

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/CS/SB 1886

INTRODUCER: Criminal Justice Committee; Education Pre-K - 12 Committee; and Senator Wise

SUBJECT: School District Zero Tolerance

DATE: February 16, 2012 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Carrouth</u>	<u>deMarsh-Mathues</u>	<u>ED</u>	<u>Fav/CS</u>
2.	<u>Dugger</u>	<u>Cannon</u>	<u>CJ</u>	<u>Fav/CS</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

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|------------------------------|-------------------------------------|---|
| 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:

Under the bill, school district zero tolerance policies would be revised to prescribe reporting to a law enforcement agency any act that poses a serious threat to school safety that occurs wherever students are within the jurisdiction of the district school board. The zero tolerance policies must also define criteria for reporting misdemeanors that do not pose a serious threat to school safety. These misdemeanors may be handled within the school disciplinary system with victim consent or by law enforcement. Finally, the zero tolerance policies must provide that school officials may not request a law enforcement agency to respond to petty acts of misconduct. These incidents must be handled within the school disciplinary system.

The bill requires that agreements between the district school board and local law enforcement include the role of a school resource officer (SRO) in handling and reporting incidents that pose a serious threat to school safety, the misdemeanor offenses that do not pose a serious threat to school safety that may be handled through alternatives to arrest with the victim's consent, if applicable, and the incidents of petty misconduct that school officials must handle without filing a report with law enforcement.

The bill also requires provisions for training, within existing inservice modules, for teachers and administrators on the long-term consequences of a youth arrest record and in-school resources available to address discipline infractions without involving law enforcement.

Additionally, schools are required to offer behavior interventions for student offenses when a disciplinary action causes the student to miss instructional time.

Finally, the bill requires the school principal to send an incident report to the district school superintendent when a student arrest is based on a serious threat to school safety.

This bill amends section 1006.13 of the Florida Statutes.

II. Present Situation:

The law pertaining to school district zero tolerance policies was amended in 2009.¹ School districts are required to revise their zero-tolerance policies to:

- Define petty misconduct, as well as offenses that pose a serious threat to school safety;
- Clarify that zero-tolerance policies do not require the reporting of petty misconduct and certain misdemeanors to a law enforcement agency;
- Provide for the review of disciplinary action taken against a student pursuant to s. 1006.07, F.S.;² and
- Consider the particular circumstances surrounding the student's misbehavior in any disciplinary or prosecutorial action.

The law also addresses the difference between serious and petty acts.³ The law provides that the intent of the Legislature is to promote a safe and supportive learning environment in schools, to protect students and staff from conduct that poses a serious threat to school safety, and to encourage schools to use alternatives to expulsion or referral to law enforcement agencies by addressing disruptive behavior through restitution, civil citation, teen court, neighborhood restorative justice, or similar programs. Furthermore, zero tolerance policies are not intended to be rigorously applied to petty acts of misconduct and misdemeanors, including, but not limited to, minor fights or disturbances.

Current law requires that cooperative agreements between the school district and local law enforcement include specific guidelines for reporting student offenses and prohibits district policies from requiring reports to law enforcement of petty misconduct and misdemeanors, including, but not limited to, disorderly conduct, disrupting a school function, simple assault or

¹ Ch. 2009-53, L.O.F., codified in s. 1006.13, F.S.

² s. 1006.07(1), F.S., provides for an administrative hearing for a student who has been expelled from school. The law does not provide for this type of hearing for a student who is suspended from school.

³ s. 1006.13(1), F.S.

battery, affray,⁴ theft of less than \$300, trespassing, and vandalism of less than \$1,000.⁵ Contrary to statutory provisions, the Department of Juvenile Justice (DJJ) reports that:⁶

- Misdemeanor offenses accounted for 68 percent of school-related referrals. During FY 2010-11, there were 16,377 total school related referrals received by the DJJ, with the most common referrals for misdemeanors;
- First time offenders accounted for 58 percent of the youth receiving school-related referrals during FY 2010-11;
- While the majority of the school-related delinquency referrals were misdemeanors, 69 percent of these cases were ultimately dismissed, not filed, or resulted in some type of diversion services.
- While African-American youth make up approximately 22 percent of the youth aged 10-17 in Florida, in FY 2007-08 black males and females accounted for 47 percent of all school-related referrals.

