

# HOUSE BILL No. 5693

May 25, 2016, Introduced by Rep. Howrylak 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 2008 PA 1.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

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

House Bill No. 5693 as amended June 1, 2016

1 pupil in accordance with rules of the superintendent of public  
2 instruction to determine if the pupil is a student with a  
3 disability, the pupil shall be evaluated immediately by the  
4 intermediate school district of which the school district is  
5 constituent in accordance with section 1711.

6 (2) ~~If~~ **SUBJECT TO SECTION 1310D, IF** a pupil possesses in a  
7 weapon free school zone a weapon that constitutes a dangerous  
8 weapon, commits arson in a school building or on school grounds, or  
9 commits criminal sexual conduct in a school building or on school  
10 grounds, the school board, or the designee of the school board as  
11 described in subsection (1) on behalf of the school board, shall  
12 expel the pupil from the school district permanently, subject to  
13 possible reinstatement under subsection (5). However, a school  
14 board is not required to expel a pupil for possessing a weapon [**IF THE  
SCHOOL BOARD DETERMINES IN WRITING THAT EXPULSION IS NOT JUSTIFIED DUE TO  
UNIQUE CIRCUMSTANCES IN THAT PARTICULAR CASE. THERE IS A REBUTTABLE  
PRESUMPTION THAT EXPULSION IS NOT JUSTIFIED**] if  
15 the pupil [**HAS NO HISTORY OF SUSPENSION OR EXPULSION OR**] establishes in a  
16 clear and convincing manner at least 1  
of the following:

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

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

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

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

27 (3) If an individual is expelled pursuant to subsection (2),

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

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

3 (4) If a school board expels an individual pursuant to  
4 subsection (2), the school board shall ensure that, within 3 days  
5 after the expulsion, an official of the school district refers the  
6 individual to the appropriate county department of social services  
7 or county community mental health agency and notifies the  
8 individual's parent or legal guardian or, if the individual is at  
9 least age 18 or is an emancipated minor, notifies the individual of  
10 the referral.

11 (5) The parent or legal guardian of an individual expelled  
12 pursuant to subsection (2) or, if the individual is at least age 18  
13 or is an emancipated minor, the individual may petition the  
14 expelling school board for reinstatement of the individual to  
15 public education in the school district. If the expelling school  
16 board denies a petition for reinstatement, the parent or legal  
17 guardian or, if the individual is at least age 18 or is an  
18 emancipated minor, the individual may petition another school board  
19 for reinstatement of the individual in that other school district.  
20 All of the following apply to reinstatement under this subsection:

21 (a) For an individual who was enrolled in grade 5 or below at  
22 the time of the expulsion and who has been expelled for possessing  
23 a firearm or threatening another person with a dangerous weapon,  
24 the parent or legal guardian or, if the individual is at least age  
25 18 or is an emancipated minor, the individual may initiate a  
26 petition for reinstatement at any time after the expiration of 60  
27 school days after the date of expulsion. For an individual who was

1 enrolled in grade 5 or below at the time of the expulsion and who  
2 has been expelled pursuant to subsection (2) for a reason other  
3 than possessing a firearm or threatening another person with a  
4 dangerous weapon, the parent or legal guardian or, if the  
5 individual is at least age 18 or is an emancipated minor, the  
6 individual may initiate a petition for reinstatement at any time.  
7 For an individual who was in grade 6 or above at the time of  
8 expulsion, the parent or legal guardian or, if the individual is at  
9 least age 18 or is an emancipated minor, the individual may  
10 initiate a petition for reinstatement at any time after the  
11 expiration of 150 school days after the date of expulsion.

12 (b) An individual who was in grade 5 or below at the time of  
13 the expulsion and who has been expelled for possessing a firearm or  
14 threatening another person with a dangerous weapon shall not be  
15 reinstated before the expiration of 90 school days after the date  
16 of expulsion. An individual who was in grade 5 or below at the time  
17 of the expulsion and who has been expelled pursuant to subsection  
18 (2) for a reason other than possessing a firearm or threatening  
19 another person with a dangerous weapon shall not be reinstated  
20 before the expiration of 10 school days after the date of the  
21 expulsion. An individual who was in grade 6 or above at the time of  
22 the expulsion shall not be reinstated before the expiration of 180  
23 school days after the date of expulsion.

24 (c) It is the responsibility of the parent or legal guardian  
25 or, if the individual is at least age 18 or is an emancipated  
26 minor, of the individual to prepare and submit the petition. A  
27 school board is not required to provide any assistance in preparing

1 the petition. Upon request by a parent or legal guardian or, if the  
2 individual is at least age 18 or is an emancipated minor, by the  
3 individual, a school board shall make available a form for a  
4 petition.

5 (d) Not later than 10 school days after receiving a petition  
6 for reinstatement under this subsection, a school board shall  
7 appoint a committee to review the petition and any supporting  
8 information submitted by the parent or legal guardian or, if the  
9 individual is at least age 18 or is an emancipated minor, by the  
10 individual. The committee shall consist of 2 school board members,  
11 1 school administrator, 1 teacher, and 1 parent of a pupil in the  
12 school district. During this time the superintendent of the school  
13 district may prepare and submit for consideration by the committee  
14 information concerning the circumstances of the expulsion and any  
15 factors mitigating for or against reinstatement.

