

**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.)

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

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BILL: SB 790

INTRODUCER: Senator Baker

SUBJECT: School Safety/Bullying and Harassment

DATE: March 14, 2008

REVISED: \_\_\_\_\_

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Carrouth	Matthews	ED	<b>Favorable</b>
2. _____	_____	CJ	_____
3. _____	_____	EA	_____
4. _____	_____	_____	_____
5. _____	_____	_____	_____
6. _____	_____	_____	_____

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**I. Summary:**

This bill prohibits acts of bullying and harassment of any public K-12 student or employee, and requires school districts to adopt policies to protect students and school employees from the physical and psychological harm of bullying and harassment. The adopted policy must afford all students the same protection regardless of their status. However, a school district may establish separate antidiscrimination policies that address categories of students.

This bill creates section 1006.147, Florida Statutes.

**II. Present Situation:**

**Research**

Current research studies indicate that bullying includes a wide variety of behavior.<sup>1</sup> All bullying behavior, however, involves a person or a group repeatedly trying to harm someone who is perceived to be weaker or more vulnerable. Bullying behavior can involve direct attacks, such as hitting, threatening or intimidating, maliciously teasing or 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.<sup>2</sup>

An article in the Journal of the American Medical Association states that almost 30 percent of teens in the United States (over 5.7 million) are estimated to be involved in bullying as either a

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<sup>1</sup> <http://www.safeyouth.org/scripts/teens/bullying.asp>

<sup>2</sup> *Id.*

bully, a target of bullying, or both.<sup>3</sup> In a recent national survey of students in grades 6 to 10, 13 percent reported bullying others, 11 percent reported being the target of bullies, and another 6 percent said they bullied others and were bullied themselves. Limited available data suggest that bullying is much more common among younger teens than older teens. As teens grow older, they are less likely to bully others and to be the targets of bullies.<sup>4</sup>

Bullying is often a warning sign that children and teens are heading for trouble and are at risk for serious violence.<sup>5</sup> Teens (particularly boys) who bully are more likely to engage in other anti-social/delinquent behavior (e.g., vandalism, shoplifting, truancy, and drug use) into adulthood. They are four times more likely than non-bullies to be convicted of crimes by age 24, with 60 percent of bullies having at least one criminal conviction.<sup>6</sup>

### **Current Provisions in Law**

Section 1006.13, F.S., requires each district school board to adopt a code of student conduct and a policy of zero tolerance for crime and victimization.<sup>7</sup> Additionally, a State Board of Education rule provides that school boards may assign more severe consequences than normally authorized for conduct code infractions 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.<sup>8</sup>

### **Department of Education Incident Monitoring<sup>9</sup>**

The Department of Education collects data on 22 separate incidents of crime and violence that take place on a school campus, on school transportation, or at a school-sponsored event, 24 hours per day, seven days per week. These incidents now include bullying/harassment as defined below:

**Bullying/Harassment** (unwanted and repeated undesired behavior) Unwanted and repeated written, verbal, or physical behavior, including any threatening, insulting, or dehumanizing gesture, by an adult or student that is severe or pervasive enough to create an intimidating, hostile or offensive educational environment, cause discomfort or humiliation, or unreasonably interfere with the individual's school performance or participation. Additionally, "Threat/Intimidation" and "Sexual Harassment" are two of these types of incidents and are defined as:

*Threat/Intimidation* (instilling fear in others) A threat to cause physical harm to another person with or without the use of a weapon that includes all of the following elements:

1. intent—an intention that the threat is heard or seen by the person who is the object of the threat;

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<sup>3</sup> Nansel, et al, Journal of American Medicine, 285(16), 2094-2100

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

<sup>5</sup> Aggression and Violence Throughout Their Lifetime, D. Olweus, 1992

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

<sup>7</sup> s. 1006.07 (2), F.S.

<sup>8</sup> 6A-1.0404, F.A.C.

