the hearing, the court may order that the child continue in secure detention for a period of 21 days, during which time the appropriate medical, psychiatric, psychological, or substance abuse examination can take place and a written report can be completed.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Section 790.22, F.S., provides general limitations, exceptions, and prohibitions with regard to the possession of firearms by a minor under 18 years of age. A minor under 18 years of age may not possess a firearm, other than an unloaded firearm at his or her home, unless engaged in a lawful hunting activity or lawful marksmanship competition or lawful recreational shooting activity. A violation of this statute constitutes a misdemeanor of the first degree, with an additional penalty of 100 hours of community service and loss of driving privileges.

Subsection (8) of s. 790.22 provides in part:

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

With regard to possessing firearms at school, section 790.115, F.S., provides (with certain specified exceptions) that "A person shall not possess any firearm... on the property of any school, school bus, or school bus stop..." A violation of this provision constitutes a felony of the third degree. A person who discharges any weapon or firearm at a school commits a felony of the second degree. However, this statutory section has no special provisions for dealing specifically with violations committed by minors.

B. EFFECT OF PROPOSED CHANGES:

The bill adds a new subsection (4) to section 790.115, F.S., which provides that if a minor under 18 years of age is charged with possessing or discharging weapons or firearms on school property, the minor shall be detained in secure detention (unless the state attorney authorizes the release of the minor) and given a probable cause hearing within 24 hours after being taken into custody. At the hearing, the court may order that the minor continue to be held in secure detention for a period of 21 days, during which time the minor **shall** receive medical, psychiatric, psychological, or substance abuse examinations and a written report can be completed.

The bill provides that the state attorney may authorize the release of a child prior to the probable cause hearing, for instance where the child was wrongly or inappropriately charged with possession of a firearm at school. At the probable cause hearing, the court has the discretion to order that the minor continue to be held in secure detention for a

period of 21 days for psychological or medical, psychiatric, psychological, or substance abuse testing, and the preparation of a written report.

The bill modifies the several provisions in Section 985.215, F.S., pertaining to juvenile detention, to specifically allow for secure detention for a child charged with possessing or discharging weapons or firearms on school property.

The bill also amends Section 985.227, F.S., giving the state attorney the discretion to charge 14 and 15 year olds committing this offense as adults. For those juveniles charged as adults under this provision, the adult court judge would have the discretion to impose either juvenile or adult sanctions.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

- (4) Are families required to participate in a program?

N/A

- (5) Are families penalized for not participating in a program?

N/A

- b. Does the bill directly affect the legal rights and obligations between family members?

N/A

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

- (1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Sections 790.115, 985.215, and 985.227, Florida Statutes.

E. SECTION-BY-SECTION ANALYSIS:

Section 1: Adds subsection (4) to section 790.115, F.S., to provide that any minor under 18 years of age charged with possessing or discharging weapons or firearms on school property shall be detained in secure detention, and receive a probable cause hearing within 24 hours after being taken into custody. The court may order that the minor be held in secure detention for period of 21 days, during which time the minor may receive medical, psychiatric, psychological, or substance abuse examinations.

Section 2: Amends section 985.215(1)(b), F.S., to require that the juvenile probation officer must place a child charged with possessing or discharging any weapon or firearm on school property into secure detention.

Amends section 985.215(2)(e), F.S., to allow a court to continue secure detention for any child charged with possessing or discharging any weapon or firearm on school property.

Section 3: Amends section 985.227(1)(a), F.S., to allow a state attorney the discretion to directly file an information on any child, who is 14 or 15 years of age, when charged with the offense of possessing or discharging any weapon or firearm on school property.

Section 4: Provides for an effective date of October 1, 1999.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

See, Fiscal Comments.

2. Recurring Effects:

See, Fiscal Comments.

3. Long Run Effects Other Than Normal Growth:

See, Fiscal Comments.

4. Total Revenues and Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

N/A

2. Direct Private Sector Benefits:

N/A

3. Effects on Competition, Private Enterprise and Employment Markets:

N/A

D. FISCAL COMMENTS:

According to the Department of Juvenile Justice, this provisions of this bill will not impact the number of youth placed in secure detention. As a result, the bill carries no fiscal impact.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

STORAGE NAME: h0349b.jj

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PAGE 8

A. APPLICABILITY OF THE MANDATES PROVISION:

N/A

B. REDUCTION OF REVENUE RAISING AUTHORITY:

N/A

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

N/A

V. COMMENTS:

While this bill is intended to require secure detention for minors possessing or discharging firearms on school property, the language of the bill could be construed to also require the detention of all minors for the possession of **any** weapon on school property.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The committee approved two amendments to clarify the bill's intent to apply only to the possession or discharge of firearms on school property.

VII. SIGNATURES:

COMMITTEE ON LAW ENFORCEMENT AND CRIME PREVENTION:

Prepared by:

Staff Director:

Kurt E. Ahrendt

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AS REVISED BY THE COMMITTEE ON JUVENILE JUSTICE:

Prepared by:

Staff Director:

David De La Paz

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