



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

BILL ANALYSIS



Telephone: (517) 373-5383
Fax: (517) 373-1986

Senate Bill 527 (as enrolled)
 Sponsor: Senator Leon Stille
 Senate Committee: Education
 House Committee: Education

PUBLIC ACT 250 of 1995

Date Completed: 1-29-96

RATIONALE

Public Act 328 of 1994 amended the School Code to require a local school board or a superintendent, principal, or other designated school official to expel permanently a pupil who unlawfully possesses a dangerous weapon in a weapon free school zone, commits arson in a school building or on school grounds, or rapes a person in the building or on school grounds. Between January and October 1995, approximately 240 students from across the State were expelled, primarily due to weapons' possession violations, according to published reports. These violations ranged from students' possessing pocket knives to students' carrying guns and threatening other students; all resulted in expulsions. Given the violations' varying degrees of severity, however, some people believe that school officials should have some flexibility when responding to various weapons' possession violations or other violations that call for expulsion.

-- Specifies that the current 90-school-day waiting period that must expire before a student may be reinstated applies only to students who have been expelled for possessing a firearm or threatening another person with a dangerous weapon; students who have been expelled for other reasons may be reinstated upon the expiration of 10 school days after the expulsion.

CONTENT

The bill amended the School Code to revise provisions concerning the reinstatement of students enrolled in grade five or below who were expelled for possessing a dangerous weapon or committing arson or rape. The bill does the following:

-- Specifies that the 60-school-day waiting period that must expire before a reinstatement petition may be initiated applies only to a student who has been expelled for possessing a firearm or threatening another person with a dangerous weapon; a reinstatement petition for a student who has been expelled for other reasons may be initiated at any time.

In regard to all grades, the bill requires school districts that operate or participate in an alternative education program for students who have been expelled for possessing a dangerous weapon or committing arson or criminal sexual conduct on school grounds to ensure that those students are physically separated at all times during the school day from the general pupil population. If an expelled individual is not placed in alternative education, the bill permits the school district to provide, or arrange for the intermediate school district to provide, appropriate instructional services to the individual at home.

In addition, the bill provides that if an expelled individual enrolls in a public school alternative education program or public school academy during the period of expulsion, the program or academy becomes eligible for the prorated share of the foundation allowance of the academy or the expelling district.

The bill also specifies that certain criminal sexual conduct offenses, instead of "rape", require student expulsion; and defines "arson" as felony violations under the Michigan Penal Code.

Expulsion Requirements

The School Code requires a local school board or a superintendent, principal, or other designated school official to expel permanently a pupil who unlawfully possesses a dangerous weapon in a weapon free school zone, commits arson in a school building or on school grounds, or commits criminal sexual conduct in the building or on school grounds. ("Dangerous weapon" means a firearm, dagger, dirk, stiletto, knife with a blade over three inches long, pocket knife opened by a mechanical device, iron bar, or brass knuckles.)

The bill replaced references to "rape" with references to "criminal sexual conduct". The bill defines "criminal sexual conduct" as a violation of the Michigan Penal Code's provisions on first-, second-, third-, or fourth-degree criminal sexual conduct, or assault with intent to commit criminal sexual conduct (MCL 750.520b, 750.520c, 750.520d, 750.520e, or 750.520g).

The bill also defines "arson" as a felony violation of Chapter 10 of the Penal Code. (Chapter 10 of the Penal Code includes the following felony violations: burning any dwelling house (MCL 750.72); burning other real property (MCL 750.73); burning personal property valued at more than \$50 (MCL 750.74); burning insured property (MCL 750.75); willfully and maliciously setting fire to property valued at more than \$50 (MCL 750.77); willfully or negligently setting fire to woods, prairies, or grounds (MCL 750.78); and, setting fire to mines and mining material (MCL 750.80).

In addition, the bill defines "firearm" as that term is defined in the 1994 Federal Gun-Free Schools Act (i.e., "(A) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; (B) the frame or receiver of any such weapon; (C) any firearm muffler or firearm silencer; or (D) any destructive device" (e.g., a bomb); the term does not include an antique firearm.)

Alternative Education/State Aid

The bill retains a provision that, unless a school district operates or participates in a program appropriate for individuals expelled under these provisions, and in its discretion admits the individual to that program, an individual expelled under these provisions is expelled from all public schools in the State and the officials of a school district may not allow the individual to enroll in the

district unless the individual has been reinstated as provided in the Code. The bill, however, refers to a school district that operates or participates "cooperatively in an alternative education program".

The Code had required that this program be operated in facilities or at times separate from those used for the general pupil population. The bill instead requires a program for expelled individuals to ensure that those students are physically separated at all times during the school day from the general pupil population.

