

STORAGE NAME: h0199s1z.jud
DATE: May 13, 1999

****FINAL ACTION****
****SEE FINAL ACTION STATUS SECTION****

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
CRIME AND PUNISHMENT**

BILL #: CS/HB 199
RELATING TO: Trespass on School Grounds or Facilities
SPONSOR(S): Committee on Crime & Punishment and Representative Waters
COMPANION BILL(S): SB 154 (s)

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

- (1) JUDICIARY YEAS 9 NAYS 0
- (2) CRIME AND PUNISHMENT YEAS 6 NAYS 0
- (3)
- (4)
- (5)

I. FINAL ACTION STATUS:

On May 11, 1999, CS/HB 199 was approved by the Governor. (Chapter #99-147)

II. SUMMARY:

The committee substitute for HB 199 is designed to afford nonpublic schools the same protection against trespass that public schools are presently afforded under section 228.091, F.S.

The committee substitute renumbers section 228.091, F.S., as 810.097, F.S., and removes all references to the terms "public" or "public school(s)," replacing those terms where necessary with the term "school."

The committee substitute simplifies the current law by removing all the categories of persons who may commit trespass on school grounds without being first told to leave the campus and replaces the categories with the broadest category from the current law, namely, persons without legitimate business. Suspended students also remain specifically subject to the trespass penalty as in current law. Similarly, the categories of persons subject to being charged with trespass on school grounds after receiving a warning were eliminated so that any person who enters or remains on school grounds after being warned to leave by the principal or the principal's designee commits a first degree misdemeanor.

The bill defines the term "school" to mean "the grounds or any facility of any kindergarten, elementary school, middle school, junior high school, or secondary school, whether public or nonpublic."

The bill has an effective date of July 1, 1999.

The bill may have an impact on the court system, local law enforcement, and the local jails to the extent that it increases the number of persons who are arrested for violating its provisions and are prosecuted and incarcerated.

III. JUDICIARY

A. PRESENT SITUATION:

1. Trespass on school grounds

Section 228.091(1), F.S., currently provides that any person who is not a student, officer, or employee of a public school and who does not have legitimate business on the campus or other authorization, license or invitation to remain on school property, or is not a student, parent, or guardian of a student enrolled at the school or is a suspended or expelled student, or is a school employee not required to be on school property and who enters or remains on the campus or other facility owned by the school commits a trespass upon those grounds and is guilty of a misdemeanor of the second degree.

If a trespasser as defined in section 228.091(1) commits the trespass after the chief administrative officer of the school or his designee has directed the person to leave the grounds or facility, the trespasser is guilty of a misdemeanor of the first degree.

Section 228.091(3) allows the chief administrative officer of a public school, or his designee, to detain a person that is trespassing on school grounds, if the detaining officer has probable cause to believe that the trespass is in violation of section 228.091. The lawful detention of a trespasser by the school official does not render the school official liable for any civil or criminal penalty for false arrest, false imprisonment, or unlawful detention.

Section 228.091(4) allows a law enforcement officer to arrest either on or off premises and without a warrant any person the officer has probable cause to believe has committed the offense of trespass upon the grounds of a public school facility. Such arrest does not render the officer liable for false arrest, false imprisonment, or unlawful detention.

2. Trespass on school property with firearm or weapon

Section 810.095, F.S. provides that persons who trespass on school property while possessing a weapon or firearm are guilty of a felony of the third degree. This law applies to public and nonpublic schools, unlike current section 228.091.

3. Trespass in structure or conveyance

Section 810.08, F.S., provides that a person who willfully and without authorization, license, or invitation enters or remains in any structure or conveyance, or where such person, having been authorized, licensed, or invited to enter the premises and who refuses to depart after being warned to do so, commits the offense of trespass in a structure or conveyance, and such offense is punishable as a misdemeanor of the second degree. In cases where the structure or conveyance was occupied by a human being at the time of trespass, the offense is punishable as a misdemeanor of the first degree. If the trespasser is armed or arms himself during the trespass, the offense is punishable as a misdemeanor of the third degree.

The property owner or his designee may detain the person that he believes is committing or that has committed an armed trespass, and the property owner or his designee will not face liability for false arrest, false imprisonment, or unlawful detention as a result of such detention.

4. Trespass on property other than structure or conveyance

Section 810.09, F.S., provides that a person who willfully and without being authorized, licensed, or invited enters upon or remains in any property other than a structure or conveyance commits the offense of trespass on property other than a structure or conveyance, if notice against entering or remaining is given, either by actual communication to the offender or by posting, fencing, or cultivation, or if the property is the unenclosed curtilage of a dwelling and the offender enters or remains with the intent to commit an offense thereon. Such a trespass is punishable as a misdemeanor of the first degree.

If the offender defies an order to leave, personally communicated by the owner of the premises or his designee, or if the offender willfully opens any door, fence, or gate or does any act that exposes animals, crops, or other property to waste, destruction, or freedom; unlawfully dumps litter on the property; or trespasses on property other than a structure or conveyance, the offender commits a misdemeanor of the first degree.

