

**STORAGE NAME:** h0267s2.llc.doc  
**DATE:** April 18, 2001

**HOUSE OF REPRESENTATIVES  
AS FURTHER REVISED BY THE  
COUNCIL FOR LIFELONG LEARNING  
ANALYSIS**

**BILL #:** CS/CS/HB 267

**RELATING TO:** School attendance by violent offenders

**SPONSOR(S):** Council for Lifelong Learning, Committee on Juvenile Justice and Representative(s)  
Kravitz, Barreiro, Davis, and others

**TIED BILL(S):**

**ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:**

- (1) GENERAL EDUCATION YEAS 10 NAYS 0
  - (2) JUVENILE JUSTICE YEAS 8 NAYS 0
  - (3) COUNCIL FOR LIFELONG LEARNING YEAS 13 NAYS 0
  - (4)
  - (5)
- 

**I. SUMMARY:**

CS/CS/HB 267 creates s. 232.265, F.S., which prohibits certain students from attending the same school or riding on a school bus with the victim or sibling of the victim of an enumerated felony offense for which the offending student has plead "guilty" or nolo contendere, or for which the offending student has been adjudicated guilty of, or delinquent for, or was found to have committed, regardless of whether adjudication was withheld. The bill requires the Department of Juvenile Justice (DJJ) to provide notice to the appropriate school district of the adjudication or plea, and the operation of this bill. An exception is provided if the court's disposition order "reflects" that the victim or victim's parents stated in writing or in open court that he or she did not object to the victim and offender attending the same school or riding the same bus.

The Council Substitute requires the school district in which the offending student resides to allow the offending student to attend another school in the district, so long as the victim or victim's sibling does not attend such school. The offending student's parents or legal guardians are responsible for arranging and paying for transportation associated with or required by the offender's attending another school. If the offender is unable to attend any other school in the residing district and is prohibited from attending school in another school district, the residing district must take reasonable precautions to separate the offender from the victim while on school grounds or school transportation.

The Council Substitute directs school principals to make full and effective use of newly-created s. 232.265, F.S., as well as the provisions of current s. 232.26(2), F.S., which relates to suspensions and expulsions. A principal who doesn't comply with these provisions is ineligible for the performance pay increases provided in s. 230.23(5)(c), F.S. However, the bill also provides that if the party responsible for notifying the school fails to properly provide such notification, the principal shall be eligible for the incentive.

CS/CS/HB 267 expands s. 230.235, F.S., to require each school district to include victimization of students in the district's policy of zero tolerance. The policy must include taking steps necessary to protect a victim of violent crime from any further victimization.

The bill requires the court to address the appropriateness of a "no contact" order in favor of the victim at delinquency proceedings involving the offending student.

The CS/CS appears to have minimal fiscal impact and provides an effective date of July 1, 2001.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- |                                   |   |                             |   |
|-----------------------------------|---|-----------------------------|---|
| 1. <u>Less Government</u>         | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u>             | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u>      | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u>      | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/>            |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

**Similar laws in other states**

Both Washington and Nevada have laws similar to the one proposed in this bill. Washington's law was passed in 1994, Nevada's in 1997. In Washington, the state's Victim Witness Protection Program tracks both victims and offenders. Since passage of the law in Washington, there have been about 20 incidents in which the law was applicable.

Two problems noted in the application of Washington's law regard instances of incest (under Washington's law, the two children would be allowed to live in the same house, eat meals together, ride the bus together [Washington's law has no prohibition against riding the same bus], yet would not be allowed to attend the same school), and instances in which there is no alternate school within a reasonable distance (the offender's parents would either be forced to travel the long distance, or to engage in home schooling).

**Florida's constitutional responsibility to educate**

The Florida Constitution provides that:

*It is...a paramount duty of the state to make adequate provision for the education of all children residing within its borders. Adequate provision shall be made by law for a uniform, efficient, safe, secure and high quality system of free public schools that allows students to obtain a high quality education...*

**Transportation of students**

Section 234.01, F.S., sets forth the circumstances under which transportation of students must be provided. School boards, after considering recommendations of the superintendent, shall provide transportation to:

1. Handicapped students in prekindergarten and kindergarten, *provided transportation is necessary to provide adequate educational facilities and opportunities which would otherwise not be adequate;* and
2. Students whose homes are more than a reasonable walking distance, as defined by the rules of the commissioner, from the nearest appropriate school

### **Authority of principal**

Section 232.26(1)(c), F.S., provides the principal with authority to recommend to the superintendent the expulsion of any student who has committed a serious breach of conduct, including, but not limited to, willful disobedience, open defiance of authority of a member of his or her staff, violence against persons or property, or any other act which substantially disrupts the orderly conduct of the school. Any recommendation of expulsion shall include a detailed report by the principal or the principal's designated representative on the alternative measures taken prior to the recommendation of expulsion.

