

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Education Pre-K-12 Appropriations Committee

BILL: CS/CS/CS/CS/SB 1540

INTRODUCER: Education Pre-K-12 Appropriations, Judiciary Committee, Criminal Justice Committee, Education Pre-K-12 and Senators Wise and Sobel

SUBJECT: Zero Tolerance Policies/Schools

DATE: April 20, 2009 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	deMarsh-Mathues	Matthews	ED	Fav/CS
2.	Dugger	Cannon	CJ	Fav/CS
3.	deMarsh-Mathues	Matthews	ED	Favorable
4.	Treadwell	Maclure	JU	Fav/CS
5.	Armstrong	Hamon	EA	Fav/CS
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

The bill requires district school boards to revise their zero-tolerance policies to:

- Define petty misconduct and offenses that pose a serious threat to school safety;
- Clarifies that zero-tolerance policies do not require the reporting of petty misconduct and certain misdemeanors to a law enforcement agency;
- Provide for a review of the disciplinary action taken against a student pursuant to s. 1006.07, F.S.; and
- Consider the particular circumstances surrounding the student's misbehavior in any disciplinary or prosecutorial action.

The bill also requires cooperative agreements to specify guidelines for offenses that pose a serious threat to school safety and reporting them to law enforcement.

The bill also requires a district school board having a policy authorizing corporal punishment to review such policy every three years during a public school board meeting. If the meeting does not occur, the corporal punishment policy expires.

Finally, the bill prohibits a student from wearing below-waist underwear while on the grounds of a public school when the underwear exposes sexual organs in an indecent manner. The bill provides penalties for the offense.

This bill substantially amends sections 1002.20, 1006.09, and 1006.13, and creates an undesignated section of the Florida Statutes.

II. Present Situation:

Code of Student Conduct

Each school board must adopt a code of student conduct that includes consistent policies and specific grounds for disciplinary action, including in-school suspension, out-of-school suspension, expulsion, and 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.¹ The code must provide notice that certain offenses are grounds for disciplinary action and may result in the imposition of criminal penalties. Additionally, the code must include procedures to be followed for actions requiring discipline, including corporal punishment.

Zero Tolerance for Crime and Victimization

School districts must adopt zero-tolerance policies for crime, substance abuse, and the victimization of students.² 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.³ The law does not require district policies to make a distinction between petty offenses and those of a more serious nature.

The law requires a procedure for ensuring that school personnel properly report delinquent acts and crimes to law enforcement and that all no contact orders entered by the court are enforced.⁴ These requirements are implemented through guidelines in cooperative agreements between school boards, law enforcement, and the Department of Juvenile Justice (DJJ). The agreements must include the role of school resource officers, if applicable, in addressing reported incidents and special circumstances in which school officials may address incidents without filing a report to law enforcement.

The current State Board of Education rule for zero tolerance lists nine offenses which subject a student to the most severe disciplinary action provided for by school board policy and provides that all of these offenses must be reported to local law enforcement agencies.⁵ Districts must

¹ Section 1006.07(2), F.S.

² Section 1006.13(1)(a), F.S.

³ Section 1006.13(2), F.S.

⁴ Section 1006.13(3), F.S.

⁵ Rule 6A-1.0404(2), F.A.C. These offenses are homicide (murder, manslaughter); sexual battery; armed robbery; aggravated battery; battery or aggravated battery on a teacher or other school personnel; kidnapping or abduction; arson; possession, use

ensure that appropriate due process procedures are followed prior to taking disciplinary action and that discipline is administered in an equitable manner.⁶

Corporal Punishment

Current Law

Corporal punishment is the moderate use of physical force or physical contact by a teacher or principal as may be necessary to maintain discipline or to enforce school rule; however, it does not include the use of such reasonable force by a teacher or principal as may be necessary for self-protection or to protect other students from disruptive students.⁷

The law authorizes and circumscribes the use of corporal punishment as a form of student discipline. Individual school districts have the authority to limit the manner and circumstances by which a teacher may impose corporal punishment.⁸

When necessary, teachers and other instructional personnel may use corporal punishment in accordance with the law and within the framework of the district school board's code of student conduct when managing student behavior.⁹ The law contains certain minimum guidelines, which must be followed before a school official may use corporal punishment in disciplining a student. A teacher or principal may administer corporal punishment only in the presence of another adult who is informed beforehand, and in the student's presence, of the reason for the punishment.¹⁰

Except in the case of excessive force or cruel and unusual punishment, a teacher or other instructional staff, a principal or the principal's designated representative, or a bus driver are not civilly or criminally liable for any action carried out in conformity with State Board of Education and district school board rules regarding the control, discipline, suspension, and expulsion of students, including, but not limited to, any exercise of authority for corporal punishment.¹¹

*Trends in Discipline and the Decline in the Use of Corporal Punishment*¹²

Over the past 15 years, the use of corporal punishment by Florida school districts has drastically decreased. For the 2006-2007 school year, there were 5,245 incidents of corporal punishment, compared to 24,198 in 1991-1992.¹³ This represents a cumulative decrease of over 78 percent.

or sale of any firearm; or possession, use or sale of any explosive device. Districts must amend their code of student conduct to ensure consistency with these provisions.

