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Senate Bill 212 (as reported with amendments)
Sponsor: Senator Lana Pollack
First Committee: Education and Mental Health
Second Committee: Judiciary
Date Completed: 6-4-87

RATIONALE

While it is difficult to determine the actual number of corporal punishments inflicted in schools throughout Michigan and throughout the country, data from the U.S. Office of Civil Rights compiled since 1980 indicate that there were more than one million incidents reported throughout the country. Some people even estimate that there may be as much as two to three times as many incidents of corporal punishment occurring in American schools each year — many of which go unreported. The National Center for the Study of Corporal Punishment and Alternatives in the Schools, at Temple University, offers a picture of what happens to children when they misbehave in school: they have been subjected to the use of the paddle, strap, hand, arrow, stick, rope, belt, and fist. Some students have had their hair cut off, been placed in store rooms, boxes, cloakrooms, and closets. Or, some students have been thrown against walls, desks, and concrete pillars. As a result, students have been injured, sometimes seriously, because of corporal punishment. Michigan law does not prohibit the use of physical force to maintain classroom control, but permits a local school board to use it under certain circumstances. Some people contend that there are alternative methods to maintaining classroom discipline without resorting to corporal punishment, and that Michigan thus should abolish the use of corporal punishment in its schools.

CONTENT

The bill would amend the School Code to:

- Prohibit the use of corporal punishment by an employee, contractor, or volunteer of a local or intermediate [public] school board.
• Permit "reasonable physical restraint" under certain circumstances.
• Require a local or intermediate school board to distribute a list of alternatives to corporal punishment, and require the Department of Education to assist schools, when requested, in developing a list.
• State that any rule, policy, ordinance, etc. permitting corporal punishment would be void.
• Delete certain provisions currently in the Code on the use of physical force.
• Define "corporal punishment".

Prohibit Corporal Punishment

A person employed by or engaged as a volunteer or contractor by a local or intermediate school board would be prohibited from inflicting, or causing to be inflicted corporal punishment upon any pupil. ("Corporal punishment" would mean the deliberate infliction of

physical pain by any means upon the whole or any part of a pupil's body as a penalty or punishment for the pupil's offense.)

The person, within the scope of his or her responsibilities, could use such "reasonable physical restraint" as necessary to:

- Protect himself or herself, the pupil, or others from physical injury.
• Obtain possession of a weapon or other dangerous object upon or within the control of a pupil.
• Protect property from physical damage.

A person who violated these provisions would have to be disciplined in accordance with formally adopted policies of the school board.

A local school or intermediate school board would be required to approve and cause to be distributed to each employee, volunteer, and contractor a list of alternatives to the use of corporal punishment. The Department of Education, upon request, would be required to provide assistance to schools in the development and adoption of such a list.

Any resolution, bylaw, rule, policy, ordinance, or other authority permitting corporal punishment would be void.

Deletions

The bill would delete current provisions in the School Code that allow a teacher or superintendent to use "reasonable physical force" to take possession of a dangerous weapon carried by a pupil and for the purpose of maintaining proper discipline over pupils.

The bill also would remove the provision protecting a teacher or superintendent from civil liability for the use of physical force on a pupil, except in a case of gross abuse and disregard for the health and safety of the pupil.

MCL 380.1312

FISCAL IMPACT

The bill would have an indeterminate fiscal impact on the State and local units of government. Direct costs to the Department of Education should be negligible for assistance to schools in developing lists of alternatives to corporal punishment.

School districts would incur some costs under the bill's provision that school boards would have to develop a list of alternative methods of disciplining students and disseminate those lists to school employees, volunteers,

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and contractors. These dissemination costs would vary with a school district's size. In large districts where printing and distribution costs exceeded \$300, the State would be required to fund the costs to that district fully, under Public Act 101 of 1979, which defines the terms under which the State is required to finance the activities required of local governments by State law (pursuant to Article IX, section 29 of the Michigan Constitution).

ARGUMENTS

Supporting Argument

Research indicates that corporal punishment is unnecessary, counter-productive and, at times, destructive of mental health. Corporal punishment suppresses behavior only temporarily and does not teach new behaviors. The continued existence of corporal punishment is difficult to explain since there is no pedagogical research supporting its use. Corporal punishment is associated with poor attendance, truancy, and school drop-out. Research indicates that corporal punishment at best only temporarily suppresses behavior and actually may decrease learning and arouse aggression against others and school property.

Supporting Argument

Unfortunately, the corporal punishment of children in schools is "a settled tradition", as it has been described by the United States Supreme Court. The sense that it is normal to punish students corporally remains. In fact, research shows that the primary determinant of a person's view on corporal punishment is a person's familiarity with this practice as a child. Fortunately, this tradition is giving way to reason. New Jersey became the first state in 1867 to abolish corporal punishment. In the past 25 years, six other states, the District of Columbia, and many major cities (such as Atlanta, Baltimore, Chicago, Milwaukee, New Orleans, New York, Omaha, Pittsburgh, Portland, Oregon; Salt Lake City, San Francisco, and San Jose) have abolished corporal punishment, while other states are considering similar action. In fact, many countries such as Austria, Belgium, Denmark, Ecuador, Finland, France, Israel, Italy, Japan, the Philippines, Poland, and Portugal, prohibit corporal punishment in their schools. The real issue is not if Michigan will abolish corporal punishment in its schools, but when.

