

# HOUSE BILL No. 5531

February 7, 2018, Introduced by Reps. Theis, Santana, Noble, Whiteford, Rendon, Kelly, Bizon, VerHeulen, Glenn, Bellino, Kahle, Alexander, Farrington, Hornberger, Barrett, VanderWall, Griffin, LaFave, Sheppard, Leutheuser, Lucido, Reilly and Yaroeh and referred to the Committee on Law and Justice.

A bill to amend 1976 PA 451, entitled  
"The revised school code,"  
by amending section 1311 (MCL 380.1311), as amended by 2016 PA 364.

## 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

1 with a disability, and the school district has not evaluated the  
2 pupil in accordance with rules of the superintendent of public  
3 instruction to determine if the pupil is a student with a  
4 disability, the pupil shall be evaluated immediately by the  
5 intermediate school district of which the school district is  
6 constituent in accordance with section 1711.

7 (2) Subject to subsection (3) and section 1310d, if a pupil  
8 possesses in a weapon free school zone a weapon that constitutes a  
9 dangerous weapon, commits arson in a school building or on school  
10 grounds, ~~or~~ commits criminal sexual conduct in a school building or  
11 on school grounds, **OR COMMITS CRIMINAL SEXUAL CONDUCT AGAINST**  
12 **ANOTHER PUPIL ENROLLED IN THE SAME SCHOOL DISTRICT**, the school  
13 board, or the designee of the school board as described in  
14 subsection (1) on behalf of the school board, shall expel the pupil  
15 from the school district permanently, subject to possible  
16 reinstatement under subsection (6). However, a school board is not  
17 required to expel a pupil for possessing a weapon if the pupil  
18 establishes in a clear and convincing manner at least 1 of the  
19 following:

20 (a) The object or instrument possessed by the pupil was not  
21 possessed by the pupil for use as a weapon, or for direct or  
22 indirect delivery to another ~~person~~ **INDIVIDUAL** for use as a weapon.

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

24 (c) The pupil did not know or have reason to know that the  
25 object or instrument possessed by the pupil constituted a dangerous  
26 weapon.

27 (d) The weapon was possessed by the pupil at the suggestion,

1 request, or direction of, or with the express permission of, school  
2 or police authorities.

3 (3) There is a rebuttable presumption that expulsion under  
4 subsection (2) for possession of a weapon is not justified if both  
5 of the following are met:

6 (a) The school board or its designee determines in writing  
7 that at least 1 of the factors listed in subsection (2)(a) to (d)  
8 has been established in a clear and convincing manner.

9 (b) The pupil has no history of suspension or expulsion.

10 (4) If an individual is expelled pursuant to subsection (2),  
11 the expelling school district shall enter on the individual's  
12 permanent record that he or she has been expelled pursuant to  
13 subsection (2). Except if a school district operates or  
14 participates cooperatively in an alternative education program  
15 appropriate for individuals expelled pursuant to subsection (2) and  
16 in its discretion admits the individual to that program, and except  
17 for a strict discipline academy established under sections 1311b to  
18 1311m, an individual expelled pursuant to subsection (2) is  
19 expelled from all public schools in this state and the officials of  
20 a school district shall not allow the individual to enroll in the  
21 school district unless the individual has been reinstated under  
22 subsection (6). Except as otherwise provided by law, a program  
23 operated for individuals expelled pursuant to subsection (2) shall  
24 ensure that those individuals are physically separated at all times  
25 during the school day from the general pupil population. If an  
26 individual expelled from a school district pursuant to subsection  
27 (2) is not placed in an alternative education program or strict

1 discipline academy, the school district may provide, or may arrange  
2 for the intermediate school district to provide, appropriate  
3 instructional services to the individual at home. The type of  
4 services provided shall meet the requirements of section 6(4)(u) of  
5 the state school aid act of 1979, MCL 388.1606, and the services  
6 may be contracted for in the same manner as services for homebound  
7 pupils under section 109 of the state school aid act of 1979, MCL  
8 388.1709. This subsection does not require a school district to  
9 expend more money for providing services for a pupil expelled  
10 pursuant to subsection (2) than the amount of the foundation  
11 allowance the school district receives for the pupil as calculated  
12 under section 20 of the state school aid act of 1979, MCL 388.1620.

