

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 7029      PCB KTS 14-02      Code of Student Conduct  
**SPONSOR(S):** K-12 Subcommittee, Baxley and others  
**TIED BILLS:**            **IDEN./SIM. BILLS:** SB 1060

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: K-12 Subcommittee	13 Y, 0 N	Beagle	Ahearn
1) Education Committee	16 Y, 0 N	Beagle	Mizereck

### SUMMARY ANALYSIS

Florida law requires each district school board to adopt a code of student conduct that includes consistent policies and specific grounds for disciplinary action, including in-school suspension, out-of-school suspension, and expulsion. Among other things, each school board must adopt a policy of zero tolerance for crime and victimization, which, among other things, requires that students found in possession of a firearm or weapon at school, at school functions, or on school transportation be expelled for a minimum of one year and referred to the criminal justice or juvenile justice system. Notice of the board's zero tolerance policy must be included in the student code of conduct. Additionally, the code must include standards for appropriate dress and boards must follow statutorily prescribed interventions when addressing dress code violations.

In recent years, news reports from across the country describe several incidents in which penalties applied to actual student firearm and weapon possession, such as suspension or expulsion, were imposed on students for simulating a firearm or weapon while playing or wearing clothing or accessories depicting firearms or support for firearms rights. A number of these incidents involved children under the age of 10 years old.

The bill clarifies that students should not be disciplined for simulating a firearm or weapon while playing or wearing clothing or accessories which depict a firearm or weapon or an opinion regarding Second Amendment rights. The bill defines simulating a firearm or weapon while playing to include:

- Brandishing a partially consumed pastry or other food item to simulate a firearm or weapon;
- Possessing a toy firearm or weapon which is two inches or less in overall length;
- Possessing a toy firearm or weapon made of plastic snap-together building blocks;
- Using a finger or hand to simulate a firearm or weapon;
- Vocalizing an imaginary firearm or weapon;
- Drawing a picture of, or possessing an image of, a firearm or weapon; or
- Using a pencil, pen, or other writing or drawing utensil to simulate a firearm or weapon.

The bill preserves school board authority to discipline students when simulating a firearm or weapon substantially disrupts student learning, causes bodily harm to another person, or places another person in reasonable fear of bodily harm. Consequences imposed upon a student must be proportionate to the severity of the infraction and consistent with school board policies for similar infractions.

Disciplinary actions involving student clothing or accessories must be addressed pursuant to the statutorily prescribed interventions for dress code violations, unless the wearing of the clothing item or accessory causes a substantial disruption to student learning. In such cases, the infraction may be addressed in a manner that is consistent with school board policies for similar infractions.

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

The bill takes effect upon becoming law.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Present Situation

#### **Gun- and Weapon-Free Schools**

Generally speaking, the disciplinary policies of public schools nationwide include measures for deterring student firearm and weapon possession in schools by imposing consistent and firm consequences for such behavior.<sup>1</sup> In recent years, news reports from across the country indicate several incidents in which penalties applied to actual student firearm and weapon possession, such as suspension or expulsion, were imposed on students for simulating a firearm or weapon while playing or wearing clothing or accessories depicting firearms or support for firearms rights. A number of these incidents involved children under the age of 10 years old.<sup>2</sup> Examples of these incidents include students who:

- Chewed a breakfast pastry into the shape of a gun;<sup>3</sup>
- Possessed a miniature gun keychain;<sup>4</sup>
- Possessed a tiny Lego action figure gun or built a gun with Lego blocks;<sup>5</sup>
- Used a finger as an imaginary gun and vocalized the sound of a gun;<sup>6</sup>
- Drew a picture of a gun or a person holding a gun;<sup>7</sup> and
- Wore a National Rifle Association T-shirt to school.<sup>8</sup>

These incidents have fueled concerns regarding how best to balance the difficult job of maintaining an orderly and safe school environment with the need to exercise discretion when addressing student misconduct.<sup>9</sup>

#### Zero Tolerance Policies

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<sup>1</sup> National Association of School Psychologists, *Zero Tolerance and Alternative Strategies: A Fact Sheet for Educators and Policy Makers*, [http://www.nasponline.org/resources/factsheets/zt\\_fs.aspx](http://www.nasponline.org/resources/factsheets/zt_fs.aspx) (last visited Nov. 13, 2013).