Section 232.26(2), F.S., states that suspension proceedings may be initiated against any pupil enrolled as a student who is formally charged (not just arrested) with a felony for an incident which allegedly occurred on property other than public school property, if that incident is shown, in an administrative hearing to have an adverse impact on the educational program, discipline, or welfare in the school in which the student is enrolled. Any pupil who is suspended as the result of such 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. The school board is given the authority to expel students if they have been found to have committed a felony, provided that the expulsion does 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.

### **Laws Affecting Florida Schools**

Florida law does not currently address school assignment or school bus transportation of students who have been charged with a criminal offense against other students or their siblings.

Section 230.235, F.S., expresses the state's "Policy of Zero-Tolerance for Crime." The section requires each school district to adopt zero-tolerance policies for crime and substance abuse.<sup>1</sup> F.A.C. Rule 6A-1.0404, "Zero Tolerance for School Related Violent Crimes", requires each school district to invoke the most severe consequences provided for in the applicable Code of Student Conduct<sup>2</sup> in dealing with students who engage in the following violent criminal acts on **school** property, on **school-sponsored** transportation, or at **school-sponsored** activities:

- Homicide
- Sexual battery
- Armed robbery
- Aggravated battery
- Battery or aggravated battery on school personnel
- Kidnapping or abduction
- Arson
- Possession, use, or sale of any firearm; or
- Possession, use, or sale of any explosive device.

Typically, the most severe consequence is expulsion. Section 232.26(1)(c), F.S., provides school principals with authority to recommend to the superintendent that any student who has committed a serious breach of conduct be expelled. 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.<sup>3</sup>

---

<sup>1</sup> s. 230.235(1), F.S.

<sup>2</sup> s. 230.23(6)(d), F.S.

<sup>3</sup> s. 232.26(1)(c), F.S.

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.<sup>4</sup>

Section 232.26(2), F.S., provides that suspension proceedings may be initiated against any pupil enrolled as a student who is formally charged with a felony for an incident which allegedly occurred **on property other than public school property**, if the incident is shown in an administrative hearing to have an adverse impact on the educational program, discipline, or welfare of the school in which the offending pupil is enrolled. Any pupil who is suspended as the result of such proceedings may be suspended from all classes of instruction on public school grounds during regular classroom hours for a period of time as determined by the superintendent.<sup>5</sup> Unlike other suspensions, suspension pursuant to s. 232.26(2), F.S., may exceed 10 days.<sup>6</sup> The school board has authority to expel students found to have committed a felony offense.<sup>7</sup> However, the expulsion must not affect the delivery of educational services to such student.<sup>8</sup> If appropriate, the offending student is to be enrolled in a residential, nonresidential, alternative, daytime, or evening program outside of the regular school setting.<sup>9</sup>

### News accounts

*The Florida Times-Union* reports that 6,213 children in Florida were sexually assaulted by other children from July 1998 to June 1999.<sup>10</sup> The newspaper also reports that during the 1998-99 school year, 159 rapes and 2,830 incidents of sexual harassment were reported to schools across the state.<sup>11</sup>

*The Florida Times-Union* recently reported the story of a Clay County teen who rides the school bus each day with her rapist.<sup>12</sup> The newspaper also reported the story of a student who was home-schooled for a year following her attack by another child, and then later returned to the public school system where she discovered her attacker was attending the same school.<sup>13</sup> The Clay County superintendent reportedly claimed that nothing could be done due to the criminal resolution of the case and the absence of a restraining order.<sup>14</sup>

### C. EFFECT OF PROPOSED CHANGES:

The bill creates s. 232.265, F.S., which prohibits certain students from attending the same school or riding on a school bus with the victim or sibling of the victim of an enumerated felony offense for which the offending student has plead "guilty" or nolo contendere, or for which the offending student has been adjudicated guilty or delinquent, or was found to have committed, regardless of whether adjudication was withheld. The offenses enumerated in the bill relate to felony violations of:

- Chapter 782, relating to homicide;
- Chapter 784, relating to assault, battery, and culpable negligence;

---

<sup>4</sup> *Id.*

<sup>5</sup> s. 232.26(5), F.S.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *The Florida Times-Union*, No. 335, pp. A1 through A5, November 30, 2001.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

- Chapter 787, relating to kidnapping, false imprisonment, luring or enticing a child, and custody offenses;
- Chapter 794, relating to sexual battery;
- Chapter 800, relating to lewdness and indecent exposure;
- Chapter 827, relating to the abuse of children;
- 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 bill requires DJJ to provide notice to the appropriate school district of the adjudication or plea involving an enumerated offense, as well as the operation of the bill.

The bill provides an exception from the requirement that the offender and victim attend different schools and ride different buses, providing that the court's disposition order "reflects" that the victim or victim's parents stated in writing or in open court that he or she did not object to the victim and offender attending the same school or riding the same bus.

The bill provides that the school district in which the offending student resides must allow the offending student to attend another school in the district, so long as the victim or victim's sibling does not attend such school. If the offender is unable to attend any other school in the residing district and is prohibited from attending school in another school district, the school district must take every reasonable precaution to keep the offender separated from the victim while on school grounds or on school transportation. The parents or legal guardians of the offending student are responsible for arranging and paying for transportation associated with or required by the offender's attending another school.

