

# Legislative Analysis

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## **CSC: SEPARATE VICTIM AND PERPETRATOR AT SCHOOL**

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<http://www.house.mi.gov/hfa>

**House Bill 5530 reported as substitute H-2**  
**House Bill 5531 reported as substitute H-1**  
**Sponsor: Rep. Lana Theis**

Analysis available at  
<http://www.legislature.mi.gov>

**House Bill 5532 reported without amendment**  
**Sponsor: Rep. Sylvia A. Santana**

**Committee: Law and Justice**  
**Complete to 3-7-18**

***BRIEF SUMMARY:*** House Bill 5530 would amend the Michigan Penal Code to allow a court to prohibit an individual who was convicted of, or adjudicated for, criminal sexual conduct (CSC) against another pupil in the same school district from attending the same school or riding the same school bus as his or her victim.

House Bill 5531 would amend the Revised School Code to allow, and in some cases require, a public school to expel such an individual.

House Bill 5532 would amend the personal protection order (PPO) laws to allow a pupil in grades K-12 to obtain a PPO against his or her assailant's attending school in the same school building.

Each of the bills would take effect 90 days after being enacted.

***FISCAL IMPACT:*** House Bill 5532 may have a fiscal impact on local court funding units, and House Bills 5530 and 5531 would not have fiscal implications on the state School Aid budget or local school districts. (See ***Fiscal Information***, below, for a more detailed discussion.)

## ***THE APPARENT PROBLEM:***

Under current law, a school or school district may permanently expel a student who rapes or sexually assaults an individual on the school grounds. The law is less clear regarding a school's authority to suspend or expel a student who sexually assaults a pupil in the same school or school district but not on school grounds. For the victim, healing can be delayed and additional trauma incurred if his or her assailant is allowed to return to the same school. Being in such close proximity to an assailant can trigger post-traumatic stress disorder symptoms, nightmares, fear, depression, and emotional distress. It makes it difficult, if not impossible, to focus in class and so interrupts learning.

This lack of clarity almost resulted in a juvenile who had assaulted more than two dozen victims in the same school district, and who had pled guilty to three rape charges, being

returned to the same school and same bus route as his victims. Though the youth eventually was sentenced to house arrest after serving a brief time in a juvenile detention facility, his victims suffered undue emotional duress over the fear of seeing him on a daily basis. To prevent a similar situation in the future, some feel that the law needs to be clearer that a student who sexually assaults another student in the same school or school district could be prohibited by a court order from returning to the same school or riding the same school bus, could be immediately suspended or expelled, and could face permanent expulsion if convicted or found responsible for a sexual assault. In a related matter, some feel that the law regarding personal protection orders (PPOs) should specifically allow a victim in grades K through 12 to obtain a PPO restraining an assailant from attending school in the same building.

### ***THE CONTENT OF THE BILLS:***

**House Bill 5530** would add a new section to the Michigan Penal Code to allow a court to order that an individual who is a student in this state and is convicted of, or adjudicated as a juvenile for, CSC in the 1st, 2nd, 3rd, or 4th degree, or assault with the intent to commit CSC in the 1st, 2nd, or 3rd degree, be prohibited from doing either of the following:

- Attending the same school building that is attended by the victim of the violation.
- Utilizing the same school bus for transportation to and from any school if the individual or juvenile will have contact with the victim during use of the school bus.

The order by the court would be a part of the court's judgment of sentence, adjudication order, order of disposition, or order of probation.

***School*** would be defined to mean a public school as that term is defined in Section 5 of the Revised School Code that offers developmental kindergarten, kindergarten, or any grade from 1 through 12.

***School bus*** would mean every motor vehicle except station wagons, with a manufacturers' rated seating capacity of 16 or more passengers, including the driver, owned by a public, private, or governmental agency and operated for the transportation of children to or from school, or privately owned and operated for compensation for the transportation of children to and from school.

Proposed MCL 750.520o

**House Bill 5531** would amend the Revised School Code. Currently, the Code allows the school board, the school district superintendent, a school building principal, or a school district official (if designated by the school board) to order the suspension or expulsion from school of a pupil who is guilty of gross misdemeanor or persistent disobedience if the interest of the school is served by the suspension or expulsion. The bill would amend this provision to also allow the suspension or expulsion of a pupil who commits ***criminal sexual conduct*** (CSC) against another pupil enrolled in the same school district.

Currently, the Code requires, subject to Section 1310d, described below, that the school board or its designee *must* expel a pupil from the school district permanently (subject to possible reinstatement) *if* the pupil commits arson or criminal sexual conduct in a school building or on school grounds. (Different expulsion criteria exist for possessing a dangerous weapon in a weapon-free school zone.)

The bill would add that a pupil must also be expelled if he or she pleads to, is convicted of, or is adjudicated for criminal sexual conduct against another pupil enrolled in the same school district. The Code defines ***criminal sexual conduct*** as CSC in the 1st, 2nd, 3rd, or 4th degree or assault with the intent to commit CSC in the 1st, 2nd, or 3rd degree.

A student expelled under the bill's provisions could, however, be admitted to a cyber school. ***Cyber school*** is defined in the Code to mean a school of excellence established under Part 6e that has been issued a contract to be organized and operated as a cyber school under Section 552(2) and that provides full-time instruction to pupils through online learning or otherwise on a computer or other technology, which instruction and learning may be remote from a school facility.