In November, 2011, the DJJ released a report⁷ analyzing school data and referrals to the Department over a seven year time period. The report, in part, states that:

Numerous factors can influence whether or not a youth is arrested and referred to the Department of Juvenile Justice for delinquency in schools. Each school district in Florida maintains its own distinctive progressive response or “discipline” plan that outlines how everything from misbehavior to actual crimes should be handled. In addition, law enforcement agencies in each school district have their own policies regarding how to respond and deal with delinquency in schools. Availability and use of alternatives to arrest can have a substantial impact on the number of youth referred to the Department of Juvenile Justice.

Of the youth adjudicated during 2008-09, 71 percent of admissions to DJJ institutions were for nonviolent behavior; more than 44 percent of youth were admitted for probation violations or misdemeanors, at a cost of approximately \$66 million; and more than 1,100 children admitted had never committed a felony, costing the state as much as \$40 million annually.⁸

*Collateral Consequences of Misdemeanor Arrest*⁹

Based on a report published by the National Council of Corrections within the U.S. Department of Justice, youth are frequently unaware of the consequences of their actions within the court system; a guilty plea, for instance, may be offered to expedite the process but may be accompanied by an assortment of problems in later years, oftentimes the result of a permanent criminal record. In the past two decades, information sharing about adjudicated juveniles has

⁴ A public brawl or fight.

⁵ s. 1006.13(4)(c), F.S.

⁶ Perspectives on Zero Tolerance, Presentation to the Senate Pre-K-12 Committee by the Southern Poverty Law Center, October 5, 2011.

⁷ *The Delinquency in Florida's Schools: A Seven-Year Study*, available at http://www.djj.state.fl.us/Research/School_Referrals/index.html.

⁸ Southern Poverty Law Center, *Opportunities to Strengthen Florida's Juvenile Justice System*, (September 17, 2010.) On file with the Senate Committee on Pre-K – 12 Education.

⁹ *Addressing the Collateral Consequences of Convictions for Young Offenders*, available at: <http://nicic.gov/Library/025263>

become easy and encouraged, and rules surrounding youth privacy and confidentiality have loosened in the interest of public safety. Today, agencies enter into agreements to share delinquency data, school data, and family data. While information sharing is a useful tool to keep track of youth across systems, some find that the lack of discretion with which sensitive information is shared outweighs this usefulness. Furthermore, a common assumption is that individuals who are processed in the juvenile justice system have their records destroyed (expunged) when they turn 18. This is not the case. The laws governing whether a juvenile record is sealed (not accessible by the general public) or expunged vary from state to state.¹⁰ Even if a record is expunged, in reality the record may still exist.

School exclusion policies may also extend into higher education in that college applications question candidates about their criminal record. In the past, applications were restricted to the question of whether one had been convicted of a crime (for which most adjudicated juveniles could respond negatively since an adjudication is technically not a crime). Many applications now also ask whether the individual has been arrested or been adjudicated delinquent. Only in an instance in which the record has been expunged would a young person be able to keep this information private.

*Civil Citations*¹¹

Florida's expansion of civil citations is evidence of the importance of community involvement and strategic guidance for these youth. Civil citation programs serve as an alternative to traditional juvenile corrections methods and instead provide consequences for the offending behavior and hold youth accountable through restitution to victims and community service. Youth under community-based civil citations are provided services that target the root causes of the delinquent behavior, such as substance abuse treatment and mental health counseling.¹² Based on a report published in 2010, civil citations (redirection) had saved the state \$51.2 million since its inception.¹³ Furthermore, youth served by redirection showed significant reductions in recidivism: the probability of an arrest was 31 percent less for high risk redirection completers; the probability of a violent felony arrest was 15 percent less for redirection completers; and the probability of admission to prison was 35 percent less for redirection completers.¹⁴ The 2011 legislation expanded the civil citation process to require these programs in all communities.¹⁵ According to Florida TaxWatch, Florida's expansion of civil citations is evidence of the importance of community involvement and strategic guidance for these youth.¹⁶