⁶ Rule 6A-1.0404(3), F.A.C.

⁷ Section 1003.01(7), F.S.

⁸ Section 1003.32(1)(k), F.S., previously s. 232.27, F.S.

⁹ *Id.*

¹⁰ Sections 1002.20(4)(c) and 1003.32(1)(k), F.S. A teacher or principal who has administered corporal punishment must, upon request, provide the student's parent with a written explanation of the reason for the punishment and the name of the other adult who was present.

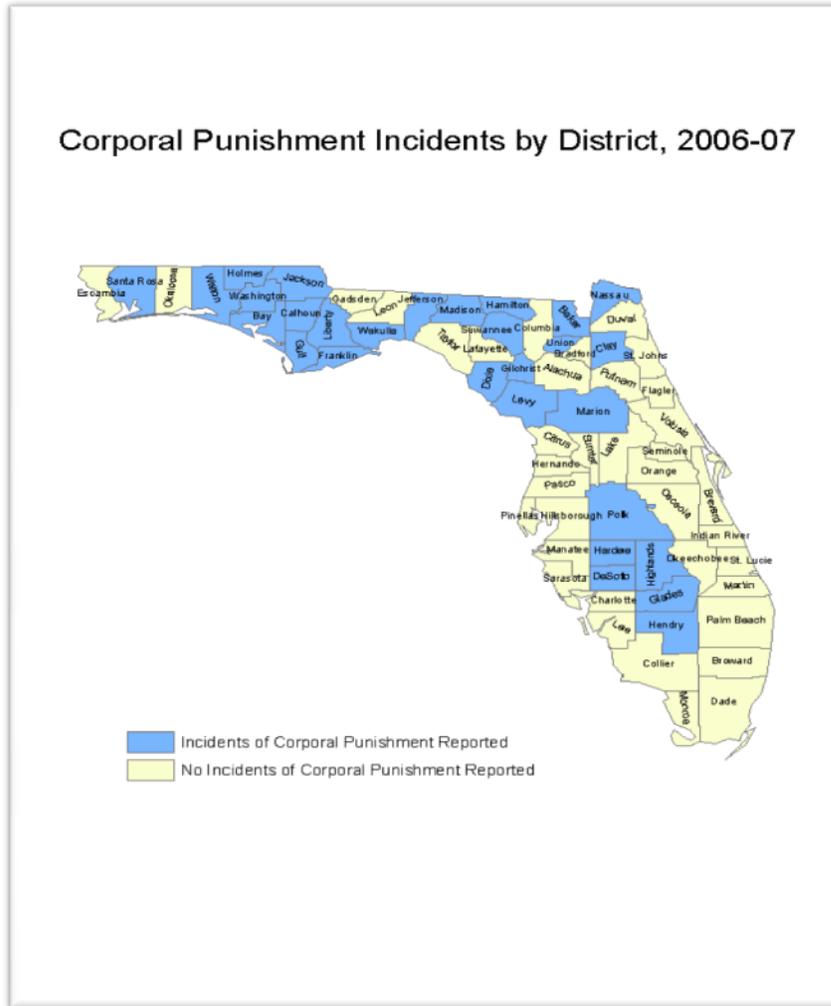
¹¹ Sections 1006.11(2) and 1012.75(1), F.S.

¹² Florida Department of Education, *Trends in Discipline and the Decline in the Use of Corporal Punishment*, Florida Information Note, Series 2008-13F (Jan. 2008), available at <http://www.fl DOE.org/eias/eiaspubs/pdf/discipline.pdf> (last visited Apr. 8, 2009).

¹³ Rule 6A-1.0402(2), F.A.C., requires each school district to report this information.

With the decline in use of corporal punishment, there have been increases in alternative forms of discipline, such as in-school and out-of-school suspensions.

