

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 1465 Firearm and Destructive Device Offenses

**SPONSOR(S):** Judiciary Committee, Garrison, Snyder and others

**TIED BILLS:** IDEN./SIM. BILLS: SB 1456

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	17 Y, 0 N	Padgett	Hall
2) Justice Appropriations Subcommittee	14 Y, 1 N	Saag	Keith
3) Judiciary Committee	21 Y, 0 N, As CS	Padgett	Kramer

### SUMMARY ANALYSIS

Firearms are regulated under both state and Federal law. Florida law restricts the ability of certain persons, including minors under 18 years of age, from possessing a firearm except in limited circumstances. Florida law also provides for enhanced penalties for offenders who possess or use a firearm while committing specified crimes.

CS/HB 1465 makes several changes related to offenses involving firearms and destructive devices as follows:

- Amends s. 775.087, F.S., commonly known as “10-20-Life,” to add the offense of human trafficking to the offenses that make a person eligible for mandatory minimum sentences if a person possessed or discharged a firearm, destructive device, semiautomatic firearm, or machine gun while committing the offense of human trafficking.
- Amends ss. 985.24 and 985.245, F.S., to revise the juvenile Detention Risk Assessment Instrument to consider a juvenile’s use of a firearm, in addition to possessing a firearm, to determine whether a juvenile should be placed in secure detention.
- Amends s. 985.25, F.S., to require that a juvenile who is charged with *any* offense involving the possession or use of a firearm to be held in secure detention until the juvenile’s detention hearing, which must occur within 24 hours after a juvenile is taken into custody.
- Amends s. 985.26, F.S., to authorize a court to hold a juvenile in secure detention for more than 21 days if he or she is charged with any offense involving the possession or use of a firearm and the court makes specified findings.
- Amends s. 790.22, F.S., to increase the time a court may hold a minor in secure detention if he or she unlawfully possesses a firearm as follows:
  - For a first violation, increases the time the court may place the minor in secure detention from three days to five days; and
  - For a second or subsequent violation, increases the time the court may place in a minor in secure detention from 15 days to 21 days.
- Amends s. 812.014, F.S., to create a new offense, punishable as a second degree felony, for a second or subsequent conviction for grand theft of a firearm.
- Amends s. 921.0022, F.S., to increase the ranking for grand theft of a firearm from a Level 4 offense to a Level 6 offense on the offense severity ranking chart (OSRC). The bill ranks the new offense of a second or subsequent conviction for grand theft of a firearm as a Level 7 offense on the OSRC.

The bill adds the offense of human trafficking to the offenses that make a person eligible for minimum mandatory terms of imprisonment for possessing or discharging a firearm while committing such an offense. To the extent that a person convicted of human trafficking is sentenced to a mandatory minimum term of imprisonment provided under the bill, there may be a positive indeterminate prison bed impact to the Department of Corrections (DOC).

The bill creates a new second degree felony for a second or subsequent conviction for grand theft of a firearm and increases the offense level for grand theft of a firearm on the OSRC. The creation of a new felony offense and increase of the offense level on the OSRC may result in increased prison admissions to DOC and longer sentences.

The bill increases the length of time a juvenile may be held in secure detention after being taken into custody for committing specified offenses and authorizes a court to hold a juvenile in secure detention for more than 21 days if he or she is charged with any offense involving the possession or use of a firearm and the court makes specified findings. This may result in an indeterminate increase to the Department of Juvenile Justice’s operational costs.

The bill provides an effective date of October 1, 2023.

