

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: SB 2088
 SPONSOR: Senator Cowin
 SUBJECT: School System Personnel
 DATE: February 18, 2002 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gordon	O'Farrell	ED	Favorable
2.	_____	_____	CJ	_____
3.	_____	_____	APJ	_____
4.	_____	_____	AP	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill imposes the criminal penalty of a first degree misdemeanor on school instructional and administrative personnel who have knowledge of a sexual battery committed by one student on another, but fail to report it to law enforcement.

This bill substantially creates the following sections of the Florida Statutes: 231.265.

II. Present Situation:

Florida criminal statutes define sexual battery as the “oral, anal, or vaginal penetration by, or union with, the sexual organ or another or the anal or vaginal penetration of another by any other object.” *See*, s.794.011(h), F.S. The Department of Education’s School Environmental Safety Incident Reporting system report (SESIR Report) for 2001 defines sexual battery as the actual or *attempted* penetration described in the criminal statute. According to the DOE, there were an estimated 162 incidents of sexual battery that occurred on school grounds in the 2000-2001 school year.¹ Of those incidents, 156 were student-on-student, with the majority, sixty-six incidents, occurring at schools that were middle/junior high schools (grades 6-8).

Section 231.0851(2), F.S., specifically requires school principals to report student-on-student crime. If the principal fails to report, he or she will not be eligible for any portion of the performance pay policy incentive under s. 230.23(5)(c). Section 231.0851(2), F.S., also provides that the principal shall not lose such eligibility if any party responsible for notification fails to

¹This number includes elementary, middle, and secondary schools and is only a preliminary report that may not account for all incidents that occurred. The DOE also separately defines and counts sexual harassment (severe and pervasive unwanted sexually tinged verbal or physical behavior) and sexual offenses (consensual sex, making lewd gestures at another). For the school year 1999-2000, there were 2,743 sexual harassment incidents and 1,540 sexual offenses.

properly notify the school. There is no statutory provision that imposes the same requirement on teachers. However, State Board of Education Rule 6B-1.006(3)(a), without explicit reference to violent crimes, provides that educational professionals “[s]hall make reasonable effort to protect the student from conditions harmful to learning and/or to the student's mental and/or physical health and/or safety.”

Section 794.027 imposes the penalty of a misdemeanor in the first degree on a person who:

- (1) has observed the commission of a sexual battery;
- (2) has the ability to seek assistance for the victim from law enforcement;
- (3) fails to seek assistance;
- (4) would not be exposed to any threat of physical violence for seeking such assistance;
- (5) is not the husband, wife, parent, grandparent, child, grandchild, brother, or sister of the offender or victim; and
- (6) is not the victim of such sexual battery.

III. Effect of Proposed Changes:

This proposed legislation would criminalize instructional or administrative personnel's failure to report a sexual battery committed by one student on another as a misdemeanor of the first degree punishable as provided in s. 775.082, F.S. or s. 775.083, F.S. Section 775.082(4)(a) provides a penalty of imprisonment not to exceed one year for a first degree misdemeanor. Section 775.083(1)(d) provides that a fine not to exceed \$1,000 for a first-degree misdemeanor may be assessed in addition to or in lieu of punishment under s. 775.082, F.S.

Educational professionals have indicated that attaching a criminal penalty to a failure to report may lead to overreporting. They have suggested withholding a school's Safe School's Appropriation which is used by most institutions to pay for security personnel and equipment. For the 2001-2002 fiscal year, the Legislature appropriated \$75,350,000 for Safe Schools activities including after school programs for middle school students, conflict resolution programs, alternative programs for adjudicated youth and general improvements to school safety.

This proposed legislation would bring the sexual battery criminal statute regarding failure to report in line with Florida's child abuse statutes. Under section 39.201(d), F.S. school teachers or other school personnel are required to report child abuse to the Department of Child Welfare's abuse hotline which in turn reports the incident to law enforcement. Failure to report is a misdemeanor in the first degree under section 39.205, F.S. This bill will impose the same penalty on school instructional and administrative personnel for a similar failure to report a battery committed by one student on another.

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:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.