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WEAPON-FREE SCHOOLS

House Bill 4673 (Substitute H-5) First Analysis (6-17-93)

Sponsor: Rep. Kirk A. Profit
Committee: Judiciary

THE APPARENT PROBLEM:

The 1990 Youth Risk Behavior Survey asked a representative sample of students in grades 9 through 12: "During the past 30 days, how many times have you carried a weapon, such as a gun, knife, or club, for self-protection or because you thought you might need it in a fight?" The responses indicated that 19.6 percent of the students (and 31.5 percent of the males) had carried a weapon at least once in the 30 days prior to the survey.

Of the high school seniors in the Class of 1991 responding to a University of Michigan survey, 6.5 percent said someone had injured them with a weapon (such as a gun, knife, or club) at school during the past 12 months one or more times and over 16 percent said someone had threatened them with a weapon (but not injured them). (Source for the above: Sourcebook of Criminal Justice Statistics - 1991, issued by the U.S. Department of Justice.)

A deputy superintendent from the Lansing School District told the House Education Committee that there were 101 "incidents involving weapons on school property" in the 1991-92 school year, and said that "an increasing number of the firearms confiscated from students are the property of the student's parents who failed to secure the firearm from access by their child."

Whatever the other disagreements are over how children should be educated, it is generally accepted that the school environment ought to be safe. Students should not be fearful because of the presence of weapons in and around their schools. Yet apparently this is all too often the case. Some people believe that new efforts need to be made to investigate this problem and attack it on several fronts at once.

Current efforts include proposals to investigate the situation and educate students and the public, embodied in House Bills 4672, 4674, and 4675, under consideration by the full House. Another

proposal is part of these efforts: a proposal to create specific penalties for weapons violations in schools.

In a related matter, youngsters who bring guns to school often have obtained them at home, sometimes because a parent or other adult has failed to properly and safely store the gun. Sometimes the result an adult's carelessness is not that a child finds the gun and brings it to school, but, tragically, that a child finds the gun, plays with it, and shoots him/herself or another child. Thus, merely imposing special penalties for weapons violations in schools may be inadequate; to more fully combat problems with children and guns, special penalties also have been proposed for allowing a child access to certain guns.

THE CONTENT OF THE BILL:

The bill would amend the Michigan Penal Code (MCL 752.82 et al.) to establish special penalties for possession or use of a weapon on school property or within a school bus (school property and vehicles would collectively be a "weapon-free school zone").

Felonious assault. An assault with a dangerous weapon within a weapon-free school zone would be a felony punishable by imprisonment for up to four years, community service of up to 150 hours, a fine of up to \$6,000, or any combination thereof. (Felonious assault ordinarily is punishable by up to four years in prison and/or a maximum fine of \$2,000.)

Parents. A custodial parent of a minor would be guilty of a misdemeanor if the minor violated weapons laws on school property and the parent either knew that the minor would commit the violation or acted to further the violation. Punishment could be any combination of a fine (up

to \$2,000), community service (up to 100 hours), or probation.

Weapons violations. Someone who committed any of thirteen existing felony weapons violations in a weapon-free school zone would be subject to felony penalties of imprisonment for up to the term authorized for the underlying offense, community service of up to 150 hours, a fine of up to three times the amount authorized for the underlying offense, or any combination thereof. The weapons violations to which these penalties would apply are four- and five-year felonies carrying maximum fines of \$2,000 or \$2,500.

Someone who committed any of 16 existing misdemeanor weapons violations in a weapon-free school zone would be subject to misdemeanor penalties of imprisonment for up to the term authorized for the underlying offense, community service for up to 100 hours, a fine of up to \$2,000, or any combination thereof.

Weapon possession. Possession of a weapon in a weapon-free school zone would be a misdemeanor punishable by up to 90 days in jail, community service of up to 100 hours, a fine of up to \$2,000, or any combination thereof. Exceptions would be made for security guards, police officers, holders of concealed weapons permits, weapons instructors, and people carrying or transporting firearms in compliance with Section 231a of the penal code (that section sets forth exceptions to the prohibition against carrying a concealed weapon).

