

SCHOOLS; USE OF CORPORAL PUNISHMENT OR PHYSICAL FORCE

House Bill 5255 as enrolled
Public Act 461 of 2000
Sponsor: Rep. Andrew Richner

House Bill 5256 as enrolled
Public Act 462 of 2000
Sponsor: Rep. Lauren Hager

Second Analysis (1-4-01)
House Committee: Family and Civil Law
Senate Committee: Education

THE APPARENT PROBLEM:

According to the Northwest Regional Educational Laboratory report "Schoolwide and Classroom Discipline," during most of its 22-year existence, the Annual Gallup Poll of the Public's Attitudes toward the public schools has identified "lack of discipline" as the most serious problem facing the nation's education system.

Like the public, many educators and students are also gravely concerned about disorder and danger in school environments, and with good reason: each month approximately three percent of teachers and students in urban schools, and one to two percent in rural schools, are robbed or physically attacked. Nearly 17,000 students per month experience physical injuries serious enough to require medical attention. Despite these data, research documents that schools are places in which there has been a broad shift away from norms tolerating interpersonal violence over the past 30 years, in the United States and in other countries.

However, the new standards for cooperative and effective learning environments are difficult to attain in some schools. According to the National Center for Education Statistics and the Bureau of Justice Statistics in the September 1999 report entitled "Indicators of School Crime and Safety," between 1989 and 1995, there were increases in the percentage of students feeling unsafe while they were at school (and also while they were going to and from school). For example, in 1989, six percent of students ages 12 through 19 sometimes or most of the time feared they were going to be attacked or harmed at school, while in 1995 this percentage rose to nine percent. (Between these years the percentage of students fearing they would be attacked while traveling to and from school rose from four percent to seven percent.)

The 1999 crime and safety indicators report issued jointly by the U.S. Department of Education and the U.S. Department of Justice also observes that "students are not the only ones who are victims of crime at school. Teachers in school are also the targets of violence." The report notes that "in addition to the personal toll such violence takes on teachers, those who worry about their safety may have difficulty teaching and may leave the profession altogether."

Over the five-year period from 1993 to 1997, teachers were the victims of approximately 1,771,000 nonfatal crimes at school. Most were thefts: more than 1.1 million of the total. However, 657,000 of the reported crimes were violent crimes, including rape or sexual assault, robbery, aggravated assault, and simple assault. On average, this translates into 354,000 nonfatal crimes per year, or 84 crimes per 1,000 teachers per year. Among the violent crimes against teachers during this five-year period, there were about 78,000 serious violent crimes (12 percent of the total of violent crimes), including rape or sexual assault, robbery, and aggravated assault. On average this translates into 16,000 serious violent crimes per year. During the 1993-97 period, the rate of *serious* violent crime at school was similar but not identical for teachers--on average 4 per 1,000 teachers--regardless of their instructional level, sex, race-ethnicity, and the urbanicity of the schools where they taught. However, differences are apparent in less serious though violent crimes. (See *BACKGROUND INFORMATION*, below.)

Data about the prevalence of Michigan teachers who have been threatened with injury or attacked by students were not available during committee testimony. However, these data were collected

nationwide during the 1993-94 school year, and then reported in both the 1998 and 1999 national School Crime Report. During that school year, 12 percent of all elementary and secondary school teachers--341,000 teachers across the nation--were threatened with injury by a student from their school, and four percent--119,000 teachers--were physically attacked by a student.

Well aware that effective schools have safe learning environments for the adults and children who work in them, teachers can and do intervene and use reasonable necessary force to make learning environments possible. Although a corporal punishment ban is in effect in most states, including Michigan, generally, teachers may respond to physical attacks -- both those directed at them, and those that occur between students. Indeed, there are times teachers must act with force to protect themselves and their students, as evident from committee testimony. In Michigan, the law currently recognizes that physical force or constraint by a school official may be required in selected situations, in order to protect students or staff from physical injury or to disarm a student. The use of physical force or constraint may also be justified to prevent property damage.

According to committee testimony, some over-zealous county prosecutors have brought charges of assault and battery against teachers who used reasonable necessary force to protect themselves and other students. In doing so, the prosecutors seemed unaware of the exemptions in the state's corporal punishment law. To curb these fruitless investigations and ill-advised charges by prosecutors, legislation has been proposed to clarify that the use of physical force by teachers is sometimes necessary in schools, and to make explicit the fact that school employees should not be presumed to have violated the corporal punishment law by the use of appropriate physical force in ways that protect themselves and their students.

THE CONTENT OF THE BILLS:

House Bill 5255 would amend the Revised School Code (MCL 380.1312) to modify the provisions allowing a school board or public school academy to discipline a teacher or other school employee for using corporal punishment or physical force on a student. [The law defines "corporal punishment" to mean the deliberate infliction of physical pain by hitting, paddling, spanking, slapping, or any other physical force used as a means of discipline.] Currently a person who violates the code's prohibition against corporal punishment, or who uses unauthorized

physical force against a student, may be disciplined by his or her school board or public school academy. Under the bill, the person would have to have acted willfully or through gross negligence.

More specifically, under the current law, a teacher or other school employee or volunteer may not inflict or cause corporal punishment to be inflicted upon any pupil under any circumstances. The law also allows limited circumstances where physical force may be used upon a pupil: a) for the purpose of restraining or removing a pupil who was interfering with the orderly exercise and performance of school functions in the school or at a school related activity; b) for self defense or defense of another; c) to prevent the pupil from harming himself or herself; d) to quell a disturbance that threatens any person with physical injury; e) to take a weapon or other dangerous object from the pupil; and, f) to protect property. The bill would retain these provisions.

