

The Florida Senate
PROFESSIONAL STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Prepared By: Education Pre-K - 12 Committee

BILL: SB 2904

INTRODUCER: Senator Haridopolos

SUBJECT: School Safety/Weapons

DATE: April 9, 2007

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brown	Matthews	ED	Favorable
2.			CJ	
3.				
4.				
5.				
6.				

I. Summary:

This bill adds a common pocketknife to the list of weapons, destructive devices, or firearms that are prohibited from possession at school-sponsored events, school property, a school bus, or at a school bus stop.

This bill provides for a penalty of a second degree misdemeanor for the illegal possession of a common pocketknife at a school event, or on school property.

An exception to the zero tolerance policy law is provided, where a student voluntarily surrenders a weapon, other than a firearm, to a school official or law enforcement, where possession of the item was lawful off of school grounds and the item has not been used by the student for unlawful activity or in violation of other school district rules or regulations.

This bill requires school districts to establish policies for confiscation and disposition of prohibited items.

This bill substantially amends sections 790.115, 1006.13, 435.04, and 921.0022 of the Florida Statutes.

II. Present Situation:

Possession or Discharge of Weapons or Firearms at Schools

Section 790.115, F.S., provides criminal penalties for the exhibition, possession, or discharge of firearms or certain weapons at a school-sponsored event or on school property, including on a school bus or at a school bus stop. A school is defined to include, public or private, preschool

through high school, a career center, or a postsecondary school. Persons are expressly prohibited from possessing a firearm, electric weapon or device, destructive device, a razor blade or box cutter, a dirk, knife, metallic knuckles, slungshot, billie, tear gas gun, chemical weapon or device, or other deadly weapon except a common pocketknife, plastic knife, or blunt-bladed table knife.¹ Exceptions are provided for the carrying of a firearm in certain instances. Penalties for violations of these provisions range from a second degree misdemeanor through a second degree felony. The 2006 Legislature added a common pocketknife to the list of those items for which exhibition is prohibited.²

Zero Tolerance Policy

The 2002 Legislature required each district school board to adopt a zero tolerance policy for crime and substance abuse, including the reporting of delinquent acts, and the victimization of students.³

This policy subjects students to at least one year of expulsion who have been found to have committed one of the following:

- Bringing a firearm or weapon to school, to any school function, or onto any school-sponsored transportation or possessing a firearm at school; or
- Making a threat or false report, involving school or school personnel's property, school transportation, or a school-sponsored activity.⁴

The policy also requires the school to refer these students to the criminal justice or juvenile justice system.

District school superintendents are granted discretion to reconsider the expulsion requirement, and request, alternatively, that the district school board assign the student to a disciplinary program or an alternative school, if the request for modification is in writing and determined to be in the best interest of the student and the school system.

III. Effect of Proposed Changes:

This bill adds common pocketknives to the list of items that a person is not permitted to possess at a school-sponsored event, or on school property, a school bus, or at a school bus stop. The pocketknife prohibition extends to preschools, elementary schools, secondary schools, career centers, or postsecondary schools, both public and private.

This bill makes consistent current law which prohibits the exhibition of a common pocketknife, to also prohibit the possession of a common pocketknife.

A person who willfully and knowingly violates this prohibition commits a second degree misdemeanor, punishable by up to 60 days in jail and up to a \$500 fine.

¹ s. 790.115(2)(a), F.S.

² ch. 2006-186, L.O.F.

³ s. 1006.13, F.S.

⁴ s. 1006.13(2), F.S.

This bill precludes criminal prosecution where a person voluntarily surrenders to a school official or law enforcement officer an electric weapon or device or other weapon, including a dirk, knife, metallic knuckles, slungshot, billie, tear gas gun, chemical weapon or device, or other deadly weapon, a razor blade, box cutter, or a common pocketknife. Under this definition of a weapon, firearms, plastic knives, and blunt-bladed table knives are excluded.

Similarly, other than for possession of a firearm, a student who voluntarily approaches a school official or law enforcement officer and surrenders any item prohibited by school district rules or regulations is not subject to disciplinary action provided that the student could lawfully possess the item when off school grounds, and the item has not been used by the student unlawfully or in violation of other school district rules or regulations.

School districts are required to develop policies for the confiscation and disposition of prohibited items that authorize a parent or legal guardian to claim the item.

This bill provides a conforming cross-reference in both the Level 2 Screening Standards law and the Criminal Punishment Code, Offense Severity Ranking Chart.

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:

The term “common pocketknife” has previously been challenged on grounds that it is void for vagueness. It is a well-established principle that a statute is considered vague where it does not provide persons of ordinary intelligence fair notice of what constitutes forbidden conduct.⁵ The absence from statute of a definition of a common pocketknife does not, in and of itself, establish vagueness.⁶ Rather, the court will define a term as it is construed in its plain and ordinary sense.⁷

In referring to dictionary definitions of both “common” and “pocketknife”, the court defined the common pocketknife as:

⁵ *L.B. v. State*, 700 So.2d 370, 371 (Fla. 1997).

⁶ *Id.* at 372.

⁷ *Id.*

A type of knife occurring frequently in the community which has a blade that folds into the handle and that can be carried in one's pocket.⁸

The court additionally cited a 1951 Attorney General opinion, which established the maximum size of a common pocketknife blade to be four inches in length or less.⁹ Where the blade of a pocketknife exceeds four inches in length or it is carried in the open position, a subsequent court concluded, its classification as a common pocketknife remains a question for the jury.¹⁰

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Students who comply with the exception to prosecution and the zero tolerance policy by voluntarily surrendering prohibited weapons may avoid costs related to criminal prosecution and expulsion from school. Campus visitors, such as contractors, may also avoid prosecution provided that they comply with the exception made available in this bill.

C. Government Sector Impact:

To the extent that costs are associated with the revision of student codes of conduct to include possession of common pocketknives, and the creation of confiscation and disposition policies, school districts may incur a minimal fiscal impact. This cost may vary, however, depending on the size of the district, and the target population for notification, such as students, parents, contractors, and members of the public. According to the Department of Education, many districts already prohibit the possession of common pocketknives through their student codes of conduct.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

This Senate Professional Staff Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

⁸ *Id.*

⁹ *Id.* at 373; citing Op. Att'y Gen. Fla. 051-358 (1951).

¹⁰ *Porter v. State*, 798 So.2d 855, 856 (Fla. 5th DCA 2001).

VIII. Summary of Amendments:

None.

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