**This document does not reflect the intent or official position of the bill sponsor or House of Representatives .**

**STORAGE NAME:** h1465e.JDC

**DATE:** 3/31/2023

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Minimum Mandatory Sentences

##### Background

##### *“10-20-Life”*

Section 775.087(2), F.S., commonly known as “10-20-Life,” requires a court to sentence a person who possessed or discharged a firearm<sup>1</sup> or destructive device<sup>2</sup> during the commission of an enumerated offense to a mandatory minimum term of imprisonment as follows:

- If a person was in *actual possession* of a firearm or destructive device during the commission of an enumerated offense, a minimum term of imprisonment of 10 years.
- If the person *discharged* a firearm or destructive device during the commission of an enumerated offense, a minimum term of imprisonment of 20 years.
- If the person *discharged* a firearm or destructive device which resulted in the *death or great bodily harm* to any person, a minimum term of imprisonment for 25 years, with a maximum term of imprisonment of life in prison.<sup>3</sup>

Section 775.087(3), F.S., requires the court to sentence a person who possessed or discharged a semiautomatic firearm and its high-capacity detachable box magazine (semiautomatic firearm) or a machine gun<sup>4</sup> during the commission of an enumerated offense to a mandatory minimum term of imprisonment as follows:

- If a person was in *actual possession* of a semiautomatic firearm or machine gun during the commission of an enumerated offense, a minimum term of imprisonment of 15 years.
- If the person *discharged* a semiautomatic firearm or machine gun during the commission of an enumerated offense, a minimum term of imprisonment of 20 years.
- If the person *discharged* a semiautomatic firearm or machine gun which resulted in the *death or great bodily harm* to any person, a minimum term of imprisonment for 25 years, with a maximum term of imprisonment of life in prison.<sup>5</sup>

The enumerated offenses that make a person eligible for the mandatory minimum terms of imprisonment in s. 775.087, F.S., include:

- Murder;
- Sexual battery;
- Robbery;
- Burglary;
- Arson;
- Aggravated battery;

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<sup>1</sup> “Firearm” means any weapon (including a starter gun) which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon; any firearm muffler or firearm silencer; any destructive device; or any machine gun. The term “firearm” does not include an antique firearm unless the antique firearm is used in the commission of a crime. S. 790.001(6), F.S.

<sup>2</sup> “Destructive device” means any bomb, grenade, mine, rocket, missile, pipe bomb, or similar device containing an explosive, incendiary, or poison gas and includes any frangible container filled with an explosive, incendiary, explosive gas, or expanding gas, which is designed or so constructed as to explode by such filler and is capable of causing bodily harm or property damage; any combination of parts either designed or intended for use in converting any device into a destructive device and from which a destructive device may be readily assembled; any device declared a destructive device by the Bureau of Alcohol, Tobacco, and Firearms; any type of weapon which will, is designed to, or may readily be converted to expel a projectile by the action of any explosive and which has a barrel with a bore of one-half inch or more in diameter; and ammunition for such destructive devices, but not including shotgun shells or any other ammunition designed for use in a firearm other than a destructive device. S. 790.001(4), F.S.

<sup>3</sup> S. 775.087(2)(a), F.S.

<sup>4</sup> “Machine gun” means any firearm, as defined herein, which shoots, or is designed to shoot, automatically more than one shot, without manually reloading, by a single function of the trigger. S. 790.001(9), F.S.

<sup>5</sup> S. 775.087(2)(a), F.S.

- Kidnapping;
- Escape;
- Aircraft piracy;
- Aggravated child abuse;
- Aggravated abuse of an elderly person or disabled adult;
- Unlawful throwing, placing, or discharging of a destructive device or bomb;
- Carjacking;
- Home-invasion robbery;
- Aggravated stalking;
- Trafficking in controlled substances; or
- Possession of a firearm by a felon.

### *Human Trafficking*

Human trafficking is modern day slavery which involves the transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining another person for the purpose of exploiting that person.<sup>6</sup> A person may not knowingly, or in reckless disregard of the facts, engage in human trafficking, attempt to engage in human trafficking, or benefit financially by receiving anything of value from participating in a venture that has subjected a person to human trafficking for commercial sexual activity, labor, or services:

- By using coercion;<sup>7</sup>
- With or of a child younger than 18;<sup>8</sup> or
- If for commercial sexual activity, with a mentally defective<sup>9</sup> or mentally incapacitated<sup>10</sup> person.<sup>11</sup>