<sup>2</sup> See, e.g., Aronson, Gavin. "Blam! These Tykes Got Busted for "Guns" Made of Legos, Pop-Tarts, and Paper," Mother Jones, (March 8, 2013), <http://www.motherjones.com/politics/2013/03/zero-tolerance-guns-schools-newtown>.

<sup>3</sup> See, e.g., St. George, Donna. "Boy Suspended for Chewing Breakfast Pastry into a Gun Shape Will Get Hearing" (Sept. 13, 2013), [http://articles.washingtonpost.com/2013-09-13/local/42025625\\_1\\_hearing-examiner-pastry-school-officials](http://articles.washingtonpost.com/2013-09-13/local/42025625_1_hearing-examiner-pastry-school-officials).

<sup>4</sup> See, e.g., NBC 10, Cranston, RI, 7<sup>th</sup> Grader Suspended for Having Gun Keychain (Sept. 27, 2013), <http://www.turnto10.com/story/23551467/7th-grader-suspended-for-having-gun-keychain>.

<sup>5</sup> See, e.g., ABC 40, Springfield, MA, "Toy Gun Causes Disturbance on Palmer Elementary School Bus" (May 24<sup>th</sup>, 2013), <http://www.wggb.com/2013/05/24/toy-gun-causes-disturbance-on-palmer-elementary-school-bus/>; see, e.g., Starnes, Todd. "Child Faces Suspension for Making Lego Gun," Fox News (Jan. 29, 2013), <http://radio.foxnews.com/toddstarnes/top-stories/child-faces-suspension-for-making-lego-gun.html>.

<sup>6</sup> See, e.g., Fox News, "Florida Boy, 8, Suspended From School After Using Finger As Imaginary Gun" (Oct. 2, 2013), <http://www.foxnews.com/us/2013/10/02/florida-boy-8-suspended-from-school-after-using-finger-as-pretend-gun/>. This student's suspension was reversed by the school board. WKMG Local 6, Orlando, FL, "Pretend Gun Suspension Reversed," (Oct. 15, 2013), <http://www.clickorlando.com/news/pretend-gun-suspension-reversed/-/1637132/22456002/-/4tba6y/-/index.html>.

<sup>7</sup> See, e.g., Owens, Eric. "Principal Threatens to Expel Third Grader Over These Awesome Drawings," The Daily Caller (Nov. 4, 2013), <http://dailycaller.com/2013/11/04/principal-threatens-to-expel-third-grader-over-these-awesome-drawings/>; see, e.g., CBS News, "13-Year-Old Suspended For Doodling Gun" (Feb. 11, 2009), [http://www.cbsnews.com/2100-201\\_162-3197492.html](http://www.cbsnews.com/2100-201_162-3197492.html); see, e.g., Fox News, "Second Grade Student Suspended for Drawing Stick Figure Firing Gun" (Oct. 21, 2007), <http://www.foxnews.com/story/2007/10/21/second-grade-student-suspended-for-drawing-stick-figure-firing-gun/>.

<sup>8</sup> See, e.g., Ramsey, Pam. "Student Charged After Refusing To Remove NRA Shirt," Huffington Post (April 21, 2013), [http://www.huffingtonpost.com/2013/04/21/student-nra-shirt\\_n\\_3128715.html](http://www.huffingtonpost.com/2013/04/21/student-nra-shirt_n_3128715.html).

<sup>9</sup> See, e.g., Aronson Gavin. "Blam! These Tykes Got Busted for "Guns" Made of Legos, Pop-Tarts, and Paper," Mother Jones, (March 8, 2013), <http://www.motherjones.com/politics/2013/03/zero-tolerance-guns-schools-newtown>; see, e.g., Dunn, Joshua. "The Prohibition of Childhood," National Review (Oct. 28, 2013).

The federal Gun-Free Schools Act<sup>10</sup> requires states receiving federal funds under the No Child Left Behind Act of 2001<sup>11</sup> to have in effect a state law requiring local education agencies (LEA)<sup>12</sup> to expel a student from school for a minimum of one year and refer him or her to the criminal justice or juvenile justice system if the LEA determines that the student brought a firearm to a school, or possessed a firearm at a school, under its jurisdiction.<sup>13</sup> Among other things, the state law must allow the chief administering officer of the LEA to modify the expulsion requirement for a student on a case-by-case basis.<sup>14</sup> A LEA, at its discretion, may provide educational services to an expelled student in an alternative educational setting.<sup>15</sup>

