

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 575 School Safety

SPONSOR(S): Thompson and others

TIED BILLS: **IDEN./SIM. BILLS:** SB 114

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on K-12</u>	<u></u>	<u>Gillespie</u>	<u>Ahearn</u>
2) <u>Schools & Learning Council</u>	<u></u>	<u></u>	<u></u>
3) <u>Policy & Budget Council</u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

House Bill 575 creates the “Jeffrey Johnston Stand Up for All Students Act.” The bill prohibits the bullying or harassment of any student or school 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, or through a public K-12 computer, computer system, or computer network.

The bill requires a school district to adopt a policy prohibiting bullying and harassment and to include students, parents, teachers, administrators, school staff, volunteers, community representatives, and local law enforcement agencies in the development of the policy. The bill requires a school district to publish its bullying and harassment policy in its codes of student conduct and employee handbooks and requires ongoing implementation throughout the school year, integrated with a school's curriculum, discipline policies, and violence prevention efforts.

For the 2008-2009 school year, a school district's Safe Schools funding would be contingent upon approval of the district's bullying and harassment policy by the Department of Education. The bill also specifies that, beginning with the 2009-2010 school year, a school district's annual allocation of Safe Schools funding would be contingent upon the district's compliance with the bill's reporting procedures.

The bill provides limited civil immunity for a school employee, volunteer, student, or parent who reports bullying or harassment in good faith.

The bill requires the Department of Education to provide school districts with model bullying and harassment policies and requires the Commissioner of Education to submit an annual report to the Governor and Legislature.

The bill raises a number of drafting issues and one constitutional concern (See III. COMMENTS).

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Safeguard Individual Liberty: The bill prohibits bullying and harassment of students and school employees and establishes measures to prevent the substantial interference with a student's educational performance.

Empower Families: The bill requires a school district to regularly report to a victim's parents on the actions taken to protect the victim and to immediately notify a victim's parents of the local agencies where criminal charges may be filed against the offender.

Maintain Public Security: The bill prohibits bullying and harassment of students and school employees.

B. EFFECT OF PROPOSED CHANGES:

Present Situation:

Current research presents various definitions of the term "bullying." For example:

- *"Bullying includes a wide variety of behaviors, but all involve a person or a group repeatedly trying to harm someone who is weaker or more vulnerable. It can involve direct attacks (such as hitting, threatening or intimidating, maliciously teasing and taunting, name-calling, making sexual remarks, and stealing or damaging belongings) or more subtle, indirect attacks (such as spreading rumors or encouraging others to reject or exclude someone)";¹ and*
- *Bullying is a "specific type of aggression in which:*
 - 1) *The behavior is intended to harm or disturb;*
 - 2) *There is an imbalance of power, with a more powerful person or group attacking a less powerful one, and;*
 - 3) *The behavior occurs repeatedly over time."²*

The United States Department of Education reports that, in 2005, 28 percent of students ages 12 to 18 reported having been bullied at school during the previous 6 months.³ Of these students, 58 percent said that the bullying had happened once or twice during the period, 25 percent had experienced bullying once or twice a month, 11 percent reported having been bullied once or twice a week, and 8 percent said they had been bullied almost daily.⁴

Following a series of school shootings in the late 1990s, in which the shooters were reported to be victims of bullying at school, at least 29 states have enacted anti-bullying legislation: Alaska, Arkansas, California, Colorado, Connecticut, Georgia, Idaho, Illinois, Indiana, Louisiana, Maine, Minnesota, Missouri, Nevada, New Hampshire, New Jersey, New York, Ohio, Oklahoma, Oregon, Rhode Island, South Carolina, Tennessee, Texas, Utah, Vermont, Virginia, Washington, and West Virginia.⁵

¹ National Youth Violence Prevention Resource Center, *Facts for Teens: Bullying 1* (2002), available at <http://hamfish.org/newsroom/bullying411.pdf>.

² Hamilton Fish Institute, George Washington University, *The 4-1-1 on Bullying 6* (September 2004) (citing the Mayo Clinic and the Journal of the American Medical Association), available at <http://hamfish.org/newsroom/bullying411.pdf>.

³ U.S. Department of Education, National Center for Education Statistics, *Indicators of School Crime and Safety: 2007*, NCES 2007-003, vi-vii (December 2006), available at <http://nces.ed.gov/pubs2007/2007003.pdf>.