[Section 1310d of the Code requires that, before suspending or expelling a student for certain offenses listed in Section 1311(2), the board of a school district or intermediate school district (ISD) or board of directors of a public school academy (PSA, or charter school), or a superintendent, school principal, or other designee, must consider each of the following factors:

- The student's age.
- The student's disciplinary history.
- Whether the student is student with a disability.
- The seriousness of the violation or behavior.
- Whether the violation or behavior committed by the student threatened the safety of any student or staff member.
- Whether restorative practices will be used to address the violation or behavior.
- Whether a lesser intervention would properly address the violation or behavior.]

MCL 380.1311

**House Bill 5532** would amend Sections 2950 and 2950a of the Revised Judicature Act, which establish the procedure for personal protection orders (PPOs) in situations involving domestic violence, stalking, or sexual assaults, and PPOs taken out against a minor.

To the current list of actions from which the subject of a PPO is prohibited, the bill would add prohibiting the subject of the PPO from attending school in the same building as the person filing the petition for the PPO. This would apply if the individual petitioning the court for a PPO is a minor who has been the victim of sexual assault by the respondent and is enrolled in a public or nonpublic school that operates any of grades K to 12. As used in the bill, ***sexual assault*** would mean criminal sexual conduct in the 1st, 2nd, 3rd, or 4th degree; assault with the intent to commit CSC in the 1st, 2nd, or 3rd degree; or a

substantially similar offense under a law of the United States, another state, or a foreign country or tribal or military law.

MCL 600.2950 and 600.2950a

### ***FISCAL INFORMATION:***

#### ***Department of Education***

There would be no fiscal impact for the state School Aid budget and minimal, if any, fiscal impact for local school districts. While a district may lose per pupil funding for an expelled pupil, pupils could transfer to other districts, and the net effect would likely be zero.

#### ***Judiciary***

House Bill 5532, which would allow a minor victim to obtain a PPO, would have an indeterminate fiscal impact on local court funding units. The fiscal impact would depend on how provisions of the bill affected court caseloads and the related administrative costs.

### ***ARGUMENTS:***

#### ***For:***

In short, the bills would give courts the ability to prohibit a student who sexually assaulted a schoolmate from attending the same school, give school officials the authority to expel a student who sexually assaults a student enrolled in the same school district whether the assault occurred on or off school grounds, and give victims the statutory authority to obtain a PPO to keep their assailant from being in the same school building. House Bill 5531 also would allow a school or school district to immediately suspend or expel a student who commits a CSC against another pupil in that school district. This would enable a school district to protect a victim while a case is being adjudicated.

In so doing, the bills would provide added protection to school-aged children who are victims of a sexual assault by a person attending the same school or enrolled in the same school district. It is difficult to heal and move forward when having to see one's assailant sitting a few rows away, in the hallway, at lunch, or even at after-school events like a varsity basketball game or school play. Even if the offender doesn't approach the victim, some offenders use the close proximity a school or school bus affords to sneer, smirk, or engage in other actions that can cause a victim distress. Enactment of the bills could therefore provide a less stressful environment for the victim and one more conducive to learning. It closes a gap in current law and will enable victims to move forward without being unduly harsh on the offender. He or she would be afforded the same opportunities to continue his or her education as for any other student whose conduct resulted in permanent expulsion, with the additional possibility of attending a cyber school.

#### ***Against:***

According to advocates who work with juvenile sex offenders, the bills' provisions act as a double-edged sword. Though victims of sexual assaults need to have their rights protected, expulsion could set up roadblocks to the rehabilitation of juvenile offenders.

Expulsion precludes participation in extracurricular activities and involvement in other activities seen as protective factors against reoffending. The research is clear that juveniles, even juvenile sex offenders, are amenable to rehabilitation.

Though House Bill 5530 affords a court discretion to decide whether the student should be prohibited from returning to the same school building as his or her victim, and the PPO issued under House Bill 5532 would only keep the student out of the same school building as the victim, House Bill 5531 affords little discretion for school officials to decide on a case-by-case basis what is the appropriate action. Since part of the issue appears to be that the school in question felt it lacked the authority to expel the student charged in the sexual assaults, perhaps such authority could be granted short of a mandate of permanent expulsion.

***Response:***

Though the section of the Revised School Code being amended does call for permanent expulsion, it also requires school officials to consider certain extenuating factors such as whether the student is a student with a disability and the seriousness of the offense, and the parents of a minor who is expelled, or an older student, can petition for reinstatement. This review may allow a school some discretion, especially if the case involved consensual sex but with an underage student.

***POSITIONS:***

Representatives of the following entities indicated support for the bills:

- American Association of University Women (2-20-18)
- Michigan Coalition to End Domestic and Sexual Violence (2-27-18)
- Michigan Association of School Boards (2-27-18)
- Oakland Schools (2-27-18)
- Michigan Association of Secondary School Principals (2-27-18)
- Michigan Department of Education (2-27-18)
- Office of Attorney General (2-27-18)
- ESA Legislative Group (2-27-18)

The ACLU of Michigan indicated a neutral position regarding HB 5530 and opposition to HB 5531. (3-7-18)

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