

CORPORAL PUNISHMENT LAW

Senate Bill 338 (Substitute H-5) First Analysis (2-5-92)

Sponsor: Sen. John J.H. Schwarz, M.D.
Senate Committee: Education
House Committee: Education

THE APPARENT PROBLEM:

Public Act 521 of 1988, generally speaking, prohibited corporal punishment in public schools. The act did, however, permit the use of "reasonable physical force" for certain specified purposes. Representatives of teachers and other school personnel complain that the act has weakened their ability to maintain order in the schools, has led to confusion and misunderstanding, and has resulted in school employees being subject to student and parent complaints, lawsuits, and criminal prosecutions for the use of force in maintaining order and control in the schools. Changes to the law are needed to clarify its intent, say teacher representatives, and to allow teachers and others to take the actions necessary to create an environment where students can learn and be safe.

THE CONTENT OF THE BILL:

The bill would amend Section 1312 of the School Code, added by Public Act 521 of 1988, to do the following:

- * Change the definition of "corporal punishment" (which would continue to be prohibited).
- * Remove the prohibition against threatening to inflict corporal punishment.
- * Add to the instances when "reasonable physical force" can be used.
- * Extend the immunity from civil liability for the use of necessary reasonable physical force upon a pupil to instances where such force is exercised upon another person of school age in a school-related setting.
- * Specify that deference be given to the reasonable good faith judgments of employees, volunteers, and contractors in determining whether such persons

have acted in accordance with "reasonable physical force" requirements.

- * Require local and intermediate school districts to develop and implement codes of student conduct and enforce their provisions with regard to pupil misconduct in classrooms, elsewhere on school premises, on school buses or other school-related vehicles, and at school-sponsored activities and events, whether or not they are held on school premises.

- * Require the state's Department of Education to develop, no later than January 1, 1993, a model list of alternatives to the use of corporal punishment. The model list would have to be developed in consultation with organizations representing the interests of teachers, school employees, school boards, school administrators, pupils, parents, and child advocates, plus any other organizations the State Board of Education wishes to consult. The Department of Education would have to send the list to each local and intermediate school district in the state and to each nonpublic school in the state that requests the list.

Definition of Corporal Punishment. Section 1312 of the School Code defines corporal punishment as "the deliberate infliction of physical pain by any means upon the whole or any part of a pupil's body as a penalty or punishment for a pupil's offense."

Senate Bill 338 (H-5) would replace that definition so as to define corporal punishment as "the deliberate infliction of physical pain by hitting, paddling, spanking, slapping, or any other physical force used as a means of discipline." Further, the bill specifies that corporal punishment does not include physical pain caused by reasonable physical activities associated with athletic training.

Prohibition on Corporal Punishment. Currently, the School Code says a local or intermediate school district employee, volunteer, or contractor cannot threaten to inflict, inflict, or cause to be inflicted corporal punishment upon any pupil.

The bill would eliminate the phrase "threaten to inflict" and would add at the end of the sentence "under any circumstances."

Use of Reasonable Force. The School Code currently, after prohibiting corporal punishment, says that a person can, however, within the scope of his or her responsibilities, use such reasonable physical force as may be necessary to: a) protect himself, herself, the pupil, or others from immediate physical injury; b) obtain possession of a weapon or other dangerous object upon or within the control of a pupil; and c) to protect property from physical damage.

Senate Bill 338 (H-5) would instead specify that a person could use "reasonable physical force upon a pupil as necessary to maintain order and control in a school or school-related setting for the purpose of providing an environment conducive to safety and learning." The bill also says, "in maintaining that order and control, the person may use physical force upon a pupil as may be necessary," and lists certain objectives. These objectives include: a) restraining or removing a pupil whose behavior is interfering with the orderly exercise and performance of school district functions within a school or at a school-related activity, if the pupil had refused to comply with a request to refrain from further disruptive acts; b) self-defense or the defense of others (this would replace the current physical injury language); c) preventing a pupil from inflicting harm on himself or herself; and d) quelling a disturbance that threatens physical injury to any person. Also included are the possession of a weapon language currently in the code and the protection of physical property provision, without the phrase "from physical damage."