⁴ *Id.*

⁵ Jennifer Dounay, Education Commission of the States, *State Anti-Bullying Statutes* (April 2005), available at <http://www.ecs.org/clearinghouse/60/41/6041.htm>; Education Commission of the States, *Recent State Policies/Activities*:

The Florida Department of Education reports that it conducted a poll of school districts to determine which districts have an anti-bullying policy. Forty-two districts (approximately 58 percent) responded that they have an anti-bullying policy. The department reports that the general trend among the districts is not to adopt a separate anti-bullying policy but to include bullying as a violation of the code of student conduct and provide for disciplinary action. The department also reports that 24 school districts provide some definition of bullying. In addition, 35 school districts are implementing various bullying prevention programs.⁶

Current Law:

Under current law, a district school board must adopt rules for the control and discipline of students.⁷ A district school board must also adopt two codes of student conduct, one for elementary schools and another for middle and high schools.⁸ A code of student conduct must be based on the school district's rules governing student conduct and discipline; must be organized and written in language understandable to students and parents; and, among other things, must contain:⁹

- Consistent policies, specific grounds for disciplinary action, and disciplinary procedures;
- Explanation of a student's rights and responsibilities;
- Notice that violence against district school board personnel, disruptive behavior on a school bus or at a bus stop, or sexual harassment are grounds for disciplinary action;
- Notice that a student possessing a firearm or weapon at school, at a school function, or on school-sponsored transportation will be expelled; and
- Notice that a student making a threat or false report involving school or school personnel's property, school transportation, or a school-sponsored activity will be expelled.

In addition, current law and rules adopted by the State Board of Education require a district school board to adopt a zero-tolerance policy on school violence, crime, the use of weapons, substance abuse, and the victimization of students.¹⁰

Safety/Student Discipline—Bullying/Conflict Resolution, available at <http://www.ecs.org/ecs/ecscat.nsf/WebTopicView?OpenView&RestrictToCategory=Safety/Student+Discipline--Bullying/Conflict+Resolution> (last visited February 28, 2007).

⁶ The Department of Education reports that the following bullying prevention programs are being implemented in the following school districts:

- Aggression Replacement Training (ART): Hernando and Indian River;
- Aggressors, Victims, Bystanders: Brevard, Collier, Columbia, DeSoto, Dixie, Escambia, Flagler, Glades, Lafayette, Levy, Manatee, Okaloosa, Palm Beach, Pinellas, Santa Rosa, Sarasota, St. Lucie, Union, and Volusia;
- Bullying Prevention (Olweus): Marion, Orange, Pasco, Pinellas, Sarasota, Seminole, and Sumter;
- Bullying Safe: Lee;
- Bully-Proofing Your School: Brevard and Volusia;
- Foundations: Creating Safe and Civil Schools: Clay and Duval;
- PATHS: Madison and Okaloosa;
- PeaceBuilders: Franklin and Gulf;
- Positive Action: Charlotte and Leon;
- Project ACHIEVE: Charlotte;
- Safe Schools Ambassadors: Seminole;
- Success in Stages: Build Respect, Stop Bullying: Union; and
- TRUST: Miami-Dade.

Florida Department of Education, *Bullying Programs in Florida Districts*, at http://www.firn.edu/doe/besss/bull_fl.html (last visited March 1, 2007)

⁷ Section 1006.07(1)(a), Florida Statutes.

⁸ Section 1006.07(2), Florida Statutes.

⁹ *Id.*

¹⁰ Section 1006.13(1), Florida Statutes; rule 6A-1.0404(1), Florida Administrative Code.

A school district's code of student conduct may assign more severe disciplinary actions when the offender appears motivated by hostility toward the victim's real or perceived gender, race, religion, color, sexual orientation, ethnicity, ancestry, national origin, political beliefs, marital status, age, social and family background, linguistic preference, or disability.¹¹

Further, current law prohibits discrimination on the basis of race, ethnicity, national origin, gender, disability, or marital status against a student or an employee in the state system of public K-20 education.¹² The Department of Education requires educational institutions to create an educational and work environment free of harassment on the basis of race, sex, national origin or handicap.¹³ The department specifies that an institution is responsible for all acts of harassment between fellow employees, fellow students, or by nonemployees, if the institution knew or should have known of the harassment and failed to take corrective action.¹⁴

A district school board is required to protect a student victimized by a violent crime from further victimization.¹⁵ Except under certain circumstances, a student committing specified violent offenses is prohibited from attending the school attended by, or riding the school bus ridden by, the victim or the victim's sibling.¹⁶ In addition, if a violent offense involves a victim, school officials are required to notify the victim, and the victim's parents or legal guardian if the victim is a minor, of the offense and of the victim's right to press charges against the offender.¹⁷

Current law assigns specific duties for student discipline and school safety to certain school district personnel. The duties include:

