

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 Appropriations Subcommittee on Criminal and Civil Justice

BILL: CS/CS/SB 548

INTRODUCER: Appropriations Subcommittee on Criminal and Civil Justice; Criminal Justice Committee; and Senator Simmons

SUBJECT: Bullying

DATE: March 6, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Dugger</u>	<u>Cannon</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>Clodfelter</u>	<u>Sadberry</u>	<u>ACJ</u>	<u>Fav/CS</u>
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/CS/SB 548 creates a criminal statute penalizing bullying and aggravated bullying. The newly created statute provides a second degree misdemeanor penalty¹ for bullying and a first degree misdemeanor penalty² for aggravated bullying. Cyberbullying is included in each new crime. The elements of these two new offenses and the definitions provided in the bill are the same as the elements and definitions in the stalking statute (found to be constitutional by the Florida Supreme Court in 1995).

The Criminal Justice Impact Conference has determined that the bill will have an insignificant impact on the need for prison beds.

II. Present Situation:

Bullying Statute

Florida law requires each district school board to adopt a policy prohibiting bullying and harassment in district schools.³ Violation of these policies can result in school disciplinary

¹ Punishable by up to 60 days in jail and a potential fine up to \$500. Sections 75.082 and 775.083, F.S.

² Punishable by up to one year in jail and a potential fine up to \$1,000. Sections 775.082 and 775.083, F.S.

³ Section 1006.147, F.S.

actions being taken. Among other things, the law prohibits the bullying or harassment of any public K-12 student or employee:

- During a public K-12 education program or activity;
- During a school-related or school-sponsored program or activity;
- On a public K-12 school bus;
- Through a computer, computer system, or computer network that is within the scope of a public K-12 educational institution;
- Through the use of data or computer software accessed at a nonschool-related location or through the use of electronic device technology or electronic devices not owned, leased, or used by a public school or school district, if it substantially interferes with or limits the victim's ability to participate or benefit from the services, activities, or opportunities offered by a school or substantially disrupts the education process or orderly operation of a school.⁴

The law defines "bullying" as:

- Systematically and chronically inflicting physical hurt or psychological distress on one or more students, which may involve teasing;
- Social exclusion;
- Threat;
- Intimidation;
- Stalking;
- Physical violence;
- Theft;
- Sexual, religious, or racial harassment;
- Public humiliation; or
- Destruction of property.

The statute includes "cyberbullying" as a form of bullying, and defines it as bullying through:

- Use of specified technology or electronic communications;
- Creation of a webpage or weblog in which the creator assumes the identity of another person or the knowing impersonation of another person as the author of posted content or messages; or
- Distribution by electronic means of a communication to more than one person or the posting of material on an electronic medium that is accessible to others.⁵

Law enforcement, among other entities, must be involved with the school district in the process of adopting the policies. The policies must include a process to investigate whether a reported act of bullying or harassment is within the scope of a district school system. If it is not, a process for referring such act to the appropriate jurisdiction must be identified. The law also requires a procedure to provide immediate notification to parents and to criminal justice authorities so that actions rising to the level of criminal activity can be referred to the appropriate law enforcement entity for further investigation.⁶

⁴ Section 1006.147(2), F.S.

⁵ Section 1006.147(3), F.S.

⁶ Section 1006.147(4), F.S.

Although Florida's anti-bullying law does not provide criminal penalties for bullying per se, it does provide a process that allows bullying behavior to be investigated and prosecuted by criminal justice authorities and, if warranted, pursued as another criminal offense. Offenses that are often relating to bullying activity include assault, aggravated assault, battery, aggravated battery, theft, stalking, and aggravated stalking.

Stalking Statute

Florida's stalking law⁷ was upheld by the Florida Supreme Court as constitutional in 1995.⁸ It defines "harass," "course of conduct," "credible threat," and "cyberstalk."⁹ Basically, "harass" means a "course of conduct" (a pattern comprised of a series of acts over a time period, however short, showing a continuity of purpose) directed at a specific person that causes substantial emotional distress to that person and serves no legitimate purpose. "Cyberstalk" means:

"[T]o engage in a course of conduct to communicate, or to cause to be communicated, words, images, or language by or through the use of electronic mail or electronic communication, directed at a specific person, causing substantial emotional distress to that person and serving no legitimate purpose".

Finally, a "credible threat" is a verbal or nonverbal threat that places a person in reasonable fear for his or his family's safety, made with the apparent ability to carry out the threat.

The stalking statute provides a first degree misdemeanor penalty for stalking¹⁰ and third degree felony penalties for several aggravated stalking offenses.¹¹ The misdemeanor stalking offense occurs when a person willfully, maliciously, and repeatedly follows, harasses, or cyberstalks another person.¹² One of the aggravated stalking offenses occurs when a person willfully, maliciously, and repeatedly follows, harasses, or cyberstalks another person and makes a credible threat to that person.¹³ The other three aggravated stalking offenses involve this same behavior without a threat being made, but with one of the following circumstances: a victim who is under 16 years of age; the offender being subject to a protective injunction because of repeat violence, sexual violence, dating violence, or domestic violence; or the offender having been convicted of certain sexual offenses and being subject to an order not to have contact with the victim.¹⁴

III. Effect of Proposed Changes:

The bill creates a criminal statute penalizing bullying and aggravated bullying. The newly created statute provides a second degree misdemeanor penalty for bullying and a first degree

⁷ Section 784.048, F.S.

⁸ *Bouters v State*, 659 So.2d 235 (Fla 1995). The Court concluded that the stalking statute was not unconstitutionally overbroad or vague. *Bouters* at 238.

⁹ Section 784.048(1), F.S.

¹⁰ See Footnote 2.

¹¹ Punishable by up to five years in prison and a potential fine up to \$5,000. Sections 775.082, 775.083, and 775.084, F.S.

¹² Section 784.048(2), F.S.

¹³ Section 784.048(3), F.S.

¹⁴ Section 784.048(4), (5), and (7), F.S.

misdemeanor penalty for aggravated bullying. Cyberbullying is included in each new crime. The second degree misdemeanor bullying offense will occur when a person willfully, maliciously, and repeatedly harasses or cyberbullies another person. The aggravated bullying offense will occur when a person willfully, maliciously, and repeatedly harasses or cyberbullies another person and makes a credible threat to that person. The elements of these two new offenses and the definitions provided in the bill are the same as the elements and definitions in the stalking statute.

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:

Persons convicted of bullying and aggravated bullying under CS/CS/SB 548 will potentially be subject to a criminal fine of up to \$500 and \$1,000, respectively.

C. Government Sector Impact:

The Criminal Justice Impact Conference met on January 30, 2014 and determined that the bill will have an insignificant impact on the need for prison bed space.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 784.049 of the Florida Statutes.

IX. Additional Information:

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

Recommended CS/CS by Appropriations Subcommittee on Criminal and Civil Justice on March 5, 2014:

- Amends the bill’s definition of “cyberbullying” to include communication that is directed “at” a specific person, rather than communication that is directed “to” a specific person. This is consistent with the definition of “cyberstalking” in s. 784.048(1)(d), F.S.

CS by Criminal Justice on February 10, 2014:

- Decreases the penalty for bullying from a first degree misdemeanor to a second degree misdemeanor.
- Decreases the penalty for aggravated bullying from a third degree felony to a first degree misdemeanor.

- B. **Amendments:**

None.