Figure 1¹⁴



The Department of Education notes the following:

- In 2006-2007, 29 school districts reported students receiving corporal punishment. In 1988-1989, all 67 school districts administered corporal punishment;¹⁵
- In 1989-1990, seven districts (Broward, Charlotte, Dade, Martin, Monroe, Palm Beach, and Sarasota) reported no use of corporal punishment. This was the first year that any district reported no use of corporal punishment at all;
- Since then, districts have steadily reported fewer incidences of corporal punishment;

¹⁴ Florida Department of Education, *supra* note 12.

¹⁵ This data reflects how many times discipline was administered, not the number of students receiving the discipline. The districts were: Baker, Bay, Calhoun, Clay, DeSoto, Dixie, Franklin, Gilchrist, Glades, Gulf, Hamilton, Hardee, Hendry, Highlands, Holmes, Jackson, Jefferson, Levy, Liberty, Madison, Marion, Nassau, Polk, Santa Rosa, Suwannee, Union, Wakulla, Walton, and Washington.

- The most significant decrease in the last 15 years occurred between 2004-2005 and 2005-2006 with 29.9 percent fewer incidents of corporal punishment reported;
- There appears to be a correlation between the decline of corporal punishment and a rise in the number of suspensions for students in Florida's public schools; and
- Factors accounting for the rise in suspensions may include the use of suspensions as an alternative form of discipline in place of corporal punishment, as determined by policy decisions.

Public School Dress Requirements

Under current law, there is authority for district school boards to impose reasonable restrictions on student dress. Specifically, s. 1001.43(1)(b), F.S., authorizes school districts to require uniforms or impose other dress-related requirements if the district determines that the requirements are necessary for the safety or welfare of the student body or school personnel. Although s. 1006.07, F.S., does not explicitly reference a standard of student dress, it requires each district school board to provide for the control of students and to preserve the health, safety, and welfare of students. Finally, s. 1001.51(14), F.S., authorizes a district school superintendent to enforce all laws, rules of the State Board of Education, and rules of the district school board.

Prohibition on the exposure of undergarments is not specifically referenced in the school code.

There are a growing number of cities that are banning the exposure of underwear.¹⁶ Opa-Locka, Florida, enacted an ordinance in this regard on October 24, 2007, in schools, parks, and city-owned property.¹⁷ In addition, the Atlanta Board of Education has considered restrictions in all of the system's public schools.¹⁸ Finally, in 2005, the Virginia House of Delegates passed a bill that would ban below-waist undergarments, although the bill did not ultimately pass the Virginia Senate.¹⁹

III. Effect of Proposed Changes:

The bill revises the requirements for zero-tolerance policies with the anticipation that there will be fewer incidences of petty acts of misconduct or misdemeanors reported to law enforcement. Rather, districts would handle these offenses administratively at the district level without the involvement of law enforcement.

The bill clarifies that district zero-tolerance policies do not require school districts to report to law enforcement acts of petty misconduct and misdemeanors, including, but not limited to, disorderly conduct, disrupting a school function, simple assault or battery, affray,²⁰ theft of less than \$300, trespassing, and vandalism of less than \$1,000. School districts are tasked with

¹⁶ Kansas City Star, *Sagging-pants ban has its critics*, December 2, 2007, available at <http://www.kansascity.com/news/local/story/387149.html>; Palm Beach Post, Pull-up or pay up; Riviera Beach mayor seeks ban on saggy pants, November 16, 2007, available at http://www.palmbeachpost.com/localnews/content/local_news/epaper/2007/11/16/s1a_RBSAGGY_1116.html?imw=Y.

¹⁷ See Palm Beach Post, *supra* note 2.

¹⁸ Atlanta Journal-Constitution, *Atlanta's school board might ban saggy pants*, December 10, 2007.

¹⁹ HB 1981, 2005 Gen. Assem., Reg. Sess. (Va. 2005)

²⁰ A public brawl or fight.

defining petty acts of misconduct. While the bill provides examples of this type of misconduct (i.e., minor fights or disturbances), it does not provide any objective criteria or guidelines to permit classification of the offense as petty.²¹ Accordingly, there may not be uniformity in the manner in which these offenses are reported to law enforcement agencies. However, school districts will have flexibility to determine the need to report certain petty offenses on a case-by-case basis.

Under the bill, districts must also define offenses that pose a serious threat to school safety and report them to law enforcement. (Currently, the “zero tolerance” law requires reporting 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.²² It does not set a minimum threshold for offenses that can be reported.)

Zero tolerance policies must also specify a procedure to review the disciplinary action taken against a student pursuant to s. 1006.07, F.S. Current law provides for an administrative hearing for a student who has been expelled from school.²³ The law does not provide for this type of hearing for a student who is suspended from school. For any disciplinary or prosecutorial action, the bill requires district policies to consider the particular circumstances surrounding the student’s misbehavior.

