



**House  
Legislative  
Analysis  
Section**

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**STATE PARK PERMIT INFO**  
*AS ENROLLED*

**Senate Bill 951 as passed by the Senate  
First Analysis (4-21-94)**

**Sponsor: Sen. Vern Ehlers  
Senate Committee: Natural Resources  
and Environmental Affairs  
House Committee: Taxation**

***THE APPARENT PROBLEM:***

A 12-bill package, known as the Michigan State Park Initiative, has been introduced to improve the funding of the state park system. Among the package's many provisions would be the creation of an endowment fund and of a state parks foundation. It would also prevent any future diversion of money from oil and gas reserves to an economic development fund. One of the bills in the package would use the Income Tax Act to promote the annual state park motor vehicle permit.

***THE CONTENT OF THE BILL:***

The bill would amend the Income Tax Act to provide that the Department of Treasury may provide information in the state income tax instruction booklet about the purchase of an annual state park motor vehicle permit.

MCL 206.471

***BACKGROUND INFORMATION:***

For a more detailed discussion of the Michigan State Parks Initiative package, consult the analysis of House Bill 5246 (dated 4-19-94).

***FISCAL IMPLICATIONS:***

The Senate Fiscal Agency reports that if the treasury department chose to provide information about the annual state park permit in the income tax instruction booklet, there would be one-time costs associated with the changes. The SFA also reports that there could as a result be an increase in revenue to the Department of Natural Resources if more people purchased the annual permits. (3-23-94)

***ARGUMENTS:***

***For:***

The bill aims to promote the sale of annual state park motor vehicle permits in order to improve the funding of the state park system. It is part of a comprehensive package of bills to protect and improve state parks.

***Response:***

As introduced, the bill would have put a check-off on the state income tax form to allow the advance purchase of annual park permits. In its current form, it is not clear what impact it would have on permit purchases.

***POSITIONS:***

There are no positions at present.

SCIENCE DIV 731 (4-21-94)



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## EXPEL STUDENTS FOR WEAPONS

Senate Bill 966 (Substitute H-3)  
First Analysis (9-21-94)

Sponsor: Sen. Joel D. Gougeon  
Senate Committee: Education  
House Committee: Education

### ***THE APPARENT PROBLEM:***

Incidents involving the use or presence of weapons in schools have been reported across the state. For example, two Lansing Eastern High School students recently were placed in police custody after police found a .22-caliber revolver in one of the student's school lockers. A loaded gun recently was confiscated from the car of an Eastern High School senior who had pulled it during a lunch-time fight. A high school student in Tawas, brandishing a gun before a classroom filled with students, threatened to harm a teacher. Distraught over breaking up with a girlfriend, a middle school honor student in Ironwood, with the help of a friend, brought a gun to school and threatened to shoot his ex-girlfriend's new boyfriend. Once considered havens for children from societal violence, schools today sometimes must contend with the same violence. Some people believe that mechanisms are needed to permit the expulsion from school of students who are found in possession of firearms or other dangerous weapons on or near school property.

### ***THE CONTENT OF THE BILL:***

The bill would amend the School Code to require the board of a local or intermediate school district or a public school academy or someone designated by it (i.e., a superintendent, principal, or other school district official) to expel permanently, subject to possible reinstatement as outlined in the bill, a pupil who possessed in a weapon-free school zone a weapon that constituted a "dangerous weapon." ("Dangerous weapon" would mean a firearm, dagger, dirk, stiletto, knife with a blade over three inches long, pocket knife opened by a mechanical device, iron bar, or brass knuckles.) Mandatory expulsion, however, would not apply if the pupil established in a "clear and convincing manner" at least one or more of the following:

- \* The object was not to be used as a weapon or for direct or indirect delivery to another pupil for use as one;
- \* He or she did not knowingly possess the weapon;
- \* He or she did not know or have reason to know that the object he or she possessed constituted a dangerous weapon;
- \* He or she possessed the weapon at the suggestion, request, or direction of, or with the express permission of, school or police authorities.

**Expulsion.** If a pupil were expelled, the expelling school district would have to enter on the pupil's permanent record that the pupil had been expelled. Except if a school district operated or participated in a program appropriate for persons expelled as specified in the bill and in the district's discretion admitted the person to that program, an expelled person would be expelled from all public schools in the state. (The bill would specify that, generally, alternative programs for expelled students would have to be operated in separate facilities or at separate times from those for the general student population.) School district officials could not allow a child expelled under the bill's provisions to enroll in the school district unless the child had been reinstated.