The bill specifies that, if an individual expelled for possession of a dangerous weapon, arson, or criminal sexual conduct (CSC) is not placed in an alternative education program, the school district may provide, or arrange for the intermediate school district (ISD) to provide, appropriate instructional services to the individual at home. The type of services provided must be similar to those provided to home-bound or hospitalized pupils under Section 109 of the State School Aid Act, and the services may be contracted for in the same manner as under that section. (Section 109 requires a district, as a condition of receiving State school aid, to provide instructional services to pupils who are hospitalized or home-bound for more than five days; a district may provide the services or contract with an ISD, a hospital, a treatment center, or another district to provide them.)

The bill specifies that these provisions do not require a school district to spend more money for providing services for an expelled pupil than the amount of the foundation allowance the school district receives for the pupil under Section 20 of the State School Aid Act (which provides for the calculation of the basic foundation allowance).

In addition, the bill provides that if a pupil expelled from a public school district for possession of a dangerous weapon, arson, or CSC is enrolled by a public school-sponsored alternative education program or a public school academy during the period of expulsion, the academy or program immediately becomes eligible for the prorated share of either the public academy foundation allowance or the expelling school district's foundation allowance, whichever is higher.

Petition for Reinstatement

Under the Code, the parent or legal guardian of an expelled student, or a student who is at least 18 or

emancipated, may petition the board of the expelling school district for the student's reinstatement in the district. Under the bill, a reinstatement petition for an expelled student who was in grade five or below at the time of the expulsion, and who was expelled for possessing a firearm or threatening another person with a dangerous weapon, may be initiated after the expiration of 60 school days following the expulsion date. (Previously, the 60-school-day requirement had applied to all individuals enrolled in grade five or below at the time of expulsion.)

Under the bill, for a student who was enrolled in grade five or below at the time of the expulsion and who has been expelled for a reason other than possessing a firearm or threatening another person with a dangerous weapon, the parent or legal guardian of an expelled student, or a student who is at least 18 or emancipated, may initiate a petition for reinstatement at any time.

(The bill does not affect the 150-school-day waiting period required for individuals in grade six or above at the time of expulsion.)

Reinstatement

A student who was in grade five or below at the time of the expulsion, and who was expelled for possessing a firearm or threatening another person with a dangerous weapon, may not be reinstated before the expiration of 90 school days after the date of expulsion. (Previously, the 90-school-day requirement had applied to all individuals enrolled in grade five or below at the time of expulsion.)

Under the bill, a student who was in grade five or below at the time of the expulsion and who has been expelled for a reason other than possessing a firearm or threatening another person with a dangerous weapon, may not be reinstated before the expiration of 10 school days after the date of expulsion.

(The bill does not affect the 180-school-day waiting period required for individuals in grade six or above at the time of expulsion.)

MCL 380.1311

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Since Public Act 328 amended the School Code and took effect January 1, 1995, more than 200 students across the State reportedly have been expelled from schools primarily for weapons violations. The Code also requires the expulsion of a student who commits arson in a school building or on school grounds, or rapes a person in the building or on school grounds. As of July 1995, 21 students were expelled for arson violations, although none reportedly was expelled for committing rape, according to the Department of Social Services. With this data and school districts' experiences of working with expulsion requirements, it has become apparent that some latitude is needed when these provisions are applied to younger children. Under the bill, for students in grade five or below, the 60-school-day waiting period for reinstatement petitions and the 90-school-day waiting period for reinstatement apply only to students who have been expelled for possessing a firearm or threatening another person with a dangerous weapon. By distinguishing between the violations committed by younger children, the bill will bring some flexibility to the Code's expulsion requirements, while preserving the original purpose of expelling students who bring firearms to school.

Response: Under the bill, a student in grade five or below who committed CSC or arson on school grounds may petition for reinstatement at any time and may be reinstated 11 school days after the date of expulsion. Thus, a student who was expelled for setting fire to school property, for example, might return to the classroom more quickly than a student who was expelled for taking a pocketknife to school. It is not clear why students who commit these serious violations should be able to return to school sooner than students whose actions are less dangerous.

Supporting Argument

Under the Code, a school district may operate or participate in a program that is appropriate for students expelled for possessing weapons or committing arson or criminal sexual conduct. The program, however, had to be operated in facilities or at times separate from those used for the general pupil population. The bill deleted the requirement that the program be operated separately, and requires, instead, that school districts operating or participating in an alternative education program for expelled students ensure that those students are physically separated at all times during the school day from the general pupil population. Thus, school districts will not have to provide separate facilities for

alternative education programs, but may operate them in the same facilities as those used for general education programs and, through scheduling, for example, may physically separate these students from the general pupil population.

