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## *Bill Analysis*

*Legislative Service Commission*

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(As Introduced)

**Sen. Gardner**

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#### **BILL SUMMARY**

- Defines "school safety zone" for purposes of the Criminal Code as consisting of a school, school building, school premises, school activity, school bus, and an area within 1,000 feet of the boundaries of any school premises and retains current definitions in certain sections of the Criminal Code of "school," "school building," "school premises," "school activity," and "school bus."
- Substitutes "school safety zone" for "vicinity of a school" as a factor in determining the classification of certain drug offenses or enhancing the penalties for certain drug offenses committed in a school safety zone or in enhancing the penalty for disorderly conduct committed in a school safety zone.
- Substitutes "school safety zone" for "school," "school building," and "school premises" as a factor in enhancing the penalty for assault committed against a school teacher or administrator or a school bus operator in a school safety zone.
- Expands the offenses of illegal conveyance or possession of a deadly weapon or dangerous ordnance on school premises, illegal possession of an object indistinguishable from a firearm on school premises, and improperly discharging a firearm at or into a habitation or school to cover the prohibited acts committed in a school safety zone and renames those offenses.
- Grants a sentencing court discretion to enhance the penalty for an offense of violence committed in a school safety zone if the offender also is convicted of or pleads guilty to a specification in the indictment, count

in the indictment, or information charging the offense of violence that it was committed in a school safety zone.

- Requires a school district superintendent to initiate expulsion proceedings against and, subject to extenuating or exonerating evidence discovered at a hearing, expel any pupil who has committed any act that warrants expulsion even if the pupil withdraws from school before the superintendent has held the hearing to expel or has made the decision to expel the pupil.
- Expands the firearm-related school expulsion requirement and the board-adopted knife-related expulsion provision to incidents occurring off school property but at activities, events, or programs sponsored by or in which the school district is a participant.
- Permits a school district board to adopt a policy authorizing the superintendent to expel for up to one year any pupil who has committed an act that results in serious physical harm to persons or property if that act was committed at school, on other school property, or on other property where an event in which the school district is a sponsor or participant was being conducted.
- Expands the scope of misconduct in a district's general suspension and expulsion policy to include misconduct by a student that occurs off of property owned or controlled by the district but that is connected to activities or incidents that have occurred on property owned or controlled by that district and misconduct by a student that, regardless of where it occurs, is directed at a district official or employee, or the property of an official or employee.
- Permits a board of education to adopt a policy granting assistant principals and other administrators the authority to suspend a student from school.
- Exempts schools from the current law requirement to provide a student written notice and an opportunity for a hearing prior to suspending a student in the case of an *in-school* suspension.
- Permits a school district, after offering an opportunity for a hearing, to temporarily deny admittance to any student if the student has been

suspended from the school of another Ohio school district and the period of suspension has not expired.

- Eliminates the post-removal notice and hearing requirements for removing a student from extracurricular activities when the student's presence poses a continuing danger to persons or property or an ongoing threat of disruption in such settings and permits such a student to be prohibited from participating in extracurricular activities in accordance with a district's general policy on suspension from extracurricular activities.
- Explicitly permits school districts to grant enforcement authority of a district extracurricular activity policy to personnel employed to direct, supervise, or coach a pupil activity program.
- Requires every board of education to adopt a comprehensive school safety plan for each school building and specifies procedures to follow in preparation of the plan and content requirements, including a protocol for addressing serious threats to safety and for responding to emergency events.
- Directs the Ohio Schools Facilities Commission to consider student and staff safety when reviewing design plans for classroom facility construction projects and to require necessary changes to promote safety; charges the Commission with reviewing and amending any construction and design standards it has adopted with a focus on student and staff safety.

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**CONTENT AND OPERATION**

**SCHOOL SAFETY ZONES**

**Drug offenses**

**Definitions of terms in existing Drug Offense Law**

For purposes of classifying certain drug offenses or enhancing the penalties for certain drug offenses, the existing Drug Offense Law defines when an offense is "committed in the vicinity of a school." An offense is "committed in the vicinity of a school" if the offender commits the offense on school premises, in a school building, or within 1,000 feet of the boundaries of any school premises (sec.