**Referral.** If a school board expelled a student, it would have to ensure that, within three days after the expulsion, a school district official referred the expellee to the appropriate county department of social services or county community mental health agency and notified the child's parent or legal guardian of the referral. If, however, the expellee was at least 18 years old or was an emancipated minor, the school district official would have to notify the expellee of the referral.

**Reinstatement.** The parent or legal guardian of an expelled child (or the expellee, if he or she were at least 18 or an emancipated minor) could petition the board of the expelling school district for reinstatement of the child to public education in the district. If the board denied a petition for reinstatement, the parent, legal guardian, or qualified expellee could petition the board of another school district for the expellee's reinstatement in the school district. Not later than 90 days after the bill's effective date, the Department of Education would have to develop and distribute to all school districts a form for initiating a petition.

All of the following would apply to reinstatement. For a expellee who at the time of the expulsion was in grade five or below, his or her parent or legal guardian could initiate a reinstatement petition at any time after the expiration of 60 school days after the expulsion date. The expellee, however, could not be reinstated before the expiration of 90 school days after the expulsion date.

For a child who at the time of expulsion was in grade six or above, the parent or legal guardian could initiate a reinstatement petition any time after the expiration of 150 school days after the date of expulsion. The child could not be reinstated before the expiration of 180 school days after the expulsion date.

The parent or legal guardian, or the expellee, if he or she were emancipated or at least 18, would be responsible for preparing and submitting the petition. A school board would not be required to provide any assistance in preparing the petition. Upon a parent's, legal guardian's or expellee's request, a school board would have to make a petition form available.

**Review Committee.** Not more than ten days after receiving a reinstatement petition, a school board would have to appoint a committee to review the petition and any supporting information submitted by the parent, legal guardian, or expellee. The committee would have to consist of two school board members, one school administrator, one teacher, and one parent of a pupil in the school district. During this time, the school district's superintendent could prepare and submit for consideration by the committee information concerning the circumstances of the expulsion and any factors mitigating for or against reinstatement.

Not more than ten days after the members were appointed, the committee would have to review the petition, any supporting information, and information provided by the school district, and would have to submit a recommendation to the school board on the reinstatement issue. The recommendation would have to be for unconditional reinstatement, for conditional reinstatement, or against reinstatement. The recommendation would have to be accompanied by an explanation of the reasons for the recommendation and of any recommended conditions for reinstatement, and would have to be based on the following factors:

- \* The extent to which the expellee's reinstatement would create a risk of harm to pupils or school personnel;
- \* The extent to which reinstatement would create a risk of school district or personal liability;
- \* The expellee's age and maturity;
- \* The expellee's school record before the incident that caused the expulsion;
- \* The expellee's attitude concerning the incident;
- \* The expellee's behavior since the expulsion and the prospects for his or her remediation; and
- \* If a parent or legal guardian filed the petition, the degree of cooperation and support that the parent or legal guardian had provided and that could be expected if the child were reinstated, including receptiveness toward possible conditions placed on the reinstatement.

By the next regularly scheduled board meeting after receiving the committee's recommendation, the school board would have to make a decision to reinstate the expellee unconditionally, reinstate him or her conditionally, or deny him or her reinstatement. The school board's decision would be final.

A school board could require an expellee and his or her parent or legal guardian to agree in writing to specific conditions before reinstating him or her in a conditional reinstatement. The conditions could include, but would not be limited to, agreement to a behavior contract, which could involve the child, parent or legal guardian, and an outside agency; participation in or completion of an anger

management program or other appropriate counseling; periodic progress reviews; and specified immediate consequences for failure to abide by a condition. A parent, legal guardian, or, when qualified, the expellee could include proposed conditions in a petition for reinstatement.

**Liability.** A school board or administrator that complied with the bill's expulsion provision would not be liable for damages for expelling a pupil, and the authorizing body of a public school academy would not be liable for damages for expulsion of a student by the public school academy.

**Due process rights.** The bill's provisions would not diminish the due process rights under federal law of a pupil who had been determined to be eligible for special education programs and services.

**Effective date.** The bill would take effect January 1, 1995.

MCL 380.1311

#### **HOUSE COMMITTEE ACTION:**

The House Education Committee adopted Substitute H-3 for the bill which is similar to the Senate-passed version except that it specifies that a school board or its designee could not expel a student for possessing a dangerous weapon if the student established in a clear and convincing manner at least one of four legitimate reasons why he or she possessed the weapon. The House substitute also includes language that would permit a student expelled under its provisions to be admitted into an appropriate alternative education program, if the district operates or participates in such a program. The House substitute includes language that would permit, in addition to a school principal, a school district superintendent as well as other school district officials, as designated by the school board, to order the expulsion of a student for weapons possession or other reasons as allowed under the act currently. And finally, the Senate-passed version included an effective date for the bill of August 1, 1994; the House substitute contains a January 1, 1995 effective date.