Commercial sexual activity means any prostitution, lewdness, or assignation offense or attempt to commit such an offense, and includes a sexually explicit performance<sup>12</sup> and the production of pornography.<sup>13</sup>

Coercion includes:

- Using or threatening to use force against a person.
- Restraining, isolating, or confining a person without lawful authority and against his or her will, or threatening to do so.
- Using lending or other credit methods to establish a debt by a person when labor or services are pledged as a security for the debt, if the reasonably assessed value of the labor or services is not applied toward the liquidation of the debt.
- Destroying, concealing, removing, confiscating, withholding, or possessing any actual or purported passport, visa, other immigration document, or government identification document.
- Causing or threatening to cause financial harm.
- Enticing or luring a person by fraud or deceit.
- Providing a Schedule I or II controlled substance<sup>14</sup> to a person for the purpose of exploiting that person.<sup>15</sup>

Human trafficking for:

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<sup>6</sup> S. 787.06(2)(d), F.S.

<sup>7</sup> S. 787.06(3)(b), F.S.

<sup>8</sup> S. 787.06(3)(g), F.S.

<sup>9</sup> Mentally defective means a mental disease or defect which renders a person temporarily or permanently incapable of appraising the nature of his or her conduct. S. 794.011(1)(a), F.S.

<sup>10</sup> Mentally incapacitated means temporarily incapable of appraising or controlling a person's own conduct due to the influence of a narcotic, anesthetic, or intoxicating substance administered without his or her consent or due to any other act committed upon that person without his or her consent. S. 794.011(1)(b), F.S.

<sup>11</sup> S. 787.06(3)(g), F.S.

<sup>12</sup> A sexually explicit performance is an act or show, whether public or private, that is live, photographed, recorded, or videotaped and intended to arouse or satisfy sexual desires or appeal to the prurient interest. S. 787.06(2)(i), F.S.

<sup>13</sup> S. 787.06(2)(b), F.S.

<sup>14</sup> S. 893.03, F.S.

<sup>15</sup> S. 787.06(2)(a), F.S.

- Labor<sup>16</sup> or services<sup>17</sup> of any child under the age of 18 is a first degree felony;<sup>18</sup>
- Labor or services of any child under the age of 18 who is an unauthorized alien, is a first degree felony;<sup>19, 20</sup>
- Labor or services by transferring or transporting any child under the age of 18 from outside of Florida to within Florida, is a first degree felony;<sup>21</sup>
- Commercial sexual activity by transferring or transporting any child under the age of 18 from outside of Florida to within Florida, is a first degree felony;<sup>22</sup> or
- Commercial sexual activity of any child under the age of 18 or any person who is mentally defective or mentally incapacitated, is a life felony.<sup>23</sup>

If during the commission of any first degree felony offense listed above the offender causes great bodily harm, permanent disability, or permanent disfigurement to another person, the offense is reclassified as a life felony.<sup>24</sup> An offender's ignorance of a victim's age, a victim's misrepresentation of his or her age, or an offender's bona fide belief of a victim's age cannot be raised as a defense in the prosecution for a human trafficking offense.<sup>25</sup> A person convicted of human trafficking for commercial sexual activity must register as a sexual offender.<sup>26</sup>

### Effect of Proposed Changes – Minimum Mandatory Sentences

CS/HB 1465 amends s. 775.087, F.S., to add the offense of human trafficking to the enumerated offenses that make a person eligible for specified mandatory minimum sentences if a person actually possessed or discharged a firearm, destructive device, semiautomatic firearm, or machine gun while committing the offense of human trafficking.

## **Juvenile Detention**

### Background

#### *Juvenile Detention Care*

In Florida, the Department of Juvenile Justice (DJJ) administers the juvenile justice system. When a child is alleged to have committed a delinquent act, DJJ must review the sufficiency of the probable cause affidavit or report and complete an intake screening to make an initial determination whether detention care is necessary.<sup>27,28</sup> Detention care is the temporary care of a child in secure or supervised release detention care pending a court adjudication or disposition of his or her case.<sup>29</sup> A child held in secure detention is under the physical restriction of a secure detention center.

