

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 603

Cooperation Between Schools and Juvenile Authorities

SPONSOR(S): Soto

TIED BILLS:

IDEN./SIM. BILLS: SB 1058

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) PreK-12 Policy Committee	12 Y, 0 N, As CS	Beagle	Ahearn
2) Education Policy Council	16 Y, 0 N	White	Lowell
3)			
4)			
5)			

SUMMARY ANALYSIS

Florida law requires the state attorney, upon formally charging a child with a felony or a delinquent act that would be a felony if committed by an adult, to notify the superintendent of the school district in which the child attends school that such charges have been filed. The superintendent must notify the appropriate school personnel, including the child's school principal, within 48 hours. In turn, the principal must immediately notify the child's classroom teachers.

The bill adds the school district director of transportation as a person who must be notified by the district school superintendent when a child is formally charged with a felony or delinquent act that would be a felony if committed by an adult. The bill adds the child's assigned bus driver and other school personnel who directly supervise the child as persons that must be notified by a school principal.

The bill requires that the school principal be notified of the disposition of the charges against the child. The principal must then notify the other school personnel whose duties include direct supervision of the child.

The Family Educational Rights Privacy Act of 1974 (FERPA) prohibits educational agencies and institutions that receive federal education funds from disclosing a student's education records without the consent of the student or the student's parent. FERPA provides several exceptions that allow the disclosure of education records without prior consent. Among other exceptions, FERPA authorizes public educational agencies and institutions to disclose the education records of students, without prior consent, if such disclosure is expressly authorized by a state statute that concerns the juvenile justice system.

In 2009, legislation was enacted which aligned Florida law governing education records to recent amendments to federal regulations implementing FERPA. This legislation removed provisions authorizing state and local educational agencies, public schools, and public postsecondary institutions to disclose education records to parties to an interagency agreement. The parties to the interagency agreement are the Department of Juvenile Justice (DJJ), school authorities, law enforcement, and other signatory agencies. The Department of Education has raised concerns that the removal of these provisions creates a conflict between state law and FERPA.

The bill authorizes an educational agency, public K-12 school, center, or institution; the Florida School for the Deaf and the Blind; and the Florida Virtual School to disclose education records, without prior consent, to parties to an interagency agreement. The parties to the interagency agreement are the DJJ, the school, law enforcement authorities, and other signatory agencies. Such disclosure is permitted to facilitate cooperation among entities to improve school safety; reduce juvenile crime, truancy, and in-school and out-of-school suspensions; and support alternatives to suspension and expulsion that enable students to complete their education. These bill provisions are substantively similar to the provisions removed in 2009.

The bill does not appear have a fiscal impact on state or local governments.

See Drafting Issues and Other Comments section of this bill analysis.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

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DATE: 4/7/2010

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Notification of School Personnel

Florida law requires the state attorney, upon formally charging a child with a felony or a delinquent act that would be a felony if committed by an adult, to notify the superintendent of the school district in which the child attends school that the charges have been filed. The superintendent must notify the appropriate school personnel, including the child's school principal, within 48 hours. In turn, the principal must immediately notify the child's classroom teachers.¹

The school principal is authorized to initiate suspension proceedings against the child if the incident from which the charges originate is determined, after notice and a hearing, to have an adverse impact on the educational program, discipline, or welfare of the school. If the court determines that the child committed the offense, the district school board may expel the student.² Current law does not specify how the school board will be notified regarding the outcome of court proceedings concerning children who have been charged with felonies or delinquent acts.

Effect of Proposed Changes

The bill adds the school district director of transportation as a person who must be notified by the district school superintendent when a child is formally charged with a felony or delinquent act that would be a felony if committed by an adult. The bill adds the child's assigned bus driver and other school personnel who directly supervise the child as persons who must be notified by a school principal.

The bill requires that the school principal be notified of the disposition of the charges against the child. The principal must then notify the other school personnel whose duties include direct supervision of the child. However, it remains unclear as to whether the superintendent would notify the principal, and if so, how the superintendent would be so notified. No provision in current law or the bill expressly instructs the state attorney to inform the superintendent of the case disposition.

¹ Section 985.04(4)(b), F.S. A "felony" is "any criminal offense that is punishable under the laws of this state, or that would be punishable if committed in this state, by death or imprisonment in a state penitentiary [for a period exceeding one year]." Section 775.08(1), F.S. A "delinquent act" is "a violation of any law of this state, the United States, or any other state which is a misdemeanor or a felony or a violation of a county or municipal ordinance which would be punishable by incarceration if the violation were committed by an adult." Section 985.03(56), F.S.

² Section 1006.09(2), F.S.