- A district school superintendent recommends student discipline and school safety plans to the district school board.¹⁸
- A school principal or designee develops policies for delegating to teachers, instructional staff, and school bus drivers the school's responsibility for control of students.¹⁹ A school principal is directed to fully support the authority of a teacher or school bus driver to remove disobedient, disrespectful, violent, abusive, uncontrollable, or disruptive students from the classroom or school bus.²⁰
- A school principal must also submit reports to the Department of Education on student discipline and school safety.²¹ The Department of Education compiles the reports and publicly reports the data through the School Environmental Safety Incident Reporting (SESIR) system.²² The SESIR system collects data on 22 incidents of crime, violence, and disruptive behaviors that occur on school grounds, on school transportation, and at off-campus, school-sponsored events.
- A school bus driver is responsible for keeping order on the school bus and requiring good behavior from, and protecting, the students on the bus.²³

Safe Schools Funding:

Funding for Safe Schools is included in the Florida Education Finance Program (FEFP) as a categorical fund²⁴ and is appropriated by the Legislature through proviso language in the General Appropriations

¹¹ Rule 6A-1.0404(5), Florida Administrative Code.

¹² Section 1000.05(2)(a), Florida Statutes.

¹³ Rule 6A-19.008, Florida Administrative Code.

¹⁴ *Id.*

¹⁵ Section 1006.13(1)(b), Florida Statutes.

¹⁶ Section 1006.13(5)(b) and (c), Florida Statutes.

¹⁷ Rule 6A-1.0404(6), Florida Administrative Code.

¹⁸ Section 1006.08(1), Florida Statutes.

¹⁹ Section 1006.09(1)(a), Florida Statutes.

²⁰ *Id.*

²¹ Sections 1001.54(3) and 1006.09(6), Florida Statutes.

²² Florida Department of Education, *Statewide Report on School Safety and Discipline Data*, at <http://www.firn.edu/doc/besss/sesir.htm>.

²³ Section 1006.10(1) and (4), Florida Statutes.

Act.²⁵ The Legislature appropriated \$75,350,000 for Safe Schools activities for the 2006-2007 school year. The Safe Schools funds are allocated as follows:

- Each school district receives a \$50,000 base allocation for Safe Schools;
- Two-thirds of the remaining balance is allocated based on the latest official Florida Crime Index provided by the Florida Department of Law Enforcement; and
- One-third is allocated based on each district's share of the state's total unweighted student enrollment.²⁶

School districts may use Safe Schools funds for various activities, including:

- After-school programs for middle school students;
- Other improvements to enhance the learning environment, including implementation of conflict-resolution strategies;
- Alternative school programs for adjudicated youth;
- Suicide prevention programs; and
- Other improvements to make the school a safe place to learn.²⁷

Proposed Changes:

The bill creates the "Jeffrey Johnston Stand Up for All Students Act."²⁸ The bill prohibits the bullying or harassment of any student or school 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, or through a public K-12 computer, computer system, or computer network.

Definitions:

The bill provides definitions of the terms "bullying" and "harassment":

- Bullying: 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.
- Harassment: Threatening, insulting, or dehumanizing gesture, use of computers, or written, verbal, or physical conduct directed against a student or school employee that causes reasonable fear of harm to person or property; substantially interferes with a student's educational performance, opportunities, or benefits; or substantially disrupts the orderly operation of a school.

The bill further specifies that bullying and harassment include:

- Retaliating against a student or school employee for reporting bullying or harassment;
- Reporting bullying or harassment, which reporting is not made in good faith;
- Perpetuating bullying or harassment with the intent to demean, dehumanize, embarrass, or cause physical harm to a student or school employee by incitement or coercion; use of (or providing access to) a school district's computer, computer system, or computer network; or conduct substantially similar to bullying or harassment.

²⁴ Section 1011.62(6)(b)3., Florida Statutes.

²⁵ Specific Appropriation 91, General Appropriations Act for Fiscal Year 2006-2007, chapter 2006-25, Laws of Florida.

²⁶ *Id.*

²⁷ *Id.*

²⁸ In 2005, Jeffrey Johnson of Cape Coral, a victim of bullying and harassment from his classmates at Ida S. Baker High School in Lee County, committed suicide at the age of 15 years. See <http://jeffrejohnston.org> (last visited March 1, 2007).

The bill also provides that existing statutory definitions for computer crimes²⁹ and stalking apply to the bill.

