

SUBSTITUTE FOR
HOUSE BILL NO. 5531

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 WHO COMMITS CRIMINAL SEXUAL CONDUCT AGAINST ANOTHER PUPIL**
6 **ENROLLED IN THE SAME SCHOOL DISTRICT OR A** pupil guilty of gross
7 misdemeanor or persistent disobedience if, in the judgment of the
8 school board or its designee, as applicable, the interest of the
9 school is served by the authorization or order. If there is
10 reasonable cause to believe that the pupil is a student with a

1 disability, and the school district has not evaluated the pupil in
 2 accordance with rules of the superintendent of public instruction
 3 to determine if the pupil is a student with a disability, the pupil
 4 shall be evaluated immediately by the intermediate school district
 5 of which the school district is constituent in accordance with
 6 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 PLEADS TO, IS CONVICTED OF, OR IS ADJUDICATED**
 12 **FOR CRIMINAL SEXUAL CONDUCT AGAINST ANOTHER PUPIL ENROLLED IN THE**
 13 **SAME SCHOOL DISTRICT**, the school board, or the designee of the
 14 school board as described in subsection (1) on behalf of the school
 15 board, shall expel the pupil from the school district permanently,
 16 subject to possible reinstatement under subsection (6). However, a
 17 school board is not required to expel a pupil for possessing a
 18 weapon if the pupil establishes in a clear and convincing manner at
 19 least 1 of the 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~~ **UNDER** subsection
11 (2), the expelling school district shall enter on the individual's
12 permanent record that he or she has been expelled ~~pursuant to~~ **UNDER**
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~~ **UNDER** subsection
16 (2) and in its discretion admits the individual to that program,
17 and except for a strict discipline academy established under
18 sections 1311b to 1311m **OR A CYBER SCHOOL AS DEFINED IN SECTION**
19 **551**, an individual expelled ~~pursuant to~~ **UNDER** subsection (2) is
20 expelled from all public schools in this state and the officials of
21 a school district shall not allow the individual to enroll in the
22 school district unless the individual has been reinstated under
23 subsection (6). Except as otherwise provided by law, a program
24 operated for individuals expelled ~~pursuant to~~ **UNDER** subsection (2)
25 shall ensure that those individuals are physically separated at all
26 times during the school day from the general pupil population. If
27 an individual expelled from a school district ~~pursuant to~~ **UNDER**

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

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

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

1 board denies a petition for reinstatement, the parent or legal
2 guardian or, if the individual is at least age 18 or is an
3 emancipated minor, the individual may petition another school board
4 for reinstatement of the individual in that other school district.

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

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

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

1 of expulsion. An individual who was in grade 5 or below at the time
2 of the expulsion and who has been expelled ~~pursuant to~~ **UNDER**
3 subsection (2) for a reason other than possessing a firearm or
4 threatening another person with a dangerous weapon shall not be
5 reinstated before the expiration of 10 school days after the date
6 of the expulsion. An individual who was in grade 6 or above at the
7 time of the expulsion shall not be reinstated before the expiration
8 of 180 school days after the date of expulsion.

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

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

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

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

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

(iii) The age and maturity of the individual.

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

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

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

(vii) If the petition was filed by a parent or legal guardian, the degree of cooperation and support that has been provided by the parent or legal guardian and that can be expected if the individual is reinstated, including, but not limited to, receptiveness toward

1 possible conditions placed on the reinstatement.

2 (f) Not later than the next regularly scheduled board meeting
3 after receiving the recommendation of the committee under
4 subdivision (e), a school board shall make a decision to
5 unconditionally reinstate the individual, conditionally reinstate
6 the individual, or deny reinstatement of the individual. The
7 decision of the school board is final.

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

21 (7) A school board or school administrator that complies with
22 subsection (2) is not liable for damages for expelling a pupil
23 ~~pursuant to~~ **UNDER** subsection (2), and the authorizing body of a
24 public school academy is not liable for damages for expulsion of a
25 pupil by the public school academy ~~pursuant to~~ **UNDER** subsection
26 (2).

27 (8) The department shall develop and distribute to all school

1 districts a form for a petition for reinstatement to be used under
2 subsection (6).

3 (9) This section does not diminish any rights under federal
4 law of a pupil who has been determined to be eligible for special
5 education programs and services.

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

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

1 safe schools also shall work with and provide technical assistance
2 to school districts, authorizing bodies for public school
3 academies, and other interested parties in developing these types
4 of alternative education programs or schools in geographic areas
5 that are not being served.

6 (12) As used in this section:

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

9 (b) "Criminal sexual conduct" means a violation of section
10 520b, 520c, 520d, 520e, or 520g of the Michigan penal code, 1931 PA
11 328, MCL 750.520b, 750.520c, 750.520d, 750.520e, and 750.520g.

12 (c) "Dangerous weapon" means that term as defined in section
13 1313.

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

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

18 (f) "School district" means a school district, intermediate
19 school district, or public school academy.

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

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