<sup>16</sup> "Labor" means work of economic or financial value. S. 787.06(2)(e), F.S.

<sup>17</sup> "Services" means any act committed at the behest of, under the supervision of, or for the benefit of another. The term includes, but is not limited to, forced marriage, servitude, or the removal of organs. S. 787.06(2)(h), F.S.

<sup>18</sup> A first degree felony is punishable by up to 30 years imprisonment and a \$10,000 fine. Ss. 775.082 and 775.083, F.S.

<sup>19</sup> "Unauthorized alien" means an alien who is not authorized under federal law to be employed in the United States, as provided in 8 U.S.C. § 1324a(h)(3). S. 787.06(2)(j), F.S.

<sup>20</sup> S. 787.06(3)(c)1., F.S.

<sup>21</sup> S. 787.06(3)(e)1., F.S.

<sup>22</sup> S. 787.06(3)(f)1., F.S., provides that an offense committed under these circumstances is punishable by a term of imprisonment not exceeding life or as provided in ss. 775.082, 775.083, or 775.084, F.S.

<sup>23</sup> A life felony is punishable by up to life imprisonment and a \$15,000 fine. Ss. 775.082, 775.083, or 775.084, F.S.

<sup>24</sup> S. 787.06(8)(b), F.S.

<sup>25</sup> S. 787.06(9), F.S.

<sup>26</sup> S. 943.0435, F.S.

<sup>27</sup> In 2021, the legislature passed "the Kaia Rolle Act", which prohibits a child under the age of 7 from being arrested, charged, or adjudicated delinquent unless the violation of law is a forcible felony. S. 985.031, F.S.

<sup>28</sup> In counties that do not have an assessment center, the law enforcement officer calls a DJJ "on-call screener" to assess the juvenile's risk and determine if detention is necessary. Office of the State Court's Administrator, *Florida's Juvenile Delinquency Benchbook* (June 2021), <https://www.flcourts.org/content/download/752754/file/Delinquency%20Benchbook%20-%20Final%20June%202021.pdf> (last visited Mar. 31, 2022).

<sup>29</sup> S. 985.03(18), F.S.

Section 985.24, F.S., requires the use of detention care to be based primarily upon findings that the child:

- Presents a substantial risk of not appearing at a subsequent hearing;
- Presents a substantial risk of inflicting bodily harm on others as evidenced by recent behavior, including illegal firearm possession;
- Presents history of committing a property offense prior to adjudication, disposition, or placement;
- Has committed a specified offense of contempt of court; or
- Requests protection from imminent bodily harm.<sup>30</sup>

### *Detention Risk Assessment Instrument*

DJJ utilizes the Detention Risk Assessment Instrument (DRAI) to make the initial determination of the need for detention. The tool was developed after considering the latest statistical analysis techniques and risk-prediction methods in Florida's juvenile criminal justice setting<sup>31</sup> and is designed to determine the likelihood that a child will fail to appear in court or commit a new offense within a short window of time.<sup>32</sup> The DRAI uses a point system, based on factors such as:

- The current alleged offense;
- Prior referrals to DJJ, including whether the child has another case pending;
- Prior delinquency history, including whether the child has previously failed to appear for court hearings or escaped from supervision; and
- The child's age.<sup>33</sup>

A child is required to be placed into secure detention after being taken into custody if the child is a "prolific juvenile offender" under s. 985.255(1)(f), F.S., or if the child is charged with possessing or discharging a firearm on school property in violation of s. 790.115, F.S.<sup>34</sup>

A child taken into custody and placed in detention care must be given a hearing within 24 hours to determine the existence of probable cause that the child has committed the delinquent act or violation of law for which he or she is charged and the need for continued detention.<sup>35</sup> The court determines the need for continued detention based on the results of the DRAI and may order a continued detention status if the DRAI indicates secure or supervised release detention.<sup>36</sup>

### *Length of Detention*

Section 985.26, F.S., controls the time period for which a court can order a child to be placed in detention care. Generally, a child may not be held in detention care for more than 21 days unless an adjudicatory hearing for the case has been commenced in good faith by the court.<sup>37</sup> However, when good cause is shown that the nature of the charge requires additional time for prosecution or defense of the case or if the totality of the circumstances, including the preservation of public safety, warrant an extension, the court may extend the length of detention for an additional 21 days if the child is charged with an offense that, if committed by an adult, would be a:

- Capital felony;
- Life felony;

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<sup>30</sup> S. 985.24(1), F.S.

