

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

Prepared By: The Professional Staff of the Criminal Justice Committee

BILL: CS/SB 790

INTRODUCER: Criminal Justice Committee and Senators Baker and Dockery

SUBJECT: School Safety/Bullying and Harassment

DATE: April 8, 2008

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Carrouth</u>	<u>Matthews</u>	<u>ED</u>	<b>Favorable</b>
2.	<u>Dugger</u>	<u>Cannon</u>	<u>CJ</u>	<b>Fav/CS</b>
3.	_____	_____	<u>EA</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**Please see Section VIII. for Additional Information:**

- |                              |                                     |   |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes        |
| B. AMENDMENTS.....           | <input type="checkbox"/>            | Technical amendments were recommended   |
|                              | <input type="checkbox"/>            | Amendments were recommended             |
|                              | <input type="checkbox"/>            | Significant amendments were recommended |

**I. Summary:**

This bill prohibits acts of bullying and harassment of any public K-12 student or employee, and requires school districts to adopt policies to protect students and school employees from the physical and psychological harm of bullying and harassment. The adopted policy must afford all students the same protection regardless of their status. However, a school district may establish separate antidiscrimination policies that address categories of students.

The school district's receipt of safe schools funds under the 2009-2010 General Appropriations Act is contingent upon and payable to the school district upon the Department of Education's approval of a school district's policy on bullying and harassment. Each districts' policy must be in substantial conformity with the department's model policy before it can be approved by the department for this upcoming fiscal year. Beginning in the next fiscal year, 2010-2011, distribution of safe schools funds will be contingent upon and payable to the districts upon their compliance with all the reporting procedures under the bill.

This bill creates section 1006.147, Florida Statutes.

## II. Present Situation:

### Research

Current research studies indicate that bullying includes a wide variety of behavior.<sup>1</sup> All bullying behavior, however, involves a person or a group repeatedly trying to harm someone who is perceived to be weaker or more vulnerable. Bullying behavior can involve direct attacks, such as hitting, threatening or intimidating, maliciously teasing or taunting, name-calling, making sexual remarks, and stealing or damaging belongings, or more subtle, indirect attacks such as spreading rumors or encouraging others to reject or exclude someone.<sup>2</sup>

An article in the Journal of the American Medical Association states that almost 30 percent of teens in the United States (over 5.7 million) are estimated to be involved in bullying as either a bully, a target of bullying, or both.<sup>3</sup> In a recent national survey of students in grades 6 to 10, 13 percent reported bullying others, 11 percent reported being the target of bullies, and another 6 percent said they bullied others and were bullied themselves. Limited available data suggest that bullying is much more common among younger teens than older teens. As teens grow older, they are less likely to bully others and to be the targets of bullies.<sup>4</sup>

Bullying is often a warning sign that children and teens are heading for trouble and are at risk for serious violence.<sup>5</sup> Teens (particularly boys) who bully are more likely to engage in other anti-social/delinquent behavior (e.g., vandalism, shoplifting, truancy, and drug use) into adulthood. They are four times more likely than non-bullies to be convicted of crimes by age 24, with 60 percent of bullies having at least one criminal conviction.<sup>6</sup>

### Current Provisions in Law

Section 1006.13, F.S., requires each district school board to adopt a code of student conduct and a policy of zero tolerance for crime and victimization.<sup>7</sup> Additionally, a State Board of Education rule provides that school boards may assign more severe consequences than normally authorized for conduct code infractions when the offender appears motivated by hostility toward the victim's real or perceived gender, race, religion, color, sexual orientation, ethnicity, ancestry, national origin, political beliefs, marital status, age, social and family background, linguistic preference, or disability.<sup>8</sup>

### Department of Education Incident Monitoring<sup>9</sup>

The Department of Education collects data on 22 separate incidents of crime and violence that take place on a school campus, on school transportation, or at a school-sponsored event, 24 hours per day, seven days per week. These incidents now include bullying/harassment as defined below:

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<sup>1</sup> <http://www.safeyouth.org/scripts/teens/bullying.asp>

<sup>2</sup> *Id.*

<sup>3</sup> Nansel, et al, Journal of American Medicine, 285(16), 2094-2100

<sup>4</sup> *Id.*

<sup>5</sup> Aggression and Violence Throughout Their Lifetime, D. Olweus, 1992

<sup>6</sup> *Id.*

<sup>7</sup> s. 1006.07 (2), F.S.

<sup>8</sup> 6A-1.0404, F.A.C.

<sup>9</sup> [www.firn.edu/doe/besss/sesir.htm](http://www.firn.edu/doe/besss/sesir.htm)

**Bullying/Harassment** (unwanted and repeated undesired behavior) Unwanted and repeated written, verbal, or physical behavior, including any threatening, insulting, or dehumanizing gesture, by an adult or student that is severe or pervasive enough to create an intimidating, hostile or offensive educational environment, cause discomfort or humiliation, or unreasonably interfere with the individual's school performance or participation. Additionally, "Threat/Intimidation" and "Sexual Harassment" are two of these types of incidents and are defined as:

*Threat/Intimidation* (instilling fear in others) A threat to cause physical harm to another person with or without the use of a weapon that includes all of the following elements:

1. intent—an intention that the threat is heard or seen by the person who is the object of the threat;
2. fear—a reasonable fear or apprehension by the person who is the object of the threat that the threat could be carried out; and
3. capability—the ability of the offender to actually carry out the threat directly or by a weapon or other instrument that can easily be obtained.

