

# Legislative Analysis



## SUSPENSION OR EXPULSION OF VICTIM OF SEXUAL ASSAULT

Phone: (517) 373-8080  
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House Bill 4125 (H-1) as reported from committee

Sponsor: Rep. Julie M. Rogers

Committee: Judiciary

Complete to 5-16-23

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

*(Enacted as Public Act 51 of 2023)*

**BRIEF SUMMARY:** House Bill 4125 would, with some exceptions, prohibit a student from being suspended for more than 10 days or expelled based on the student's actions immediately preceding, following, or tied to an incident reported as a sexual assault.

**FISCAL IMPACT:** The bill would have no fiscal impact on the state or local units of government. The bill should not create additional costs for local school districts, intermediate school districts (ISDs), or public school academies (PSAs, or charter schools) because any entity receiving federal funds from the U.S. Department of Education already is required under Title IX to identify someone on staff to act as and carry out the duties of a Title IX coordinator.

### **THE APPARENT PROBLEM:**

Sexual assaults are known to be underreported, and this is believed to be true of sexual assaults occurring on K-12 school campuses as well. Some feel that the fear of long-term administrative suspensions or expulsions of a student survivor who reports a sexual assault may be a factor contributing to the underreporting of incidents on school property. It is difficult to know the extent of student survivors who experience suspensions, expulsions, or other disciplinary measures after reporting an assault, especially at the K-12 level, but according to stories in the media, students across the country are reporting long suspensions or expulsions based on such things as being in the wrong part of the school at the time of the assault and due to the failure of the school to follow Title IX guidelines in response to the reported incident. Legislation has been introduced that would, in some circumstances, prohibit a school from expelling a student who reported being sexually assaulted, or suspending the student for more than 10 days, for actions the student engaged in right before, during, or after an assault.

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

House Bill 4125 would add a new section to the Revised School Code to prohibit the board of a school district or ISD or board of directors of a PSA from expelling a student, or suspending a student for more than 10 school days,<sup>1</sup> for an action of the student immediately preceding, immediately following, or that could be reasonably tied to an incident in which the student reported being *sexually assaulted* or a school official, staff member or other individual witnessed and reported a sexual assault on the student or received and reported credible evidence that the student had been sexually assaulted. The bill would encourage a board or board of directors to follow the recommendations of its *Title IX coordinator* in deciding whether to suspend such a student.

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<sup>1</sup> Under the Revised School Code, *suspend* means to exclude a student from school for disciplinary reasons for less than 60 school days and *expel* means to exclude the student for 60 or more school days.

**Sexual assault** would mean an act constituting criminal sexual conduct (CSC) in the first, second, third, or fourth degree or assault with intent to commit CSC in the first, second, or third degree.

**Title IX coordinator** would mean the official responsible for overseeing compliance with Title IX of the Education Amendments of 1972. (The law prohibits discrimination based on sex in an education program or activity that is federally funded.)

However, the prohibition would not apply if any of the following are met concerning the reported incident:

- The student is convicted of, pleads guilty to, pleads responsible for, or is adjudicated responsible for aggravated assault, felonious assault, assault with intent to commit murder, assault with intent to do great bodily harm, assault with intent to maim, attempted murder, homicide, or manslaughter, or an offense defined above as sexual assault.
- The student possessed a dangerous weapon in a weapon-free school zone (and was not able to establish mitigating factors<sup>2</sup>); committed arson in a school building or on school grounds; committed CSC in a school building or on school grounds; or pled to or was convicted of or adjudicated for CSC against another student enrolled in the same school district.
- A completed Title IX investigation determined by clear and convincing evidence that the report of sexual assault is conclusively false.
- The board or board of directors, or its designee, considered any reports of CSC and the mitigating factors under section 1310d(1)<sup>3</sup> and determined that the expulsion or suspension for more than 10 days is justified.

The bill would go into effect 90 days after its enactment.

Proposed MCL 380.1310e

**BACKGROUND:**

House Bill 4125 is a reintroduction of HB 4379 of the 2019-20 legislative session and HB 5800 of the 2017-18 session, the latter of which was passed by the House of Representatives.

**ARGUMENTS:**

**For:**

House Bill 4125 would add protections to survivors of a sexual assault occurring on K-12 campuses by prohibiting long expulsions and suspensions for behaviors and actions the student

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<sup>2</sup> These mitigating factors are: The student did not possess the applicable object for use as a weapon or to deliver to someone else for use as a weapon; the student did not possess the weapon knowingly; the student did not know or have reason to know that the object was a dangerous weapon; or the student possessed the weapon at the direction of school or police authorities or with their express permission.

<sup>3</sup> These mitigating factors are: The student's age; the student's disciplinary history; whether the student is a student with a disability; the seriousness of the violation or behavior committed by the student; whether the violation or behavior 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.

survivor may have engaged in during the time immediately around the assault. For example, there is anecdotal testimony that students who report being sexually assaulted at school have subsequently been suspended or expelled for such things as being in a boy's bathroom or locker room (the scene of the alleged assault) if they are female, or being in any other part of school property at the time of the alleged incident instead of being in an assigned classroom. Even acting out after an assault (for instance, vandalizing the locker of the accused) has been noted as a reason for a student survivor to be expelled or suspended.

Under the bill, students would be protected from being subjected to expulsions or long suspensions for actions occurring around the assault. However, the restriction on expulsion or a longer suspension would not apply if the student survivor engaged in certain listed criminal acts or if the expulsion or length of suspension is deemed justified after the administration considers certain mitigating factors.

Supporters argue that House Bill 4125 acknowledges that survivors of sexual assaults do not always act or behave in conventional or expected ways. Responses can range from withdrawal, silence, and depression to outward expressions of aggression toward others, even those not responsible for the assault. Experiencing a sexual assault is a traumatizing event, and student survivors who report the assault should not be further traumatized by having their education disrupted just because of certain actions or reactions connected to that trauma. Enactment of the bill would be a positive step in removing, or at least reducing, a student's fear of retaliation in the form of a long suspension or expulsion. The ability to continue education without a major disruption can help in the healing process, enable students to access school-based resources, and ensure academic progression in both the short-term and long-term and may encourage students who experience or witness a sexual assault to come forward and report incidents.

### ***POSITIONS:***

A representative of the Michigan Coalition to End Domestic and Sexual Violence testified in support of the bill. (4-12-23)

The following entities indicated support for the bill:

- Michigan Department of Education (4-19-23)
- Michigan Catholic Conference (4-19-23)
- Michigan Nurses Association (4-12-23)
- Junior Leagues of Michigan (4-12-23)

The Michigan Alliance for Student Opportunity (MASO) indicated a neutral position on the bill. (4-19-23)

Legislative Analysts: Susan Stutzky  
Fiscal Analysts: Jacqueline Mullen  
Noel Benson

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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.