<sup>31</sup> Florida Department of Juvenile Justice, *Detention Risk Assessment Instrument* (July 1, 2019), <https://www.djj.state.fl.us/research/latest-initiatives/detention-risk-assessment-instrument> (last visited Mar. 31, 2022).

<sup>32</sup> Florida Department of Juvenile Justice, *Detention Risk Assessment Instrument-Frequently Asked Questions*, <https://www.djj.state.fl.us/research/latest-initiatives/detention-risk-assessment-instrument/frequently-asked-questions> (last visited Mar. 31, 2022).

<sup>33</sup> S. 985.245(2)(b), F.S.

<sup>34</sup> S. 985.25(1)(b), F.S.

<sup>35</sup> Ss. 985.255(1) and (3)(a), F.S.

<sup>36</sup> *Id.*

<sup>37</sup> S. 985.26(2)(a), F.S.

- First-degree felony;
- Second-degree felony; or
- Third degree felony involving violence against any person.<sup>38</sup>

The court may order additional extensions of secure detention, in up to 21-day increments, but only after conducting a hearing prior to the expiration of the child's current secure detention period and making written findings that there is a need for the child's continued secure detention.<sup>39</sup> If a court extends the period of secure detention, it must ensure that an adjudicatory hearing in the child's case commences as soon as is reasonably possible and must prioritize the disposition of any child's case who has been held in secure detention for 60 days or more.<sup>40</sup>

#### *Possession of Firearms by a Minor*

Section 790.22, F.S., prohibits a minor under 18 years of age from possessing a firearm, other than an unloaded firearm at his or her home unless:

- The minor is engaged in a lawful hunting activity and:
  - Is at least 16 years of age; or
  - Under 16 years of age and supervised by an adult.
- 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
  - Under 16 years of age and supervised by an adult who is acting with the consent of the minor's parent or guardian.
- The firearm is unloaded and is being transported by the minor directly to or from a lawful hunting or recreational shooting event.

A first violation is punishable as a first degree misdemeanor<sup>41</sup> and the court may place the minor in secure detention for up to three days.<sup>42</sup> A second or subsequent violation is punishable as a third degree felony and the court may place the minor in secure detention for up to 15 days.<sup>43</sup>

#### Effect of Proposed Changes – Juvenile Detention

##### *Detention Risk Assessment Instrument*

The bill makes several changes to the DRAI and juvenile intake and detention procedures as follows:

- Amends ss. 985.24 and 985.245, F.S., to revise the DRAI to consider a juvenile's use of a firearm, in addition to his or her possession of a firearm, to determine whether a juvenile should be placed in secure detention; and
- Amends s. 985.25, F.S., to require that a juvenile who is charged with any offense involving the possession or use of a firearm to be held in secure detention until the juvenile's detention hearing, which must be held within 24 hours after a juvenile is taken into custody.

##### *Length of Detention*

The bill amends s. 985.26, F.S., to authorize a court to hold a juvenile in secure detention for more than 21 days if he or she is charged with any offense involving the possession or use of a firearm and the court makes specified findings that, based on the totality of the circumstances, continued detention of the juvenile is necessary.

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<sup>38</sup> S. 985.26(2)(b), F.S.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> A first degree misdemeanor is punishable by up to one year in jail and a \$1,000 fine. Ss. 775.082 and 775.083, F.S.

<sup>42</sup> S. 790.22(5)(a), F.S.

<sup>43</sup> S. 790.22(5)(b), F.S.

