

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 2410

SPONSOR: Senator Wasserman Schultz

SUBJECT: School Safety Zone/Loitering

DATE: March 7, 2002 REVISED: 03/12/02 _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>deMarsh-Mathues</u>	<u>O'Farrell</u>	<u>ED</u>	<u>Fav/1 amendment</u>
2.	<u>Clodfelter</u>	<u>Cannon</u>	<u>CJ</u>	<u>Fav/1 amendment</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill creates a new provision of law to define the term “school safety zone” and limit those persons who can be in the zone at designated times. “School safety zone” means a zone 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. Also, the bill prohibits unauthorized persons from loitering in the zone. The bill provides two new criminal offenses and penalties (second degree misdemeanors, punishable as provided in ss. 775.082 or 775.083, F.S.).

This bill creates s. 810.0975, F.S., and provides an effective date of July 1, 2002.

II. Present Situation:

Current statutes 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 public and private elementary, middle, or high schools. The term “school safety zone” is not used in these provisions. For example:

- 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 and provides a criminal penalty (a third degree felony); and
- Section 893.13(1)(c), F.S., increases the penalties for the manufacture, sale, or delivery of designated controlled substances within 1000 feet of schools during certain hours and provides a criminal penalty (a first degree felony).

Chapter 810, F.S., relates to burglary and trespass. Section 810.097, F.S., provides for the offense of trespassing on grounds or facilities of any kindergarten, elementary school, middle

school, junior high school or secondary school, whether public or nonpublic. The penalties are as follows:

- It is a second degree misdemeanor if a person trespasses on the grounds or facilities of the school; and
- It is a first degree misdemeanor if the school's principal directs the trespasser to leave the school and the trespasser refuses.

The law applies to a person without legitimate business on the campus or any other authorization, license, or invitation to enter or remain upon school property, as well as a student currently under suspension or expulsion.

The chief administrative officer of a school or any designated employee who has probable cause to believe that a person is trespassing upon school grounds may take the 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. A law enforcement officer must be called to the scene immediately after the person is taken into custody. Taking a person into custody and detaining him or her does not make the authorized school officer or the designee criminally or civilly liable for false arrest, false imprisonment, or unlawful detention.

If a law enforcement officer has probable cause to believe that a person has committed the offense of trespassing on the grounds of a school facility, he or she may arrest the person either on or off the premises and without a warrant. This arrest does not make the law enforcement officer criminally or civilly liable for false arrest, false imprisonment, or unlawful detention.

Chapter 856, F.S., includes the offense of loitering and provides for a criminal penalty (a second degree misdemeanor). Section 856.021, F.S., provides that the offense of loitering contains two elements: the accused must be loitering in a manner not usual for law-abiding citizens; and loitering must be under circumstances that threaten public safety. In criminal law, the term "willfully" generally refers to an act done stubbornly, obstinately, perversely, or with a bad purpose, without justifiable excuse.

III. Effect of Proposed Changes:

Section 1. This bill creates s. 810.0975, F.S., which defines a "school safety zone" and places limitations on those persons who can be in the zone at designated times (from 1 hour prior to the start of a school session until 1 hour after the end of the session). "School safety zone" means a zone 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.

Public and private school principals or their designees must notify the appropriate law enforcement agency to prohibit unauthorized persons from loitering in a school safety zone. This applies to a person without legitimate business in the zone or any other authorization, license, or invitation.

This bill provides two new criminal offenses with the following penalties:

- It is a second degree misdemeanor if an unauthorized person enters the premises, trespasses within a school safety zone, or remains on the premises during certain hours (from 1 hour prior to the start of a school session until 1 hour after the end of the session).
- It is a second degree misdemeanor if the principal or his or her designee requests the unauthorized person to leave a school safety zone and the person willfully fails to do so.

Section 2. This bill would take effect on July 1, 2002.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

A person would be in violation of the bill's provisions if he or she is in a school safety zone without "legitimate business in the school safety zone or any other authorization, license, or invitation to enter or remain in the school safety zone." It can be argued that the phrase "legitimate business" is unconstitutionally vague. In *J.H. v. State*, 625 So. 2d 883 (Fla. 1st DCA 1993), the First District Court of Appeal rejected an argument that the term "legitimate business" in s. 228.28, F.S. (now s. 810.097, F.S.) was unconstitutionally vague. The Third District Court of Appeal rejected a similar argument in *A.C. v. State*, 538 So. 2d 136 (Fla. 3d DCA 1989). The statute considered in these cases prohibited trespass on school grounds and required "legitimate business on the campus or any other authorization, license or invitation to remain on school property." The courts did not have trouble determining whether the defendant's presence on campus was legitimate or authorized because the statute dealt with a single type of property used for a particular purpose. In essence, the statute constituted a trespass warning: "You are not allowed on school property without permission."

In contrast, the school safety zone created in the bill could include businesses, residences, streets, parks and other types of public and private property. Therefore, it may be much more difficult to determine whether a person has legitimate business within a school safety zone. Unlike s. 893.13(1)(c), F.S. (enhancing penalties for drug offenses within 1000 feet of a school), and s. 847.0134, F.S. (prohibiting certain activities of "adult entertainment establishments" within 2500 feet of a school), the bill does not prohibit the commission of a particular act within the school safety zone. Because of this, it may be vulnerable to a challenge that it does not give adequate notice of what conduct would constitute a violation of its prohibitions.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Persons who commit the offenses set forth in the bill are subject to a second-degree misdemeanor which is punishable by up to 60 days in jail or a \$500 fine.

C. Government Sector Impact:

This bill creates offenses which are second-degree misdemeanors, punishable by up to sixty days in county jail. The extent to which the bill will have a fiscal impact on county jails is unknown.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

#1 by Education:

Extends the provisions of the bill to middle schools and high schools.

#1 by Criminal Justice:

Specifies that the bill does not apply to residents or persons operating a licensed commercial business within the school safety zone. (WITH TITLE AMENDMENT)