2925.01(P)). The Drug Offense Law defines the following terms (sec. 2925.01(Q), (R), and (S)):

"School" means any school operated by a board of education or for which the State Board of Education prescribes minimum standards under the Minimum Standards for Schools Law, whether or not any instruction, extracurricular activities, or training provided by the school is being conducted at the time a criminal offense is committed.

"School premises" means either: (a) the parcel of real property on which any school is situated, whether or not any instruction, extracurricular activities, or training provided by the school is being conducted on the premises at the time a criminal offense is committed or (b) any other parcel of real property that is owned or leased by a board of education of a school or the governing body of a school for which the State Board of Education prescribes minimum standards under the Minimum Standards for Schools Law and on which some of the instruction, extracurricular activities, or training of the school is conducted, whether or not any instruction, extracurricular activities, or training provided by the school is being conducted on the parcel of real property at the time a criminal offense is committed.

"School building" means any building in which any of the instruction, extracurricular activities, or training provided by a school is conducted, whether or not any instruction, extracurricular activities, or training provided by the school is being conducted in the school building at the time a criminal offense is committed.

**Enhanced penalties under the existing Drug Offense Law**

The offense classifications and penalties for the following drug offenses generally depend on the type or amount of controlled substance involved and the location of the violation, which is either in the vicinity of a school or the vicinity of a juvenile: corrupting another with drugs, aggravated trafficking in drugs, trafficking in drugs, trafficking in marihuana, trafficking in cocaine, trafficking in L.S.D., trafficking in heroin, trafficking in hashish, aggravated preparation of drugs for sale, preparation of drugs for sale, preparation of marihuana for sale, preparation of cocaine for sale, preparation of L.S.D. for sale, preparation of heroin for sale, preparation of hashish for sale, permitting drug abuse, illegal dispensing of drug samples, trafficking in counterfeit controlled substances, promoting and encouraging drug abuse, and fraudulent drug advertising. (Secs. 2925.02, 2925.03, 2925.07, 2925.13, 2925.36, and 2925.37.)

### Changes proposed by the bill

**Definition of "school safety zone" in the Criminal Code.** The bill repeals the definition of "committed in the vicinity of a school" in the Drug Offense Law, substitutes the term "school safety zone" for "vicinity of a school" in the Drug Offense Law and defines "school safety zone," as used in the entire Criminal Code (not only in the Drug Offense Law) as consisting of a school, school building, school premises, school activity, school bus, and an area within 1,000 feet of the boundaries of any school premises. For purposes of this definition, the bill moves the definitions of "school," "school building," and "school premises" from the existing Drug Offense Law to the definitional section for the Criminal Code. (Secs. 2901.01(C)(1) and (C)(2)(a), (b), and (c) and 2925.01(P), (Q), (R), and (S).) It additionally defines the following terms (sec. 2901.01(C)(2)(d) and (e)):

"School activity" means any activity held under the auspices of a board of education of a city, local, county, exempted village, joint vocational, or cooperative education school district or the governing body of a school for which the State Board of Education prescribes minimum standards under the existing Minimum Standards for Schools Law. (See **COMMENT 1**.)

"School bus" has the same meaning as in the Traffic Law. (See **COMMENT 2**.)

The bill's definition of "school safety zone" applies to the specific criminal offenses discussed in this analysis.

**Enhanced penalties under the Drug Offense Law.** The bill substitutes "school safety zone" for "vicinity of a school" in the sections of the Drug Offense Law that classify the offense or enhance the penalty if the particular drug offense is committed in a *school safety zone*. These are the same offenses described in "**Enhanced penalties under the existing Drug Offense Law**," above. The bill retains the same classifications and enhanced penalties for those drug offenses as in existing law. (Secs. 2925.02(C), 2925.03(C), 2925.07(C), 2925.13(C)(3), 2925.36(C)(2)(b) and (3)(b), and 2925.37(H), (J), and (K).)