In connection with the newly-created s. 232.265, F.S., CS/HB 267 also expands s. 230.235, F.S., to require each school district to adopt a policy of zero tolerance for victimization of students, in addition to the current zero tolerance policy for crime and substance abuse. The policy must include taking all steps necessary to protect the victim of any violent crime from any further victimization. Each school district must work cooperatively with DJJ to ensure that all "no contact" orders entered by the court are reported and enforced, and that all steps necessary are taken to protect the victim of any such crime.

In addition, the bill amends s. 960.001, F.S., which addresses guidelines for fair treatment of victims and witnesses. The bill provides that when the victim of an offense committed by a juvenile is a minor, DJJ is to request information regarding whether the offender and the victim or sibling of the victim attend the same school. If the offender is under the criminal court jurisdiction, the Department of Corrections is to request the information. After this information has been obtained, the appropriate agency is to notify the victim's parent or legal guardian of the right to attend the sentencing or disposition of the offender, and request that the offender be required to attend another school.

The bill also amends s. 985.23(1)(d), F.S., which relates to disposition hearings in juvenile delinquency cases. The bill requires the court make a finding related to the appropriateness of entering a "no contact" order in favor of the victim at delinquency proceedings involving the offending student. The bill amends s. 985.228, F.S. (relating to adjudicatory hearings, withheld adjudications, and orders of adjudication) and s. 985.231, F.S. (relating to powers of disposition in delinquency cases) for purposes of incorporating the amendment to s. 985.23(1)(d), F.S.

To ensure that the local school districts comply with the intent and provisions of the bill, CS/CS/HB 267 directs school principals to make full and effective use of the provisions of current s. 232.26(2), F.S., relating to suspensions and expulsions, and newly-created s. 232.265, F.S., which prohibits offenders from attending the same school or riding the same school bus as their victims in certain circumstances. A principal who doesn't comply with these provisions is ineligible for the performance pay increases provided in s. 230.23(5)(c), F.S. However, the bill also provides that if the party responsible for notifying the school fails to properly provide such notification, the principal shall be eligible for the incentive.

The bill appears to have minimal fiscal impact and provides an effective date of July 1, 2001.

D. SECTION-BY-SECTION ANALYSIS:

Please see "Effect of Proposed Changes" section.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

This bill is not expected to result in significant expenditures by state government. Please see "Fiscal Comments" section.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

Department of Juvenile Justice

DJJ estimates that the agency's costs associated with notifying schools, victims, and their 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 99-00, 37,249 youth were either placed on probation or were committed and eligible for subsequent conditional release placement. Based on this data, DJJ estimates a recurring fiscal impact for notification of approximately \$13,410 (37,249 youth X .36 =

\$13,410). These costs may be offset by workload savings if the bill results in reduced future victimization.

DJJ anticipates that indirect effects of the bill will have an indeterminate impact on workload for juvenile probation officers and DJJ's recently-created victims' coordinators. Victims' 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.

Department of Education

The bill could have a negative, but indeterminate, impact on recidivism rates if offenders fail to attend or drop out of their new school setting. The Department of Education reports that 60 percent of middle school students who transfer to new schools fail to continue attendance.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

Section 1, Art. IX, Florida Constitution, provides for the following:

It is...a paramount duty of the state to make adequate provision for the education of all children residing within its borders. Adequate provision shall be made by law for a uniform, efficient, safe, secure and high quality system of free public schools that allows students to obtain a high quality education...

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On March 27, 2001, the House Committee on Juvenile Justice adopted a substitute "strike-everything" amendment to the General Education amendment that was traveling with the bill, and reported the bill favorably as a committee substitute. The original bill, as filed, dealt mainly with the issue of offenders and their victims and siblings of victims attending the same school and riding the same school bus. Please see "Effects of Proposed Changes" for all other issues addressed in the committee substitute.

On April 17, 2001, the Council for Lifelong Learning adopted four amendments. These amendments:

- Provide an exception from the requirement that the offender and victim attend different schools and ride different buses, providing that the court's disposition order "reflects" that the victim or victim's parents stated in writing or in open court that he or she did not object to the victim and offender attending the same school or riding the same bus; and
- Provide that if the party responsible for notifying the school of the applicability of this bill's provisions in an incident involving the school's students fails to properly provide such notification, the principal shall be not be ineligible for the incentive established in s. 230.23(5)(c) F.S.

The Council then made the bill a CS/CS.

VII. SIGNATURES:

COMMITTEE ON JUVENILE JUSTICE:

Prepared by:

Gip Arthur

---

Staff Director:

Ouida Ashworth

---

AS REVISED BY THE COMMITTEE ON JUVENILE JUSTICE:

Prepared by:

Shari Z. Whittier

---

Staff Director:

Lori Ager

---

AS FURTHER REVISED BY THE COUNCIL FOR LIFELONG LEARNING:

Prepared by:

Gip Arthur

---

Staff Director:

Patricia Levesque

---