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

21 (6) The parent or legal guardian of an individual expelled  
22 pursuant to subsection (2) or, if the individual is at least age 18  
23 or is an emancipated minor, the individual may petition the  
24 expelling school board for reinstatement of the individual to  
25 public education in the school district. If the expelling school  
26 board denies a petition for reinstatement, the parent or legal  
27 guardian or, if the individual is at least age 18 or is an

1 emancipated minor, the individual may petition another school board  
2 for reinstatement of the individual in that other school district.

3 All of the following apply to reinstatement under this subsection:

4 (a) For an individual who was enrolled in grade 5 or below at  
5 the time of the expulsion and who has been expelled for possessing  
6 a firearm or threatening another person with a dangerous weapon,  
7 the parent or legal guardian or, if the individual is at least age  
8 18 or is an emancipated minor, the individual may initiate a  
9 petition for reinstatement at any time after the expiration of 60  
10 school days after the date of expulsion. For an individual who was  
11 enrolled in grade 5 or below at the time of the expulsion and who  
12 has been expelled pursuant to subsection (2) for a reason other  
13 than possessing a firearm or threatening another person with a  
14 dangerous weapon, the parent or legal guardian or, if the  
15 individual is at least age 18 or is an emancipated minor, the  
16 individual may initiate a petition for reinstatement at any time.  
17 For an individual who was in grade 6 or above at the time of  
18 expulsion, the parent or legal guardian or, if the individual is at  
19 least age 18 or is an emancipated minor, the individual may  
20 initiate a petition for reinstatement at any time after the  
21 expiration of 150 school days after the date of expulsion.

22 (b) An individual who was in grade 5 or below at the time of  
23 the expulsion and who has been expelled for possessing a firearm or  
24 threatening another person with a dangerous weapon shall not be  
25 reinstated before the expiration of 90 school days after the date  
26 of expulsion. An individual who was in grade 5 or below at the time  
27 of the expulsion and who has been expelled pursuant to subsection

1 (2) for a reason other than possessing a firearm or threatening  
2 another person with a dangerous weapon shall not be reinstated  
3 before the expiration of 10 school days after the date of the  
4 expulsion. An individual who was in grade 6 or above at the time of  
5 the expulsion shall not be reinstated before the expiration of 180  
6 school days after the date of expulsion.

7 (c) It is the responsibility of the parent or legal guardian  
8 or, if the individual is at least age 18 or is an emancipated  
9 minor, of the individual to prepare and submit the petition. A  
10 school board is not required to provide any assistance in preparing  
11 the petition. Upon request by a parent or legal guardian or, if the  
12 individual is at least age 18 or is an emancipated minor, by the  
13 individual, a school board shall make available a form for a  
14 petition.

15 (d) Not later than 10 school days after receiving a petition  
16 for reinstatement under this subsection, a school board shall  
17 appoint a committee to review the petition and any supporting  
18 information submitted by the parent or legal guardian or, if the  
19 individual is at least age 18 or is an emancipated minor, by the  
20 individual. The committee shall consist of 2 school board members,  
21 1 school administrator, 1 teacher, and 1 parent of a pupil in the  
22 school district. During this time the superintendent of the school  
23 district may prepare and submit for consideration by the committee  
24 information concerning the circumstances of the expulsion and any  
25 factors mitigating for or against reinstatement.

