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HOUSE OF REPRESENTATIVES
COMMITTEE ON
GENERAL EDUCATION
ANALYSIS

BILL #: HB 267
RELATING TO: School attendance by violent offenders
SPONSOR(S): Representative(s) Kravitz and Davis

TIED BILL(S):

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

- (1) GENERAL EDUCATION YEAS 10 NAYS 0
- (2) JUVENILE JUSTICE
- (3) COUNCIL FOR LIFELONG LEARNING
- (4)
- (5)

I. SUMMARY:

This bill provides that any student who has been found guilty of (or who has pleaded nolo contendere [no contest] to) any one of a number of stipulated crimes¹ shall not be allowed to attend the same school as, or ride on the same bus with, the victim (or sibling of the victim) of such crime. Specifically, the bill provides that the court shall notify the appropriate school district when:

- (1) A student is adjudicated guilty of (or pleads nolo contendere to) one of the stipulated crimes, and
- (2) The victim, or the sibling of the victim, is attending the same school.

The bill provides that the offending student shall be permitted by the district to attend another school in the district, providing the victim or victim's sibling does not attend such school. If there is no school available in the district that complies with that stipulation, then the offending student shall be permitted to attend school in another school district, providing that neither the victim nor any of the victim's siblings attend the school in question.

And, as previously stated, once adjudicated and the school district is notified, the offending student shall not be allowed to ride the same bus as the victim or a sibling of the victim. The parents of legal guardians of the offending student shall "be responsible for transportation or other costs that would otherwise be paid by the school district."

The bill in its present form has a number of concerns. See the "Comments" section of this analysis for details.

On March 19, 2001, the House Committee on General Education adopted one "strike everything" amendment, which is now traveling with the bill. See amendments section of this analysis for discussion of the differences between the bill (as filed) and the "strike everything" amendment that is traveling with the bill.

¹ These crimes are identified in the bill by chapter number, and a general listing is as follows: Assault; battery; sexual battery; stalking; kidnapping; luring; indecent exposure; prostitution; lewdness; selling, distributing or producing obscene materials, and abuse of children..

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|-----------------------------------------|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Actual instances of cases this bill is intended to address; the dilemma

According to a November 30, 2000 newspaper article in *The Florida Times Union*:

- In one school in North Florida, a teen rides the school bus every day with her rapist. In another case, a high school freshman sees her attacker every day in the school lunchroom.
- In the second instance, the student had been home-schooled for a year following the incident, and then had returned to school. However, due to teasing (related to the attack) by her classmates, she transferred to another school, only to learn that her attacker was attending that school. The school said it could do nothing without a restraining order, because the court (in a plea bargain), had reduced the charge to "unwanted touching." And, the school further noted that in order to get a restraining order from a judge, it is often necessary to show proof of *two* attacks. Finally, in explaining their dilemma, the school noted that it is the philosophy of the juvenile justice system to rehabilitate, rather than sentence harshly, so the school cannot, in most cases, expect any help from the system in separating the offender from the victim by placing the offender in detention for any length of time.
- Statewide, 6,213 children were sexually assaulted by other children from July 1, 1998 to June 1999. During the 1998-99 school year, 159 rapes and 2,830 incidents of sexual harassment were reported to schools across the state.

Similar laws in other states

Both Washington and Nevada have laws similar to the one proposed in this bill. Washington's law was passed in 1994, Nevada's in 1997. In Washington, the state's Victim Witness Protection Program tracks both victims and offenders. Since passage of the law in Washington, there have been about 20 incidents in which the law was applicable.

Two problems noted in the application of Washington's law regard instances of incest (under Washington's law, the two children would be allowed to live in the same house, eat meals together, ride the bus together [Washington's law has no prohibition against riding the same bus], yet would not be allowed to attend the same school), and instances in which there is no alternate school

within a reasonable distance (the offender's parents would either be forced to travel the long distance, or to engage in home schooling).

Florida's constitutional responsibility to educate

The Florida Constitution provides that:

It is...a paramount duty of the state to make adequate provision for the education of all children residing within its borders. Adequate provision shall be made by law for a uniform, efficient, safe, secure and high quality system of free public schools that allows students to obtain a high quality education...

