

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 184

SPONSOR: Education Committee and Senator Lynn

SUBJECT: Student Discipline and School Safety

DATE: January 8, 2004 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>deMarsh-Mathues</u>	<u>O'Farrell</u>	<u>ED</u>	<u>Favorable/CS</u>
2.	<u>Golden</u>	<u>Newman</u>	<u>AED</u>	<u>Favorable</u>
3.	_____	_____	<u>AP</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill deletes the notice requirement in the code of student conduct of possible disciplinary action or criminal penalties for possession of an electronic telephone pager by a student while he or she is on school property or in attendance at a school function. Notice must be given to all teachers, school personnel, students, and parents at the beginning of each school year that using a wireless communications device to commit a criminal act may result in the imposition of disciplinary action or criminal penalties. Under the bill, a student may possess a wireless communications device while he or she is on school property or in attendance at a school function. District school boards must adopt rules governing the student's use of a wireless communications device while he or she is on school property or in attendance at a school function.

This bill substantially amends s. 1006.07, F.S., and provides an effective date of July 1, 2004.

II. Present Situation:

Under s. 1006.07(2)(d), F.S., school districts must adopt and annually distribute a code of student conduct for elementary, middle, and high schools. The code must be based on the district's rules governing student conduct and discipline. The contents must include specific notice requirements, including notice that the illegal use, possession, or sale of controlled substances, as defined in chapter 893, F.S., or the possession of electronic telephone pagers is grounds for disciplinary action and may result in criminal penalties. The sanctions are applicable to a student while he or she is on school property or attending a school function. The notice requirements and sanctions in s. 1006.07, F.S., relating to the possession of electronic telephone pagers, were enacted in section 18 of chapter 89-303, L.O.F.

Another provision of law (s. 397.951, F.S.) requires the Department of Children and Family Services to ensure that substance abuse treatment providers employ all appropriate available sanctions necessary to engage, motivate, and maintain a child in treatment. This includes sanctions (e.g., disciplinary action by the school and possible criminal penalties pursuant to s. 1006.09(1)-(4), F.S.) for any student who possesses an electronic telephone pager while he or she is on school property or attending a school function.

Current law (s. 1006.09, F.S.) provides for the school principal's responsibilities for discipline and school safety, including suspension and expulsion. The School Code does not define the term "electronic telephone device." The Florida Department of Education advised school districts that the term "electronic telephone pagers" in s. 1006.07(2)(d), F.S., does not include cellular telephones. The regulation of the possession or use of cellular telephones or other electronic devices is solely within the discretion of the district school board.¹

Section 934.215, F.S., provides a third degree felony, punishable as provided for in ss. 775.082, 775.083, or 775.084, F.S., for any person who uses a two-way communications device to facilitate or further the commission of any felony offense. This includes, but is not limited to, a portable two-way wireless communications device. This section does not make possession per se of these communications devices a criminal offense.

According to staff for the Office of the Public Counsel, the rules of the Florida Public Service Commission do not define the term "wireless communications device," as these devices are not within the Commission's regulatory scheme. The Federal Communications Commission (FCC) regulates wireless communications companies.

The Education Commission of the States recently reviewed state policies restricting student possession of pagers and cellular phones on school property.² The review noted that these restrictions were enacted in response to state concerns that students were carrying these devices to participate in gang activity or drug sales and that the devices served as distractions to the classroom setting. Some states have revised these restricted policies, in part due to the use of cell phones to contact family members during the 1999 mass shootings on the campus of Columbine High School and during the terrorist attacks on September 11, 2001. According to the review, the following states repealed provisions of law restricting the possession of cell phones or pagers: California, Illinois, Indiana, Kentucky, Maryland, Nevada, Oklahoma, South Carolina, and Virginia. The review also noted the following:

- States currently restricting the possession of pagers or cellular phones include Alabama, Arkansas, Connecticut, Florida, Georgia, Illinois, Louisiana, Maryland, Michigan, New Jersey, Pennsylvania, Rhode Island, and Wisconsin.

¹ *Student Use of Cellular Telephones on School Property*, Chancellor Jim Warford, Florida Department of Education, September 16, 2003.

² "Pagers and Cellular Phones on School Property," *State Notes*, Education Commission of the States, May 2003, http://www.ecs.org/ecsmain.asp?page=/html/publications/home_publications.asp?am=5.

- States providing policymaking to local authorities for the use or possession of these devices include Connecticut, Illinois, Kentucky, Nevada, Ohio, Oklahoma, South Carolina, Tennessee, Texas, Virginia, and Washington.

While prohibiting pocket pagers or similar electronic communication devices, Alabama law allows an exception for a student's health or other extraordinary needs, upon approval by the Board of Education. Arkansas law allows a similar exemption for students to possess a paging device, beeper, or similar electronic device for health. Arkansas law also provides an exemption for use of these devices after normal school hours for extracurricular activities.

III. Effect of Proposed Changes:

The bill deletes the notice requirement in the code of student conduct of possible disciplinary action or criminal penalties for possession of an electronic telephone pager by a student while he or she is on school property or in attendance at a school function. Notice must be given to all teachers, school personnel, students, and parents at the beginning of each school year that using a wireless communications device to commit a criminal act may result in the imposition of disciplinary action or criminal penalties. Under the bill, a student may possess a wireless communications device while he or she is on school property or in attendance at a school function. District school boards must adopt rules governing the student's use of a wireless communications device while he or she is on school property or in attendance at a school function.

The bill provides an effective date of July 1, 2004.

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 who violate the provisions of the bill may be subject to criminal penalties.

C. Government Sector Impact:

School districts may incur some costs in adopting rules and revising the code of student conduct to reflect the changes under this bill, as well as for enforcing the bill's requirements. However, it is a "best practice" for a district school board and school administrators to annually review and revise discipline policies.³

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

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

³ School Safety & Security Best Practices with their associated indicators, developed by the Office of Program Policy Analysis and Government Accountability, See http://www.firn.edu/doe/besss/safe_passage/2003pdf/2002_best_practices_and_indicators.pdf