

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 974

SPONSOR: Education Committee and Senator Bronson

SUBJECT: School Attendance/Violent Offenders

DATE: April 17, 2001 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>deMarsh-Mathues</u>	<u>O'Farrell</u>	<u>ED</u>	<u>Favorable/CS</u>
2.	<u>Forgas</u>	<u>Johnson</u>	<u>JU</u>	<u>Favorable</u>
3.	_____	_____	<u>APJ</u>	_____
4.	_____	_____	<u>AP</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill prohibits certain students from attending a school or riding on a school bus if the victim or the victim's sibling attends the school or rides on the bus, except as provided for in a written disposition order. These provisions apply to students who are adjudicated guilty of or delinquent for, or are found to have committed (regardless of whether adjudication is withheld), or who plead guilty or nolo contendere to felony offenses involving: chapter 782, F.S. (relating to homicide); section 784.045, F.S. (relating to aggravated battery); chapter 787, F.S. (relating to kidnapping, false imprisonment, luring or enticing a child, and custody offenses); chapter 794, F.S. (relating to sexual battery); chapter 800, F.S. (relating to lewdness and indecent exposure); chapter 827, F.S. (relating to child abuse); or section 812.13, (relating to robbery); section 812.131, (relating to robbery by sudden snatching); section 812.133, (relating to carjacking); or section 812.135, (relating to home-invasion robbery).

The school district must allow these students to attend another school in the district in which the student resides, unless the victim or the victim's sibling attends the school. The student may be allowed to attend a school in another school district if there is no school in the student's school district that meets the required conditions. If the student is unable to attend any other school in his or her district and is prohibited from attending school in another school district, the student's school district must take every reasonable precaution to keep the student separated from the victim while on school grounds or on school transportation.

The bill requires the Department of Juvenile Justice to notify the appropriate school district about the court's action on a student's case, the new law, and any prohibition related to student attendance and transportation. The notification is unnecessary if the disposition order indicates that the victim's parents or guardians do not object to placement in the same school or on the same bus. School districts must take appropriate action to separate students who were subject to

certain court action from the victims or siblings of the victims. Responsibility for transportation arrangements and payment is assigned to the student or his or her parents or legal guardians, if the student is a juvenile. The bill prohibits charging the responsible party for existing modes of transportation that can be used by the student at no additional cost to the district.

The bill amends s. 985.23, F.S., related to the disposition hearings of juvenile delinquency cases, to require the court to make a finding related to the appropriateness of entering a “no contact” order in favor of the victim or sibling of the victim. The determination must be made by the court, based on whether the child attends or is eligible to attend the same public school as the victim or the victim’s sibling. If acceptable to the victim’s parent, parents, or legal guardian, the court’s order may note that the victim or the victim’s parent did not object to the victim or the victim’s sibling attending the same school or riding on the same bus. The bill contains requirements for specific court orders related to the school attended by the victim or the victim’s sibling. The bill changes the reference to the Department of Juvenile Justice’s commitment level in s. 985.231(1)(a)3., F.S., that is ordered by the court for an adjudicated delinquent child.

Each school district must adopt a zero tolerance policy for victimizing students. Cooperative agreements between the Department of Juvenile Justice and the district must specify guidelines for ensuring that all court “no-contact orders” are reported and enforced and that all necessary steps are taken to protect crime victims. School principals, subject to an economic sanction, must make full and effective use of specific provisions of law when a student has been the victim of a violent crime committed by another student who attends the same school. There is an exception to the sanction. The bill adds new requirements to the guidelines for the fair treatment of victims in the criminal justice and juvenile justice systems. The bill provides an effective date of July 1, 2001.

The bill amends ss. 230.235, 231.0851, 960.001, 985.228, 985.23, 985.231, and 985.233, F.S., and creates s. 232.265, F.S.

