

STORAGE NAME: h1423a.jo.doc
DATE: February 21, 2002

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
JUDICIAL OVERSIGHT
ANALYSIS**

BILL #: HB 1423
RELATING TO: School Safety Zone/Loitering
SPONSOR(S): Representative Ryan
TIED BILL(S): None

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

- (1) CRIME PREVENTION CORRECTIONS & SAFETY YEAS 9 NAYS 0
 - (2) JUDICIAL OVERSIGHT YEAS 9 NAYS 0
 - (3) HEALTHY COMMUNITIES COUNCIL
 - (4)
 - (5)
-

I. SUMMARY:

THIS DOCUMENT IS NOT INTENDED TO BE USED FOR THE PURPOSE OF CONSTRUING STATUTES, OR TO BE CONSTRUED AS AFFECTING, DEFINING, LIMITING, CONTROLLING, SPECIFYING, CLARIFYING, OR MODIFYING ANY LEGISLATION OR STATUTE.

This bill creates a new section of law which defines a "school safety zone" and limits who can be in such zone at designated times. "School safety zone" is defined as "in, on, or within 500 feet of any real property owned by or leased to any public or private elementary school or school board and used for elementary education." This bill prohibits persons without legitimate business in a school safety zone from entering or remaining in the zone during certain times or if specifically ordered to leave by the principal or his or her designee.

An amendment to expand the schools covered by the bill to include middle and high schools was adopted by the Crime Prevention, Corrections and Safety committee.

This bill appears to have a minimal fiscal impact on state and local governments.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|--|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input 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 checked="" type="checkbox"/> | N/A <input 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:

This bill creates a new statute that restricts the geographical area around certain elementary schools an unauthorized person can occupy during designated times.

B. PRESENT SITUATION:

There are statutes designed to protect students by either restricting certain activities in close proximity to schools or increasing the penalties for certain criminal acts within a certain distance of a school. Section 847.0134, F.S., prohibits the display, sale or distribution of adult entertainment materials harmful to minors within 2,500 feet of a school; Section 893.13, F.S., increases the penalties for the manufacture, sale or delivery of designated drugs within 1000 feet of schools. The term "school safety zone" is not used in these statutes.

Additionally, section 810.097, F.S., provides a specific crime of "Trespass upon grounds or facilities of a school" and provides penalties. The statute is as follows:

(1) Any person who:

(a) Does not have legitimate business on the campus or any other authorization, license, or invitation to enter or remain upon school property; or

(b) Is a student currently under suspension or expulsion;

and who enters or remains upon the campus or any other facility owned by any such school commits a trespass upon the grounds of a school facility and is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(2) Any person who enters or remains upon the campus or other facility of a school after the principal of such school, or his or her designee, has directed such person to leave such campus or facility or not to enter upon the campus or facility, commits a trespass upon the grounds of a school facility and is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(3) The chief administrative officer of a school, or any employee thereof designated by the chief administrative officer to maintain order on such campus or facility, who has probable cause to believe that a person is trespassing upon school grounds in violation of this section may take such person into custody and detain him or her in a reasonable

manner for a reasonable length of time pending arrival of a law enforcement officer. Such taking into custody and detention by an authorized person does not render that person criminally or civilly liable for false arrest, false imprisonment, or unlawful detention. If a trespasser is taken into custody, a law enforcement officer shall be called to the scene immediately after the person is taken into custody.

(4) Any law enforcement officer may arrest either on or off the premises and without warrant any person the officer has probable cause for believing has committed the offense of trespass upon the grounds of a school facility. Such arrest shall not render the law enforcement officer criminally or civilly liable for false arrest, false imprisonment, or unlawful detention.

(5) As used in this section, the term "school" means the grounds or any facility of any kindergarten, elementary school, middle school, junior high school or secondary school, whether public or nonpublic.

C. EFFECT OF PROPOSED CHANGES:

This bill creates s. 810.0975, F.S., which defines a "school safety zone" and places limitations as to who can be in such zone at designated times.

"School safety zone" is defined as "in, on, or within 500 feet of any real property owned by or leased to any public or private elementary school or school board and used for elementary education."

School principals are directed in the bill to notify the appropriate law enforcement agency to prohibit any person from loitering in a school safety zone who does not have legitimate business in such zone.

This bill provides for two (2) new criminal offenses:

1) That "[d]uring the period from 1 hour prior to the start of a school session until 1 hour after the conclusion of a school session, it is unlawful for any person to enter the premises or trespass within a school safety zone or to remain on such premises or within such school safety zone when that person does not have legitimate business in the school safety zone or any other authorization, license, or invitation to enter or remain in the school safety zone."

2) That when "[a]ny person who does not have legitimate business in the school safety zone or any other authorization, license, or invitation to enter or remain in the school safety zone who shall willfully fail to remove himself or herself from the school safety zone after the principal or designee requests him or her to do so[.]"

Both of the above new offenses are classified as misdemeanors of the second degree, punishable as provided in s. 775.082 or s. 775.083.

This bill takes effect July 1, 2002.

D. SECTION-BY-SECTION ANALYSIS:

See "Present Situation" and "Effect of Proposed Changes".

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See fiscal comment.

2. Expenditures:

See fiscal comment.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See fiscal comment.

2. Expenditures:

See fiscal comment.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

This bill creates a second-degree misdemeanor offense, which is punishable by up to sixty (60) days in county jail. The staff of the Committee on Crime Prevention, Corrections and Safety expect it to have an insignificant prison bed impact on county jails.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill is exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill is exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

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

This bill is exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

This bill does not provide a specific exception to persons who have a residence, business or other legitimate concern within 500 feet of a school. As such, this bill would potentially infringe on such persons, their personal or business associates and customers rights. This language, if it became law, could be challenged on the basis of an unconstitutional partial taking of private property. However, this bill does protect persons who have a "legitimate business in the school safety zone or any other authorization, license, or invitation to enter or remain in the school safety zone." This language, it can be argued, would prevent the conviction of persons who have homes or businesses within in the school safety zone. In J.C.S. v. State, 613 So. 2d 574 (Fla. 1st DCA 1993), the First District Court of Appeal reversed a finding of delinquency for trespass on school grounds when it found that the circumstantial evidence against J.C.S. was not inconsistent with his theory of innocence, that he was invited on the campus to discuss his transcripts with a guidance officer. Defendants, it can be argued, would have similar defenses when charged under this bill.

It might be argued that the phrase "legitimate business" is unconstitutionally vague. However, the First District Court of Appeal rejected the argument in J.H. v. State, 625 So. 2d 883 (Fla. 1st DCA 1993). The Third District Court of Appeal rejected a similar argument in A.C. v. State, 538 So. 2d 136 (Fla. 3d DCA 1989).

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

An amendment to expand the schools covered by the bill to include middle and high schools was adopted by the Crime Prevention, Corrections and Safety committee.

The Committee on Judicial Oversight reported the bill favorably on February 21, 2002.

VII. SIGNATURES:

COMMITTEE ON CRIME PREVENTION CORRECTIONS & SAFETY:

Prepared by:

Staff Director:

Eric S. Haug

Trina Kramer

AS REVISED BY THE COMMITTEE ON JUDICIAL OVERSIGHT:

Prepared by:

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