

# Legislative Analysis



## CHANGES TO SUSPENSION AND EXPULSION RULES IN SCHOOLS

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**House Bill 5618 as enacted**  
**Public Act 360 of 2016**  
**Sponsor: Rep. Andy Schor**

**House Bill 5619 as enacted**  
**Public Act 361 of 2016**  
**Sponsor: Rep. Al Pscholka**

**House Bill 5620 as enacted**  
**Public Act 362 of 2016**  
**Sponsor: Rep. Adam F. Zemke**

**House Bill 5621 as enacted**  
**Public Act 363 of 2016**  
**Sponsor: Rep. Lisa Posthumus Lyons**

**House Bill 5693 as enacted**  
**Public Act 364 of 2016**  
**Sponsor: Rep. Martin Howrylak**

**House Bill 5694 as enacted**  
**Public Act 365 of 2016**  
**Sponsor: Rep. David LaGrand**

**House Bill 5695 as enacted**  
**Public Act 366 of 2016**  
**Sponsor: Rep. Peter J. Lucido**

**House Committee: Education**  
**Senate Committee: Judiciary**  
**Complete to 1-10-17**

***BRIEF SUMMARY:*** House Bills 5618 to 5621 would amend the Revised School Code to require schools to operate under the rebuttable presumption that suspension or expulsion is *not* justified, with certain exceptions, and to consider other factors and options before suspending or expelling a student. The package of bills would make *restorative practices* one of those options to consider, and also would encourage schools to include restorative practices in their school bullying policies. Finally, they would require school boards to report information required in the statewide school safety information policy to the appropriate state or local law enforcement agencies and prosecutors.

***Restorative practices:*** practices that emphasize repairing the harm to the victim and the school community caused by a student's misconduct. (Definition in House Bill 5619)

House Bill 5693 would establish a rebuttable presumption that expulsion for possession of a weapon in a weapon free school zone is *not* justified if the student fits one of the exceptions to that rule.

House Bills 5694 and 5695 would incorporate the changes in HBs 5618 to 5621 into other sections of the Revised School Code, and make other technical changes.

All seven bills take effect on August 1, 2017.

**FISCAL IMPACT:** House Bills 5618 to 5621, as well as House Bills 5693 to 5695, would have no fiscal impact on the state or local entities.

***THE APPARENT PROBLEM:***

Zero tolerance measures at schools, enacted in the mid- to late-1990s, and especially after the Columbine High School shooting in 1999, required suspension or expulsion for various offenses, and were intended to keep schools safe. However, those measures leave little flexibility or discretion for schools and have resulted in unintended consequences. According to committee testimony, with no ability to consider a student's age, developmental abilities, or intent, the discipline often does not fit the crime. This has led to a substantial increase in out-of-school suspension and expulsion in the past few decades.

This bill package attempts to address those concerns by giving schools a list of factors to consider before taking disciplinary action and by requiring that the school leadership operate under the rebuttable presumption that suspension or expulsion is *not* justified, with certain exceptions.

***THE CONTENT OF THE BILL:***

**House Bill 5618 (proposed MCL 380.1310d)**

***Considerations before suspension or expulsion:*** House Bill 5618 would require that, before suspending or expelling a student for certain offenses (in the chart, on the next page), the board of a school district or intermediate school district (ISD) or board of directors of a public school academy (charter school), or a superintendent, school principal, or other designee must consider the following factors:

- The student's age,
- The student's disciplinary history,
- Whether the student has a disability, [Section 1311(1) does provide that if there is reasonable suspicion to believe the student has a disability and has not been evaluated, that evaluation will take place immediately]
- 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, and
- Whether a lesser intervention would properly address the violation or behavior.

Section	Triggering offense	Current discipline	Proposed discipline
MCL 380.1310	Pupil enrolled in grade 6 or above commits a physical assault against another student at school	School <u>shall suspend or expel</u> the pupil from the school district for up to 180 school days	Before suspension or expulsion, school <u>shall</u> consider factors above
MCL 380.1311(2)	Pupil possesses a dangerous weapon at school; or commits arson at school; or commits criminal sexual conduct at school	School <u>shall expel</u> the pupil from the school district permanently (subject to successful petition for reinstatement)	Before expulsion, school <u>shall</u> consider factors above. These considerations do not apply when a student possesses a firearm in a weapon free school zone.
MCL 380.1311A	Pupil enrolled in grade 6 or above commits a physical assault against an employee, volunteer, or contractor of the school	School <u>shall expel</u> the pupil from the school district permanently (subject to successful petition for reinstatement)	Before expulsion, school <u>shall</u> consider factors above
MCL 380.1311(1)	Pupil is guilty of gross misdemeanor or persistent disobedience, and school officials believe suspension or expulsion is in the interest of the school	School <u>may suspend or expel</u>	Before suspension or expulsion, school <u>shall</u> consider factors above