II. Present Situation:

Compulsory School Attendance

Chapter 232, F.S., provides for compulsory school attendance. Generally, all children who are between the ages of 6 and 18 are required to attend school regularly during the entire school term. There are exceptions. A child between the ages of 16 and 18 years of age is not subject to compulsory school attendance if the child files a formal declaration of intent to terminate school enrollment with the district school board. The declaration must acknowledge that terminating school enrollment is likely to reduce the student’s earning potential and must be signed by the child and the child’s parent or legal guardian. The school district must notify the child’s parent or legal guardian of receipt of the child’s declaration of intent. A child who attains the age of 18 during the school year is no longer subject to compulsory school attendance beyond the date which he or she attains that age. In addition, under the provisions of s. 232.06, F.S., children within compulsory attendance age limits who hold valid certificates of exemptions issued by the superintendent are exempt from attending school.

Regular school attendance may be achieved by attending one of the following:

- a public school supported by public funds;

- a parochial, religious, or denominational school;
- a private school supported in whole or in part by tuition charges or by endowment or gifts;
- a home education program that meets the requirements of s. 232.0201, F.S.; or
- a private tutoring program that meets the requirements of s. 232.0202, F.S.

Section 232.09, F.S., provides that parents or legal guardians of children within the compulsory attendance age are responsible for the child's school attendance as required by law. Parents or guardians are *not* responsible for the child's nonattendance under any of the following conditions:

- with permission of the head of the school;
- without the parent's knowledge, consent, or connivance;
- financial inability of the parent to provide the child with necessary clothes;
- sickness, injury, or other insurmountable condition.

Code of Student Conduct

Each code of student conduct (s. 230.23(6), F.S.) must include consistent policies and specific grounds for disciplinary action, including in-school suspension, out-of-school suspension, expulsion, any disciplinary action that may be imposed for the 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 as defined in chapter 893, F.S. The code must also contain policies to be followed for the assignment of violent or disruptive students to an alternative educational program, and notice that certain offenses are grounds for disciplinary action and may result in the imposition of criminal penalties. Students may not be suspended for unexcused tardiness, lateness, absence, or truancy.

Each school board is required, in s. 230.23(6)(c), F.S., to adopt rules for the control, discipline, in-school suspension, suspension, and expulsion of students and to decide all cases recommended for expulsion. Section 232.26, F.S., establishes the authority of school principals, including the development of policies for delegating responsibility for the control and direction of students to teachers, other members of the instructional staff, and bus drivers. Recommendations of these individuals must be considered when making a decision regarding student referral for discipline.

Any student transported to or from school at public expense may be suspended from the privilege of riding on a school bus for violation of school board transportation policies. Each school board is required, in s. 230.23(6)(c), F.S., to adopt rules for the control, discipline, in-school suspension, suspension, and expulsion of students and to decide all cases recommended for expulsion. School board transportation policies must include a policy for behavior at school bus stops.

Student Discipline and Suspension

The law (s. 228.041(25), F.S.) defines two types of suspension: out-of-school suspension and in-school suspension. Suspension (also referred to as out-of-school suspension) is the temporary removal of a student from all classes of instruction on public school grounds and all other school-sponsored activities, except as authorized by the principal or the principal's designee. It

includes remanding the student to his or her parents with specific homework assignments to complete. In-school suspension is the temporary removal of a student from the student's regular school program and placement in an alternative program, such as that provided in s. 230.2316, F.S., under the supervision of school district personnel. Under this provision of law, in-school and out-of-school suspensions may not exceed 10 school days. A principal or his or her designee may suspend a student only in accordance with district school board rules. The law provides that school personnel may not be held legally responsible for suspensions of students made in good faith.

Suspension Process

Suspension hearings are exempt from chapter 120, F.S. The law (s. 232.26, F.S.) sets forth the process for suspending students. A good faith effort must also be made to employ parental assistance or other alternative measures prior to suspension, except for emergency or disruptive conditions requiring immediate suspension or for a serious breach of conduct as defined by district school board rules. The rules must require notice to the student of the charges and an explanation of the evidence against him or her prior to the suspension. Each student must be given an opportunity to present his or her side of the story.