If the trespasser is armed with a firearm or other dangerous weapon during the trespass, that person is guilty of a felony of the third degree. In such cases, the property owner or his designee may detain the person he believes is committing or that has committed an armed trespass on property other than a structure or conveyance, and the property owner or his designee does not face liability for false arrest, false imprisonment, or unlawful detention as a result of such detention..

B. EFFECT OF PROPOSED CHANGES:

The committee substitute brings nonpublic schools within the protections afforded by section 228.091 regarding trespasses on school grounds or facilities.

The committee substitute defines "school" as "the grounds or any facility of any kindergarten, elementary school, middle school, junior high school, or secondary school, whether public or nonpublic."

The committee substitute simplifies the current law by removing all the categories of persons who may commit trespass on school grounds without being first told to leave the campus and replaces the categories with the broadest category from the current law, namely, persons without legitimate business. Suspended students also remain specifically subject to the trespass penalty the same as in current law. Similarly, the categories of persons subject to being charged with trespass on school grounds after receiving a warning were eliminated so that any person who enters or remains on school grounds after being warned to leave by the principal or the principal's designee commits a first degree misdemeanor.

The committee substitute contains various technical amendments to current section 228.091, F.S. which will not alter the substantive effect of the law.

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?

The bill may increase the responsibilities of local law enforcement, the court system, and the prison system to the extent that it increases the number of persons who violate its provisions by trespassing on private school grounds or facilities.

- (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?

No agency programs are eliminated or reduced by the bill.

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

None.

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

Responsibility has not shifted to new agencies.

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?

To the extent that the schools qualify for religious or other property tax exemptions, they will not directly pay for law enforcement and county court services.

4. Individual Freedom:

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

Yes. The bill will help private schools maintain the security of their grounds and facilities.

- 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?

The bill provides an indirect service to children by fostering more secure schools.

- (2) Who makes the decisions?

School officials and their designees may detain persons who they believe are trespassers.

- (3) Are private alternatives permitted?

The bill does not provide for any private alternatives.

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

The bill does not create a program requiring the participation of families.

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

No.

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

No.

- 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?

The bill does not create or change a program providing services to families.

- (2) service providers?

See No. (1) above.

- (3) government employees/agencies?

See No. (1) above.

D. STATUTE(S) AFFECTED:

Section 228.091, F.S.

E. SECTION-BY-SECTION ANALYSIS:

Section 1. Renumbers present section 228.091, F.S., as 810.097, F.S. Deletes references to "public schools." Provides clarifying technical amendments to present section 228.091. Defines the term "school" to include nonpublic schools.

Section 2. Provides an effective date of July 1, 1999.

IV. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

To the extent that the bill will increase the number of persons who require arrest, detention, and/or prosecution or incarceration, it may require local law enforcement, the state court system, and the state prison system to increase available resources.

3. Long Run Effects Other Than Normal Growth:

Non.

4. Total Revenues and Expenditures:

None forecast.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

To the extent that the bill will increase the number of persons who require arrest, detention, and/or prosecution or incarceration, it may require local law enforcement agencies to increase available resources.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

None.

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

None.

D. FISCAL COMMENTS:

The bill only relates to misdemeanor penalties, therefore, there is no impact to the state prison system since a person may not be sentenced to prison for a misdemeanor. There could be some small impact on the county jails and the courts by increase the locations where trespass on school grounds may occur from public schools to public and private schools.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill may require counties or municipalities to expend funds associated with the increased need to arrest, prosecute, and incarcerate persons who commit a trespass on private school grounds or facilities. However, because the bill imposes criminal penalties on such persons, it is exempt from the provisions of Article VII, Section 18 of the Florida Constitution.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

None.

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

None.

VI. COMMENTS:

The definition of "school property" in the bill is identical to the definition of "school property" contained in section 810.095 which prohibits armed trespass on school grounds. The armed trespass statute was passed in 1992, and there are no appellate opinions addressing a constitutional challenge to the armed trespass statute for vagueness or any other grounds.

The courts have had difficulty in determining which provisions of section 228.091, F.S., (the new section 810.097) are mutually exclusive. State v. M.O., 605 So.2d 600 (5th DCA 1992). The broadest of the provisions, which makes it a crime for persons who do not have "legitimate business on the campus" to enter or remain on school grounds, is broad enough to include the other classes of persons prohibited from school grounds. The phrase "legitimate business on the campus" has also been upheld against claims of vagueness in the courts. J.H. v. State, 625 So.2d 883 (1st DCA 1993).

VII. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The committee substitute rewrites the statute to resolve the ambiguities raised in State v. M.O. The committee substitute provides that a person may be charged with trespass on school grounds even without a prior warning if the person does not have legitimate business on the campus or any authorization, license, or invitation to be on school grounds. A suspended student may also be charged with trespass on school grounds. The committee substitute also clarifies that anyone may be charged with trespass if a principal or the principal's designee has previously directed the person to leave the school grounds.

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VIII. SIGNATURES:

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