#### **FISCAL IMPLICATIONS:**

According to the House Fiscal Agency, the bill would not affect state budget expenditures but could have fiscal implications for local school districts

required by the bill to expel certain students. In fiscal year 1994-95, most local school districts will be in-formula districts with state payments calculated on a per-pupil basis. Depending on the timing of an expulsion with respect to the pupil-count days, an expulsion could reduce a district's pupil count, causing the district to lose future state payments for that pupil. In addition, a district could incur some administrative costs in complying with the reinstatement petition process.

There would be no expected additional costs to the Department of Social Services and/or the Department of Mental Health, as a juvenile found in possession of a firearm would almost certainly come in contact with the DSS and/or DMH under existing child protection, juvenile justice, or probate laws. (9-20-94)

#### **ARGUMENTS:**

##### **For:**

The presence of firearms and dangerous weapons on school grounds is increasing as more students show little reluctance to use weapons as a means of intimidating fellow students or school staff, or for protection from other violent students. The removal from school premises of the most disruptive students, including those who possess guns and dangerous weapons, often is difficult, if not impossible. Consequently, schools today must tolerate a tremendous amount of disruption and disorder. Despite the recent enactment of educational reform measures (Public Act 335 of 1993), the state's educational system cannot improve and students cannot achieve higher educational standards if the learning environment is not safe. School officials need help to provide a school setting in which most students can learn in safe surroundings. The bill would require the expulsion of a student who possessed a dangerous weapon, as this is defined under the act, in a weapon-free school zone, unless the student could show using "clear and convincing" evidence at least one of four valid reasons why a dangerous weapon was found in his or her possession. Thus, under the version of the bill adopted by the House Education Committee (Substitute H-3), school authorities would be given explicit authority to expel students for carrying these kinds of weapons, but could still use discretion in deciding whether or not to expel based on the specific circumstances. Ultimately, the bill should help to foster safer school environments by providing the means to remove from the classroom



students who wielded guns or other dangerous weapons on or near school property where these are prohibited.

***For:***

The School Code requires that every parent, guardian, or other person having control and charge of a child from six years of age to the child's 16th birthday send that child to the public schools, except in certain cases, during the entire school year. The child's attendance must be continuous and consecutive for the school year. A school board is required, under the act, to make reasonable regulations for the proper establishment, maintenance, management, and carrying on of the district's schools, including regulations relative to pupils' conduct concerning their safety while attending school or en route to and from school. In addition, the act permits a school board to authorize or order the suspension or expulsion from school of a pupil guilty of a gross misdemeanor or persistent disobedience when in the board's judgment the interest of the school may demand the authorization or order. School boards have had to balance their duty to provide a safe school environment, which may necessitate the expulsion of a student, with the compulsory attendance requirement. This has resulted in situations in which a student who has committed a gross misdemeanor under the act, such as possessing a gun or other weapon, is expelled from the school district, but then attempts to enroll in a neighboring school district. If that child meets the new district's residency requirements or if the new district accepts nonresident tuition students, the district apparently must accept that student, because of the state's compulsory attendance law, even when the district is aware of the student's problems at the previous district. The bill would enhance school officials' abilities to deal with students who bring firearms or dangerous weapons to school by requiring that a student be expelled permanently not only from the school he or she was attending but from any other public school in which he or she may attempt to enroll, with the possibility that he or she could be sent to one of the alternative education programs--such as for the learning disabled--currently operating in the state.

***For:***

Under the bill, a school board would be required, within three days after the expulsion, to contact a local social services or mental health agency to arrange a referral for the child. Currently, a referral is not required and a child may come into

contact with these agencies only if he or she is charged with illegal possession of a weapon, and subsequently is referred to an agency through the judicial process. Mandating this referral would ensure the child's contact with persons and programs that could address the causes for his or her behavior. Furthermore, the bill would allow an expelled student's parent or legal guardian to petition the school board to reinstate the student. Thus, a student who benefited from his or her contact with the services of a mental health or social services agency could seek to return to school.

