

The Evolving Laws Following Marjory Stoneman Douglas Public Safety Act and the Impact on Students and Families

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House Bill 7065 was the third school safety package bill proposed by the Legislature since the 2018 Parkland shooting, and it was the first one to fail. I believe however, this failure is a good thing for students with disabilities. The illusion that these laws were about keeping students safe may be finally starting to crack.

On February 14, 2018, a 19-year-old, former student, walked into Marjory Stoneman Douglas High School in Parkland, Florida and shot 34 people. In less than four minutes, the gunman shot and killed 17 people and left another 17 injured. It was the deadliest school shooting since the December 2012 Sandy Hook Elementary School shooting in Connecticut that resulted in the death of 28 people. The Parkland shooter was 19 years old and used a legally purchased AR-15 semi-automatic rifle during the shooting spree. This was the same type of firearm used during the Sandy Hook shooting and the Pulse Nightclub shooting in Orlando that left 49 dead and 53 injured on June 12, 2016.

While this was not the first or last mass school shooting, this incident garnered national attention in part because the students at Marjory Stoneman Douglas High School were outspoken and savvy with their use of social media, but also because Florida's legislature acted swiftly after the shooting. Just twenty-three days after this tragic incident, Florida's legislature passed a sweeping new law titled the Marjory Stoneman Douglas High School Public Safety Act, CS/SB 7026. Florida is being watched closely by the rest of the country to see if its law should be replicated in other states.

The law has several important measures that are supported by gun violence prevention activists, such as raising the minimum age to purchase a firearm in Florida to twenty-one, limiting the sale of bump fire stocks and clarifying and strengthening the three-day wait period. The law also includes a provision known as a "red flag law" which allows law enforcement to obtain a risk protection order which empowers law enforcement to temporarily remove firearms and ammunition from a person who is deemed by a court to be a danger to themselves or others. This is a civil process similar to a domestic violence protection order.

This law, however, goes much further. The law includes new requirements for armed law enforcement or guardians to be on all school campuses, new training provisions, new reporting provisions, mandatory shooting drills in schools and the creation of several new departments.

Within the Florida Department of Education, the law establishes the Office of Safe Schools (OSS) and within the Florida Department of Law Enforcement the Marjory Stoneman Douglas (MSD) Safety Commission. The OSS is a central repository for best practices, training standards and compliance oversight in all matters related to school safety and security.¹ The MSD Safety Commission also known as the School Safety Commission was formed to analyze the Parkland shooting and other mass violence in Florida and make recommendations for system improvements.² The Guardian Program, also known as the Coach Aaron Feis Guardian Program,

trains and arms school personnel to help aid in the prevention and abatement of active assailant incidents on school premises.³ Coach Feis was a football coach at Marjory Stoneman Douglas High School and was killed during the Parkland shooting by using himself as a shield to protect his students. The law allocated 67 million dollars for the guardian program, 97.5 million for the OSS and 98 million to “harden” the physical security of school buildings.

The Marjory Stoneman Douglas (MSD) Safety Commission also known as the School Safety Commission is housed within the Florida Department of Law Enforcement. The majority of people who sit on this commission are law enforcement. The commission is made up of 16 voting members, and four non-voting members who were all appointed by the governor. The Commission began meeting in April 2018 and meets each month. The commission will be in place until 2023.

The original purpose of the commission was to review what happened at Parkland and provide recommendations as to what changes could be made to the system to prevent future school shootings. The Commission issued an initial report on January 2, 2019. The initial report was 458 pages and made recommendations for improvements in eleven different areas.⁴ The report was critical of the Broward County school district and law enforcement. There was also a lot of public pressure put on the school districts to comply with certain provisions of the new law.

As a result of the Commission’s recommendations the Florida legislature amended the law in 2019. The second version of the MSD Safety Act (SB 7030) builds on the first. This second iteration of the law makes some significant changes. First, the law now allows school districts to arm teachers. Twenty-one school districts now allow school employees to be armed. Second, the law required the creation of a Centralized Integrated Data Repository to be up and running by August 1, 2019, before the start of the 2019-2020 school year. It also expanded who would have access to this information. Third, districts are required to utilize and advertise “FortifyFL” – a reporting app to allow adults and students to report threats or suspicious student behavior. It went live October 2018. Fourth, it created a uniformed threat assessment tool called the Florida Safe Schools Assessment Tool. This assessment tool is twenty-two pages. It assesses the student as well as the family. Fifth, the new version of the law now requires more reporting of incidents to law enforcement. In the first edition of the law, petty acts of misconduct and misdemeanors did not need to be reported to law enforcement at the discretion of the school administration. Only those which were “serious” were required to be reported. This new version removed the word serious and removed the misdemeanor and minor offense exclusion. Now all such incidents must be reported to law enforcement. Most, if not all, discretion has been taken away from school administrators. Sixth, was a clarification of required active shooting drills in school. Finally, the law now allows for the superintendent’s salary to be withheld for noncompliance.

A second commission report was issued on November 1, 2019. It is 389 pages and also contained recommendations for changes in policies and procedures. These changes are being addressed to the Florida Legislature during the current legislative session, which began on January 14, 2020. The third iteration of the law, House Bill 7065, however failed to pass in the final moments of the 2020 legislative session.

What remains however, is fear and confusion by the school administrations and their staff. Fear is fueled by the Statewide Grand Jury which was impaneled on February 25, 2019. At the same time the Commission was issuing its scathing report about noncompliance, the governor empaneled a Statewide Grand Jury to hold those failing to comply with the new law criminally responsible. The Grand Jury was impaneled in Broward County, Florida where the Parkland shooting took place but will review actions and inactions of school districts across the entire state. The grand jury issued their first report on July 19, 2019. The report, while mostly confidential, was also scathing. It was issued just twenty-four days before the start of the 2019-2020 school year. Districts, while not individually named, were publicly shamed for failing to comply with the provisions in SB 7026 and SB 7030. The Grand Jury found that that law enforcement and school district officials have had “sufficient time” to bring their districts into compliance with these laws, and stated “we fully expect that these officials will use the remaining days before the first day of the 2019-20 school year to do whatever it takes to bring these districts into full compliance.” This Statewide Grand Jury will continue to investigate, monitor and exercise its authority to ensure full compliance with SB 7026 and SB 7030. A second report was issued in December 2019. The second report was no better than the first. The grand jury stated, “there is no conceivable set of circumstances that any Florida school, charter or not, should be unprepared to comply.” Districts fear not only public shaming but criminal prosecution. Does this fear make students safer?

While these new laws enacted after Parkland may have been drafted with good intentions, it is not yet known whether they will actually keep students safer. Between February 2018 and February 2019, there were nearly 1,200 gun violence deaths of victims eighteen and under. In the year following Parkland there was a school shooting, on average, every twelve days. Of the thirty-one school shootings, three of those were in Florida. Will these laws prevent the next shooting?

Historically students with disabilities are disproportionately impacted by zero tolerance type policies. The trauma of zero tolerance type policies, removal of any discretion from school administrators, heightened surveillance of our students and increased law enforcement involvement in every aspect of public-school life has created more fear and anxiety in students and families, especially for those students with disabilities. Will it have been worth it? Only time will tell.

¹ See Fla. Stat. § 1001.212; www.fldoe.org/safe-schools/.

² www.fdle.state.fl.us/MSDHS/Home.aspx.

³ Fla. Stat. § 30.15

⁴ Initial Commission Report at pg. 5. <http://www.fdle.state.fl.us/MSDHS/CommissionReport.pdf>.