

1 HOUSE BILL NO. 558

2 INTRODUCED BY J. O'NEIL

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT MAKING DISCRETIONARY THE REQUIREMENT FOR
5 MANDATORY EXPULSION OR SUSPENSION OF A STUDENT WHO IS DETERMINED TO HAVE BROUGHT
6 A FIREARM TO SCHOOL OR TO HAVE POSSESSED A FIREARM AT SCHOOL; CLARIFYING WHAT
7 CONSTITUTES A VIOLATION; REQUIRING SCHOOL OFFICIALS TO NOTIFY PARENTS OR GUARDIANS
8 OF CERTAIN RIGHTS; REQUIRING THE OFFICE OF PUBLIC INSTRUCTION TO MAKE PUBLIC CERTAIN
9 INFORMATION; PROVIDING THAT A KNOWING VIOLATION BY A SCHOOL EMPLOYEE CONSTITUTES
10 GOOD CAUSE FOR TERMINATION OF EMPLOYMENT; AND AMENDING SECTION 20-5-202, MCA."

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12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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14 **Section 1.** Section 20-5-202, MCA, is amended to read:
15 **"20-5-202. Suspension and expulsion.** (1) As provided in 20-4-302, 20-4-402, and 20-4-403, a pupil
16 may be suspended by a teacher, superintendent, or principal. The trustees of the district shall adopt a policy
17 defining the authority and procedure to be used by a teacher, superintendent, or principal in the suspension of
18 a pupil and in defining the circumstances and procedures by which the trustees may expel a pupil. Expulsion is
19 any removal of a pupil for more than 20 school days without the provision of educational services and is a
20 disciplinary action available only to the trustees. A pupil may be suspended from school for an initial period not
21 to exceed 10 school days. Upon a finding by a school administrator that the immediate return to school by a pupil
22 would be detrimental to the health, welfare, or safety of others or would be disruptive of the educational process,
23 a pupil may be suspended for one additional period not to exceed 10 school days if the pupil is granted an
24 informal hearing with the school administrator prior to the additional suspension and if the decision to impose the
25 additional suspension does not violate the Individuals With Disabilities Education Act, 20 U.S.C. 1400, et seq.
26 (2) The trustees of a district shall adopt a policy for the expulsion of a student who is determined to have
27 brought a firearm, as defined in 18 U.S.C. 921, to school or to have possessed a firearm at school and for
28 referring the matter to the appropriate local law enforcement agency. A student who is determined to have
29 brought a firearm to school or to have possessed a firearm at school under this subsection ~~must~~ may be expelled
30 from school for a period of not less than 1 year, ~~except that the trustees may authorize the school administration~~

1 ~~to modify the requirement for expulsion of a student on a case-by-case basis.~~ A decision to change the placement
 2 of a student with a disability who has been expelled pursuant to this section must be made in accordance with
 3 the Individuals With Disabilities Education Act.

4 (3) In accordance with 20-4-302, 20-4-402, 20-4-403, and subsection (1) of this section, a teacher, a
 5 superintendent, or a principal ~~shall suspend~~ may immediately suspend ~~for good cause~~ a student ~~who is~~
 6 ~~determined to have~~ if there is probable cause, prior to a possible evidentiary hearing as provided for in subsection
 7 (2), to believe the student brought a firearm to school or possessed a firearm at school.

8 (4) Nothing in this section prevents a school district from:

9 (a) offering instructional activities related to firearms or allowing a student to bring a firearm to be brought
 10 to school or to possess a firearm at school for instructional activities sanctioned by the district if:

11 (i) the district has in place appropriate safeguards to ensure student safety; and

12 (ii) the firearm is secured in a locked container approved by the school district when the firearm is on
 13 school grounds and is not in use for the instructional activity; or

14 (b) providing educational services in an alternative setting to a student who has been expelled from the
 15 student's regular school setting.

16 (5) (a) Except as provided in subsection (5)(b), for the purposes of this section, the term "school" means
 17 a school building or school grounds or property.

18 (b) A firearm that is secured in a locked container approved by the school district or in a locked motor
 19 vehicle the entire time that it is on school grounds or property, except while in use for a school-sanctioned
 20 instructional activity, is not considered to have been brought to school or possessed at school.

21 (6) The following are not included in the definition of firearm:

22 (a) a picture of a firearm;

23 (b) a fractional-sized replica of a firearm such as on a toy soldier, a charm bracelet, a necklace, or a lapel
 24 pin;

25 (c) a person imitating the sound of a firearm discharge; and

26 (d) a person forming the person's hand into the shape of a firearm.

27 (7) A student may not be determined to have brought a firearm to school or to have possessed a firearm
 28 at school unless the trustees of a district find, after due notice and an evidentiary hearing, a preponderance of
 29 evidence that the student knowingly, as defined in 1-1-204, brought a firearm to school or possessed a firearm
 30 at school.

1 (8) The school record of a student who undergoes an evidentiary hearing and is found not to have
2 violated this section must clearly indicate that the student was not found to have violated this section and was
3 not disciplined under this section.

4 (9) Before holding a hearing to determine if a student has violated this section, the trustees of a district
5 shall, in a clear and timely manner, notify the student, if an adult, or the parents or guardian of a minor student
6 that they may waive the student's privacy interest and request a public hearing.

7 (10) The office of public instruction shall make available on its official website the information that it
8 gathers from school districts and annually provides to the federal government under its reporting obligations under
9 the federal Gun-Free Schools Act, provided that it redacts any personally identifiable information.

10 (11) Knowing violation of this section by a state or local employee of the K-12 school system constitutes
11 good cause, as defined in 39-2-903, for termination of employment."

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