## Possession of Firearms by a Minor

The bill amends s. 790.22, F.S., to increase the time a court may hold a minor in secure detention if he or she unlawfully possesses a firearm as follows:

- For a first violation, the court may place the minor in secure detention for up to five days (increased from up to three days).
- For a second or subsequent violation, the court may place in a minor in secure detention for up to 21 days (increased from up to 15 days).

## Grand Theft of a Firearm

### Background

#### *Theft of a Firearm*

A person commits theft if he or she knowingly obtains or uses, or endeavors to obtain or use, the property of another with intent to, either temporarily or permanently:

- Deprive the other person of a right to the property or a benefit from the property; or
- Appropriate the property to his or her own use or to the use of any person not entitled to use the property.

Section 812.014, F.S., defines theft offenses and generally categorizes the offense level based on the value of the property stolen, the type of property stolen, and an offender's prior history of theft convictions. The offense levels for theft crimes based on property value thresholds and general property types are classified as follows:

	Property Value/Type	Offense Level
Grand Theft	≥ \$100,000 or a semitrailer deployed by law enforcement officer; property stolen while causing other property damage; or cargo valued ≥ \$50,000	First Degree Felony
	≥ \$20,000, but < \$100,000 or cargo valued < \$50,000; emergency medical equipment; or law enforcement equipment from authorized emergency vehicle	Second Degree Felony
	≥ \$10,000, but < \$20,000 or specified items <i>(including theft of a firearm)</i>	Third Degree Felony

	≥ \$5,000, but < \$10,000	Third Degree Felony
	≥ \$750, but < \$5,000	Third Degree Felony
	≥ \$100, but < \$750 if taken from a dwelling or unenclosed curtilage <sup>44</sup> of a dwelling	Third Degree Felony
<b>Petit Theft</b>	≥ \$100, but < \$750	First Degree Misdemeanor
	< \$100	Second Degree Misdemeanor

Additionally, the penalty for a petit theft offense is increased if a person has one or more prior theft convictions, as follows: petit theft committed by a person with a previous theft conviction is a first degree misdemeanor;<sup>45</sup> and petit theft committed by a person with two or more previous theft convictions is a third degree felony.<sup>46</sup>

*Criminal Punishment Code*

Felony offenses which are subject to the Criminal Punishment Code<sup>47</sup> are listed in a single offense severity ranking chart (OSRC),<sup>48</sup> which uses 10 offense levels to rank felonies from least severe to most severe. Each felony offense listed in the OSRC is assigned a level according to the severity of the offense.<sup>49, 50</sup> A person’s primary offense, any other current offenses, and prior convictions are scored using the points designated for the offense severity level of each current offense.<sup>51, 52</sup> The final score calculation, following the scoresheet formula, determines the lowest permissible sentence that a trial

court may impose, absent a valid reason for departure.<sup>53</sup> Under current law, grand theft of a firearm is ranked as a Level 4 offense on the OSRC.<sup>54</sup>

Effect of Proposed Changes – Grand Theft of a Firearm

The bill amends s. 812.014, F.S., to create a new offense, punishable as a second degree felony,<sup>55</sup> for a second or subsequent conviction for grand theft of a firearm.

The bill amends s. 921.0022, F.S., to increase the ranking for grand theft of a firearm from a Level 4 offense to a Level 6 offense on the OSRC. The bill ranks the new offense of a second or subsequent conviction for grand theft of a firearm as a Level 7 offense on the OSRC.

The bill provides an effective date of October 1, 2023.

**B. SECTION DIRECTORY:**

<sup>44</sup> “Unenclosed curtilage of a dwelling” means the unenclosed land or grounds, or any outbuildings, directly and intimately adjacent to and connected with the dwelling and necessary, convenient, and habitually used in connection with that dwelling. S. 810.09(1)(b), F.S.

<sup>45</sup> S. 812.014(3)(b), F.S.

<sup>46</sup> S. 812.014(3)(c), F.S.

<sup>47</sup> All felony offenses, with the exception of capital felonies, committed on or after October 1, 1998, are subject to the Criminal Punishment Code.