### Assault

#### **Existing law**

The Assault Law prohibits any person from knowingly causing or attempting to cause physical harm to another or to another's unborn or recklessly causing serious physical harm to another or to another's unborn (sec. 2903.13(A) and (B)). Generally, the offense of assault is a misdemeanor of the first degree.

Under certain specified circumstances, the offense is a felony of the third, fourth, or fifth degree. One of these specified circumstances is when the victim of the offense is a school teacher or administrator or a school bus operator, and the offense occurs "on school premises, in a school building, on a school bus, or while the victim is outside of school premises or a school bus and is i[e]ngaged in duties or official responsibilities associated with the victim's employment or position as a school teacher or administrator or a school bus operator, including, but not limited to, driving, accompanying, or chaperoning students at or on class or field trips, athletic events, or other school extracurricular activities or functions outside of school premises." Under these circumstances, assault is a felony of the fifth degree. (Sec. 2903.13(C)(2)(e).) The Assault Law defines "school," "school building," and "school premises" in the same manner as in the Drug Offense Law (see "*Definitions of terms in existing Drug Offense Law*," above) and defines "school bus" as in the Traffic Law (see COMMENT 2). (Sec. 2903.13(C)(4)(f) and (h).)

### **Changes proposed by the bill**

The bill modifies the circumstances under which the classification and penalty for assault is increased from a misdemeanor of the first degree to a felony of the fifth degree by repealing the clause quoted in "*Existing law*," above, and specifying that the offense is a felony of the fifth degree if the victim of the offense is a school teacher or administrator or a school bus operator (as in existing law) and the assault occurs in a *school safety zone* (sec. 2903.13(C)(2)(e)). The bill repeals the definitions of "school," "school building," "school premises," and "school bus" in the Assault Law (sec. 2903.13(C)(4)(f) and (h)).

### **Disorderly conduct**

#### **Existing law**

The Disorderly Conduct Law prohibits any person from recklessly causing inconvenience, annoyance, or alarm to another by doing any of specified acts and prohibits any person, while voluntarily intoxicated, from doing any of specified acts (sec. 2917.11(A) and (B)). Except under certain circumstances, disorderly conduct is a minor misdemeanor. One of these circumstances is when the offense is "committed in the vicinity of a school," in which case, disorderly conduct is a misdemeanor of the fourth degree. The Disorderly Conduct Law defines "committed in the vicinity of a school" in the same manner as in the Drug Offense Law (see "*Definitions of terms in existing Drug Offense Law*," above). (Sec. 2917.11(E) and (F).)

### **Changes proposed by the bill**

The bill modifies the circumstance in which the classification and penalty for disorderly conduct is enhanced from a minor misdemeanor to a misdemeanor of the fourth degree by substituting "school safety zone" for "vicinity of a school" and repealing the definition of "committed in the vicinity of a school" in the Disorderly Conduct Law (sec. 2917.11(E) and (F)).

### **Illegal conveyance or possession of a deadly weapon or dangerous ordnance on school premises**

#### **Existing law**

Existing law prohibits any person from: (a) knowingly conveying, or attempting to convey, a deadly weapon or dangerous ordnance "onto school premises, into a school or school building, to a school activity, or onto a school bus" or (b) knowingly possessing a deadly weapon or dangerous ordnance "on school premises, in a school or school building, at a school activity, or on a school bus" (sec. 2923.122(A) and (B)). These prohibitions do not apply to certain persons, including any security officer employed by a board of education or governing body of a school during the time that the security officer is on duty pursuant to that contract of employment or any other person who has written authorization from the board of education or governing body of a school to convey deadly weapons or dangerous ordnance "onto school premises, into a school or school building, to a school activity, or onto a school bus" or to possess a deadly weapon or dangerous ordnance "on school premises, in a school or school building, at a school activity, or on a school bus" and who conveys or possesses the deadly weapon or dangerous ordnance in accordance with that authorization. A violation of either prohibition is the illegal conveyance or possession of a deadly weapon or dangerous ordnance on school premises, a felony of the fifth degree or, if the offender previously has been convicted of the violation, a felony of the fourth degree. (Sec. 2923.122(A), (B), (D), and (E)(1).)