Transportation of students

Section 234.01, F.S., sets forth the circumstances under which transportation of students must be provided. School boards, after considering recommendations of the superintendent, shall provide transportation to:

1. Handicapped students in prekindergarten and kindergarten, *provided transportation is necessary to provide adequate educational facilities and opportunities which would otherwise not be adequate*; and
2. Students whose homes are more than a reasonable walking distance, as defined by the rules of the commissioner, from the nearest appropriate school

Policy of zero tolerance for crime

Currently, s. 230.235, F.S., Policy of Zero-Tolerance for Crime, requires each school district to adopt policies for crime and substance abuse. State Board Rule 6A-1.0404, Zero Tolerance for School Related Violent Crimes, FAC, requires each school district to invoke the most severe consequences (usually expulsion) provided for in the applicable Code of Student Conduct (s. 230.23(6)(d), F.S.) in dealing with students who engage in the following violent criminal acts on school property, on school-sponsored transportation, or at school-sponsored activities:

- * Homicide
- * Sexual battery
- * Armed robbery
- * Aggravated battery
- * Battery or aggravated battery on school personnel
- * Kidnapping or abduction
- * Arson
- * Possession, use, or sale of any firearm; or
- * Possession, use, or sale of any explosive device.

Authority of principal

Section 232.26(1)(c), F.S., provides the principal with authority to recommend to the superintendent the expulsion of any student who has committed a serious breach of conduct, including, but not limited to, willful disobedience, open defiance of authority of a member of his or her staff, violence against persons or property, or any other act which substantially disrupts the orderly conduct of the school. Any recommendation of expulsion shall include a detailed report by the principal or the principal's designated representative on the alternative measures taken prior to the recommendation of expulsion.

Section 232.26(2), F.S., states that suspension proceedings may be initiated against any pupil enrolled as a student who is formally charged (not just arrested) with a felony for an incident which allegedly occurred on property other than public school property, if that incident is shown, in an

administrative hearing to have an adverse impact on the educational program, discipline, or welfare in the school in which the student is enrolled. Any pupil who is suspended as the result of such proceedings may be suspended from all classes of instruction on public school grounds during regular classroom hours for a period of time, which may exceed 10 days, as determined by the superintendent. The school board is given the authority to expel students if they have been found to have committed a felony, provided that the expulsion does not affect the delivery of educational services to the student in any residential, nonresidential, alternative, daytime, or evening program outside of the regular school setting.

C. EFFECT OF PROPOSED CHANGES:

The bill provides that if a student is the victim of any one of several stipulated crimes, neither the victim nor any sibling of the victim will be forced to attend the same school (or ride the same bus) as the offender.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Provides that any student who has been found guilty of (or who has pleaded nolo contendere [no contest] to) any one of a number of stipulated crimes shall not be allowed to attend the same school as, or ride on the same bus with, the victim (or sibling of the victim) of such crime. These crimes are identified in the section by chapter number and a general listing is as follows: assault; battery; sexual battery; stalking; kidnapping; luring; indecent exposure; prostitution; lewdness; selling, distributing or producing obscene materials, and abuse of children.

Specifically, the section provides that the court shall notify the appropriate school district when:

- (1) A student is adjudicated guilty of (or pleads nolo contendere to) one of the stipulated crimes, and
- (2) The victim, or the sibling of the victim, is attending the same school.

The section provides that the offending student shall be permitted by the district to attend another school in the district, providing the victim or victim's sibling does not attend such school. If there is no school available in the district that complies with that stipulation, then the offending student shall be permitted to attend school in another school district, providing that neither the victim nor any of the victim's siblings attend the school in question.

And, as previously stated, once adjudicated and the school district is notified, the offending student shall not be allowed to ride the same bus as the victim or a sibling of the victim. The parents or legal guardians of the offending student shall "be responsible for transportation or other costs that would otherwise be paid by the school district."