26 (e) Not later than 10 school days after all members are  
27 appointed, the committee described in subdivision (d) shall review

1 the petition and any supporting information and information  
2 provided by the school district and shall submit a recommendation  
3 to the school board on the issue of reinstatement. The  
4 recommendation shall be for unconditional reinstatement, for  
5 conditional reinstatement, or against reinstatement, and shall be  
6 accompanied by an explanation of the reasons for the recommendation  
7 and of any recommended conditions for reinstatement. The  
8 recommendation shall be based on consideration of all of the  
9 following factors:

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

12 (ii) The extent to which reinstatement of the individual would  
13 create a risk of school district liability or individual liability  
14 for the school board or school district personnel.

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

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

18 (v) The individual's attitude concerning the incident that  
19 caused the expulsion.

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

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

27 (f) Not later than the next regularly scheduled board meeting

1 after receiving the recommendation of the committee under  
2 subdivision (e), a school board shall make a decision to  
3 unconditionally reinstate the individual, conditionally reinstate  
4 the individual, or deny reinstatement of the individual. The  
5 decision of the school board is final.

6 (g) A school board may require an individual and, if the  
7 petition was filed by a parent or legal guardian, his or her parent  
8 or legal guardian to agree in writing to specific conditions before  
9 reinstating the individual in a conditional reinstatement. The  
10 conditions may include, but are not limited to, agreement to a  
11 behavior contract, which may involve the individual, parent or  
12 legal guardian, and an outside agency; participation in or  
13 completion of an anger management program or other appropriate  
14 counseling; periodic progress reviews; and specified immediate  
15 consequences for failure to abide by a condition. A parent or legal  
16 guardian or, if the individual is at least age 18 or is an  
17 emancipated minor, the individual may include proposed conditions  
18 in a petition for reinstatement submitted under this subsection.

19 (7) A school board or school administrator that complies with  
20 subsection (2) is not liable for damages for expelling a pupil  
21 pursuant to subsection (2), and the authorizing body of a public  
22 school academy is not liable for damages for expulsion of a pupil  
23 by the public school academy pursuant to subsection (2).

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

27 (9) This section does not diminish any rights under federal



1 law of a pupil who has been determined to be eligible for special  
2 education programs and services.

3 (10) If a pupil expelled from a public school district  
4 pursuant to subsection (2) is enrolled by a public school district  
5 sponsored alternative education program or a public school academy  
6 during the period of expulsion, the public school academy or  
7 alternative education program shall immediately become eligible for  
8 the prorated share of either the public school academy or operating  
9 school district's foundation allowance or the expelling school  
10 district's foundation allowance, whichever is higher.

11 (11) If an individual is expelled pursuant to subsection (2),  
12 it is the responsibility of that individual and of his or her  
13 parent or legal guardian to locate a suitable alternative  
14 educational program and to enroll the individual in such a program  
15 during the expulsion. The office of safe schools in the department  
16 shall compile information on and catalog existing alternative  
17 education programs or schools and nonpublic schools that may be  
18 open to enrollment of individuals expelled pursuant to subsection  
19 (2) and pursuant to section 1311a, and shall periodically  
20 distribute this information to school districts for distribution to  
21 expelled individuals. A school board that establishes an  
22 alternative education program or school described in this  
23 subsection shall notify the office of safe schools about the  
24 program or school and the types of pupils it serves. The office of  
25 safe schools also shall work with and provide technical assistance  
26 to school districts, authorizing bodies for public school  
27 academies, and other interested parties in developing these types

1 of alternative education programs or schools in geographic areas  
2 that are not being served.

3 (12) As used in this section:

4 (a) "Arson" means a felony violation of chapter X of the  
5 Michigan penal code, 1931 PA 328, MCL 750.71 to 750.79.

6 (b) "Criminal sexual conduct" means a violation of section  
7 520b, 520c, 520d, 520e, or 520g of the Michigan penal code, 1931 PA  
8 328, MCL 750.520b, 750.520c, 750.520d, 750.520e, and 750.520g.

9 (c) "Dangerous weapon" means that term as defined in section  
10 1313.

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

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

15 (f) "School district" means a school district, intermediate  
16 school district, or public school academy.

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

19 Enacting section 1. This amendatory act takes effect 90 days  
20 after the date it is enacted into law.