16 (e) Not later than 10 school days after all members are  
17 appointed, the committee described in subdivision (d) shall review  
18 the petition and any supporting information and information  
19 provided by the school district and shall submit a recommendation  
20 to the school board on the issue of reinstatement. The  
21 recommendation shall be for unconditional reinstatement, for  
22 conditional reinstatement, or against reinstatement, and shall be  
23 accompanied by an explanation of the reasons for the recommendation  
24 and of any recommended conditions for reinstatement. The  
25 recommendation shall be based on consideration of all of the  
26 following factors:

27 (i) The extent to which reinstatement of the individual would

1 create a risk of harm to pupils or school personnel.

2 (ii) The extent to which reinstatement of the individual would  
3 create a risk of school district liability or individual liability  
4 for the school board or school district personnel.

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

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

8 (v) The individual's attitude concerning the incident that  
9 caused the expulsion.

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

12 (vii) If the petition was filed by a parent or legal guardian,  
13 the degree of cooperation and support that has been provided by the  
14 parent or legal guardian and that can be expected if the individual  
15 is reinstated, including, but not limited to, receptiveness toward  
16 possible conditions placed on the reinstatement.

17 (f) Not later than the next regularly scheduled board meeting  
18 after receiving the recommendation of the committee under  
19 subdivision (e), a school board shall make a decision to  
20 unconditionally reinstate the individual, conditionally reinstate  
21 the individual, or deny reinstatement of the individual. The  
22 decision of the school board is final.

23 (g) A school board may require an individual and, if the  
24 petition was filed by a parent or legal guardian, his or her parent  
25 or legal guardian to agree in writing to specific conditions before  
26 reinstating the individual in a conditional reinstatement. The  
27 conditions may include, but are not limited to, agreement to a

1 behavior contract, which may involve the individual, parent or  
2 legal guardian, and an outside agency; participation in or  
3 completion of an anger management program or other appropriate  
4 counseling; periodic progress reviews; and specified immediate  
5 consequences for failure to abide by a condition. A parent or legal  
6 guardian or, if the individual is at least age 18 or is an  
7 emancipated minor, the individual may include proposed conditions  
8 in a petition for reinstatement submitted under this subsection.

9 (6) A school board or school administrator that complies with  
10 subsection (2) is not liable for damages for expelling a pupil  
11 pursuant to subsection (2), and the authorizing body of a public  
12 school academy is not liable for damages for expulsion of a pupil  
13 by the public school academy pursuant to subsection (2).

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

17 (8) This section does not diminish any rights under federal  
18 law of a pupil who has been determined to be eligible for special  
19 education programs and services.

20 (9) If a pupil expelled from a public school district pursuant  
21 to subsection (2) is enrolled by a public school district sponsored  
22 alternative education program or a public school academy during the  
23 period of expulsion, the public school academy or alternative  
24 education program shall immediately become eligible for the  
25 prorated share of either the public school academy or operating  
26 school district's foundation allowance or the expelling school  
27 district's foundation allowance, whichever is higher.

1           (10) If an individual is expelled pursuant to subsection (2),  
2 it is the responsibility of that individual and of his or her  
3 parent or legal guardian to locate a suitable alternative  
4 educational program and to enroll the individual in such a program  
5 during the expulsion. The office of safe schools in the department  
6 shall compile information on and catalog existing alternative  
7 education programs or schools and nonpublic schools that may be  
8 open to enrollment of individuals expelled pursuant to subsection  
9 (2) and pursuant to section 1311a, and shall periodically  
10 distribute this information to school districts for distribution to  
11 expelled individuals. A school board that establishes an  
12 alternative education program or school described in this  
13 subsection shall notify the office of safe schools about the  
14 program or school and the types of pupils it serves. The office of  
15 safe schools also shall work with and provide technical assistance  
16 to school districts, authorizing bodies for public school  
17 academies, and other interested parties in developing these types  
18 of alternative education programs or schools in geographic areas  
19 that are not being served.

20           (11) As used in this section:

21           (a) "Arson" means a felony violation of chapter X of the  
22 Michigan penal code, 1931 PA 328, MCL 750.71 to ~~750.80~~-750.79.

23           (b) "Criminal sexual conduct" means a violation of section  
24 520b, 520c, 520d, 520e, or 520g of the Michigan penal code, 1931 PA  
25 328, MCL 750.520b, 750.520c, 750.520d, 750.520e, and 750.520g.

26           (c) "Dangerous weapon" means that term as defined in section  
27 1313.

## House Bill No. 5693 as amended June 2, 2016

1 (d) "Firearm" means that term as defined in section 921 of  
2 title 18 of the United States Code, 18 USC 921.

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

5 (f) "School district" means a school district, ~~a local act~~  
6 ~~school district, an intermediate school district, or a public~~  
7 school academy.

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

10 Enacting section 1. This amendatory act takes effect August 1,  
11 [2016].

12 Enacting section 2. This amendatory act does not take effect  
13 unless House Bill No. 5618 of the 98th Legislature is enacted into  
14 law.