

# HOUSE BILL No. 4014

January 25, 2001, Introduced by Rep. Jelinek and referred to the Committee on Education.

A bill to amend 1976 PA 451, entitled  
"The revised school code,"  
by amending section 1311 (MCL 380.1311), as amended by 1999  
PA 23.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Sec. 1311. (1) Subject to subsection (2), the school board,  
2 or the school district superintendent, a school building princi-  
3 pal, or another school district official if designated by the  
4 school board, may authorize or order the suspension or expulsion  
5 from school of a pupil guilty of gross misdemeanor or persistent  
6 disobedience if, in the judgment of the school board or its des-  
7 ignee, as applicable, the interest of the school is served by the  
8 authorization or order. If there is reasonable cause to believe  
9 that the pupil is handicapped, and the school district has not  
10 evaluated the pupil in accordance with rules of the state board

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1 to determine if the student is handicapped, the pupil shall be  
2 evaluated immediately by the intermediate school district of  
3 which the school district is constituent in accordance with sec-  
4 tion 1711.

5 (2) If a pupil possesses in a weapon free school zone a  
6 weapon that constitutes a dangerous weapon, commits arson in a  
7 school building or on school grounds, or commits criminal sexual  
8 conduct in a school building or on school grounds, the school  
9 board, or the designee of the school board as described in sub-  
10 section (1) on behalf of the school board, shall expel the pupil  
11 from the school district permanently, subject to possible rein-  
12 statement under subsection (5). However, a school board is not  
13 required to expel a pupil for possessing a weapon if the pupil  
14 establishes in a clear and convincing manner at least 1 of the  
15 following:

16 (a) The object or instrument possessed by the pupil was not  
17 possessed by the pupil for use as a weapon, or for direct or  
18 indirect delivery to another person for use as a weapon.

19 (b) The weapon was not knowingly possessed by the pupil.

20 (c) The pupil did not know or have reason to know that the  
21 object or instrument possessed by the pupil constituted a danger-  
22 ous weapon.

23 (d) The weapon was possessed by the pupil at the suggestion,  
24 request, or direction of, or with the express permission of,  
25 school or police authorities.

26 (3) If an individual is expelled pursuant to subsection (2),  
27 the expelling school district shall enter on the individual's

1 permanent record that he or she has been expelled pursuant to  
2 subsection (2). Except if a school district operates or partici-  
3 pates cooperatively in an alternative education program appropri-  
4 ate for individuals expelled pursuant to subsection (2) and in  
5 its discretion admits the individual to that program, and except  
6 for a strict discipline academy established under sections 1311b  
7 to 1311l, an individual expelled pursuant to subsection (2) is  
8 expelled from all public schools in this state and the officials  
9 of a school district shall not allow the individual to enroll in  
10 the school district unless the individual has been reinstated  
11 under subsection (5). Except as otherwise provided by law, a  
12 program operated for individuals expelled pursuant to  
13 subsection (2) shall ensure that those individuals are physically  
14 separated at all times during the school day from the general  
15 pupil population. If an individual expelled from a school dis-  
16 trict pursuant to subsection (2) is not placed in an alternative  
17 education program or strict discipline academy, the school dis-  
18 trict may provide, or may arrange for the intermediate school  
19 district to provide, appropriate instructional services to the  
20 individual at home. The type of services provided shall meet the  
21 requirements of section ~~6(4)(v)~~ 6(4)(U) of the state school aid  
22 act of 1979, MCL 388.1606, and the services may be contracted for  
23 in the same manner as services for homebound pupils under section  
24 109 of the state school aid act of 1979, MCL 388.1709. This sub-  
25 section does not require a school district to expend more money  
26 for providing services for a pupil expelled pursuant to  
27 subsection (2) than the amount of the foundation allowance OR PER

1 PUPIL PAYMENT the school district receives for the pupil under  
2 section 20 of the state school aid act of 1979, MCL 388.1620.

3 (4) IF A PUPIL POSSESSES A WEAPON THAT CONSTITUTES A DANGER-  
4 OUS WEAPON IN A WEAPON FREE SCHOOL ZONE, THE SCHOOL BOARD OR AN  
5 OFFICIAL OF THE SCHOOL DISTRICT SHALL NOTIFY THE APPROPRIATE  
6 COUNTY FAMILY INDEPENDENCE AGENCY OR COUNTY COMMUNITY MENTAL  
7 HEALTH AGENCY CONCERNING THAT INDIVIDUAL WITHIN 12 HOURS. THE  
8 AGENCY SHALL CONDUCT EVALUATION AND COUNSELING OF THAT INDIVIDUAL  
9 FOR 48 HOURS AT A FACILITY OF THE AGENCY. THE SCHOOL BOARD OR  
10 OFFICIAL SHALL ALSO NOTIFY THE INDIVIDUAL'S PARENT OR LEGAL  
11 GUARDIAN AND REFER THE PARENT OR LEGAL GUARDIAN TO THE SAME  
12 AGENCY. DURING THE 48-HOUR EVALUATION AND COUNSELING PERIOD, THE  
13 AGENCY SHALL DETERMINE WHETHER FURTHER INDIVIDUAL OR FAMILY COUN-  
14 SELING, OR BOTH, IS REQUIRED. If a school board expels an indi-  
15 vidual pursuant to subsection (2) FOR A REASON OTHER THAN POS-  
16 SESSING A DANGEROUS WEAPON IN A WEAPON FREE SCHOOL ZONE, the  
17 school board shall ensure that, within 3 days after the expul-  
18 sion, an official of the school district refers the individual to  
19 the appropriate county ~~department of social services~~ FAMILY  
20 INDEPENDENCE AGENCY or county community mental health agency and  
21 notifies the individual's parent or legal guardian or, if the  
22 individual is at least age 18 or is an emancipated minor, noti-  
23 fies the individual of the referral.