In compliance with the Gun Free Schools Act, Florida law requires each district school board to adopt a policy of zero tolerance for crime and victimization, which, among other things, requires that students found in possession of a firearm at school, at school functions, or on school transportation be expelled for a minimum of one year and referred to the criminal justice or juvenile justice system. Florida's zero tolerance law also applies to a student in possession of a weapon at school, at a school function, or on school transportation and threats or false reports regarding explosives, bombs, weapons of mass destruction, and destructive devices involving school or school personnel's property, school transportation, or school sponsored activities.<sup>16</sup>

Florida law defines the terms "firearm" and "weapon" as follows:

- "Firearm" means any weapon (including a starter gun) which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon; any firearm muffler or firearm silencer; any destructive device; or any machine gun. The term "firearm" does not include an antique firearm unless the antique firearm is used in the commission of a crime.<sup>17</sup>
- "Weapon" means "any dirk, knife, metallic knuckles, slungshot, billie, tear gas gun, chemical weapon or device, or other deadly weapon except a firearm or a common pocketknife, plastic knife, or blunt-bladed table knife."<sup>18</sup>

School boards must adhere to these definitions when determining punishments for school-related firearms and weapons infractions.<sup>19</sup>

School boards have discretion to provide continuing educational services to an expelled student in an alternative educational setting. A district school superintendent may consider the one-year expulsion requirement on a case-by-case basis and request that the school board modify the requirement by assigning the student to a disciplinary program or second chance school if it determines such modification is in the best interest of the student and the school system.<sup>20</sup>

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<sup>10</sup> Pub. L. No. 103-382, 108 Stat. 3518 (Oct. 20, 1994). States were required to comply with the Gun Free Schools Act by October 20, 1995. *Id.* The Florida Legislature enacted legislation in the 1995 General Session pursuant to the Act. Section 66, ch. 95-267, L.O.F., *codified at s. 230.23(6)(d)10.*, F.S. (1995), *now codified at ss. 1006.07 and 1006.13*, F.S.

<sup>11</sup> Pub. L. No. 107-110, 115 Stat. 1425 (Jan. 8, 2002).

<sup>12</sup> Federal law broadly defines the term LEA to include state boards of education, state departments of education, local school boards, cities, counties, political subdivisions, public postsecondary institutions, or any other public entities that a state's law authorizes to administer public elementary and secondary schools. Each state determines which entities will serve as LEAs. *See, e.g.*, 34 C.F.R. s. 77.1.

<sup>13</sup> 20 U.S.C. s. 7151(b)(1) and (h)(1).

<sup>14</sup> 20 U.S.C. s. 7151(b)(1).

<sup>15</sup> 20 U.S.C. s. 7151(b)(2).

<sup>16</sup> Section 1006.13(3), F.S.; *see s. 790.162 and 790.163*, F.S. (relating to threats and false reports).

<sup>17</sup> Section 790.001(6), F.S. The Gun-Free Schools Act applies only to firearms possession by students at school. In contrast, Florida's zero tolerance statute addresses both firearms and weapons possession. *See* 20 U.S.C. s. 7151(b)(3). The federal definition of "firearm" is similar to Florida's. *See* 18 U.S.C. s. 921(a).

<sup>18</sup> Section 790.001(13), F.S.

<sup>19</sup> Sections 1006.07(2)(g) and 1006.13(3), F.S.

<sup>20</sup> Section 1006.13(3), F.S. (flush-left provision at end of subsection).

Florida law states that the purpose of zero tolerance policies is to protect students and staff from serious threats to school safety and the policies should not be applied to petty acts of misconduct and misdemeanors, including, but not limited to, minor fights or disturbances.<sup>21</sup> Among other things, each district school board's zero tolerance policy must define acts that pose a serious threat to school safety and petty acts of misconduct.<sup>22</sup>

The Florida Department of Education's policy statement on zero tolerance policies provides that it "is incumbent upon districts to use discretion and take a "common sense" approach to school discipline. District administrators must investigate and take into consideration mitigating circumstances (on a case-by-case basis) when determining appropriate disciplinary responses to student misconduct."<sup>23</sup>

### Student Codes of Conduct

Each district school board must adopt a code of student conduct that includes consistent policies and specific grounds for disciplinary action, including in-school suspension, out-of-school suspension, expulsion, disciplinary actions for possession or use of alcohol on school property or while attending a school function, or for the illegal use, sale, or possession of controlled substances.<sup>24</sup> Among other things, the code must include notice of disciplinary policies regarding student firearm and weapon possession.<sup>25</sup>