Education Records of Juveniles

The Family Educational Rights Privacy Act of 1974 (FERPA) prohibits educational agencies and institutions³ that receive federal education funds from disclosing a student's education records without the consent of the student or the student's parent.⁴ The FERPA sets forth several exceptions that allow the disclosure of education records without prior consent. Among other exceptions, the FERPA authorizes public educational agencies and institutions to disclose the education records of students, without prior consent, if such disclosure is expressly authorized by a state statute that concerns the juvenile justice system.⁵ The statute must specify which state and local authorities are authorized to receive the records.⁶ The disclosure must concern the juvenile justice system's ability to effectively serve the child before adjudication.⁷

In 2009, the Legislature enacted House Bill 7117, which aligned Florida law governing education records to recent amendments to federal regulations implementing the FERPA.⁸ Among other things, the bill removed statutory provisions authorizing state and local educational agencies, public schools, and public postsecondary institutions to disclose education records, without prior consent, to parties to an interagency agreement, including the Department of Juvenile Justice (DJJ), school and law enforcement authorities, and other signatory agencies.⁹ The Department of Education (DOE) has raised concerns that the removal of these provisions creates a conflict between state law and FERPA.¹⁰

Effect of Proposed Changes

The bill reinstates statutory authorization for educational agencies;¹¹ public K-12 schools, centers, or institutions; the Florida School for the Deaf and the Blind; and the Florida Virtual School to disclose education records, without prior consent, to parties to an interagency agreement. The parties to the interagency agreement are the DJJ, the school, law enforcement authorities, and other signatory agencies. Such disclosure is permitted to facilitate cooperation among entities to improve school safety; reduce juvenile crime, truancy, and in-school and out-of-school suspensions; and support alternatives to suspension and expulsion that enable students to complete their education.

Information contained in education records may only be disclosed for the purpose of determining appropriate programs and services for the student and to coordinate the delivery of such programs and services among agencies. The bill provides that such information is inadmissible in court proceedings before a dispositional hearing unless written consent is provided by a parent or other responsible adult. These bill provisions are substantively similar to the provisions removed by HB 7117 (2009).

B. SECTION DIRECTORY:

Section 1: Amending s. 985.04, F.S.; requiring that specified school personnel be notified when a child is formally charged by a state attorney with a felony or delinquent act that would be a felony if committed by an adult; requiring that specified school personnel be notified of the disposition of the charges.

Section 2: Amending s. 1002.221, F.S. authorizing the disclosure of K-12 education records for juvenile justice purposes; specifying conditions for such disclosure.

³ The FERPA defines "educational agency or institution" to mean any public or private agency or institution that receives federal education funding. 20 U.S.C. § 1232g(a)(3).

⁴ 20 U.S.C. § 1232g(a). Educational agencies and institutions must comply with the FERPA or risk losing federal funds. *Id.*

⁵ 20 U.S.C. § 1232g(b)(1)(E), F.S.

⁶ 34 C.F.R. § 99.31(5)(i).

⁷ 34 C.F.R. § 99.38.

⁸ House Bill 7117(2009); § 2, ch. 2009-239, L.O.F.; See § 1002.22, F.S. (2008).

⁹ See § 1002.22(3)(d)13., F.S. (2008). Within each county, law enforcement, the district school superintendent, and the DJJ must enter into an interagency agreement for the purpose of sharing information regarding juvenile offenders. Section 985.04(1), F.S.

¹⁰ Email from Legislative Affairs staff, Florida Department of Education (Feb. 18, 2010, 4:45 PM EST).

¹¹ Florida's education records statute defines "agency" to mean a board, agency, or other entity that provides administrative control or direction of, or performs services for, public elementary or secondary schools, centers, or other institutions. Section 1002.22(1)(a), F.S.

Section 3: Providing an effective date of July 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have a fiscal impact on state revenues.

2. Expenditures:

The bill does not appear to have a fiscal impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have a fiscal impact on local revenues.

2. Expenditures:

The bill does not appear to have a fiscal impact on local expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have a direct economic impact on the private sector.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require a county or municipality to spend funds or take an action requiring expenditures; reduce the authority that counties and municipalities had as of February 1, 1989, to raise revenues in the aggregate; or reduce the percentage of a state tax shared in the aggregate with counties and municipalities as of February 1, 1989.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Lines 36-39: The bill requires that the school principal be notified of the disposition of the charges against the child. The principal must then notify the other school personnel whose duties include direct supervision of the child. However, it remains unclear as to whether the superintendent would notify the principal, and if so, how the superintendent would be so notified. No provision in current law or the bill expressly instructs the state attorney to inform the superintendent of the case disposition.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 17, 2010, the PreK-12 Policy Committee adopted two amendments to HB 603 and reported favorably as a committee substitute. The differences between the CS and the HB are as follows:

- The CS requires the school principal to notify both the child's assigned school bus driver and any school personnel who directly supervise the child when a child has been charged with a felony or a delinquent act. The bill required the director of transportation to notify the school bus driver and the principal to notify the child's immediate "paraprofessionals."
- The CS adds provisions requiring that the school principal be notified of the disposition of the charges against the child and requires the principal to notify the other school personnel whose duties include direct supervision of the child.
- The CS reinstates provisions removed by HB 7117 (2009) to enable education records to be disclosed for juvenile justice purposes in compliance with FERPA. To this end, the CS adds provisions:
 - Authorizing an educational agency, public K-12 school, center, or institution; the Florida School for the Deaf and the Blind; and the Florida Virtual School to disclose education records, without prior consent, to parties to an interagency agreement. The parties to the interagency agreement are the DJJ, the school, law enforcement authorities, and other signatory agencies.
 - Providing that disclosure is permitted to facilitate cooperation among entities to improve school safety; reduce juvenile crime, truancy, and in-school and out-of-school suspensions; and support alternatives to suspension that enable students to complete their education.
 - Providing that disclosure of education records may only be made for the purpose of determining appropriate programs and services for the student and to coordinate the delivery of such programs and services among agencies.
 - Providing that information contained in education records is inadmissible in court proceedings before a dispositional hearing unless written consent is provided by a parent or other responsible adult.