***Intent of bill: increased discretion for school board or board of directors:*** The bill states that this section is intended to give the board or board of directors, or its designee, discretion over whether or not to suspend or expel a student under sections 1310, 1311(1), 1311(2), or 1311A that would otherwise mandate a suspension or expulsion. In exercising that discretion for a suspension of more than 10 days or expulsion, there is a rebuttable presumption that a suspension or expulsion is not justified unless the board can demonstrate that it considered each of the factors listed above. For a suspension of 10 days or fewer, there is no rebuttable presumption, but the board must still consider the factors. As before, if a student possesses a firearm in a weapon free school zone, the student will be permanently expelled without considering the factors, unless the student can establish mitigating factors by clear and convincing evidence. (See House Bill 5693, below)

***Definitions:*** Finally, the bill defines several terms, or refers to applicable definitions elsewhere in state or federal law.

- Expel: to exclude a student from school for disciplinary reasons for a period of 60 or more days.
- Firearm: (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. Such term does not include an antique firearm. (defined in Title 18 of the United States Code, 18 USC 921)
- Suspend: to exclude a student from school for disciplinary reasons for a period of fewer than 60 days.

- Weapon free school zone: school property and a vehicle used by a school to transport students to or from school property (defined in the Michigan penal code, MCL 750.237a)

**House Bill 5619: Restorative practices (proposed MCL 380.1310c)**

The bill would require that a school board or its designee consider using restorative practices as an alternative or in addition to suspension or expulsion. It should be the first consideration for offenses such as interpersonal conflicts, bullying, verbal and physical conflicts, thefts, damage to property, class disruption, harassment, and cyberbullying.

Restorative practices may include *victim-offender conferences* that:

- Are initiated by the victim;
- Are approved by the victim's parent or legal guardian or, if the victim is at least 15, by the victim;
- Are attended voluntarily by the victim, a victim advocate, the offender, members of the school community, and supporters of the victim and the offender; and
- Would provide an opportunity for the offender to accept responsibility for the harm caused to those affected, and to participate in setting consequences to repair the harm.

The attendees of the conference would be called a restorative practices team, and may require the student to apologize; participate in community service, restoration of emotional or material losses, or counseling; pay restitution; or any combination of these. The selected consequences and time limits for their completion will be incorporated into an agreement to be signed by all participants.

**House Bill 5620: Restorative practices in school bullying policy (MCL 380.1310b)**

In addition to several technical changes, this bill would encourage the board of directors of a school district or ISD or board of directors of a charter school to include provisions for using restorative practices, as described above, in its required policy prohibiting school bullying. House Bill 5620 is tie-barred to House Bill 5619, meaning that it could not take effect unless HB 5619 is also enacted.

**House Bill 5621: Reporting of serious incidents (MCL 380.1308)**

The bill simplifies the reporting requirements under the statewide school safety information policy. Currently, the policy identifies the types of incidents which must be reported to law enforcement, as well as procedures to be followed when an incident occurs. House Bill 5621 clarifies that reporting of that information required by the statewide school safety information policy must be done by a school board or its designee, to appropriate state or local law enforcement agencies and prosecutors. This change is an attempt to address concerns about duplicative or conflicting reporting requirements.

In addition to the incidents which currently must be reported immediately by the superintendent to law enforcement, the bill would also require the superintendent of the school district to report information required by the statewide school safety information policy to appropriate state and local law enforcement agencies.

**House Bill 5693 (MCL 380.1311): Changes to zero tolerance expulsions**

This section currently mandates expulsion for possession of a dangerous weapon in a weapon free school zone, or for arson or criminal sexual conduct on school property, unless the student with the weapon establishes by clear and convincing evidence that he or she fits one of the exceptions to that rule. Expulsion is not required if the student can establish one of the following:

- The object or instrument was not possessed for use as a weapon (or for delivery for another person to use as a weapon);
- The student did not knowingly possess the weapon;
- The student did not know or have reason to know that the object constituted a dangerous weapon; or
- The student had the weapon at the suggestion, request, or direction of, or with the express permission of, school or police authorities.

The bill would retain all of these provisions, but provide that there is a rebuttable presumption that expulsion for possessing the weapon is not justified if the school board or its designee determines in writing that the student has established that he or she fits under one of the exceptions above by clear and convincing evidence, and that the student has no previous history of suspension or expulsion.

**House Bill 5694 (MCL 380.1310), & House Bill 5695 (MCL 380.1311A):  
Incorporation of proposed changes in Code and technical changes**

House Bills 5694 and 5695 update their respective sections of the Revised School Code to incorporate the requirement in HB 5618 that the factors in that bill be considered before suspending or expelling a student for the offenses described in those sections. (See chart, above). The bills also make several technical updates to the statute.

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