Other Successful Initiatives

In 2003, Clayton County, Georgia established a collaborative agreement called a "School Offense Protocol" to reduce misdemeanor referrals to law enforcement. In less than five years

¹⁰ *Id.* at endnote 25. Sealing typically refers to placing court records in a separate repository that is not available to the public. Expungement refers to the process of destroying the court records and any history of court involvement in a particular case.

¹¹ See www.floridataxwatch.org/resources/.../20110603CivilCitationOnePager.pdf.

¹² *Id.*

¹³ *Id.*

¹⁴ OPPAGA Report 10-38, *Redirection Saves \$51.2 Million and Continues to Reduce Recidivism*, (April 2010), available at: <http://www.oppaga.state.fl.us/ReportsYearList.aspx?yearID=22>.

¹⁵ Chapter 2011-124, L.O.F., requires a civil citation or similar diversion program to be established at the local level.

¹⁶ See www.floridataxwatch.org/resources/.../20110603CivilCitationOnePager.pdf.

misdeemeanor referrals to the court system were reduced by 59 percent.¹⁷ Since the implementation of the School Offense Protocol, the number of serious weapons in Clayton County schools is down by 70 percent and, according to SROs, the protocol has also increased students' trust in them, making it more likely that students will confide in them about genuine safety threats.¹⁸

III. Effect of Proposed Changes:

The bill would amend s. 1006.13, F.S., to encourage schools to address disruptive student behavior using practical school offense procedures rather than automatically making referrals to law enforcement for petty acts of misconduct and misdemeanor offenses. The school offense protocols would serve to promote alternatives to expulsion and referrals to law enforcement agencies by addressing petty acts and misdemeanors at the school level.

Under the bill, school district zero tolerance policies would be revised to prescribe reporting to a law enforcement agency any act that poses a serious threat to school safety that occurs wherever students are within the jurisdiction of the district school board. The zero tolerance policies must also define criteria for reporting misdemeanors that do not pose a serious threat to school safety. These misdemeanors may be handled within the school disciplinary system with victim consent or by law enforcement. Finally, the zero tolerance policies must provide that school officials may not request a law enforcement agency to respond to petty acts of misconduct. These incidents must be handled within the school disciplinary system.

The bill requires that zero tolerance agreements between the district school board and local law enforcement include the role of an SRO in handling and reporting incidents that pose a serious threat to school safety, the misdemeanor offenses that do not pose a serious threat to school safety that may be handled through alternatives to arrest with the victim's consent, if applicable, and the incidents of petty misconduct that school officials must handle without filing a report with law enforcement.

The bill also establishes provisions for training, within existing inservice modules, for teachers and administrators on the long-term consequences of a youth arrest record, as well as in-school resources available to address discipline infractions without involving law enforcement.

Additionally, schools are required to offer behavior interventions for student offenses when a disciplinary action causes the student to miss instructional time.

Finally, the bill requires the school principal to send an incident report to the district school superintendent when a student arrest is based on a serious threat to school safety.

The bill may reduce the number of petty acts of misconduct and misdemeanor offenses that are referred to law enforcement. School districts would be encouraged to respond more appropriately to student offenses not considered a threat to school safety. The bill may also serve to encourage

¹⁷ The School Offense Protocol concept was initiated when in 1997 police were placed in the Clayton County Georgia secondary schools and misdemeanor arrests skyrocketed. Southern Poverty Law Center, *Opportunities to Strengthen Florida's Juvenile Justice System*, (September 17, 2010.) On file with the Senate Committee on Pre-K – 12 Education.

¹⁸ *Id.*

meaningful involvement of local communities in addressing at-risk behavior of youth, relying on appropriate interventions to correct behavior rather than punitive actions.