Existing law defines "school," "school building," and "school premises" as in the Drug Offense Law (see "**Definitions of terms in existing Drug Offense Law**," above); defines "school bus" as in the Traffic Law (see **COMMENT 2**); and defines "school activity" as any activity held under the auspices of a board of education of a city, local, county, exempted village, joint vocational, or cooperative education school district or the governing body of a school for which the State Board of Education prescribes minimum standards under the Minimum Standards for Schools Law (sec. 2923.122(F)(1), (2), and (3)).

### **Changes proposed by the bill**

The bill modifies the elements of the offense of illegal conveyance or possession of a deadly weapon or dangerous ordnance on school premises by prohibiting any person from: (a) knowingly conveying, or attempting to convey, a deadly weapon or dangerous ordnance *into a school safety zone* or (b) knowingly possessing a deadly weapon or dangerous ordnance *in a school safety zone* (sec. 2923.122(A) and (B)). The bill exempts from either prohibition any person who has written authorization from the board of education or governing body of a school to convey deadly weapons or dangerous ordnance *into a school safety zone* or to possess a deadly weapon or dangerous ordnance *in a school safety zone* and who conveys or possesses the deadly weapon or dangerous ordnance in accordance with that authorization. The bill retains the other exemptions in existing law. (Sec. 2923.122(D).)

The bill renames the offense "illegal conveyance or possession of a deadly weapon or dangerous ordnance *in a school safety zone*" and retains the same penalty for the offense as in existing law (sec. 2923.122(E)(1)). The bill also repeals the definitions of "school," "school building," "school premises," "school activity," and "school bus" that are used in existing law (sec. 2923.122(F)(1), (2), and (3)).

### **Illegal possession of an object indistinguishable from a firearm on school premises**

#### **Existing law**

Existing law prohibits any person from knowingly possessing an object "on school premises, in a school or school building, at a school activity, or on a school bus" if both (a) the object is indistinguishable from a firearm (see **COMMENT 3**), whether or not the object is capable of being fired and (b) the person indicates that the person possesses the object and that it is a firearm, or the person knowingly displays or brandishes the object and indicates that it is a firearm. This prohibition does not apply to certain persons and to the persons exempted as described in "**Illegal conveyance or possession of a deadly weapon or dangerous ordnance on school premises**," above. A violation of the prohibition is "illegal possession of an object indistinguishable from a firearm on school premises," a misdemeanor of the first degree or, if the offender previously has been convicted of the violation, a felony of the fifth degree. (Sec. 2923.122(C), (D), and (E)(2).)

This offense has the same definitions of terms as is described in "**Illegal conveyance or possession of a deadly weapon or dangerous ordnance on school premises**," above.

### **Changes proposed by the bill**

The bill modifies the elements of illegal possession of an object indistinguishable from a firearm on school premises by prohibiting any person from knowingly possessing an object in a *school safety zone* and retains both conditions for the offense as described in (a) and (b) in "**Existing law**," above. The bill renames the offense "illegal possession of an object indistinguishable from a firearm in a *school safety zone*" and retains the same penalty as in existing law. (Sec. 2923.122(C) and (E)(2).)

The bill makes the same changes to the existing provisions regarding exempted persons and definitions of terms as described in "**Illegal conveyance or possession of a deadly weapon or dangerous ordnance on school premises**," above.

### **Improperly discharging a firearm at or into a habitation or school**

#### **Existing law**

Existing law prohibits any person, without privilege to do so, from knowingly discharging a firearm at or into an occupied structure that is a permanent or temporary habitation of any individual or "a school." A violation of the prohibition is "improperly discharging a firearm at or into a habitation or school," a felony of the second degree. (Sec. 2923.161(A) and (C).)