*Sexual Harassment* (undesired sexual behavior) Unwanted and repeated verbal or physical behavior with sexual connotations by an adult or student that is severe or pervasive enough to create an intimidating, hostile, or offensive educational environment, cause discomfort or humiliation or unreasonably interfere with the individual's school performance or participation.<sup>10</sup> An incident occurs when one person demands a sexual favor from another under the threat of physical harm or adverse consequence.

### **School Environmental Safety Incident Reporting System (SESIR)**

The Department of Education modified the SESIR system in 2006 to include the reporting elements for bullying and continues to provide technical assistance to school districts through an annual database management workshop. Additionally, the department will cosponsor with the University of North Florida the Third Annual Bullying Prevention Conference in April, 2008.<sup>11</sup>

### **Current School District Policies**

The Department of Education website on Safe and Drug Free Schools reports that 45 Florida school districts currently have anti-bullying policies in place and employ prevention programs, 36 of which the department deems are proven programs and nine of which the department has designated as promising.<sup>12</sup>

## **III. Effect of Proposed Changes:**

### **Short Title**

The act is entitled the "Jeffrey Johnston Stand Up for All Students Act." Jeffrey Johnston committed suicide in 2005 at age 15 after being victimized by a classmate's taunts, which were posted and remained on the Internet for more than a year.

<sup>10</sup> See Rule 6A-19.008(1)

<sup>11</sup> <http://www.fldoe.org/safeschools/>

<sup>12</sup> [http://www.fldoe.org/safeschools/bull\\_fl.asp](http://www.fldoe.org/safeschools/bull_fl.asp)

**School District Anti-Bullying Policies**

Each school district would be required to adopt by December 1, 2008, a policy to prohibit bullying and harassment of any student or employee of a public K-12 educational facility. Each policy must contain a definition of bullying and harassment, similar to the definition in the bill; notice of penalties; reporting and investigating procedures; and notice to the parents of the perpetrator and the parents of the bullying victim.

The Department of Education would be required to develop model policies no later than October 1, 2008, for school districts to use in developing policies. Because school districts must adopt their anti-bullying policies by December 1, 2008, this may not provide enough time for school districts to thoroughly examine the model policies, involve the local community, and develop their proposed plans.

**Equal Protection to Students and Separate Antidiscrimination Policies**

School districts would be required to provide all students with the same protections against harassment and bullying regardless of their status. This provision in the bill may require further clarification, if the intent is to supersede Rule 6A-1.0404, F.A.C., which specifically provides that school boards may assign more severe consequences than normally authorized when violations by the offender appear motivated by hostility toward the victim's real or perceived gender, race, religion, color, sexual orientation, ethnicity, ancestry, national origin, political beliefs, marital status, age, social and family background, linguistic preference, or disability. School districts may establish separate protected categories of students for purposes of adopting antidiscrimination policies.

**Funding**

The bill specifies that safe schools funding provided in the 2009-2010 General Appropriations Act is contingent upon and payable to the school district, upon the department's approval of a school district's bullying policy which is in substantial conformity with the department's model bullying and harassment policy. Distribution of these funds in the 2010-2011 fiscal year and afterwards is contingent upon and payable to a school district upon its compliance with all the reporting procedures under the bill.

The Commissioner of Education is required to report on the implementation of the bill annually by January 1 to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

**Limitations on Defense**

The physical location or time of access of a computer-related bullying incident may not be raised as a defense in any disciplinary action initiated under this bill. The bill, in and of itself, does not criminalize the conduct of bullying or harassment as described in this bill.

**Limited Immunity**

School employees, volunteers, students, or parents who promptly report acts of bullying or harassment in good faith as provided in the adopted policy are immune from any civil cause of action arising out of the report or failure to remedy the reported incident.

**Free Speech**

The bill contains a clause that indicates it does not abridge the rights of students or employees protected by the First Amendment of the U.S. Constitution. As laws are cloaked with a presumption of constitutional intent, this provision does not appear to be necessary.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

None.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

School districts may need to create or strengthen their bullying prevention and training procedures. The cost of such efforts are indeterminate at this time. However, the 2007 Legislature appropriated \$76,617,000 for Safe Schools. Each district was guaranteed \$74,483,000 and the remaining funds were distributed based on a combination of the Florida Crime Index provided by the Florida Department of Law Enforcement and the district share of student enrollment.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

- A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Criminal Justice on April 8, 2008:**

- Requires the Department of Education to develop a model policy no later than October 1, 2008, for school districts to use in developing their policies.
- Provides that safe schools funding contained in the 2009-2010 General Appropriations Act is contingent upon and payable to the school district, upon the department's approval of a school district's bullying policy which is in substantial conformity with the department's model bullying and harassment policy.
- Provides further that distribution of these funds in the 2010-2011 fiscal year and afterwards is contingent upon and payable to the school district upon its compliance with all the reporting procedures under the bill.
- Requires a procedure to be developed in the policies providing immediate notice of the incident to the parents of the perpetrator, as well as to the parents of the bullying victim.

- B. **Amendments:**

None.