The law also provides for the initiation of suspension proceedings by a prosecuting attorney against students who are formally charged with a felony or delinquent act which would be a felony if committed by an adult. These proceedings may be initiated for certain incidents which allegedly occurred off school property if, in an administrative hearing, the incident is shown to have an adverse effect upon the education program, discipline, or welfare in the school in which the student is enrolled. Any student who is suspended as the result of these proceedings may be suspended from all classes of instruction on public school grounds during regular classroom hours for a period of time, which may exceed 10 days, as determined by the superintendent. However, the suspension does not affect the delivery of educational services to the student. The student must be immediately enrolled in a daytime alternative education program, or an evening alternative education program, where appropriate. If the court determines that the student did commit the felony or delinquent act, the school board may expel the student. However, the expulsion must not affect the delivery of educational services to the student in any residential, nonresidential, alternative, daytime, or evening program outside of the regular school setting.

Expulsion

The law defines expulsion as the removal of the right and obligation of a student to attend a public school under conditions set by the school board and for a period of time not to exceed the remainder of the term or school year and 1 additional year of attendance. Expulsions may be imposed with or without continuing educational services and shall be reported accordingly. The law (s. 230.23(6)(c), F.S.) provides that expulsion hearings are governed by ss. 120.569 and 120.57(2), F.S., and are exempt from the public meetings law. However, parents must be given notice and an opportunity to have the hearing conducted under the public meetings law. The law sets forth the school board's authority for final orders of expulsion or dismissal.

Section 232.26(1)(c), F.S., provides school principals with authority to recommend to the superintendent expulsion of any student who has committed a serious breach of conduct. A "serious breach of conduct" may include, but is not limited to, willful disobedience, open defiance of authority of a member of the school staff, violence against persons or property, or

any other act which substantially disrupts the orderly conduct of the school. Recommendations for expulsion must include a detailed report by the principal or the principal's designee outlining alternative measures taken prior to recommendation of expulsion. A recommendation for expulsion may be made for any student found to have intentionally made false accusations that jeopardize the professional reputation, employment, or professional certification of a teacher or other member of the school staff, according to the school district code of conduct. A recent Attorney General opinion (AGO 01-05) noted that while the school board may delegate evidentiary hearing functions to qualified individuals, the board must ultimately make the decision as to whether a student is to be expelled.

Zero Tolerance

Section 230.235, F.S., requires each school district to adopt zero-tolerance policies for crime and substance abuse. The policy must include reporting of delinquent acts and crimes occurring whenever and wherever students are under the jurisdiction of the school district. The policy must require students found to have committed specific offenses to be expelled, with or without continuing education services, from the student's regular school for a period of not less than one year and to be referred for criminal prosecution. However, superintendents may recommend modification of this requirement on a case-by-case basis. The law requires a procedure for ensuring that school personnel properly report delinquent acts and crimes to law enforcement.

Students with disabilities

Students with disabilities are subject to disciplinary measures. School boards are required to establish policies and procedures for the discipline of students with disabilities and for providing this information to the student's parent or guardian. The law (s. 232.26(4), F.S.) provides that any recommendation for suspension or expulsion of a student with a disability must be made in accordance with State Board of Education rule. The federal Individual with Disabilities in Education Act imposes certain requirements upon states, including procedural safeguards and provisions for disciplinary action, in executing responsibilities for educational programs for students with disabilities as a condition of receiving federal financial assistance. The procedural safeguards for exceptional students are contained in Florida administrative rule (Rule 6A-6.0331, F.A.C.).

Notification related to charges and convictions of students

Several provisions of law contain notification requirements about arrests, pending criminal charges or convictions involving students, including:

- s. 230.235, F.S., requiring school district procedures for ensuring that all school personnel properly report appropriate delinquent acts and crimes and for agreements with law enforcement agencies for ensuring reports of felonies and violent misdemeanors, whether committed by a student or adult, and delinquent acts that would be felonies or violent misdemeanors if committed by an adult;
- s. 230.335, F.S., requiring the court to notify (within 24 hours of the finding) the school superintendent of the name and address of a student: found to have committed a delinquent act, or who has adjudication withheld for an act that would be a felony if committed by an adult; or found guilty of a felony (the notification must include the specific act);
- s. 232.0205, F.S., requiring student disclosures at the time of school registration of previous school expulsions, arrests resulting in a charge, and any juvenile justice actions;