<sup>9</sup> [www.firn.edu/doe/besss/sesir.htm](http://www.firn.edu/doe/besss/sesir.htm)

2. fear—a reasonable fear or apprehension by the person who is the object of the threat that the threat could be carried out; and
3. capability—the ability of the offender to actually carry out the threat directly or by a weapon or other instrument that can easily be obtained.

*Sexual Harassment* (undesired sexual behavior) Unwanted and repeated verbal or physical behavior with sexual connotations by an adult or student that is severe or pervasive enough to create an intimidating, hostile, or offensive educational environment, cause discomfort or humiliation or unreasonably interfere with the individual's school performance or participation.<sup>10</sup> An incident occurs when one person demands a sexual favor from another under the threat of physical harm or adverse consequence.

### **School Environmental Safety Incident Reporting System (SESIR)**

The Department of Education modified the SESIR system in 2006 to include the reporting elements for bullying and continues to provide technical assistance to school districts through an annual database management workshop. Additionally, the Department will cosponsor with the University of North Florida the Third Annual Bullying Prevention Conference in April, 2008.<sup>11</sup>

### **Current School District Policies**

The Department of Education website on Safe and Drug Free Schools reports that 45 Florida school districts currently have anti-bullying policies in place and employ prevention programs, 36 of which the department deems are proven programs and nine of which the department has designated as promising.<sup>12</sup>

## **III. Effect of Proposed Changes:**

### **Short Title**

The act is entitled the "Jeffrey Johnston Stand Up for All Students Act." Jeffrey Johnston committed suicide in 2005 at age 15 after being victimized by a classmate's taunts, which were posted and remained on the Internet for more than a year.

### **School District Anti-Bullying Policies**

Each school district would be required to adopt by December 1, 2008, a policy to prohibit bullying and harassment during school-related and school-sponsored activities or through the use of computer access that is networked as a part of a public K-12 educational institution. Each policy must contain a definition of bullying and harassment, which the bill defines; notice of penalties; reporting and investigating procedures; and notice to the parents of a bullying victim of actions taken to protect the victim.

### **Equal Protection to Students and Separate Antidiscrimination Policies**

School districts would be required to provide all students with the same protections against harassment and bullying regardless of their status. This provision in the bill may require further clarification, if the intent is to supersede Rule 6A-1.0404, F.A.C., which specifically provides

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<sup>10</sup> See Rule 6A-19.008(1)

<sup>11</sup> <http://www.fldoe.org/safeschools/>

<sup>12</sup> [http://www.fldoe.org/safeschools/bull\\_fl.asp](http://www.fldoe.org/safeschools/bull_fl.asp)

that school boards may assign more severe consequences than normally authorized when violations by the offender appear 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. School districts may establish separate protected categories of students for purposes of adopting antidiscrimination policies.

**Limitations on Defense**

The physical location or time of access of a computer-related bullying incident may not be raised as a defense in any disciplinary or prosecution initiated under this bill. The bill, in of itself, does not criminalize the conduct of bullying or harassment as described in this bill. Accordingly, it is unclear whether this provision of the bill is related solely to school disciplinary actions or intends to encompass separate criminal proceedings. More clarification is needed.

**Limited Immunity**

School employees, volunteers, students, or parents who promptly report acts of bullying or harassment in good faith as provided in the adopted policy are immune from any civil cause of action arising out of the report or failure to remedy the reported incident.

**Free Speech**

The bill contains a clause that indicates it does not abridge the rights of students or employees protected by the First Amendment of the U.S. Constitution. As laws are cloaked with a presumption of constitutional intent, this provision does not appear to be necessary.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

None.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

School districts may need to create or strengthen their bullying prevention and training procedures. The cost of such efforts are indeterminate at this time. However, the 2007 Legislature appropriated \$76,617,000 for Safe Schools. Each district was guaranteed \$74,483,000 and the remaining funds were distributed based on a combination of the Florida Crime Index provided by the Florida Department of Law Enforcement and the district share of student enrollment.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.