<sup>48</sup> S. 921.0022, F.S.

<sup>49</sup> S. 921.0022(2) and (3)(e), F.S.

<sup>50</sup> Felony offenses that are not listed in the OSRC default to statutorily assigned levels, as follows: an unlisted third degree felony defaults to a level 1; an unlisted second degree felony defaults to a level 4; an unlisted first degree felony defaults to a level 7; an unlisted first degree felony punishable by life defaults to a level 9; and an unlisted life felony defaults to a level 10. S. 921.0023, F.S.

<sup>51</sup> Ss. 921.0022 and 921.0024, F.S.

<sup>52</sup> A person may also accumulate points for factors such as victim injury points, community sanction violation points, and certain sentencing multipliers. S. 921.0024(2), F.S.

<sup>53</sup> If a person scores more than 44 points, the lowest permissible sentence is a specified term of months in state prison, determined by a formula. If a person scores 44 points or fewer, the court may impose a nonprison sanction, such as a county jail sentence, probation, or community control. *Id.*

<sup>54</sup> S. 921.0022(3)(d), F.S.

<sup>55</sup> A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. Ss. 775.082 and 775.083, F.S.



- Section 1:** Amends s. 775.087, F.S., relating to possession or use of weapon; aggravated battery; felony reclassification; minimum sentence.
- Section 2:** Amends s. 790.22, F.S., relating to use of BB guns, air or gas-operated guns, or electric weapons or devices by minor under 16; limitation; possession of firearms by minor under 18 prohibited; penalties.
- Section 3:** Amends s. 812.014, F.S., relating to theft.
- Section 4:** Amends s. 985.24, F.S., relating to use of detention; prohibitions.
- Section 5:** Amends s. 985.245, F.S., relating to risk assessment instrument.
- Section 6:** Amends s. 985.25, F.S., relating to detention intake.
- Section 7:** Amends s. 985.26, F.S., relating to length of detention.
- Section 8:** Amends s. 921.0022, F.S., relating to Criminal Punishment Code; offense severity ranking chart.
- Section 9:** Provides an effective date of October 1, 2023.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

### D. FISCAL COMMENTS:

The bill adds the offense of human trafficking to the enumerated offenses that make a person eligible for specified minimum mandatory terms of imprisonment for possessing or discharging a firearm while committing such an offense. To the extent that a person convicted of human trafficking is sentenced to a mandatory minimum term of imprisonment provided under the bill, there may be a positive indeterminate impact to prison beds in the Department of Corrections (DOC).

The bill creates a new second degree felony for a second or subsequent conviction for grand theft of a firearm and increases the offense level for grand theft of a firearm in the OSRC. The creation of a new felony offense and increase of the offense level in the OSRC may result in increased prison admissions to DOC and longer sentences. Thus, there may be a positive indeterminate impact to prison beds in DOC.

The bill increases the length of time a juvenile may be held in secure detention after being taken into custody for committing specified offenses and authorizes a court to hold a juvenile in secure detention for more than 21 days if he or she is charged with any offense involving the possession or use of a firearm and the court makes specified findings that such continued detention is necessary. To the extent this may increase DJJ's operational costs, the bill may have an indeterminate negative impact on

state expenditures. It is likely that any negative impacts of the bill can be absorbed within existing resources.

### **III. COMMENTS**

#### **A. CONSTITUTIONAL ISSUES:**

##### **1. Applicability of Municipality/County Mandates Provision:**

Not applicable. The bill does not appear to affect county or municipal governments.

##### **2. Other:**

None.

#### **B. RULE-MAKING AUTHORITY:**

Not applicable.

#### **C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

On March 31, 2023, the Judiciary Committee adopted an amendment and reported the bill favorably as a committee substitute. The amendment authorized a court to hold a juvenile in secure detention for more than 21 days if he or she is charged with any offense involving the possession or use of a firearm and the court makes specified findings that such continued detention is necessary.

This analysis is drafted to the committee substitute as passed by the Judiciary Committee.