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:

The bill may provide opportunities for appropriate interventions for at-risk youth at the local level. Some studies suggest that these alternatives to residential facilities may result in a safer state.¹⁹ The Office of Program Policy Analysis and Government Accountability (OPPAGA) noted that youth served by redirection showed significant reductions in recidivism: the probability of an arrest was 31 percent less for high risk redirection completers; the probability of a violent felony arrest was 15 percent less for redirection completers; and the probability of admission to prison was 35 percent less for redirection completers.²⁰

C. Government Sector Impact:

A reduction in referrals to law enforcement could result in substantial cost savings to the state judicial system as well as reduce the financial burden of costs associated with juvenile justice residential facilities.²¹ According to Florida TaxWatch, if Florida barred the commitment of misdemeanants to state custody, the DJJ would have reduced admissions by 1,273, or 21 percent during that period, which could have saved

¹⁹ www.floridataxwatch.org/resources/pdf/20101201GCSTFChapter2.pdf.

²⁰ OPPAGA Report 10-38, *Redirection Saves \$51.2 Million and Continues to Reduce Recidivism*, (April 2010), available at: <http://www.oppaga.state.fl.us/ReportsYearList.aspx?yearID=22>.

²¹ One report states that more than 2,500 children were admitted to DJJ residential facilities for misdemeanors or violations of probation in FY 2008-09. *Report and Recommendations of the Florida TaxWatch Government Cost Savings Task Force on Criminal and Juvenile Justice Reform for Fiscal Year 2011-12*, Chapter 2: Criminal and Juvenile Justice Reform, (December 2010). See recommendation 21, available at: www.floridataxwatch.org/resources/pdf/20101201GCSTFChapter2.pdf.

approximately \$30 million.²² Based on findings reported by the Center for Smart Justice,²³ the \$240 million the state spends on residential facilities each year is not making Florida safer, but instead more vulnerable. Residential facilities have higher recidivism rates than community-based alternatives, and repeated studies have proven that institutional programs make low-risk children more likely to re-offend.²⁴

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/CS by Criminal Justice on February 16, 2012:

- Deletes the provision requiring acts that do not pose a serious threat to school safety to be handled within the school disciplinary system.
- Provides that zero tolerance policies must define criteria for reporting misdemeanors that do not pose a serious threat to school safety and that these misdemeanors may be handled within the school disciplinary system with victim consent or by law enforcement.
- Requires that zero tolerance agreements between the district school board and local law enforcement also include the role of a school resource officer (SRO) in handling and reporting misdemeanor offenses that do not pose a serious threat to school safety and may be handled through alternatives to arrest with the victim's consent, if applicable.
- Requires, rather than allows, schools to offer behavior interventions for student offenses when a disciplinary action causes the student to miss instructional time.
- Requires the school principal to send an incident report, rather than certifying, to the district school superintendent when a student arrest is based on a serious threat to school safety.

²² *Id.*

²³ <http://www.floridatxwatch.org/centers/CSJ/index.php>

²⁴ The Center for Smart Justice reports that with an adult prison population of over 100,000 costing taxpayers \$2.4 billion annually, the state can no longer afford policy choices that have led to out of control growth without making communities any safer or offenders more accountable. The Juvenile Justice Blueprint Commission found that youth who are kept in programs for prolonged lengths of time after treatment goals are achieved often begin to deteriorate and may be more likely to re-offend once release is finally achieved. See the *Report of the Blueprint Commission: Getting Smart About Juvenile Justice*, available at: <http://www.djj.state.fl.us/blueprint/index.html>.

CS by the Education Pre-K – 12 on January 30, 2012:

The committee substitute:

- Adds provisions for school staff training on the consequences of a youth arrest record and in-school alternatives to law enforcement intervention for minor disciplinary infractions;
- Restores current law to clarify that petty acts of misconduct and misdemeanor offenses are not to be included in district zero-tolerance policies unless such acts pose a serious threat to school safety.

B. Amendments:

None.