School District Policies:

The bill requires a school district, by December 1, 2007, to adopt a policy prohibiting bullying and harassment on school property, at a school-related or school-sponsored program or activity, on a school bus, or through a district school system's computer, computer system, or computer network. The policy must:

Enforcement:

- Define and prohibit "bullying" and "harassment";
- Establish procedures for reporting and investigating a report of bullying or harassment, including anonymous reporting (the bill prohibits disciplinary action based solely on anonymous reports);
- Prescribe standards of conduct for students and school employees, disciplinary actions for a person who engages in bullying or harassment, and disciplinary actions for a person who wrongfully and intentionally accuses another of bullying or harassment; and
- Establish procedures for referring bullying and harassment reports outside of the school district's authority to the appropriate officials (the bill specifies that a reported act of bullying or harassment is deemed to be a school-related activity).

Victim Services and Prevention:

- Establish procedures for:
 - Referring victims and offenders of bullying or harassment to counseling;
 - Regular reporting to a victim's parents on the actions taken to protect the victim;
 - Immediate notification of a victim's parents of the local agencies where criminal charges may be filed against the offender; and
 - Training students, parents, teachers, school administrators, counseling staff, and volunteers to identify, prevent, and respond to bullying and harassment.

Statewide Reporting:

- Establish procedures for including bullying and harassment in the school district's student discipline and school safety reports submitted to the Department of Education (currently through the School Environmental Safety Incident Reporting (SESIR) system).

The bill allows a school district to adopt separate discrimination policies for different categories of students but requires that all students have the same protection from bullying and harassment. The bill requires a school district to include students, parents, teachers, administrators, school staff, volunteers, community representatives, and local law enforcement agencies in the development of the bullying and harassment policy.

The bill requires the policy to be included in the district's codes of student conduct and employee handbooks and requires ongoing implementation throughout the school year, integrated with a school's curriculum, discipline policies, and violence prevention efforts.

Model Policies:

The bill requires the Department of Education to develop and provide to the school districts by October 1, 2007, model policies prohibiting bullying and harassment.

²⁹ Section 815.03, Florida Statutes, defines terms used to proscribe computer-related crimes throughout chapter 815, Florida Statutes. Of the defined terms, "access," "computer," "computer network," "computer software," "computer system," and "data" are among the terms used in the bill.

Immunity for Reporting:

The bill provides limited civil immunity to a school employee, volunteer, student, or parent who reports bullying or harassment in good faith and according to the school district's policy. The immunity applies for both reporting and failing to stop the bullying or harassment.

Computer Issues:

The bill prohibits a person charged with a disciplinary action under a school district's policy or other prosecution from raising the "physical location" or "time of access" of a computer-related incident as a defense to the charges. The bill also exempts a person who uses a computer, computer system, or computer network from violations of the bullying and harassment policies, when the person acts within the scope of lawful employment or investigates a bullying or harassment violation under the school district's policy.

Contingency of Safe Schools Funds:

The bill provides that, for the 2008-2009 school year, a school district's Safe Schools funding is contingent upon the Department of Education's approval of the district's bullying and harassment policy. The bill also specifies that, each year beginning with the 2009-2010 school year, a school district's Safe Schools funding is contingent upon the district's compliance with "all reporting procedures" in the bill.³⁰

Annual Report to Governor and Legislature:

The bill requires the Commissioner of Education to report to the Governor and presiding officers of the Legislature by January 1 of each year³¹ on the implementation of policies prohibiting bullying and harassment, including student discipline and school safety data.

First Amendment:

The bill requires construction of its provisions consistent with the First Amendment to the United States Constitution.

Effective Date:

The bill provides that it takes effect upon becoming a law.

C. SECTION DIRECTORY:

Section 1. Creates section 1006.147, Florida Statutes, which prohibits bullying and harassment of students and school employees.

Section 2. Provides an effective date.

³⁰ In paragraph (4)(k), a school district is required to submit student discipline and school safety reports to the Department of Education (currently through the School Environmental Safety Incident Reporting (SESIR) system). The bill appears to make Safe Schools funding contingent upon the submission of these reports.

³¹ The Department of Education notes that the first annual report to the Governor and Legislature is due one month after the school districts are required to submit their bullying and harassment policies to the department. The department recommends that the Legislature amend the bill to allow more time for the department to prepare its first annual report.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

According to the Department of Education, the department would need approval for one additional full-time-equivalent position (FTE) and \$71,487 for salary, benefits, and related expenses. The department estimates that the position is needed for the developing, monitoring, training, and reporting requirements of the bill.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not impact the revenues of counties or municipalities. See FISCAL COMMENTS for the revenue impact on school districts.

