

Massachusetts Coalition for Juvenile Justice Reform

Promoting the Educational Success of Youth

Lead Sponsors: Rep. Meschino/Sen. Jehlen (H.664 and S.344)

Although Massachusetts is often celebrated for having the best public schools in the nation, our state also has one of the worst racial inequities for school achievement, school exclusion, and juvenile justice system involvement. In Massachusetts, Black students are three times more likely and Latinx students are over two times more likely to be suspended than their White peers for the same or similar behaviors. Children of color, those living with disabilities, and child-welfare involved children are overrepresented in the child welfare, juvenile justice, and later, adult criminal legal systems. When students get what they need to succeed and remain in school they enter adulthood with a much brighter future.

This bill prevents students who have been merely accused of a crime from being excluded from school without any real due process, and clarifies the type of student behavior that would rise to the level of being a danger in the school to justify expulsion and suspension. This bill does not limit a school's ability to suspend students for any behavior banned in their school code of conduct handbook. It will also not change the legislative intent of allowing principals to exclude students long-term or permanently who present a safety risk to the school.

PROBLEM: Students facing felony allegations are subject to suspension when a complaint has issued from the juvenile court, prior to any due process.

SOLUTION: Such students would be subject to school exclusion after prosecutors and the courts formally arraign a child.

Currently, a student can be suspended from school “upon the issuance of a criminal complaint.” This means, that a child can be potentially removed from school and denied basic right to education without the opportunity for any due process in the juvenile court. The formal arraignment is an opportunity for the courts to determine “probable cause”. Further, the arraignment is an opportunity for the youth, the youth’s attorney and the district attorney and the judge to also look at whether there may be diversion opportunities. It is contradictory to allow for a student to be suspended from school for felony charges in a case where the charges were dismissed or diverted after the issuance of the complaint.

PROBLEM: Currently students can be suspended or expelled for behavior outside of school resulting in a felony charge, whether or not it poses safety concerns to the school.

SOLUTION: The statute should codify DESE’s guidance on suspension and expulsion due to serious behavior to ensure that the offense represents a realistic threat to school safety.

The law allows student exclusion due to any pending felony charge or conviction based on the principal’s discretion resulting in the exclusion of students for minor, non-violent behavior. Because a “felony” can range from being a passenger in a stolen car to manslaughter, the law is being used to exclude students charged with felonies that do not

present a danger. This bill would align the law with the DESE guidance¹, on “serious violent felonies” and defining it as an offense causing or threatening serious bodily harm, or any charge involving a gun².

PROBLEM: Current law allows the expulsion of students for possession of weapons, drugs, and assault on school staff, however these factors are too broadly defined resulting in students losing their education for minor infractions.

SOLUTION: The statute should be amended to bring the definitions in line with the federal and legal definition of a “dangerous weapon”.

The law allows principals to exclude students possessing a “weapon”. Without an explicit definition, the definition of “weapon” is too broad such as a case in which a student was excluded under this provision for possessing a paperclip. This bill would define a “weapon” to match the federal definition of “dangerous weapon” under 18 U.S.C. § 930.

Similarly, “assault” which also is not defined in the law, has sometimes been applied to include a “menacing” look from a student, unintentional contact with a teacher, or contact made with a teacher by a kindergartener during a tantrum. This bill would clarify that an “assault” must include specific intent and imminent harm before imposing exclusions.

PROBLEM: Currently there are no statutes or regulations that clearly spell out the due process protections available to students facing serious charges. Regulations do exist for students facing non-serious offenses. The result is that often students facing long-term suspension or expulsion are not given the required level of due process established through case law involving serious offenses.

SOLUTION: The law should be amended to reflect the due process entitlements.

Under the current law, students who are being disciplined for allegations of non-serious behaviors have more robust protections delineated than students who are facing more serious allegations involving weapons, drugs, assault on educational staff, and any felony charges or convictions. The result in practice is that students facing the serious allegations are often not afforded the appropriate educational due process because it is not specifically delineated in the statute, although it is supported by the case law. Requiring additional procedural protections ensures that schools take steps to confirm that (1) the offense did in fact occur; (2) that it was committed by the student being disciplined, and (3) to hear the whole story including mitigating circumstances before imposing very serious and potentially life altering consequences. This does not prevent schools from implementing serious disciplinary consequences if the principal determines such consequences are warranted.

For more information, please contact:

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¹ <http://www.doe.mass.edu/lawsregs/advisory/discipline/AOSD1.html>

² The definition aligns with the Youthful Offender statute, M.G.L. c. 119 §54, which allows prosecutors to indict a child as a youthful offender, subjecting them to treatment as an adult.