24 (5) The parent or legal guardian of an individual expelled  
25 pursuant to subsection (2) or, if the individual is at least age  
26 18 or is an emancipated minor, the individual may petition the  
27 expelling school board for reinstatement of the individual to

1 public education in the school district. If the expelling school  
2 board denies a petition for reinstatement, the parent or legal  
3 guardian or, if the individual is at least age 18 or is an eman-  
4 cipated minor, the individual may petition another school board  
5 for reinstatement of the individual in that other school  
6 district. All of the following apply to reinstatement under this  
7 subsection:

8       (a) For an individual who was enrolled in grade 5 or below  
9 at the time of the expulsion and who has been expelled for pos-  
10 sessing a firearm or threatening another person with a dangerous  
11 weapon, the parent or legal guardian or, if the individual is at  
12 least age 18 or is an emancipated minor, the individual may ini-  
13 tiate a petition for reinstatement at any time after the expira-  
14 tion of 60 school days after the date of expulsion. For an indi-  
15 vidual who was enrolled in grade 5 or below at the time of the  
16 expulsion and who has been expelled pursuant to subsection (2)  
17 for a reason other than possessing a firearm or threatening  
18 another person with a dangerous weapon, the parent or legal  
19 guardian or, if the individual is at least age 18 or is an eman-  
20 cipated minor, the individual may initiate a petition for rein-  
21 statement at any time. For an individual who was in grade 6 or  
22 above at the time of expulsion, the parent or legal guardian or,  
23 if the individual is at least age 18 or is an emancipated minor,  
24 the individual may initiate a petition for reinstatement at any  
25 time after the expiration of 150 school days after the date of  
26 expulsion.

1 (b) An individual who was in grade 5 or below at the time of  
2 the expulsion and who has been expelled for possessing a firearm  
3 or threatening another person with a dangerous weapon shall not  
4 be reinstated before the expiration of 90 school days after the  
5 date of expulsion. An individual who was in grade 5 or below at  
6 the time of the expulsion and who has been expelled pursuant to  
7 subsection (2) for a reason other than possessing a firearm or  
8 threatening another person with a dangerous weapon shall not be  
9 reinstated before the expiration of 10 school days after the date  
10 of the expulsion. An individual who was in grade 6 or above at  
11 the time of the expulsion shall not be reinstated before the  
12 expiration of 180 school days after the date of expulsion.

13 (c) It is the responsibility of the parent or legal guardian  
14 or, if the individual is at least age 18 or is an emancipated  
15 minor, of the individual to prepare and submit the petition. A  
16 school board is not required to provide any assistance in prepar-  
17 ing the petition. Upon request by a parent or legal guardian or,  
18 if the individual is at least age 18 or is an emancipated minor,  
19 by the individual, a school board shall make available a form for  
20 a petition.

21 (d) Not later than 10 school days after receiving a petition  
22 for reinstatement under this subsection, a school board shall  
23 appoint a committee to review the petition and any supporting  
24 information submitted by the parent or legal guardian or, if the  
25 individual is at least age 18 or is an emancipated minor, by the  
26 individual. The committee shall consist of 2 school board  
27 members, 1 school administrator, 1 teacher, and 1 parent of a

1 pupil in the school district. During this time the  
2 superintendent of the school district may prepare and submit for  
3 consideration by the committee information concerning the circum-  
4 stances of the expulsion and any factors mitigating for or  
5 against reinstatement.

6 (e) Not later than 10 school days after all members are  
7 appointed, the committee described in subdivision (d) shall  
8 review the petition and any supporting information and informa-  
9 tion provided by the school district and shall submit a recommen-  
10 dation to the school board on the issue of reinstatement. The  
11 recommendation shall be for unconditional reinstatement, for con-  
12 ditional reinstatement, or against reinstatement, and shall be  
13 accompanied by an explanation of the reasons for the recommenda-  
14 tion and of any recommended conditions for reinstatement. The  
15 recommendation shall be based on consideration of all of the fol-  
16 lowing factors:

17 (i) The extent to which reinstatement of the individual  
18 would create a risk of harm to pupils or school personnel.