***Against:***

The bill is unnecessary as Michigan law already provides the means for dealing with the illegal possession of firearms. Under the Michigan Penal Code, for example, a person is prohibited from possessing a firearm on school premises, except when providing or receiving instruction in firearms safety. A person also is prohibited from brandishing a firearm in public. The Penal Code also prohibits a person under 18 years of age from possessing a firearm in public, except under the supervision of a person who is at least 18 or in accordance with the Wildlife Conservation Act or the Hunting and Fishing License Act. Furthermore, the School Code permits school boards to authorize or order the expulsion or suspension of a pupil when he or she is guilty of a gross misdemeanor or persistent disobedience and it is in the school's best interest to take this action. When a student has been found possessing a dangerous weapon while at school, at a school activity, or en route on a school bus to or from a school, the School Code requires a superintendent of a local or intermediate school district to report this to the pupil's parent or legal guardian and the local law enforcement agency. Armed with this authority under Michigan law, school officials and prosecuting attorneys already are able to deal with weapons possessions by students.

***Against:***

As reported from the House committee, the bill is significantly weaker than the version passed by the Senate and, in fact, would do little to change the current situation. Under Substitute H-3, a school board or someone designated by it would have to permanently expel a student who possessed a dangerous weapon unless the student could clearly show why he or she possessed the weapon. The House substitute apparently has been written so that it would give school officials flexibility in deciding

whether to expel students caught with guns or other dangerous weapons. But school officials already have this authority. To truly change the way in which school districts will handle weapons-possession problems, the bill should require the immediate expulsion of students caught with dangerous weapons, period, with the possibility, of course, for later reinstatement if certain conditions were met.

#### ***Against:***

While weapons possession and the threat (and reality) of violence in the schools are serious problems that call for drastic measures, expelling students caught possessing dangerous weapons in schools is a simplistic solution to a complex problem with multiple causes. Data from a study done by the Middle Cities Education Association suggest that violence is a growing problem among youth in schools, particularly at the middle school or junior high level. Because of the increased threat of violence, some students may, in fact, feel compelled to arm themselves simply to defend against potentially dangerous situations. Whereas in previous times a student who was personally threatened by "bullies" may have felt confident to report the situation to school officials or others knowing the problem likely could be resolved, today such a course may seem fruitless if a student believes school officials are powerless to correct the problem. And if, as this study suggests, dangerous weapons are being carried by a growing number of students, whether for defensive or offensive purposes, pursuing a strategy of expelling those caught with them could lead to the ludicrous situation where otherwise good students would be forced from school. The bill fails to address the root causes for rising violence in schools and, at best, would merely shift the problem of kids carrying and using weapons in school from school premises to surrounding communities.

#### ***Against:***

The bill could be ruled unconstitutional as it would provide inadequate due process rights for students alleged to have been found possessing dangerous weapons, and could force the state into the position of denying a child or young person access to a free public education. This right has been recognized in numerous court cases. For instance, the U.S. Supreme Court declared in a ruling made in 1975 that "the state is constrained to recognize a student's legitimate entitlement to a public education as a property interest which is protected by the Due

Process Clause and which may not be taken away for misconduct without conformity to the minimum procedures required by that clause" (*Goss v Lopez*, 419 US 565). In that case, the court described the "rudimentary" due process rights of a student prior to his or her temporary suspension, i.e., oral or written notice of the charge, an explanation of the evidence relied upon by the authorities, and, if the student offers a different version of the facts, an opportunity to be heard. Although the court indicated that students whose presence poses a continuing danger may be immediately removed, it went on to state that "the necessary notice and rudimentary hearing should follow as soon as practicable." And though it includes provisions that would allow students to offer clear and convincing evidence showing weapons were possessed for a legitimate reason, the House substitute still would place the burden of having to prove innocence entirely on the accused and fails to ensure that he or she would have any sort of help or counsel in making a defense. The court also indicated that it was addressing only *short* suspensions, not exceeding 10 days, and that "[l]onger suspensions or expulsions for the remainder of the school term, or permanently, may require more formal procedures," which, it appears, are sorely lacking in the bill (except for reinstatement procedures). These due process protections were reiterated by both the Michigan Court of Appeals in 1983 (*Birdsey v Grand Blanc Community Schools*, 130 Mich App 718) as well as the attorney general in 1985 (Opinion No. 6271). Further, though the bill specifies that it would not diminish the due process rights of students receiving special education services, the courts have made it clear that *all* students are entitled to rudimentary due process protections when they are suspended even for short periods, and additional protections when they are permanently expelled.

#### ***Against:***

The bill would give school districts the option of directing expelled students into alternative education programs, but neither guarantees that students expelled for weapons possession would be enrolled in such programs or that they, even if those who operate them wanted to, would be financially or otherwise able to accept these expelled students. Lack of available alternative education programs would be particularly problematic in urban areas where students are more likely to be carrying weapons than in rural or suburban districts. Further, some studies suggest using expulsion as a