- s. 232.197, F.S., requiring the court to provide notice to the school of any action taken by the court that directly involves a student's school, including but not limited to an order that a student attend school;
- s. 985.04(7)(a), F.S., requiring a law enforcement agency to notify the school superintendent that a child is alleged to have committed a delinquent act when a child has been taken into custody for an offense that would have been considered a felony if committed by an adult or has committed a violent crime; and
- s. 985.04(7)(b), F.S., requiring a state attorney to notify the school superintendent when a child has been formally charged with a felony or a delinquent act that would have been considered a felony if committed by an adult.

The law (s. 985.04(4), F.S.) provides a public records exemption for children's records in the custody of the Department of Juvenile Justice. However, certain records are not confidential and exempt solely based on the child's age (e.g., the child's name, address, photograph, and crime arrest report of a child: taken into custody of a law enforcement officer for a violation of law that would be a felony if committed by an adult; or found by a court to have committed 3 or more violations of law that would be misdemeanors if committed by an adult). Also, the law does not prohibit the release of the juvenile offense report by a law enforcement agency to the victim of the offense. There is an exception in that the information gained by the victim, including next of kin of a homicide victim, about any case handled by a juvenile court may not be revealed to any outside party, except as reasonably necessary to pursue legal remedies.

Student transportation

Section 234.01, F.S., enumerates the students and others who must be provided with transportation, as well as students and others who may be provided with transportation by the district school board. In each case in which transportation of students is impracticable, as deemed by the school board, the school board may take steps to make available educational facilities that are practical and authorized by law or rule of the commissioner. According to the Department of Education, school districts generally provide transportation for alternative programs in lieu of expulsion, although temporary, annual, or permanent suspension of bus services is sometimes used as a consequence, subject to school board approval and depending upon the severity of the student's actions.

Other

The law (s. 230.23(5)(c), F.S.) requires school boards to adopt a salary schedule to furnish incentives for improvement in training and for continued efficient service as a basis for payment and compensation of school employees. Section 231.0851, F.S., relates to school safety and discipline reports and requires principals to verify the accuracy of reported incidents.

Black's Law Dictionary defines the term, "nolo contendere" (also called no contest) to mean a plea by a defendant in a criminal prosecution that without admitting guilt subjects the defendant to conviction as in the case of a guilty plea but that does not bar denial of the truth of the charges in another proceeding (as a civil action based on the same acts).

Chapter 960, F.S., relates to victim assistance, and provides for the development and implementation of guidelines for the fair treatment of victims and witnesses in the criminal justice and juvenile justice systems. Chapter 985, F.S., relates to delinquency and contains

provisions relating to hearings and orders, including s. 985.228, F.S., (relating to adjudicatory hearings after the filing of a petition alleging that a child has committed a delinquent act or a violation of law), s. 985.23, F.S., (relating to disposition hearings in delinquency cases), and s. 985.231, F.S. (relating to powers and duties in delinquency cases). Section. 985.233, F.S., (relating to sentencing procedures for juveniles prosecuted as adults), provides legislative intent that the criteria and guidelines in this part of the law are mandatory. A determination of disposition under s. 985.233, F.S, is subject to appellate review under s. 985.234, F.S.

III. Effect of Proposed Changes:

Section 1. The bill amends s. 230.235, F.S., related to zero tolerance, to require each school district to adopt a zero tolerance policy for victimizing students. The policy must include taking all necessary steps to protect the victim of a violent crime from further victimization. The cooperative agreement between the Department of Juvenile Justice and the district must specify guidelines for ensuring that all court “no-contact orders” are reported and enforced and that all necessary steps are taken to protect crime victims.