19 (ii) The extent to which reinstatement of the individual  
20 would create a risk of school district liability or individual  
21 liability for the school board or school district personnel.

22 (iii) The age and maturity of the individual.

23 (iv) The individual's school record before the incident that  
24 caused the expulsion.

25 (v) The individual's attitude concerning the incident that  
26 caused the expulsion.

1       (vi) The individual's behavior since the expulsion and the  
2 prospects for remediation of the individual.

3       (vii) If the petition was filed by a parent or legal guardi-  
4 an, the degree of cooperation and support that has been provided  
5 by the parent or legal guardian and that can be expected if the  
6 individual is reinstated, including, but not limited to, recep-  
7 tiveness toward possible conditions placed on the reinstatement.

8       (f) Not later than the next regularly scheduled board meet-  
9 ing after receiving the recommendation of the committee under  
10 subdivision (e), a school board shall make a decision to uncondi-  
11 tionally reinstate the individual, conditionally reinstate the  
12 individual, or deny reinstatement of the individual. The deci-  
13 sion of the school board is final.

14       (g) A school board may require an individual and, if the  
15 petition was filed by a parent or legal guardian, his or her  
16 parent or legal guardian to agree in writing to specific condi-  
17 tions before reinstating the individual in a conditional  
18 reinstatement. The conditions may include, but are not limited  
19 to, agreement to a behavior contract, which may involve the indi-  
20 vidual, parent or legal guardian, and an outside agency; partici-  
21 pation in or completion of an anger management program or other  
22 appropriate counseling; periodic progress reviews; and specified  
23 immediate consequences for failure to abide by a condition. A  
24 parent or legal guardian or, if the individual is at least age 18  
25 or is an emancipated minor, the individual may include proposed  
26 conditions in a petition for reinstatement submitted under this  
27 subsection.



1       (6) A school board or school administrator that complies  
2 with subsection (2) is not liable for damages for expelling a  
3 pupil pursuant to subsection (2), and the authorizing body of a  
4 public school academy is not liable for damages for expulsion of  
5 a pupil by the public school academy pursuant to subsection (2).

6       (7) The department shall develop and distribute to all  
7 school districts a form for a petition for reinstatement to be  
8 used under subsection (5).

9       (8) This section does not diminish the due process rights  
10 under federal law of a pupil who has been determined to be eligi-  
11 ble for special education programs and services.

12       (9) If a pupil expelled from a public school district pursu-  
13 ant to subsection (2) is enrolled by a public school district  
14 sponsored alternative education program or a public school acad-  
15 emy during the period of expulsion, the public school academy or  
16 alternative education program shall immediately become eligible  
17 for the prorated share of either the public school academy or  
18 operating school district's foundation allowance or the expelling  
19 school district's foundation allowance, whichever is higher.

20       (10) If an individual is expelled pursuant to subsection  
21 (2), it is the responsibility of that individual and of his or  
22 her parent or legal guardian to locate a suitable alternative  
23 educational program and to enroll the individual in such a pro-  
24 gram during the expulsion. The office of safe schools in the  
25 department shall compile information on and catalog existing  
26 alternative education programs or schools and nonpublic schools  
27 that may be open to enrollment of individuals expelled pursuant

1 to subsection (2) and pursuant to section 1311a, and shall  
2 periodically distribute this information to expelled  
3 individuals. A school board that establishes an alternative edu-  
4 cation program or school described in this subsection shall  
5 notify the office of safeschool districts for distribution to  
6 schools about the program or school and the types of pupils it  
7 serves. The office of safe schools also shall work with and pro-  
8 vide technical assistance to school districts, authorizing bodies  
9 for public school academies, and other interested parties in  
10 developing these types of alternative education programs or  
11 schools in geographic areas that are not being served.

12 (11) As used in this section:

13 (a) "Arson" means a felony violation of chapter X of the  
14 Michigan penal code, 1931 PA 328, MCL 750.71 to 750.80.

15 (b) "Criminal sexual conduct" means a violation of  
16 section 520b, 520c, 520d, 520e, or 520g of the Michigan penal  
17 code, 1931 PA 328, MCL 750.520b, 750.520c, 750.520d, 750.520e,  
18 and 750.520g.

19 (c) "Dangerous weapon" means that term as defined in  
20 section 1313.

21 (d) "Firearm" means that term as defined in section 921 of  
22 title 18 of the United States Code, 18 U.S.C. 921.

23 (e) "School board" means a school board, intermediate school  
24 board, or the board of directors of a public school academy.

25 (f) "School district" means a school district, a local act  
26 school district, an intermediate school district, or a public  
27 school academy.

1 (g) "Weapon free school zone" means that term as defined in  
2 section 237a of the Michigan penal code, 1931 PA 328,  
3 MCL 750.237a.