Minor's access to gun. The bill would make it a crime to store or leave a loaded pistol, short-barreled rifle, or short-barreled shotgun on premises under one's control in a location that a reasonable person would not believe to be secure from access to a minor, if the person knew that a minor lawfully on the premises could gain access to the gun without parental permission, and if the minor obtained the gun and shot someone or carelessly displayed it.

Penalties would vary. If the minor inflicted great bodily injury or death, the adult held culpable would be guilty of a felony punishable by up to three years in prison, community service of up to 150 hours, a fine of up to \$10,000, or any combination thereof. If the minor caused injury less than great bodily harm, or if the minor possessed or carelessly or threateningly exhibited the gun in a public place or

in the presence of another person, the culpable adult would be guilty of a misdemeanor punishable by up to one year in jail, community service of up to 100 hours, a fine of up to \$1,000, or any combination thereof.

The penalties would not apply if circumstances met any of several exceptions: the gun was securely locked by a locking device; the minor used the gun in a lawful act of self-defense or defense of another; or, the person who left the gun had no reasonable expectation that a minor might be lawfully present on the premises.

Effective date. The bill would take effect September 1, 1993.

FISCAL IMPLICATIONS:

Fiscal information is not available.

ARGUMENTS:

For:

With its strong and specific penalties, the bill would do much to ensure that adults and minors alike respect the need to keep weapons at home, securely put away. The bill not only would punish someone who brought a weapon onto school property: it also would hold parents accountable for failing to uphold their responsibility to see to it that their children do not carry weapons to school.

Further, as the tragic consequences of guns in the hands of children are by no means confined to the schoolyard, the bill also would require owners of pistols and other short-barreled guns to fulfill their responsibility to keep and store those dangerous weapons safely. Although hard data appears to be lacking on the numbers of children killed by guns in the hands of other children, even a casual reader of newspapers cannot help but be struck by the sad frequency of accounts of children killed or maimed by guns fired in anger or in ignorance by other children who found loaded guns stored in dresser drawers or under mattresses. Some may criticize portions of the bill as an erosion of the rights of gun owners, but others would disagree that there is any right to be careless with a dangerous weapon, especially when that weapon could fall into the hands of a child.

While criminal penalties admittedly are not the whole answer to the problems of weapons in schools

and elsewhere, they are an important first step and essential complement to educational efforts. The focus of the bill is clear: to get the guns out of the hands of children.

Against:

Public perceptions on the severity of the problem with children and guns, at least with regard to accidents at home, may not be accurate: the National Rifle Association notes that according to the National Safety Council, firearm-related accidents involving children have decreased over fifty percent in the past twenty years. Nonetheless, it is a tragic thing when a child finds an improperly stored gun and harms someone with it. However, if the gun owner was negligent, then civil remedies can be brought to bear on the responsible party; the bill should not compound the harm by making the owner guilty of a felony. Rather than punish a grieving family member after a tragic event has already happened, the legislature would do better to develop and fund safety education programs that would prevent tragedies from happening.

Moreover, the bill is internally inconsistent, and inconsistent with existing statute. The same act of, say, leaving a loaded gun in a bedside table, would be punished differently depending on the accident of circumstances; it would be a misdemeanor if a child waved it around, and a felony if the child seriously injured someone. It is already a two-year, \$2,000 misdemeanor to carelessly cause or allow any firearm under his immediate control to be discharged to as to kill or injure another. The bill should let the law stand at this. With the bill, questions arise as to how a person could be able to keep a loaded gun at hand for self-protection, what would constitute a "loaded" gun for the purposes of the statute (something that is not clear if one is referring to a handgun that uses an ammunition clip), and whether the next logical step would be to criminalize the careless storage of matches and lighters, which also pose grave risks for inquisitive children.

POSITIONS:

The Prosecuting Attorneys Association of Michigan supports the bill. (6-15-93)

The Wayne County Prosecutor's Office supports the bill. (6-15-93)

The Department of State Police supports the concept of the bill, but does not have a position on the substitute at this time. (6-15-93)

The Michigan Association of School Boards supports legislation to curb violence in schools, but has not yet reviewed the substitute. (6-16-93)

The National Rifle Association of America opposes provisions (Section 237B) that would criminalize failure to prevent a minor's gaining access to a gun, but does not oppose the rest of the bill. (6-16-93)