

STORAGE NAME: h0267.jj.doc
DATE: March 26, 2001

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

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

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:

The bill prohibits certain students of compulsory school age who have been adjudicated "guilty" or who plead "guilty" or nolo contendere to enumerated offenses from attending the same school as, or riding on the same bus with, the victim of the offense or a sibling of the victim. The bill is limited to the extent that the offender and the victim or victim's sibling must have been attending the same school before or at the time of the adjudication or plea. The bill requires the court to provide notice to the appropriate school district at the time of disposition of such offense.

The bill provides that the offending student shall be permitted by the district to attend another school in the district, so long as the victim or victim's sibling does not attend such school. If there is no school available in the district pursuant to the operation of the bill, then the offending student must be permitted to attend school in another school district.

Upon adjudication and notice from the court, the offending student is not to be allowed to ride the same school bus as the victim or victim's sibling. Once adjudicated, 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."

The bill appears to have minimal fiscal impact. The bill provides an effective date of July 1, 2001.

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

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:

Laws affecting Florida schools

Florida law does not currently address school bus transportation of students who have been charged with a criminal offense, or the transportation of their victims.

Section 230.235, F.S., expresses the state's "Policy of Zero-Tolerance for Crime." The section requires each school district to adopt zero-tolerance policies for crime and substance abuse. F.A.C. Rule 6A-1.0404, "Zero Tolerance for School Related Violent Crimes", requires each school district to invoke the most severe consequences provided for in the applicable Code of Student Conduct¹ 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.

Typically, the most severe consequence is expulsion. Section 232.26(1)(c), F.S., provides school principals with authority to recommend to the superintendent that any student who has committed a serious breach of conduct be expelled. A "serious breach of conduct" may include, but is not limited to, willful disobedience, open defiance of authority of a member of the school staff, violence against persons or property, or any other act which substantially disrupts the orderly conduct of the school. Recommendations for expulsion must include a detailed report by the principal or the principal's designee outlining alternative measures taken prior to recommendation of expulsion.

¹ S. 230.23(6)(d), F.S.

Section 232.26(2), F.S., provides that suspension proceedings may be initiated against any pupil enrolled as a student who is formally charged with a felony for an incident which allegedly occurred **on property other than public school property**, if the incident is shown in an administrative hearing to have an adverse impact on the educational program, discipline, or welfare of the school in which the offending pupil 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 as determined by the superintendent. Unlike other suspensions, suspension pursuant to s. 232.26(2), F.S., may exceed 10 days. The school board has authority to expel students found to have committed a felony offense. However, the expulsion must not affect the delivery of educational services to such student. If appropriate, the offending student is to be enrolled in a residential, nonresidential, alternative, daytime, or evening program outside of the regular school setting.

Other states have passed similar legislation. According to Washington's Victim Witness Notification Program administrator, the program tracks both victims and offenders to make sure that they are kept separate. Since 1994, when Washington passed its law, the program reports that about 20 victims have "been kept away from their attackers at school."² The Washington law does not directly address the issue of the offender and the victim riding the same bus.

News accounts

The Florida Times-Union reports that 6,213 children in Florida were sexually assaulted by other children from July 1998 to June 1999. The newspaper also reports that during the 1998-99 school year, 159 rapes and 2,830 incidents of sexual harassment were reported to schools across the state.³

The Florida Times-Union recently reported the story of a Clay County teen who rides the school bus each day with her rapist.⁴ The newspaper also reported the story of a student who was home-schooled for a year following her attack by another child, and then later returned to the public school system where she discovered her attacker was attending the same school. The Clay County superintendent reportedly claimed that nothing could be done due to the criminal resolution of the case and the absence of a restraining order.⁵

C. EFFECT OF PROPOSED CHANGES:

The bill prohibits certain students of compulsory school age who have been adjudicated "guilty" or who plead "guilty" or nolo contendere to enumerated offenses from attending the same school as, or riding on the same bus with, the victim of the offense or a sibling of the victim. The bill is limited to the extent that the offender and the victim or victim's sibling must have been attending the same school before or at the time of the adjudication or plea. The bill requires the court to provide notice to the appropriate school district at the time of disposition of such offense.

The bill provides that the offending student shall be permitted by the district to attend another school in the district, so long as the victim or victim's sibling does not attend such school. If there is no school available in the district pursuant to the operation of the bill, then the offending student must be permitted to attend school in another school district.

² *The Florida Times-Union*, No. 335, p. A-1 through A5, November 30, 2001.

³ Id.

⁴ Id.

⁵ Id.

Upon adjudication and notice from the court, the offending student will not be allowed to ride the same school bus as the victim or victim's sibling. 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."

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Prohibits certain students of compulsory school age who have been adjudicated "guilty" or who plead "guilty" or nolo contendere to

- assault;
- battery;
- sexual battery;
- stalking;
- kidnapping;
- luring or enticing a child;
- indecent exposure;
- prostitution;
- lewdness;
- selling, distributing or producing obscene materials; or
- abuse of children

from attending the same school as, or riding on the same bus with, the victim of the offense or a sibling of the victim. The bill is limited to the extent that the offender and the victim or victim's sibling must have been attending the same school before or at the time of the adjudication or plea. The bill requires the court to provide notice to the appropriate school district at the time of disposition of such offense when the offender and the victim or a sibling of the victim attend the same school.

The bill provides that the offending student shall be permitted by the district to attend another school in the district, so long as the victim or victim's sibling does not attend such school. If there is no school available in the district, then the offending student must be permitted to attend school in another school district.

Upon adjudication and notice from the court, the offending student will not be allowed to ride the same school bus as the victim or victim's sibling. 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 an effective date of October 1, 2001.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

This bill is not expected to result in significant expenditures by state government.

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:

Section 1, Art. IX, Florida Constitution, provides for the following:

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...

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

Comments by the Committee on General Education

Concerns with the bill in its original form are described below. The "strike everything" amendment, which is traveling with the bill, addressed 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.

Department of Education (DOE)

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 adopted a "strike everything" amendment to the bill. The following are changes that the adopted amendment made to the original bill:

- Adds notification of the potential penalties established under this bill to the other notices contained in the Code of Student Conduct set forth in s. 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 on 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. The phrase "Any person who is required to attend school pursuant to chapter 232" is utilized 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 persons aged 17 or 18 years.

VII. SIGNATURES:

COMMITTEE ON GENERAL EDUCATION:

Prepared by:

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