The current law also allows a school board or public school academy to discipline a teacher or other employee for violations of these provisions. However, the law specifies that a person employed by or engaged as a volunteer or contractor by a local or intermediate school board, or public school academy, who exercises necessary reasonable physical force upon a pupil, or upon another person of school age in a school-related setting, is not liable in a civil action for damages arising from the use of that physical force. House Bill 5255 would retain that provision, but also add that the employee or volunteer would be presumed not to have violated the corporal punishment ban that is specified in the law, by the use of that physical force. Further and under the bill, a person who willfully or through gross negligence violated the corporal punishment ban, or who willfully or through gross negligence used physical force upon a pupil that was not authorized by the law, could be appropriately disciplined by his or her school board or public school academy. The bill also specifies that this section would not limit a school board's or public school academy's authority to discipline an employee for a violation of its own policies.

House Bill 5256 would amend the Michigan Penal Code (MCL 750.81) to specifically exempt uses of necessary reasonable physical force against pupils under and in compliance with the Revised School Code from the Penal Code's provisions against assault and battery.

BACKGROUND INFORMATION:

Less serious though violent crime. In the period from 1993 to 1997, middle/junior high school teachers were more likely to be victims of violent crimes (most of which were simple assaults) than were senior high school teachers, who, in turn, were more likely to be victims of violent crime than elementary school teachers (60 versus 37 crimes per 1,000 teachers, and 37 versus 18 crimes per 1,000 teachers, respectively.) The violent crime rate among teachers at school also varied by sex. Over the five-year period from 1993 to 1997, male teachers were more likely to be victims of violent crimes than female teachers (45 versus 27 crimes per 1,000 teachers). However, males and females were equally likely to be victims of *serious* violent crime (4 per 1,000 teachers).

Teachers were differently victimized by crimes at school according to where they taught. For example, over the five-year period from 1993 to 1997, urban teachers were more likely to be victims of violent crimes than suburban teachers (39 versus 22 crimes per 1,000 teachers). Urban teachers were also more likely to experience theft (65 per 1,000 teachers) than rural teachers (35 per 1,000 teachers).

For additional information about school safety, visit the Michigan electronic library website: mel.org/education/edu-safety.html

FISCAL IMPLICATIONS:

The Senate Fiscal Agency notes that House Bill 5255 would have no fiscal impact on the state. However, the local fiscal impact is indeterminate. There are not available data that would identify whether the bill would lead to more or fewer disciplinary hearings before school boards. If the bill led to fewer disciplinary hearings for teachers who had allegedly used “unreasonable” force to quell disturbances, then it is possible that the costs associated with holding hearings would fall. The agency notes, however, that the bill allows for two kinds of corporal punishment policies: the policy established in law by the state statute, and a policy adopted by an individual local school board. If local school boards adopted very strict “don’t touch” policies as a result of the bill, then boards could be faced with more disciplinary hearings. In this scenario, teachers could quell disturbances that were in violation of local school board policies, but that would not be in violation of state law. This could lead to more local board hearings, and higher associated costs.

The Senate Fiscal Agency notes that House Bill 5256 would have an indeterminate fiscal impact on local government. There are no statewide data available to indicate how many offenders are convicted of simple assault, or how many were applying reasonable physical force in compliance with the Revised School Code. To the extent that local government incurs the costs and/or receives the fine revenue from these misdemeanor offenses, changes to the assault and battery statute would have a fiscal impact on local units. (12-6-00)

ARGUMENTS:

For:

Children in schools, indeed, children everywhere, need and deserve the protection of adults who guide their growth and development. For that reason, corporal punishment laws protect children from harm within the classroom and school. However, school employees also need protection. Professional educators who intend to maintain cooperative learning environments in schools must sometimes use force to constrain unruly students who mean harm to themselves or others. Sometimes their use of force provokes disgruntled parents and children, and even, at times, other employees. At these times, educators must know that their intent will be understood, and that they will be prosecuted only when their behavior is willfully and grossly negligent.

Against:

Although the intent of this legislation is to reduce teachers’ fear of criminal prosecution so they will more readily and ably step forward to break up fights, boards of education may be unwilling to support teachers who act more aggressively, and in a manner that assumes that the higher prosecutorial standard of gross negligence and willful misconduct must be met. Indeed, the legislation may provoke even more boards of education to adopt stringent ‘hands off, don’t touch’ policies for teachers, for fear that their hands, as well as the prosecutors’, are tied in disciplinary matters. Local boards can now discipline teachers who exercise a level of force to quell disturbances that, while neither willfully or grossly negligent, may be excessive and unreasonable.

Response:

Boards of education know that cooperative learning environments must be safe in order to be effective. Twenty years of school discipline research (50 studies conducted in six countries and reviewed by the Northwest Regional Educational Laboratory in its school improvement research series) reveals the

relationship between disciplinary practices and student behavioral outcomes. According to that research, 'best practice' means that schools should follow a few guidelines: avoid the use of vague or unenforceable rules; do not ignore student behavior which violates school or classroom rules, because it will not go away; avoid ambiguous or inconsistent treatment of misbehavior; avoid draconian punishments and punishments delivered without accompanying support; avoid corporal punishment; and, avoid out-of-school suspension whenever possible, reserving the use of suspension for serious misconduct only. These guidelines cannot be followed when teachers are under orders to ignore violent students.

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#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.