Student codes of conduct must also include an explanation of student responsibilities regarding appropriate dress, respect for self and others, and the role that appropriate dress and respect for self and others has on an orderly learning environment. The law prescribes an escalating series of interventions which school boards must apply when addressing dress code violations:

- For a first offense, a student must be given a verbal warning and the school principal must call the student's parent or guardian.
- For a second offense, the student is ineligible to participate in any extracurricular activity for a period of time not to exceed five days and the school principal must meet with the student's parent or guardian.
- For a third or subsequent offense, a student must receive an in-school suspension for a period not to exceed three days, the student is ineligible to participate in any extracurricular activity for a period not to exceed 30 days, and the school principal must call the student's parent or guardian and send the parent or guardian a written letter regarding the student's in-school suspension and ineligibility to participate in extracurricular activities.<sup>26</sup>

Student codes of conduct must be distributed to teachers, school personnel, students, and parents at the beginning of each school year.<sup>27</sup>

### **Effect of Proposed Changes**

The bill clarifies that public school students should not be disciplined for simulating a firearm or weapon while playing or wearing clothing or accessories which depict a firearm or weapon or express an

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<sup>21</sup> Section 1006.13(1), F.S.

<sup>22</sup> Section 1006.13(2)(b) and (c), F.S.

<sup>23</sup> Florida Department of Education, *Florida Department of Education's Position on Zero Tolerance* (2009), available at [http://www.fldoe.org/safeschools/pdf/FDOE\\_Position\\_On\\_Zero\\_Tolerance.pdf](http://www.fldoe.org/safeschools/pdf/FDOE_Position_On_Zero_Tolerance.pdf).

<sup>24</sup> Section 1006.07(2)(a)-(b), F.S.

<sup>25</sup> Section 1006.07(2)(g), (l), and (m), F.S.

<sup>26</sup> Section 1006.07(2)(d), F.S.

<sup>27</sup> Section 1006.07(2), F.S.

opinion regarding Second Amendment<sup>28</sup> rights. The bill defines simulating a firearm or weapon while playing to include, without limitation:

- Brandishing a partially consumed pastry or other food item to simulate a firearm or weapon;
- Possessing a toy firearm or weapon which is two inches or less in overall length;
- Possessing a toy firearm or weapon made of plastic snap-together building blocks;
- Using a finger or hand to simulate a firearm or weapon;
- Vocalizing an imaginary firearm or weapon;
- Drawing a picture of, or possessing an image of, a firearm or weapon; or
- Using a pencil, pen, or other writing or drawing utensil to simulate a firearm or weapon.

The bill preserves district school board authority to discipline students when simulating a firearm or weapon substantially disrupts student learning, causes bodily harm to another person, or places another person in reasonable fear of bodily harm. In such cases, the severity of any consequences imposed upon a student must be proportionate to the severity of the infraction and consistent with school board policies for similar infractions. If a student is disciplined for such conduct, the school principal or his or her designee must call the student's parent. This allows school officials to address conduct that is truly disruptive or dangerous, while protecting students from being disciplined for otherwise innocuous acts.

Disciplinary actions involving student clothing or accessories must be addressed pursuant to the statutorily prescribed interventions for dress code violations, unless the wearing of the clothing item or accessory causes a substantial disruption to student learning. In such cases, the infraction may be addressed in a manner that is consistent with district school board policies for similar infractions. This provision of the bill may not be construed to prohibit a public school from adopting a school uniform policy.

#### B. SECTION DIRECTORY:

**Section 1.** Amends s. 1006.07, F.S.; relating to district school board duties relating to student discipline and school safety; clarifies that play involving simulated firearm or weapon use or wearing clothing or accessories depicting firearms or weapons images or messages are not actionable under certain district school board disciplinary policies; defines simulating a weapon while playing; provides criteria for determining whether certain conduct warrants disciplinary action.

**Section 2.** Provides that the bill takes effect upon becoming a law.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

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<sup>28</sup> The Second Amendment of the U.S. Constitution states that "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." U.S. Const., Amend. 2.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not provide new rule-making authority to district school boards; however, some boards may need to revise disciplinary policies and student codes of conduct to comply with the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.