Section 2. Provides that the bill shall take effect October 1, 2001.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

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

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

Concerns with the bill in its original form are described below. (*NOTE: The "strike everything" amendment addresses all of the concerns expressed in this section*)

Legal terminology

A juvenile is not "adjudicated guilty." A juvenile is adjudicated "delinquent."

Delay between commission of crime and adjudication

The progression of events would be as follows: Commission of crime, allegation, arrest, formal charges, and adjudication. Assume the allegation or arrest follows more-or-less immediately after the commission of the crime. Formal charges would not be filed by the State Attorney until the investigation and paperwork is complete. This can take a couple of weeks. Once charges are filed, it is very likely that adjudication will still be several months away.

During this period, which would certainly last several weeks -- and most probably would last several months -- the provisions of this bill would not be in effect. Therefore, the bill would offer no protection to the victim or the victim's siblings during that period.

Requirement that the court notify the district

We are advised that typically, in other areas of law compelling notice regarding the status of certain offenders, such a burden is usually placed on law enforcement (i.e., certain felony arrests, including notice to schools following a felony arrest of a juvenile) or the state attorney (i.e., certain convictions, including felony juvenile adjudications). There is also some question as to how the court, law enforcement, or the State Attorney could necessarily be expected to know if a victim or victim's sibling attends the same school as the offender.

Effective date

Currently, the bill has an October 1, 2001 effective date. In order for the bill to take effect prior to the beginning of the school year (in late August), the effective date would need to be moved up.

DOE Comments

The DOE called several school districts (Palm Beach, Escambia, and Gilchrist) to see how they have handled similar situations. They received calls back from Escambia and Gilchrist. Workman Middle School said that when a student has committed a felony, if the charge is something that will have an adverse impact on his students, the school will convene a hearing with DJJ and the State Attorney's Office to determine whether or not they should go forward with an expulsion hearing or to alternatively place the child. If the student has committed a misdemeanor, then there is nothing the school can do.

The Assistant Superintendent of Instruction for Gilchrist County School District, stated that if the Sheriff's Office or other law enforcement agency arrests a student, until formal charges are brought by the State Attorney's Office, there is nothing they can do. It can take up to two weeks to complete the investigation and file the appropriate paperwork. Regarding students who have been charged with felonies, Gilchrist County School District follows almost the same process as Escambia County School District, in dealing with the charged students.

Thus, the bill does not address the time frame between the incident and disposition of the case. Students who have been arrested would still be riding the school bus and attending school with the victim and the sibling of the victim until disposition of the case.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On March 19, 2001, the House Committee on General Education passed a "strike everything amendment. That amendment:

- Adds notification of the potential penalties established under this bill to the other notices contained in the Code of Student Conduct set forth in 230.23(6)(d), F.S.
- Clarifies that the authority of the principal to recommend for expulsion students for a serious breach of conduct extends to off-campus incidents.

- Changes the violations that "trigger" the penalties under the bill from all violations under the cited chapter to only the felony violations under the cited chapters.
- Clarifies that the penalties apply whether the person is adjudicated as an adult (adjudicated guilty), or adjudicated as a juvenile (adjudicated delinquent).
- Adds the felonies from the chapters on robbery and homicide (manslaughter) as applicable violations.
- Provides that the Juvenile Court judge shall issue a finding in any case before him (or her) that is covered by the provisions in s. 232.265, F.S.
- Changes the effective date from October 1, 2001 to July 1, 2001.

NOTE: One problem in the "strike everything" amendment will need to be addressed. In five places in the amendment (as well as in the original bill) the phrase "Any person who is required to attend school pursuant to chapter 232" is used, with the intent of having it apply to all persons attending K-12 in Florida. However, the only persons required to attend school pursuant to ch. 232, F.S., are persons 16 years of age or younger. Therefore, the bill's provisions (inadvertently) would not apply to 17 or 18 year old students. An amendment will need to be drafted to address this problem.

VII. SIGNATURES:

COMMITTEE ON GENERAL EDUCATION:

Prepared by:

Staff Director:

Gip Arthur

Ouida Ashworth