MCL 380.1312

HOUSE COMMITTEE ACTION:

The House Education Committee adopted Substitute H-5 in place of the Senate-passed bill. The House substitute contains many of the same provisions, including the same definition of corporal punishment (with the athletic training exemption).

Among the differences are the following. Where the Senate version made maintaining "order and control" one of the various objectives that the use of "reasonable physical force" could be used to achieve, the House substitute makes maintaining order and control "for the purpose of providing an environment conducive to safety and learning" the principal objective, with the other objectives considered elements in the larger "order and control for safety and learning" category. The Senate version permits reasonable physical force to be used "to remove a disruptive pupil" from school-related settings. The House version uses the expression "to restrain or remove" a pupil engaging in certain behaviors if the pupil had refused to comply with requests to refrain from further disruptive acts. The Senate version said "a person shall hold a pupil strictly accountable for any [school related] misconduct," whereas the House version requires the adoption and use of codes of student conduct and requires that the code be enforced "with regard to [school-related] pupil misconduct."

FISCAL IMPLICATIONS:

The Senate Fiscal Agency said of the Senate-passed version that it would cost the Department of Education about \$20,000 in the development of programs and materials for the law's implementation. (12-5-91) The House substitute contains the same requirement that the department, upon request, provide assistance to schools in the development of programs and materials and further requires the department to develop a model list of alternatives to the use of corporal punishment in consultation with representatives of various specified interests. (The Department of Education reports that the state board has already published a booklet on alternatives to corporal punishment, but the bill would appear to require the board to do it again.)

ARGUMENTS:

For:

The bill would make it clearer what teachers and administrators can and cannot do in maintaining order in the public schools. The bill says reasonable physical force can be used as necessary to maintain order and control in the schools for the purpose of providing an environment conducive to safety and learning. That is the crux of the issue here. Teachers and administrators need to be able to keep disruptive students from preventing all other students from being able to learn. The schools

cannot carry out its primary functions if order and control are not maintained. The corporal punishment law as currently written has led to a weakening of control and discipline. The law is not well understood. School officials are confused about how to apply the law, which has led in some instances to "no touching" policies and has led to civil and criminal actions against teachers who were making good faith efforts to restore or maintain order. This bill does not endorse, condone, or permit corporal punishment. Corporal punishment remains prohibited. The bill intends for physical force to be used only after other avenues have been exhausted and after a student has been warned.

Examples provided by teachers and administrators of occasions where reasonable physical force may be necessary include physically guiding a student who otherwise would not go to a "time out" corner in a classroom; assisting a disruptive student in sitting down and remaining in his or her seat; and turning a student's body in the direction of the teacher after a repeatedly disruptive student refuses to look at the teacher. (These, of course, are in addition to more dramatic cases when students are fighting or a student is harming himself or herself.) In one case cited by a teacher's representative, a teacher who intervened in a fierce argument in the classroom between high school students that threatened to become a physical exchange and then physically escorted a student to the principal's office came under fire. The result of that controversy, in which the teacher was eventually cleared after various hearings, was the institution of a "no touching" policy in the school building. If teachers are not allowed to be able to maintain control and order in their classrooms they cannot be expected to teach. If they have no expectation that their judgment in classroom management is to be respected, they cannot know when and how to act with disruptive students. It is alleged that students understand all too well the limitations placed on teachers' (and others') disciplinary authority and can use the law and school rules to coerce, intimidate, and punish teachers. The bill would require that "deference be given to reasonable good faith judgments made by" school employees, volunteers, and contractors in using reasonable physical force to maintain order and control.

This bill would eliminate language in the current law that defines corporal punishment as "the deliberate infliction of physical pain by any means upon the whole or any part of a pupil's body as a

penalty or punishment for a pupil's offense." Teachers' representatives say that this language, in particular the phrase "by any means", is ambiguous and leads to misinterpretation. It is intolerable that teachers and other school personnel should face threats of disciplinary action, lawsuits, or criminal prosecution because a student felt "physical pain" due to an action to rectify school disruptions. The bill provides a more specific definition that will be less subject to abuse. Further, the bill clarifies the circumstances in which and the purposes for which reasonable physical force can be employed.