Section 2. The bill amends s. 231.0851, F.S., related to school safety and discipline reports, to require the principal to make full and effective use of s. 232.26(2), F.S., (relating to suspension and expulsion) and s. 232.265, F.S., (relating to a new provision of law) when a student has been the victim of a violent crime committed by another student who attends the same school. The principal’s failure to comply with this requirement results in his or her ineligibility for any part of the performance pay policy incentive under s. 230.23(5)(c), F.S. There is an exception to this sanction if a party responsible for notification fails to properly notify the school.

Section 3. The bill creates s. 232.265, F.S. Certain students attending public school who are adjudicated guilty of or delinquent for, or are found to have committed (regardless of whether adjudication is withheld), or who plead guilty or nolo contendere to certain offenses may not attend the school or ride on a school bus if the victim or the victim’s sibling attends the school or rides on the bus, except as provided for in a written disposition order. These provisions apply to felony offenses for the following:

- chapter 782, F.S. (relating to homicide);
- section 784.045, F.S. (relating to aggravated battery);
- chapter 787, F.S. (relating to kidnapping, false imprisonment, luring or enticing a child, and custody offenses);
- chapter 794, F.S. (relating to sexual battery);
- chapter 800, F.S. (relating to lewdness and indecent exposure);
- chapter 827, F.S. (relating to child abuse);
- section 812.13, F.S. (relating to robbery);
- section 812.131, F.S. (relating to robbery by sudden snatching);
- section 812.133, F.S. (relating to carjacking); or
- section 812.135, F.S. (relating to home-invasion robbery).

The bill requires the school district to allow any of these students to attend another school in the district in which the student resides. However, this option is not available if the victim or the victim’s sibling attends the school. Alternatively, the student may be allowed to attend a school in another school district if there is no school in the student’s school district that meets the

required conditions. If the student is unable to attend any other school in his or her district and is prohibited from attending school in another school district, the student's school district must take every reasonable precaution to keep the student separated from the victim while on school grounds or on school transportation. Students may be separated by various means, including in-school suspension and alternative schedules for classes, lunch, or other school activities.

The bill requires the Department of Juvenile Justice to notify the appropriate school district about the court's action on the student's case. The notification must occur if the student, before or at the time of the court's action, was attending a school attended by the victim or the victim's sibling and notwithstanding any provision of law prohibiting disclosure of the identity of a minor. Also, the department must notify the districts about the new law and whether the student is prohibited from attending the school or riding on a school bus when the victim or the victim's sibling is in attendance or riding on the bus. Notification is unnecessary if the disposition order indicates that the victim's parents or guardians do not object to placement in the same school or on the same bus. After receiving notice from the Department of Juvenile Justice, the school district must take appropriate action to separate students who were subject to certain court action from the victims or siblings of the victims.

The student who was subject to certain court action is responsible for arranging and paying for the transportation when he or she must use different transportation to attend school. If the student is a juvenile, his or her parents or legal guardians assume these responsibilities. The responsible party may not be charged for existing modes of transportation that can be used by the student at no additional cost to the district.

Section 4. The bill amends s. 960.001, F.S., to add new requirements to the guidelines that must be developed and used by various agencies for the fair treatment of victims and witnesses in the criminal justice and juvenile justice systems. The bill provides that when the victim of an offense committed by a juvenile is a minor, the Department of Juvenile Justice must request information regarding whether the student and the victim or the victim's sibling attend or are eligible to attend the same school. If the student is under the criminal circuit court jurisdiction, the Department of Corrections must request the information. After this information has been obtained, the appropriate agency must notify the victim's parent or legal guardian of the right to attend the sentencing or disposition of the student and request that the student be required to attend another school.

Section 5. The bill amends s. 985.228, F.S., related to adjudicatory hearings, to require the court order to include a finding under s. 985.23(1)(d), F.S., based on the court's determination that the victim or the victim's sibling attends or is eligible to attend the same school as the child found to have committed a delinquent act or a violation of law.

Section 6. The bill amends s. 985.23, F.S., related to the disposition hearings of juvenile delinquency cases, to require the court to make a finding related to the appropriateness of entering a "no contact" order in favor of the victim or sibling of the victim. The determination must be made by the court, upon its own motion or at the request of any party or any parent or legal guardian of the victim, based on whether the child attends or is eligible to attend the same public school as the victim or the victim's sibling. The bill provides that if acceptable to the victim's parent, parents, or legal guardian, the court may include in the written disposition order

that the victim or the victim's parent made a written statement or an oral statement in open court that there was no objection for the victim or the victim's sibling to attend the same school or ride on the same bus.