Supporting Argument

Research indicates that corporal punishment is administered to approximately 3.5% of students enrolled throughout the country in kindergarten to 12th grade. Corporal punishment often is administered in a discriminatory manner. The most frequent recipients have been students with emotional/behavioral problems and those from Black, Hispanic, and lower socio-economic groups. Research also indicates that elementary and junior high school students receive corporal punishment more frequently than do students in high school. In addition, corporal punishment is frequently administered to male students by males, thus modeling violent solutions and aggressive male behavior, imposed on weaker members of society, as a means to solve problems.

Supporting Argument

Research indicates that there are a number of reasons why children misbehave in schools: inadequate parenting; ineffective teacher training; ineffective school organization and administrative leadership that may cause student alienation; and the interaction of student characteristics, such as learning disabilities, with the school environment. The key to developing good discipline is prevention of discipline problems by changing the school climate to foster

positive methods of discipline, rather than corporal punishment. Corporal punishment is the easiest and quickest response that requires no thinking or training on the part of the teacher. Teachers must receive training in effective alternatives to control student behavior. Courses are available for students preparing to become teachers and in-service workshops have been held for teachers on strategies for dealing with disruptive behavior without the use of corporal punishment. Some techniques for improving discipline include training teachers to: use appropriate information feedback to students; diagnose reasons for students' misbehavior; use reward and "planned ignoring"; conduct democratic classroom problem-solving procedures; and use simple therapeutic techniques to deal with crises. Further, the use of corporal punishment increases the likelihood of school liability and increased insurance rates.

Supporting Argument

The Governor's Task Force on School Violence and Vandalism, in 1979, recommended that the use of corporal punishment as a means of disciplining students should be prohibited. Prior to that, a 1972 report of the Task Force on Corporal Punishment indicated that it is no longer legal for public employees to beat prisoners, military personnel, or inmates of institutions. Only school children may be corporally punished legally.

Supporting Argument

The Legislature had established the Children's Trust Fund for the purpose of combatting child abuse in the State. Legislative action to prohibit the use of corporal punishment for disciplining school students is consistent with earlier action of the Legislature.

Opposing Argument

Corporal punishment effectively reduces the aggressive, unruly, and disrespectful behavior of school children, is a quick method of discipline, is the only action that will work with some students, and is used only as a last resort. Elimination of corporal punishment would have serious consequences in the operation of schools.

Response: While many educators claim they need corporal punishment as a last resort, research indicates that far too often it is the first or second response to a variety of student misbehaviors that vary widely in degree of severity.

Opposing Argument

The decision of whether corporal punishment should be permitted in schools should be left to the discretion of each local school board. State law currently does not require the use of physical force to maintain classroom control, but permits a school board to use it under certain conditions. Many local districts already have developed policies and procedures to follow in the administration or prohibition of corporal punishment. These policies often are the product of collaboration between the local school board, which represents the parents and community; the administration; and school staff. The decision on the use or prohibition of corporal punishment should not be mandated by the State.

Opposing Argument

The United States Supreme Court in 1975 (*Baker v Owen*) affirmed a lower court decision upholding corporal punishment in the schools. The lower court held that spanking was not a constitutionally prohibited, cruel and unusual punishment, and established a number of guidelines that schools should use when administering

corporal punishment, including: never using corporal punishment as a first means of punishment, giving students clear warning that certain behavior will subject them to physical punishment; providing that students receive corporal punishment in the presence of a second school official who must be informed beforehand and in the student's presence of the reason for the punishment; and recommending that the school official who had administered the punishment provide the child's parents or guardian, upon request, a written explanation of the reasons for the punishment and name of the second school official who observed the punishment. The Court also held in 1977 in a second opinion (Ingraham v Wright) that paddling school children to maintain discipline was not cruel and unusual punishment under the Eighth Amendment, and that corporal punishment was "a settled tradition". The Court also held that with adequate common law remedies as protection, there was no need of prior notice and opportunity to be heard under the Fourteenth Amendment's due process clause. These rulings clearly support the use of corporal punishment in the schools.

Response: While there may be some validity to the use of corporal punishment under the circumstances described by the lower court in Baker v Owen, in practice the use of corporal punishment is merely a visceral reaction, not a reasoned response within a controlled setting.

Opposing Argument

The bill would eliminate current language in the School Code that grants immunity to persons using physical force on a pupil to maintain classroom discipline or to take possession of a weapon carried by a pupil. Since the bill would allow the use of reasonable physical restraint as needed to protect the employee, a pupil, or others, language granting immunity should be left in the School Code.

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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.