Against:

This bill is an overreaction and is unnecessary. The current law has not yet been in effect three years and there has not been enough time for its impact to be fairly evaluated. The Department of Education has said in its analysis of this proposal that the corporal punishment law "is no longer considered to be a serious matter. It would appear that most, if not all, schools are dealing with this successfully at the local level." Where there is a lack of understanding and confusion, the answer is to educate people about the law and about alternatives to corporal punishment and the use of physical force. The use of reasonable physical force is permitted now in certain specified cases and there has been no demonstrated need to expand the list, particularly for such a broad purpose as maintaining "order and control." Allowing the use of physical force in order to maintain order and control and giving the benefit of the doubt in such cases to school employees and volunteers together provide adults in school settings with a great deal of latitude in using what many people would consider "corporal punishment" on children. And what justification can there be for removing the prohibition in current law against threatening to inflict corporal punishment? This allows teachers and others to bully students (and lie to them).

A representative of a protection and advocacy organization has said that the proposed changes to the corporal punishment law would "weaken the protection afforded students in current law and increase the possibility that they will be subjected to violence in school only to learn that the way to power and control is through aggression and the infliction of pain. In a society already concerned about the increase in violence among youth, this is not the lesson for our schools to be teaching." Public Act 521 was enacted because corporal punishment (and the use of physical force against

children generally) is considered ineffective, counterproductive, and emotionally and physically harmful. It may, some say, both decrease learning and arouse aggression against others and school property. And its harmful effects are not limited to the immediate victims but to all students who are part of an environment where physical force is used for discipline. Effective alternative disciplinary methods exist and are used successfully in some schools. Teachers and other adults working in schools can receive training in positive disciplinary methods. As one opponent of this bill has said, "All children should be able to experience discipline which develops internal controls, builds self-esteem, positive motivation and the desire to do good out of concern for others rather than fear of punishment. Anxiety subdues creativity and students cannot learn in an atmosphere which condones violence or the threat of violence."

For:

The bill contains several important specific clarifications of current law. It specifically says that physical pain caused by reasonable physical activities associated with athletic training is not corporal punishment. This addresses concerns that students will claim actions by coaches or physical education instructors to be illegal corporal punishment when they are regularly accepted activities. The bill also makes it clear that reasonable physical force can be employed when appropriate in "school-related settings" and against school-age persons who may not be considered "pupils," but who are causing disruptions.

Response:

At the very least, the exemption for athletic activities should be rewritten to make it clear that physical pain cannot be inflicted as a punishment during athletic activities.

Against:

Some people believe that if the law is to be amended, it ought to be made stronger and not weakened. For example, the protection of children against corporal punishment should be extended to private schools and to those operated by the state; the use of force should be limited to non-assaultive physical intervention to manage pupils who pose a danger to themselves or others, or to confiscate a weapon, or protect property; information on alternatives to corporal punishment should be disseminated; and instruction on the meaning of the corporal punishment law should be provided to

everyone in education. If anything, greater protection of students is needed.

POSITIONS:

A representative from the Michigan Education Association testified the organization strongly supports the substitute bill. (2-4-92)

Representatives of the Michigan Federation of Teachers, the Detroit Federation of Teachers, and the Detroit Organization of School Administrators and Supervisors indicated support for the bill. (2-4-92)

Among the groups indicating opposition to changes in the law made by the bill are: the Michigan Protection and Advocacy Service; the Michigan PTA; the Student Advocacy Center; the Michigan Head Start Child Development Association; the Michigan Association of School Psychologists; and the Michigan League of Women Voters. (2-4-92)

The State Board of Education took a position of "nonsupport, unless amended" on Senate Bill 338 (S-1) on 12-12-91, but has not specifically addressed the current substitute. (A member of the state board testified before the House Education Committee on 2-4-92 that the board is not convinced the law in this area needs to be amended.)