In addition, the bill requires a district school board having a policy authorizing corporal punishment to review such policy every three years during a public school board meeting. If the meeting does not happen, the corporal punishment policy expires.

Finally, the bill prohibits a student from wearing below-waist underwear while on the grounds of a public school when the underwear exposes sexual organs, covered or uncovered, in an indecent manner. The bill provides the following penalties that increase with repeated offenses:

- Verbal warning for the first offense, student’s parents called;
- 3-day suspension from school for the second offense, student’s parents notified verbally and in writing;
- 5-day suspension for the third offense, meeting between the principal and the parents; and
- 10-day suspension for the fourth and subsequent offenses.

The bill provides that the act will take effect on July 1, 2009.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

²¹ Federal law defines certain types of misdemeanors and infractions as petty offenses. 18 U.S.C. s. 19.

²² Section 1006.13, F.S.

²³ Section 1006.07(1), F.S.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

First Amendment

The bill may implicate First Amendment concerns and be challenged. Courts have long held that students do not lose their constitutional right to freedom of speech or expression at the schoolhouse gate.²⁴ However, courts have also repeatedly affirmed the authority of the states and school districts to prescribe and control conduct in schools.²⁵ Accordingly, courts must analyze the speech or expressive conduct and determine whether the regulation does not impermissibly exceed the state's constitutional authority.²⁶

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

According to the Department of Juvenile Justice (DJJ), the provisions of the bill have no direct fiscal impact on the department. The DJJ notes that limiting the number of offenses reported to law enforcement should decrease referrals to the DJJ and, as a result, the need for DJJ services and associated costs.

According to the Department of Education (DOE), it would be responsible for the costs of modifications to training, tools, and materials for district training on incident and discipline reporting. In addition, changes to reporting requirements may add additional cost for the DOE and school districts because of modifications to data systems (the FDOE School Environmental Safety Incident Reporting system).²⁷

²⁴ *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503, 506 (1969).

²⁵ *Id.* at 507.

²⁶ See *Blau v. Fort Thomas Public School District*, 401 F.3d 381 (C.A. 6th KY 2005) (upholding dress code restriction on baggy or tight clothing, among other things); *Brandt v. Board of Educ. of City of Chicago*, 480 F.3d 460 (C.A. 7th Ill. 2007) (upholding dress code restriction on "gifted" T-shirt); *Canady v. Bossier Parish School Bd.*, 240 F.3d 437 (C.A.5 La. 2001) (upholding mandatory uniform policy); *Bar-Navon v. School Board of Brevard County, Florida*, 2007 WL 3284322, (M.D. Fla. 2007) (granting motion for summary judgment for the school district on dress code policy that provides that pierced jewelry is limited to the ear).

²⁷ Florida Department of Education, *2008 Bill Analysis, SB 1540*, 3 (Nov. 24, 2008).

School districts would need to review and revise their zero tolerance policies to conform to the provisions of the bill. There would likely be minimal cost associated with this review.

VI. Technical Deficiencies:

None.

VII. Related Issues:

According to the Department of Juvenile Justice, “[b]lack males and females accounted for 47% of all school-related referrals, while only representing 22% of the youth aged 10-17 in Florida. Setting thresholds and minimum standards for zero-tolerance policies will improve the uniformity of its application across the state and it will help address the over-representation of minorities in the juvenile justice system.”²⁸

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS/CS/CS by Education Pre-K-12 Appropriations on April 20, 2009:

The committee substitute adds a provision to prohibit a student from wearing below-waist underwear while on the grounds of a public school when the underwear exposes sexual organs in an indecent manner. Penalties are provided that increase with repeated violations.

CS/CS/CS by Judiciary on April 15, 2009:

The committee substitute clarifies that zero-tolerance policies do not require the reporting of petty misconduct and certain misdemeanors to a law enforcement agency.

CS/CS by Criminal Justice on March 25, 2009:

The committee substitute:

- Requires a district school board having a corporal punishment policy to review the policy every three years during a public school board meeting; otherwise, the policy expires.
- Requires any disciplinary or prosecutorial action taken against a student who violates a zero-tolerance policy to be based not on the individual student, but rather on the particular circumstances of the misconduct.
- Requires the zero tolerance policy to minimize the victimization of not just students, but also staff and volunteers.

CS by Education Pre-K-12 on March 5, 2009:

The committee substitute clarifies the law enforcement reporting requirement and

²⁸ Department of Juvenile Justice, *2009 Legislative Session Bill Analysis*, 3 (Feb. 27, 2009).

requires zero tolerance policies to include a review of the disciplinary action taken against a student.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
