



Senate Fiscal Agency
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BILL ANALYSIS



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Senate Bill 527 (Substitute S-2 as reported)
 Sponsor: Senator Leon Stille
 Committee: Education

Date Completed: 10-16-95

RATIONALE

Public Act 328 of 1994 amended the School Code to require a local school board or a superintendent, principal, or other designated school official to expel permanently a pupil who unlawfully possesses a dangerous weapon in a weapon free school zone, commits arson in a school building or on school grounds, or rapes a person in the building or on school grounds. Since the Act took effect in January, approximately 240 students from across the State have been expelled, primarily due to weapons' possession violations, according to published reports. These violations ranged from students' possessing pocket knives to students' carrying guns and threatening other students; all resulted in expulsions. Given the violations' varying degrees of severity, however, some people believe that school officials should have some flexibility when responding to various weapons' possession violations or other violations that call for expulsion.

CONTENT

The bill would amend the School Code to revise provisions concerning the reinstatement of students enrolled in grade five or below who were expelled for possessing a dangerous weapon or committing arson or rape. The bill would do the following:

- Specify that the current 60-school-day waiting period that must expire before a reinstatement petition may be initiated for an expelled student would apply only to a student who had been expelled for possessing a firearm.
- Permit a reinstatement petition for a student who had been expelled for

reasons other than a firearm's possession to be initiated at any time.

- Specify that the current 90-school-day waiting period that must expire before a student may be reinstated in school would apply only to students who had been expelled for possessing a firearm.
- Provide that students who had been expelled for reasons other than possessing a firearm could not be reinstated in school before the expiration of 10 school days after the expulsion.

Also, in regard to all grades, the bill would require school districts that operated or participated in an alternative education program for students who had been expelled for possessing a dangerous weapon or committing arson or certain criminal sexual conduct offenses on school grounds to ensure that those students were physically separated at all times during the school day from the general pupil population. (Currently, an alternative education program must be operated in facilities or at times separate from those used for the general pupil population.) The bill also specifies that certain criminal sexual conduct offenses, instead of "rape", would require student expulsion; and would define "arson" as felony violations under the Michigan Penal Code.

Expulsion Requirements

The School Code requires a local school board or a superintendent, principal, or other designated school official to expel permanently a pupil who unlawfully possesses a dangerous weapon in a

weapon free school zone, commits arson in a school building or on school grounds, or rapes a person in the building or on school grounds. ("Dangerous weapon" means 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.)

The bill would delete reference to "rape" and require, instead, that a student be expelled for committing "criminal sexual conduct" in a school building or on school grounds. Under the bill, criminal sexual conduct would mean a violation of the Michigan Penal Code's provisions on first-, second-, third-, or fourth-degree criminal sexual conduct, or assault with intent to commit criminal sexual conduct (MCL 750.520b, 750.520c, 750.520d, 750.520e, or 720.520g).

The bill also would define "arson" as a felony violation of Chapter 10 of the Penal Code. (Chapter 10 of the Penal Code includes the following felony violations: burning any dwelling house (MCL 750.72); burning other real property (MCL 750.73); burning personal property valued at more than \$50 (MCL 750.74); burning insured property (MCL 750.75); willfully and maliciously setting fire to property valued at more than \$50 (MCL 750.77); willfully or negligently setting fire to woods, prairies, or grounds (MCL 750.78); and, setting fire to mines and mining material (MCL 750.80).

In addition, the bill would define "firearm" as that term is defined in the 1994 Federal Gun-Free Schools Act (i.e., "(A) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; (B) the frame or receiver of any such weapon; (C) any firearm muffler or firearm silencer; or (D) any destructive device" (e.g., a bomb); the term does not include an antique firearm.)

Alternative Education

Currently, a student expelled under these provisions is expelled from all public schools in the State and is prohibited from enrolling in a school district unless he or she has been reinstated, as provided in the School Code. A school district, however, may operate or participate in a program that is appropriate for students expelled under these provisions. The Code requires that this program be operated in facilities or at times that are separate from those used for the general pupil

population. The bill would require school districts that operated or participated in an alternative education program for students who had been expelled for possessing a dangerous weapon or committing arson or certain criminal sexual conduct offenses on school grounds to ensure that those students were physically separated at all times during the school day from the general pupil population.

Petition for Reinstatement

Under the Code, the parent or legal guardian of an expelled student, or a student who is at least 18 or emancipated, may petition the board of the expelling school district for the student's reinstatement in the district. Currently, a reinstatement petition for an expelled student who was in grade five or below at the time of the expulsion may be initiated after the expiration of 60 school days following the expulsion date. The bill specifies that this provision would apply to a student who had been expelled for possessing a firearm.

Under the bill, for a student who was enrolled in grade five or below at the time of the expulsion and who had been expelled for a reason other than possessing a firearm, the parent or legal guardian of an expelled student, or a student who was at least 18 or emancipated, could initiate a petition for reinstatement at any time.

Reinstatement

Under the Code, a student who was in grade five or below at the time of the expulsion cannot be reinstated before the expiration of 90 school days after the date of expulsion. The bill specifies that this provision would apply to a student who had been expelled for possessing a firearm.

Under the bill, a student who was in grade five or below at the time of the expulsion and who had been expelled for a reason other than possessing a firearm could not be reinstated before the expiration of 10 school days after the date of expulsion.

MCL 380.1311

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Since Public Act 328 amended the School Code and took effect January 1, 1995, more than 200 students across the State reportedly have been expelled from schools primarily for weapons violations. The Code also requires the expulsion of a student who commits arson in a school building or on school grounds, or rapes a person in the building or on school grounds. As of July 1995, 21 students were expelled for arson violations, although none reportedly was expelled for committing rape, according to the Department of Social Services. With this data and school districts' experiences of working with expulsion requirements, it has become apparent that some latitude is needed when these provisions are applied to younger children. Currently, the Code permits a reinstatement petition for a student who was in grade five or below to be initiated 60 school days after the expulsion date, but prohibits reinstatement before 90 school days since the expulsion have expired. These provisions apply to any youngster in grade five or below, regardless of whether the violation was for weapon possession, arson, or rape. Under the bill, the Code's current provisions would apply only to students who had been expelled for possessing a firearm. Students in grade five or below who were expelled for a reason other than possessing a firearm could initiate a petition for reinstatement at any time and could be reinstated after 10 school days from the expulsion date had expired. By distinguishing between the violations committed by younger children, the bill would bring some sensibility to the Code's expulsion requirements, while preserving the original purpose of expelling students who bring firearms to school.

Response: Under the bill, a student in grade five or below who committed criminal sexual conduct or arson on school grounds could petition for reinstatement at any time and could be reinstated 10 school days after the date of expulsion. Thus, a student who was expelled for setting fire to school property, for example, could return to the classroom as quickly as a student who was expelled for taking a pocketknife to school. It is not clear why students who committed these serious violations should be able to return to school sooner than students whose actions were less serious.

Supporting Argument

Currently, a school district may operate or participate in a program that is appropriate for students expelled under the Code for possessing weapons or committing arson or criminal sexual conduct. The program, however, must be

operated in facilities or at times that are separate from those used for the general pupil population. The bill would delete the requirement that the program be operated separately, and would require, instead, that school districts operating or participating in an alternative education program for expelled students ensure that those students were physically separated at all times during the school day from the general pupil population. Thus, school districts would not have to provide separate facilities for alternative education programs, but could operate them in the same facilities as those used for general education programs and through scheduling, for example, could physically separate these students from the general pupil population.

Response: Although the Code permits school districts to operate or participate in an alternative education program for these students, there is no provision requiring these programs to be established. Furthermore, the bill would not address concerns about the lack of alternative education for these students. Consequently, students in grade five or below who were expelled for weapons' possession as well as students in higher grades who were expelled for possessing weapons or committing arson or rape on school grounds still could be forced out on the streets where they would not be under any adult supervision.

Opposing Argument

School board members, administrators and parents relate instances in which students were expelled automatically because of the Code's provisions, despite extenuating circumstances. For example, an eighth grade student was caught carrying a knife at a school football game. He was expelled despite explaining to school officials that he feared for his safety and needed the knife for self-protection. In a similar incident, a 12-year-old girl carried her father's hunting knife to and from school as protection against a man she believed was following her. Finally, a grade school student and his friend were expelled as the result of an after-school incident. The student and his friend reportedly were whittling wood at the student's house when the two boys decided to go to play at a nearby school yard. While the two were playing, the whittling knives fell out of their pockets. A janitor saw the knives and reported the incident to school officials, who had no recourse but to expel the students. Some school officials are concerned that the Code's zero-tolerance approach to these situations unnecessarily punishes some children who had no intent to harm. Although the bill would revise to reinstatement provisions for students in

grade five or below, it would not grant school officials more flexibility in determining appropriate responses to these kinds of incidents.

Response: The Code already does allow school boards to exercise some discretion if a pupil establishes in a clear convincing manner that the object or instrument he or she possessed was not possessed for use as a weapon, or for delivery to another person for use as a weapon; the weapon was not knowingly possessed by the pupil; the pupil did not know or have reason to know that the object or instrument constituted a dangerous weapon; and/or the weapon was possessed by the pupil at the suggestion, request, or direction of, or with the express permission of, school or police authorities.

Opposing Argument

Title X Part B of the Federal Goals 2000: Educate America Act, known as the gun-free schools provisions, requires states receiving funds under the Act to enact a law under which local school districts must expel from school for at least one year a student who is determined to have brought a weapon to school, except that the state law must allow the chief administering officer to modify the expulsion requirement on a case-by-case basis. Since the School Code's expulsion requirements do not permit school districts to conduct a case-by-case review, some have raised the concern that Michigan could be in jeopardy of forfeiting future Federal funds. State Department of Education officials have identified in the 1995-96 Department budget approximately \$390 million in Federal grant revenues for school districts (for such programs as drug-free schools, disadvantaged children, migrant education, handicapped children, professional development, and school improvement) as well as funds used by the Department for various technical assistance and support programs, which originally were authorized under the Elementary and Secondary Education Act, that could be affected by this requirement.

Response: Some people believe that these funds may not be in jeopardy because Congress is considering repealing this requirement. Furthermore, action is expected to be taken first against states that have no expulsion laws at all. States that have expulsion laws, although they may not comply totally with Federal requirements, are expected to be addressed at a later time. Thus, these funds may not be in imminent jeopardy, if at all.

Legislative Analyst: L. Arasim

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: E. Pratt

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.