#### **Changes proposed by the bill**

The bill modifies the elements of improperly discharging a firearm at or into a habitation or school by prohibiting any person, without privilege to do so, from knowingly (a) discharging a firearm at or into an occupied structure that is a permanent or temporary habitation of any individual (as in existing law) or (b) discharging a firearm *at, in, or into a school safety zone*. The bill renames the offense "improperly discharging a firearm at or into a habitation or in a school zone" and retains the same penalty as in existing law. (Sec. 2923.161(A) and (C).)

### **Discretionary enhancement of penalty for offense of violence committed in a school safety zone**

The bill authorizes a court, in its discretion, to impose one of the following sentences on an offender who is convicted of or pleads guilty to an offense of violence (see **COMMENT 4**) and also is convicted of or pleads guilty to a specification in the indictment, count in the indictment, or information charging the offense of violence that the offender committed the offense of violence in a school safety zone (sec. 2929.14(J)(1)):

(1) If the offense of violence committed is a misdemeanor, a sentence for a felony of the fifth degree;

(2) If the offense of violence committed is a felony, a sentence for the felony that is one degree higher than the offense of violence committed.

The bill precludes a court from imposing any sentence described in (1) or (2), above, upon an offender who commits the offense of assault or the offense of improperly discharging a firearm at or into a habitation or in a school zone if the offense is committed in a school safety zone (sec. 2929.14(J)(2)).

The bill precludes a court from imposing any sentence described in (1) or (2), above, unless the indictment, count in the indictment, or information charging the offense of violence specifies that the offender committed the offense of violence in a school safety zone. The specification must be stated at the end of the body of the indictment, count, or information and be in substantially the following form (sec. 2941.143):

SPECIFICATION (or, SPECIFICATION TO  
THE FIRST COUNT). The grand jurors (or insert the  
person's or the prosecuting attorney's name when  
appropriate) further find and specify that (set forth that  
the offender committed the offense of violence in a  
school safety zone).

## SCHOOL DISCIPLINE AND SAFETY PLANS

### **Background--current law on suspensions, expulsions, removal, and permanent exclusion**

Current law provides several mechanisms for the removal of a student from a public school for disciplinary reasons. These include "suspensions" for minor misconduct, "expulsions" for major infractions of the school discipline code, "removal" to prevent immediate threats, and "permanent exclusion" to prevent continued threats. Each district board of education must adopt a policy that specifies the types of misconduct that warrant each type of discipline. The decision to permanently exclude a student from school is made by the state Superintendent of Public Instruction after a hearing, but only upon the recommendation of a district board.

The "COMMENT" section at the end of this analysis contains a discussion of the current mechanisms for removing a student for disciplinary reasons, the due-process requirements for disciplinary actions (COMMENT 6), and the federal "Gun-Free Schools Act of 1994" (COMMENT 5).

### **The bill**

#### **Student must be expelled even if withdrawn from school**

(sec. 3313.66(B)(6))

The bill requires that a superintendent initiate expulsion proceedings against a pupil who has committed an act that warrants expulsion under the district's expulsion policy even if that student has already withdrawn from school. If after conducting the hearing to expel, the superintendent finds that the student has committed an act warranting expulsion, the superintendent must expel the student for the period of time prescribed in the statute and in the district's policy. However, the bill also provides that any expulsion period imposed on a student who has withdrawn from school must be for the same duration as an expulsion imposed on a similarly-situated student who has not withdrawn from school. (Sec. 3313.66(B)(6).)

#### **Jurisdiction for suspensions and expulsions to include non-school property**

The bill expands the scope of a school's jurisdiction over *misconduct* to include "misconduct by a pupil that occurs off of property owned or controlled by the district but that is connected to activities or incidents that have occurred on property owned or controlled by that district and misconduct by a pupil that,

regardless of where it occurs, is directed at a district official or employee, or the property of such official or employee" (sec. 3313.661(A)).

It is unclear whether the student's action must be intentionally directed at a district employee for the non-school property provision to apply. For example, if a student damages four cars at a shopping center, one of which is owned by the district superintendent, it is unclear whether the provision applies only if the student's intent was to damage the superintendent's car, or whether it applies if the damage to all of the cars was a random act and the student did not know one of the cars was the superintendent's.

