

SFA

BILL ANALYSIS

SEP 14 1987

Senate Fiscal Agency

Lansing, Michigan 48909

(517) 373-5383

Mich. State Law Librar

Senate Bill 212 (as passed by the Senate)**Sponsor: Senator Lana Pollack****First Committee: Education and Mental Health****Second Committee: Judiciary****Date Completed: 7-31-87****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 1 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, or 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, unless a board chose not to be bound by the bill.
- 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.
- Require a school district not bound by the bill to provide each parent or legal guardian of a pupil with a form to sign if he or she did not want his or her child subject to corporal punishment.
- State that any rule, policy, ordinance, etc. permitting corporal punishment would be void.
- Require that a person who violated the bill's provisions would be disciplined in accordance with formally adopted school board policies
- Delete certain provisions currently in the Code on the use of physical force.
- Define "corporal punishment".

Prohibit Corporal Punishment

Except as provided in the bill and other than in exceptional circumstances, a person employed by or engaged as a volunteer or contractor by a local or intermediate school board would be prohibited from inflicting corporal punishment upon any pupil. ("Corporal punishment" would mean the deliberate physical 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.)

Exceptional circumstances would justify the use of such physical force as could be necessary to:

- Protect the employee, 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 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.

Except as provided in the bill, any resolution, bylaw, rule, policy, ordinance, or other authority permitting corporal punishment would be void.

Local District Option

A local or intermediate school board, by majority vote, could elect that the district or intermediate school district not be bound by the bill. A local or intermediate school board that elected not to be bound by the bill would be required to provide each parent or legal guardian of a pupil with a form to sign if the parent or legal guardian did not want the pupil to be subject to corporal punishment. A local or intermediate school board could not permit corporal punishment to be inflicted upon a pupil whose parent or legal guardian had signed such a form.

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 393.1312

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, 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).

Additional school district costs could result from the bill's provision requiring school boards that choose not to be bound by the proposed law to provide each parent or legal guardian of a student with a form to sign if the parent or legal guardian did not want the student to be subject to corporal punishment.

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 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, albeit slowly, to reason. New Jersey, which in 1867 became the first state to abolish corporal punishment, has been joined by California, Hawaii, Maine, Massachusetts, New Hampshire, New York, Rhode Island, and Vermont in prohibiting the use of corporal punishment. Bills that would ban corporal punishment are pending in the legislatures of Alaska, Ohio, Washington, and Wisconsin as well as Michigan. In the past 25 years, 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. 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 bill would maintain local control of schools. The decision of whether corporal punishment should be permitted in schools, under the bill, ultimately would be left to the discretion of each local school district since a school board, by majority vote, could elect not to be bound by the bill's provisions. Many school 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 bill would continue this flexibility in the use of corporal punishment by prohibiting its use as a matter of State law, but allowing local districts to decide what disciplinary methods would be best suited for the district.

Response: Local control of schools merely is a tradition — not a constitutionally guaranteed right. Despite the perception that local districts have certain inherent powers, local districts actually have only as much authority as has been granted by the State. Through the School Code, for example, the State authorizes local districts to levy taxes and issue bonds. While the School Code does not require the use of physical force to maintain classroom control, the Code does permit a teacher or superintendent to use "reasonable physical force" under certain circumstances. The authority to use corporal punishment comes from the State and, without that State-granted authority, a local district would have no power to use corporal punishment.

The State also is responsible for the welfare of children, and the State's prohibiting the use of corporal punishment on students — for the protection of children — outweighs maintaining the tradition of local control of schools.

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 in the belief that there is a correlation between school vandalism and violence and corporal punishment. 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 has 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 would be 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. In fact, the option to use corporal punishment is needed to maintain discipline, especially when students are carrying weapons into classrooms. 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

In response to an increase in violence in the Detroit public schools, school officials reportedly have conducted weapons sweeps and instituted a "hot line" so students can report their fellow students who carry guns. The officials also requested State funds to hire additional security officers for the schools. These actions illustrate that school administrators and teachers need additional, not fewer, options for dealing with disruptive students and overall violence in the schools. School violence, thus, does not stem from disciplinary actions taken by faculty and administrators, but from unruly students. Senate Bill 212 would send a message that school officials had even less ability to maintain order and would render any disciplinary code meaningless in the overall effort to fight juvenile crime in schools.

Response: Under the bill, local or intermediate school boards could vote that their districts not be bound by provisions of the bill. Thus, a local school district would be able to institute disciplinary codes that included corporal punishment, if the school board believed such action was appropriate.

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 give 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

Under the bill, a local or intermediate school board, by majority vote, could elect that the local school district not be bound by the bill's provisions. The bill would not require a unanimous vote but only a majority vote of the local board, which in some cases could mean only four board members voting that a district not to be bound by the bill. In effect, the State law could be pre-empted in a district by a handful of people.

Response: A local school board is made up of persons elected to represent parents and legal guardians of students as well as the community at large. Even though a majority vote of the board would be needed to exempt a district from the bill's provisions, these board members would be acting on behalf of those they represent. Besides, parents or legal guardians of students who disagreed with the board's action could sign a form indicating that they did not want their children subjected to corporal punishment.

Opposing Argument

The bill could result in classroom management problems for teachers. Under the bill, a school board that voted not to be bound by the bill would have to provide each parent or legal guardian of a pupil with a form to sign if the parent or guardian did not want his or her child subject to corporal punishment. It is not clear how teachers would be able to identify those students who were and those who were not subject to corporal punishment, especially at the moment of trying to discipline an unruly student. In addition, this provision would cause further confusion in a school district that was trying to establish a discipline code and determine the students to whom the code would apply.

Opposing Argument

It would be a mistake to eliminate language in the School Code that grants immunity to a teacher or superintendent who used physical force on a pupil in order to maintain proper discipline or take possession of a weapon carried by a pupil. Public Act 175 of 1986 amended the governmental immunity Act to provide immunity from tort liability to an employee or volunteer of a governmental agency if the individual acted within the scope of his or her authority, the agency was engaged in the discharge of a governmental function, and the person's conduct did not amount to gross negligence. Nevertheless, it would be

prudent to retain the immunity language in the School Code in order to avoid confusion over whether the governmental immunity Act was applicable or whether a particular action was within the scope of a teacher's authority or amounted to gross negligence. Retaining the School Code immunity language would be especially important to schools that opted out of the bill's coverage.

Response: Inclusion in the School Code of governmental immunity provisions would be redundant and would not necessarily provide any additional protection to school employees, volunteers, and others.

Opposing Argument

The Child Protection Law prohibits any person, including a school employee, from abusing or neglecting children. Further, the Attorney General has held that the Department of Social Services is required to investigate reports of abuse to a child by a teacher. This should protect children from unreasonable physical force, while granting school employees the authority to discipline a child through the use of corporal punishment.

Legislative Analyst: L. Arasim
Fiscal Analyst: N. Johnson

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.