Response: Although school districts may operate or participate in an alternative education program for these students or provide instructional services for them at home, there is no provision *requiring* these programs to be established or provided. The bill fails to address concerns about the lack of alternative education for these students. Consequently, expelled students in all grades still may be forced out on the streets where they will not be under any adult supervision--whether for a minimum of 10 days or permanently.

Opposing Argument

School board members, administrators, and parents relate instances in which students were expelled automatically because of the Code's provisions, despite extenuating circumstances. For example, an eighth grade student was caught carrying a knife at a school football game. He was expelled despite explaining to school officials that he feared for his safety and needed the knife for self-protection. In a similar incident, a 12-year-old girl carried her father's hunting knife to and from school as protection against a man she believed was following her. Finally, a grade school student and his friend were expelled as the result of an after-school incident. The student and his friend reportedly were whittling wood at the student's house when the two boys decided to go to play at a nearby school yard. While the two were playing, the whittling knives fell out of their pockets. A janitor saw the knives and reported the incident to school officials, who had no recourse but to expel the students. Some school officials are concerned that the Code's zero-tolerance approach to these situations unnecessarily punishes some children who had no intent to harm. Although the bill revises reinstatement provisions for students in grade five or below, it does not grant school officials more latitude in determining appropriate responses to these kinds of incidents.

Response: The Code already does allow school boards to exercise some discretion in expelling a pupil for possessing a weapon if the pupil establishes in a clear and convincing manner that the object or instrument he or she possessed was not possessed for use as a weapon, or for delivery to another person for use as a weapon; the weapon was not knowingly possessed by the pupil; the pupil did not know or have reason to know that the object or instrument constituted a dangerous weapon; and/or the weapon was

possessed by the pupil at the suggestion, request, or direction of, or with the express permission of, school or police authorities (MCL 380.1311(2)).

Opposing Argument

Title X Part B of the Federal Goals 2000: Educate America Act, known as the gun-free schools provisions, requires states receiving funds under the Act to enact a law under which local school districts must expel from school for at least one year a student who is determined to have brought a weapon to school, except that the state law must allow the chief administering officer to modify the expulsion requirement on a case-by-case basis. Since the School Code's expulsion requirements do not permit school districts to conduct a case-by-case review, some have raised the concern that Michigan could be in jeopardy of forfeiting future Federal funds. State Department of Education officials have identified in the 1995-96 Department budget approximately \$390 million in Federal grant revenues for school districts (for such programs as drug-free schools, disadvantaged children, migrant education, handicapped children, professional development, and school improvement) as well as funds used by the Department for various technical assistance and support programs, which originally were authorized under the Elementary and Secondary Education Act, that could be affected by this requirement.

Response: Some people believe that these funds may not be in jeopardy because Congress is considering repealing this requirement. Furthermore, action is expected to be taken first against states that have no expulsion laws at all. States that have expulsion laws, although they may not comply totally with Federal requirements, are expected to be addressed at a later time. Thus, these funds may not be in imminent jeopardy, if at all.

Legislative Analyst: L. Arasim
S. Margules

FISCAL IMPACT

The bill will have no fiscal impact on State government. It will, however, have an impact on local and intermediate school districts and public school academies that conduct programs for students expelled for possessing a dangerous weapon or committing CSC or arson at school.

A student expelled for possessing a dangerous weapon or committing CSC or arson at school may be enrolled under the bill by an alternative education program or public school academy in a

program separated from other students. The bill makes a public school academy or alternative education program that enrolls the expelled pupil immediately eligible for the prorated share of the public school academy's foundation allowance or the expelling school district's foundation allowance, whichever is higher. This could be interpreted as requiring the district receiving foundation allowance funding for the pupil to pay the academy or alternative program educating the expelled student a portion of the foundation allowance attributable to that pupil's membership. The bill does not change State foundation allowance payments, which are determined by the State School Aid Act.

In FY 1995-96, foundation allowance payments are determined by a local district's foundation allowance per pupil and the district's pupil membership count. The foundation allowance that applies is generally that of the pupil's district of residence. The pupil membership of a district is the average of pupils who are enrolled and in regular daily attendance on the February 1995 and October 1995 pupil count days. A pupil who is expelled on one of those days and not enrolled and in attendance at an alternative program is not counted in pupil membership on that count day. For example, a pupil who was in school in February 1995 and expelled on the October 1995 count day and not attending an alternative program would only generate 0.5 full-time equivalent membership or one-half of a foundation allowance in the current fiscal year.

A district that chooses to offer educational services to an expelled student in the student's home under the bill might incur additional expenses to provide the program. Under the current State School Aid Act, an expelled student taught in a home-bound program on a pupil membership count day is not eligible to be counted in pupil membership on that day. The existing exception that allows home-bound pupils to be counted in membership applies only to students with medical conditions.

Fiscal Analyst: E. Pratt

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.