2. Expenditures:

The bill does not impact the expenditures of counties or municipalities. See FISCAL COMMENTS for the impact on school district expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The Legislature appropriated \$75,350,000 for Safe Schools for fiscal year 2006-2007. The appropriation included an allocation formula that guaranteed a school district at least \$50,000. The bill requires the withholding of Safe Schools funds for noncompliance with reporting requirements. The withholding of Safe Schools funds may adversely affect other district safety and security activities

The bill requires school districts to adopt policies, revise codes of student conduct and employee handbooks, train employees, and revise reporting of student discipline and school safety data. The Department of Education estimates that there would be administrative and programming costs of implementing these requirements but does not quantify the estimate.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require a county or municipality to spend funds or take an action requiring expenditures, reduce the authority that counties and municipalities had as of February 1, 1989, to raise revenues in the aggregate, or reduce the percentage of a state tax shared in the aggregate with counties and municipalities as of February 1, 1989.

2. Other:

The bill requires that a school district's 2008-2009 Safe Schools funding is contingent upon approval of the district's bullying and harassment policy by the Department of Education. The bill does not provide criteria for the department's approval of a district's policy, nor does the bill establish a process or timelines for a school district to submit its policy for approval or to seek review of an

adverse decision by the department. The bill accordingly gives the department unlimited discretion in determining whether to approve, disapprove, or take no action on a district's policy. Without minimal standards for these actions, the bill may raise a constitutional concern.³²

B. RULE-MAKING AUTHORITY:

The bill does not create new authority for rulemaking; however, the State Board of Education and district school boards have authority to adopt rules to implement provisions of law conferring duties upon them.³³ In addition, a district school board is required to adopt rules for the control and discipline of students.³⁴

C. DRAFTING ISSUES OR OTHER COMMENTS:

Section 1 of the bill includes several drafting issues, which are summarized as follows:

- The bill uses different language to express the locations where bullying and harassment are prohibited in subsection (2) compared to the locations where a school district's policy is required to prohibit bullying and harassment in subsection (4). The difference in the language may create a misunderstanding of the intended application of the bill.
- In paragraph (3)(c), the bill specifies that definitions relating to stalking in section 784.048, Florida Statutes, are applicable to the bill. Section 784.048, Florida Statutes, provides various criminal penalties for stalking and defines four terms: "harass," "course of conduct," "credible threat" and "cyberstalk." Of these terms, none is used in the bill. However, the bill uses the similar term, "harassment," but provides a definition for the term in paragraph (3)(b). The bill uses the term "stalking," but the term is not defined. Throughout section 784.048, Florida Statutes, several crimes are designated as the "offense of stalking" or "offense of aggravated stalking."
- In subsection (3), the bill defines the terms "bullying" and "harassment." In paragraph (4)(b), the bill also directs school districts to establish their own definitions. The bill does not specify whether school districts are required to incorporate the definitions in subsection (3) within their definitions or whether the definitions in subsection (3) provide nonbinding guidance for school districts.
- In subsection (4), the bill requires a school district to adopt a "policy prohibiting bullying and harassment" and authorizes a district to establish separate "discrimination policies" that include categories of students. Since current law prohibits discrimination on the basis of race, ethnicity, national origin, gender, disability, or marital status against a student or employee in the state system of public K-20 education,³⁵ the bill is unclear whether it authorizes school districts to prohibit discrimination against new categories of students or whether it allows a school district to establish separate bullying and harassment policies for different categories of students (e.g., one policy for elementary school, a second policy for middle school, and a third policy for high school).
- In paragraphs (4)(d) and (e), the bill requires a school district's bullying and harassment policy to establish consequences for a "person" who commits violations of the bill's provisions. The bill does not specify the universe of persons who would be subject to the policy (e.g., students, school district personnel, volunteers).

³² Unlawful delegation of legislative authority to the Department of Education in violation of Section 3, Article II of the State Constitution, which provides as follows:

Branches of government.—The powers of the state government shall be divided into legislative, executive and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein.

³³ Sections 1001.02(1) and 1001.41(2), Florida Statutes.

³⁴ Section 1006.07(1)(a), Florida Statutes.

³⁵ Section 1000.05(2)(a), Florida Statutes.

- In subsection (7)(a), the bill prohibits a person charged with a disciplinary action under a school district's policy or other "prosecution initiated under this section" from raising certain defenses to the charges. Although the bill prohibits bullying and harassment in subsection (2), and a school district's policies are required to prohibit bullying and harassment under subsection (4), the bill does not provide criminal penalties that would be subject to prosecution.
- In subsection (8), the bill requires that a school district's 2008-2009 Safe Schools funding is contingent upon approval of the district's bullying and harassment policy by the Department of Education. The bill does not otherwise specify that a district is required to submit its policy to the Department of Education (See A.2. above).

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES