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SCHOOL LOCKER SEARCHES

House Bill 5233 as enrolled
Public Act 87 of 2000
Second Analysis (4-20-00)

Sponsor: Rep. Lauren Hager
House Committee: Education
Senate Committee: Education

THE APPARENT PROBLEM:

On April 20, 1999, two students at Columbine High School in Middleton, Colorado shot and killed thirteen of their classmates, one of their teachers, and then themselves. The massacre at Columbine prompted more than 3,000 copycat bomb threats in schools nationwide, according to the National Safety Center, about five times the number usually reported in the last few months of a school year. In addition, many conspiracies to murder fellow students were reported.

One of the copycat crimes occurred at Holland Woods Middle School in the Port Huron Area School District, where school officials thwarted a plan by four boys to kill teachers and students, and where a live bomb was found in the school following an evening parent meeting. After the violent incident, a local committee on school safety convened to consider changes in school policies that might better protect students from their angry and violent classmates. Despite the fact that Port Huron school officials did not receive a tip to look for the live bomb in a student's locker, they have recommended that school officials have clear authority under the law to conduct a random search of a student's locker (See *BACKGROUND INFORMATION*, "School Violence," below).

The Michigan Department of Education (MDE) has issued a model policy about locker searches that schools can adopt and implement. The MDE suggested policy states that students do not have an expectation of privacy in school lockers because school lockers are school property. The policy allows general locker inspections if conducted on a regular basis with sufficient advance notice, otherwise the suggested policy would require reasonable suspicion of illegal activity or school safety concerns. (See *BACKGROUND INFORMATION*, "MDE Locker Search Guidelines," below). The model policy does not provide for random searches or spot checks (sometimes called suspicionless searches, under the

law), which might turn up previously unknown criminal activity, and could deter students from using their lockers to hide evidence of criminal activity.

A citizen, including a high school student, is protected from unreasonable searches and seizures under the Fourth Amendment to the U.S. Constitution. However, courts have sought to balance that individual right against the public interest that a public school has to maintain an effective system of education, and to protect the well-being of all students.

In Michigan, the case law is silent on the issue of school locker searches, although there is case law about searches of students' bodies (See *BACKGROUND INFORMATION*, "Body Searches of Students," below). However, there are two cases nearly on point outside of Michigan case law that allow for suspicionless searches of school lockers, one based on a statute passed by the Indiana legislature. (See *BACKGROUND INFORMATION*, "Locker Search Case Law," below.)

Several states have provisions in their school codes that set a basic standard for all-school locker searches, and that also require the schools to promulgate their own rules and distribute the rules to the students, and to their parents and guardians. The states whose statutes allow searches of school lockers are Indiana, Iowa, New Jersey, Ohio, Pennsylvania, and Wisconsin.

Some have argued that in Michigan law should be changed so that a student's locker could be searched at any time.

THE CONTENT OF THE BILL:

House Bill 5233 would amend the Revised School Code to specify that a student's locker is the property of a school district, and under the bill a student would

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be presumed to have no expectation of privacy with regard to the locker or its contents.

The bill further specifies that if the board of a school district (to include the boards of a local act school district, and of an intermediate school district, and also the board of directors of a public school academy) operates a school that has pupil lockers, then no later than 180 days after the effective date of this legislation, the board (or board of directors) would be required to adopt a policy on searches of students' lockers and locker contents, and to distribute that policy to each student having a locker, and also to the parent or legal guardian of each student.

Under House Bill 5233, a public school principal or a principal's designee could search a student's locker and the locker's contents at any time in accordance with the school district search policy, and a law enforcement agency having jurisdiction over the school could assist school personnel in conducting a search, at the request of the school principal.

Further, House Bill 5233 specifies that not later than 90 days after the effective date of the legislation, the state superintendent of public instruction would be required to develop and make available a model policy on searches that could be adopted by local school districts.

Finally, the bill specifies that any evidence obtained as a result of a search of a pupil's locker or its contents would not be inadmissible in any court or administrative proceeding because the search violated the bill or a school policy adopted under the bill, or because no policy had been adopted.

MCL 380.1306

BACKGROUND INFORMATION:

School violence. On May 21, 1999, the *Detroit News* reported that in the last two years, 26 children have died in mass shootings in Littleton, Colorado; Pearl, Mississippi; West Paducah, Kentucky; Edinboro, Pennsylvania; and Springfield, Oregon. There were 40 school shooting deaths across the country in the 1997-98 school year, down from a high of 55 in the 1992-93 school year, according to the National School Safety Center at Pepperdine University in California.

In the wake of Columbine, Holland Woods Middle School in the Port Huron Area School District was not the only Michigan school district to experience a bomb

threat during May 1999. Throughout Michigan articles in the press reported more than a score of bomb threats and threats of violence. Bomb threats or threats of violent acts occurred in DeWitt Middle School, Flint McKinley Middle School, Grand Blanc High School, Flint Longfellow Middle School, Benzie Central High School, Taylor West Middle School, Livonia Franklin High School, the Detroit Public Schools (which experienced seven bomb threats), Lansing Everett High School, Cadillac Schools, Romulus Middle School, Utica Shelby Junior High, Escanaba Schools, Clarkston Schools, Jackson High School, Birmingham Seaholm High School, and Fraser High School.

Michigan Department of Education (MDE) locker search guidelines. In "A Recommended Guide to Students' Rights and Responsibilities in Michigan" (second edition, published in 1982), the MDE suggests a policy that only allows for "general inspections" of lockers without reasonable suspicion of illegal activity if the general searches are conducted regularly with students present, and with sufficient advance notice, not focused on a particular student or group of students, and for the purpose of maintaining cleanliness and sanitation.

Michigan case law concerning body searches of students. According to majority caucus counsel to the House Education Committee, the only Michigan case pertaining to school searches is *People v. Ward*, 62 Mich. App. 46, which requires reasonable suspicion as a basis for conducting bodily searches of students. However even in this case, the Michigan Court of Appeals held that school officials and their agents are in a hybrid or unique position of having many of the powers and responsibilities of parents and, yet, at the same time, are state officials. For this reason, the court found that the Fourth Amendment protection against unreasonable searches and seizures, as applied to school officials, would allow less than the normal probable cause basis and would not require a warrant. The court's reasoning in departing from normal constitutional requirements for searches was that school officials are responsible for "discipline and the maintenance of an educational atmosphere" and that "the public interest in maintaining an effective system of education and . . . in protecting the well-being of students" outweighs to a large extent many of the constitutional safeguards.

Locker search case law. The majority caucus counsel reports two cases nearly on point outside of Michigan case law that allow for suspicionless searches of school lockers. The first is an Indiana Court of Appeals case

based on statute. Indiana has a provision in its school code to specify that students have no expectation of privacy in school lockers, and that the lockers may be searched anytime according to the school policy. The Indiana statute also states that the school policy should be provided to the students and their families. In *S. A. v State*, 654 N.E.D. 791 (Ind. App. 1995), the statute was upheld under constitutional scrutiny. The second case is *People v Overton*, 229 N.E.2d, 596, which states that “the schools . . . presumably can spot check to insure compliance” by students with school regulations and state law. The court found that, “Not only have the school authorities the right to inspect but this right becomes a duty when suspicion arises that something of an illegal nature may be secreted there.”

FISCAL IMPLICATIONS:

The House Fiscal Agency notes that the bill has no fiscal impact. (2-1-00)

ARGUMENTS:

For:

It is time for Michigan statute to clearly state that locker searches are legal in schools. This legislation is necessary because it clarifies the policy confusion that emerges when one reads existing case law about locker searches. In Michigan, no court has ever offered a ruling about locker searches. However, elsewhere in the nation where suits have been brought, courts have tried to achieve a balance between individual rights of privacy, and the duty of schools to provide a safe learning environment. In those suits courts have sometimes decided in favor of students, and sometimes in favor of schools. To set the record straight, Michigan should join Indiana, Iowa, New Jersey, Ohio, Pennsylvania, and Wisconsin, to specify in our school code that a student’s locker can be searched at any time. Having experienced more than a score of bomb threats in schools across our state during May 1999, it is clear to many school officials that school safety and the well-being of all students can be better assured if school officials have the legal right to randomly spot-check student lockers in order to deter criminal behavior. The legislature can give school officials that right, indeed, it can hold them to that duty, if it enacts this legislation.

For:

This bill’s sponsor comes from a town where four middle school students planned to go on a killing spree during May 1999. There, school officials from Holland

Woods Middle School in Port Huron thwarted a Columbine copycat conspiracy by four students to kill their classmates and teachers. In the wake of Columbine and the incident in Port Huron, the sponsor has noted that “the culture of students in society has changed. With a lot of the different movies, music, and games young people play nowadays, we have come to the conclusion that if the culture has changed we have to assure somehow that schools are safe.” (*Traverse City Record Eagle*, 1-30-00) As a school principal having 28 years experience testified before the House Education Committee: “It used to be that a principal’s primary responsibility was delivering the curriculum. Today a principal’s primary responsibility is school safety.” The principal who is in charge of a school building must be able to act decisively when school safety is threatened. This bill will help principals do just that.

Against:

To allow school officials the power to conduct random spot-checks will undoubtedly lead to excessive surveillance, and likely to a court case to test the constitutionality of the statute under the Fourth Amendment to the U.S. Constitution. This bill is overly broad and it should be amended. It is already the case that a student’s locker can be lawfully searched if a school official “has reasonable grounds to believe that a student possesses evidence of illegal activity or activity that would interfere with school discipline and order.” That reasonableness requires that the search be 1) “justified at its inception,” and 2) “reasonably related in scope to the circumstances which justified the interference in the first place” (469 U.S. at 341-42, S.Ct. at 743). To these ends, this bill should be amended to state that any model policy specify a) that locker searches be authorized only if there is reasonable suspicion to do so; b) that a random search be conducted only in cases when the safety and security of students and school personnel is at risk; and, c) that the privacy rights of the student be respected regarding any items that are not illegal and are sensitive in nature.

Against:

The protection against unreasonable searches and seizures is guaranteed to citizens by the Fourth Amendment to the U.S. Constitution. A government teacher has noted that “One of our most cherished values in American society is privacy. Whenever society is willing to compromise its rights out of fear, that society is in danger. History is a great teacher in that regard.” (*Traverse City Record Eagle*, 1-30-00)

This legislation challenges that cherished value because it erodes the privacy protection granted to every citizen under the Bill of Rights.

Analyst: J. Hunault

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.