Section 7. The bill amends s. 985.231, F.S., related to the powers of disposition in delinquency cases, to require the court placement order for an adjudicated delinquent child to include a finding under s. 985.23(1)(d), F.S., based on the court's determination that the victim or the victim's sibling attends or may attend the same school as the child following residential commitment. Similarly, the court's commitment order must contain this finding. The bill changes the reference to the Department of Juvenile Justice's commitment level in s. 985.231(1)(a)3., F.S., that is ordered by the court for an adjudicated delinquent child. The current general reference to the restrictiveness level is replaced with a specific reference to the residential commitment level.

Section 8. The bill amends s. 985.233, F.S., related to sentencing alternatives for juveniles prosecuted as adults, to require the court placement order to include a finding under s. 985.23(1)(d), F.S., based on the court's determination that the victim or the victim's sibling attends or may attend the same school as the child.

Section 9. The bill provides an effective date of July 1, 2001.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Students, or parents or guardians of juvenile students, who must attend another school or ride on a different bus will incur transportation costs.

C. Government Sector Impact:

The Department of Juvenile Justice estimates that the agency's costs associated with notifying schools, victims, and victims' families will be minimal. The Juvenile Justice Information System is able to process victim information and can generate the notices at a cost of approximately 36 cents per notice (postage, plus envelope and paper supplies.) During FY 1999-2000, 37,249 youth were either placed on probation or were committed and eligible for subsequent conditional release placement. Based on this data, the department estimates a recurring fiscal impact for notification of approximately \$13,410 (37,249 youth X .36 = \$13,410). To the extent that the provisions of the bill result in reduced future victimization, these costs may be offset by workload savings.

The department also anticipates that the bill will have an indirect and indeterminate impact on workload for juvenile probation officers and the agency's recently created victim coordinators. Victim coordinators will assume responsibility for modifying victim restitution forms to collect information on the victim's school, the victim's siblings and their schools, and the victim's preference for a "no contact" order and separate school situation. Juvenile probation officers will be responsible for including this information in their predisposition report to the judge, and for coordinating with the school district to facilitate separate school placements and transportation arrangements.

According to the Department of Juvenile Justice, the bill may result in a negative, but indeterminate, impact on recidivism if students fail to attend or drop out of their new school setting.

According to the Office of the State Courts Administrator, the provisions of the bill should result in no fiscal impact on the courts. School districts may incur costs related to transferring students and individual school FTE counts may be affected by students who transfer to other schools.

VI. Technical Deficiencies:

Current law (s. 230.23(6), F.S., relating to the code of student conduct) does not specifically address notice to students, parents, and others about school assignment or alternative transportation as set forth in the provisions of the bill. The bill contains several internal inconsistencies in terminology, including the references to court actions in s. 232.265(1), F.S., the references to the parties present at the delinquency disposition hearing in s. 985.23(1), F.S., and the references to school attendance by the victim or the victim's sibling.

VII. Related Issues:

Current law (s. 232.09(2), F.S.) holds parents and guardians responsible for the compulsory attendance of school age students and subjects them to the criminal sanctions in s. 232.19(7), F.S. (a second degree misdemeanor), after meeting specific procedural requirements. The bill does not provide an exception from the criminal penalties for parents or guardians who are unable to pay the required transportation costs to another school. It is unclear whether the school district is responsible for actually providing transportation for the students.

According to the Department of Education, two school districts (Escambia and Gilchrist) report that hearings are convened with the Department of Juvenile Justice and the state attorney when a student is charged with a felony that will have an adverse effect upon the student body. The purpose of the hearing is to determine whether or not to initiate an expulsion hearing or alternative placement. These districts have, however, experienced difficulty in taking action related to misdemeanors or prior to the filing of formal charges.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
