

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 Committee on Judiciary

BILL: SB 1060

INTRODUCER: Senator Evers

SUBJECT: Code of Student Conduct

DATE: April 7, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Dugger</u>	<u>Cannon</u>	<u>CJ</u>	Favorable
2.	<u>Hand</u>	<u>Klebacha</u>	<u>ED</u>	Favorable
3.	<u>Brown</u>	<u>Cibula</u>	<u>JU</u>	Favorable

I. Summary:

SB 1060 provides that students are not subject to discipline for simulating a firearm or weapon while playing or wearing clothing or accessories that depict a firearm or weapon or expressing an opinion on Second Amendment rights. The bill defines simulating a firearm or weapon while playing to include:

- Brandishing a partially consumed pastry or other food item as a firearm or weapon;
- Possessing a toy firearm or weapon that is 2 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 sounds of 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 the authority of district school boards to discipline students when simulating a firearm or weapon substantially disrupts student learning, cause's bodily harm to another person, or causes 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. If a student is disciplined, the school must phone the student's parent.

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

II. 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.¹ 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 for supporting firearm rights.² A number of these incidents involved children under the age of 10 years old.³ Examples of these incidents include students who:

- Chewed a breakfast pastry into the shape of a gun;⁴
- Possessed a miniature gun keychain;⁵
- Possessed a tiny Lego action figure gun or built a gun with Lego blocks;⁶
- Used a finger as an imaginary gun and vocalized the sound of a gun;⁷
- Drew a picture of a gun or a person holding a gun;⁸ and
- Wore a National Rifle Association T-shirt to school.⁹

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.¹⁰

¹ 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.

² Gavin Aronson, *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>.

³ *Id.*

⁴ Donna St. George, *Boy Suspended for Chewing Breakfast Pastry into a Gun Shape Will Get Hearing* (September 13, 2013), http://articles.washingtonpost.com/2013-09-13/local/42025625_1_hearing-examiner-pastry-school-officials.

⁵ NBC 10, Cranston, RI, *7th Grader Suspended for Having Gun Keychain* (September 27, 2013). <http://www.turto10.com/story/23551467/7th-grader-suspended-for-having-gun-keychain>.

⁶ ABC 40, Springfield, MA, *Toy Gun Causes Disturbance on Palmer Elementary School Bus* (May 24th, 2013), <http://www.wggb.com/2013/05/24/toy-gun-causes-disturbance-on-palmer-elementary-school-bus/>. Todd Starnes, *Child Faces Suspension for Making Lego Gun*, Fox News (January 29, 2013).

⁷ Fox News, *Florida Boy, 8, Suspended From School After Using Finger As Imaginary Gun* (October 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*, (October 15, 2013), <http://www.clickorlando.com/news/pretend-gun-suspension-reversed/-/1637132/22456002/-/4tba6y/-/index.html>.

⁸ Eric Owens, *Principal Threatens to Expel Third Grader Over These Awesome Drawings*, The Daily Caller (November 4, 2013), <http://dailycaller.com/2013/11/04/principal-threatens-to-expel-third-grader-over-these-awesome-drawings/> (last visited March 21, 2014). CBS News, *13-Year-Old Suspended For Doodling Gun* (February 11, 2009), http://www.cbsnews.com/2100-201_162-3197492.html. Fox News, *Second Grade Student Suspended for Drawing Stick Figure Firing Gun* (October 21, 2007), <http://www.foxnews.com/story/2007/10/21/second-grade-student-suspended-for-drawing-stick-figure-firing-gun/>.

⁹ Pam Ramsey, *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.

¹⁰ USA Today, *Doctors Oppose Automatic School Suspensions, Expulsions* (February 25, 2013) <http://www.usatoday.com/story/news/nation/2013/02/25/automatic-school-suspensions-not-ideal-doctors-group>

Zero Tolerance Policies

Federal law requires states receiving federal funds under the No Child Left Behind Act of 2001 to have in effect a state law requiring local education agencies (LEA)¹¹ to expel a student from school for a minimum of 1 year and refer the student 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.¹² 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.¹³ A state is not prevented from allowing a LEA to provide educational services to an expelled student in an alternative educational setting.¹⁴

Florida law requires each district school board to adopt zero tolerance policies which, among other things, requires that a student which possesses a firearm at school or brings a firearm or weapon to school, a school function, or onto school-sponsored transportation, be expelled from the student's regular school for a minimum of 1 year and referred to the criminal justice or juvenile justice system.¹⁵ 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."¹⁶
- "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."¹⁷

Florida law provides a district school superintendent may consider the 1-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 such modification is in the best interest of the student and the school system.¹⁸ Additionally, Florida law provides district school boards with the discretion to provide continuing educational services to an expelled student in an alternative educational setting.¹⁹

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

[says/1943997/](https://www.nationalreview.com/nrd/articles/360840/prohibition-childhood#). Joshua Dunn, *The Prohibition of Childhood*, National Review (October 28, 2013), <https://www.nationalreview.com/nrd/articles/360840/prohibition-childhood#!>

¹¹ See 34 C.F.R. s. 77.1. The term "local educational agency" means a public board of education or other public authority legally constituted within a State to administratively control or direct, or perform service functions for, public schools. *Id.*

¹² See 20 U.S.C. s. 7151 (January 8, 2002).

¹³ 20 U.S.C. s. 7151(b)(1).

¹⁴ 20 U.S.C. s. 7151(b)(2).

¹⁵ Sections 1006.13, 1006.07(2)(g) and (l), F.S.,

¹⁶ Section 790.001(6), F.S.

¹⁷ Section 790.001(13), F.S. School boards must adhere to these definitions when determining punishments for school-related firearms and weapons infractions. Sections 1006.07(2)(g) and 1006.13(3)(a), F.S.

¹⁸ Section 1006.13(3), F.S., (flush-left provision at end of subsection).

¹⁹ *Id.*

and misdemeanors, including, but not limited to, minor fights or disturbances.²⁰ 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.²¹

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."²²

Student Codes of Conduct

Each district school board must adopt a code of student conduct which 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.²³ Among other things, the code must include notice of disciplinary policies regarding student firearm and weapon possession.²⁴

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.²⁵ 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 of up to 5 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 up to 3 days, the student is ineligible to participate in extracurricular activities for up to 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.²⁶

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

²⁰ Section 1006.13(1), F.S.

²¹ Section 1006.13(2)(b) and (c), F.S.

²² Florida Department of Education, *Florida Department of Education's Position on Zero Tolerance*.

http://www.fldoe.org/safeschools/zero_tolerance.asp

²³ Section 1006.07(2)(a), F.S.

²⁴ Section 1006.07(2)(g) and (l), F.S.

²⁵ Section 1006.07(2)(d), F.S.

²⁶ *Id.*

²⁷ Section 1006.07(2), F.S.

III. Effect of Proposed Changes:

SB 1060 provides that public school students are not subject to discipline, including referral to the criminal justice or juvenile justice system, for:

- Simulating a firearm or weapon while playing;
- Wearing clothing or accessories that depict a firearm or weapon; or
- Expressing an opinion on Second Amendment rights²⁸.

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 that 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 sounds of 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 causes 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. These provisions provide flexibility to school officials to address conduct that is truly disruptive.

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

The bill recognizes the right of a public school to adopt a school uniform policy. If a school does require students to wear school uniforms, students of the school may not wear clothing or accessories which depict firearms or other weapons.

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

²⁸ 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.

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:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 1006.07 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.