### **Limits on the expanded jurisdiction**

The expansion of the district's jurisdiction over a student's misconduct to include sites other than school property presumably does not apply to the current mandatory one-year expulsion for firearm offenses, the current permissive one-year expulsion for knife offenses, or for the one-year expulsion the bill permits for offenses that result in serious physical harm to persons or property that take place on property at which the school is participating in an event (see below under "**One-year expulsion for causing serious physical harm to persons or property**"). For example, a student who threatens a teacher with a knife at a shopping center could receive up to 80 days expulsion pursuant to the expansion of jurisdiction that includes threats against school officials at any location. If, however, the student threatened the teacher with a knife on school property, the student could be expelled for one year.

### **Firearm and knife expulsion expanded to school-event property**

However, the bill does expand the territorial scope of the firearm expulsion requirement and the board-adopted knife expulsion provision to include incidents occurring on property at which an activity, event, or program sponsored by or *in which the school district is a participant* was being conducted (secs. 3313.66(B)(2) and (3)). The student presumably would be responsible for knowing whether the school district was a participant. For example, if a school district had a booth at a county fair, the provision would appear to apply to a student who had a knife with him at that fair whether or not he knew about the district's booth.

### **One-year expulsion for causing serious physical harm to persons or property**

(secs. 3313.66(B)(4) and 3313.661(A))

The bill permits a district board of education to adopt a policy authorizing the superintendent to expel for up to one year any student who has committed an

act at school or on other school property or on other property where a district-sponsored event is being conducted that is a criminal act if committed by an adult and that results in serious physical harm to persons or property. The bill refers to definitions of "serious physical harm to persons" and "serious physical harm to property" in Revised Code sections 2901.01(A)(5) and (A)(6), respectively.\* The superintendent may extend the expulsion as necessary into the next school year following the school year during which the incident that gave rise to the expulsion took place. (Sec. 3313.66(B)(4).) A district policy authorizing expulsions under this provision must also permit the superintendent to reduce the expulsion on a "case-by-case basis" (sec. 3313.661(A)). Expulsion under this provision would not require prosecution or conviction for any criminal act.

### **Other changes to law on suspensions**

Current law permits a school district, after offering an opportunity for a hearing, to temporarily deny admittance to any student (including a pupil entitled under state law to attend school in the district) if the student has been *expelled* from the schools of another Ohio school district and the period of expulsion has not expired. The bill provides the same authority to school districts with regard to students under *suspension*. Specifically, a school district may, after offering an opportunity for a hearing, temporarily deny admittance to any student if the student has been suspended from the school of another Ohio school district and the period

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\* R.C. section 2901.01(A)(5) defines "Serious physical harm to persons" as any of the following:

(a) Any mental illness or condition of such gravity as would normally require hospitalization or prolonged psychiatric treatment;

(b) Any physical harm that carries a substantial risk of death;

(c) Any physical harm that involves some permanent incapacity, whether partial or total, or that involves some temporary, substantial incapacity;

(d) Any physical harm that involves some permanent disfigurement, or that involves some temporary, serious disfigurement;

(e) Any physical harm that involves acute pain of such duration as to result in substantial suffering, or that involves any degree of prolonged or intractable pain.

R.C. section 2901.01(A)(6) defines "serious physical harm to property" as any physical harm to property that does either of the following:

(a) Results in substantial loss to the value of the property, or requires a substantial amount of time, effort, or money to repair or replace;

(b) Temporarily prevents the use or enjoyment of the property, or substantially interferes with its use or enjoyment for an extended period of time.

of suspension has not expired. The district is permitted to deny admittance to the student until the suspension period set by the other Ohio district expires. (Sec. 3313.66(J)(1)(a).) This provision does not apply to suspensions imposed by out-of-state schools.

The bill also eliminates the current law's post-removal notice and hearing requirements for removing a student from *extracurricular* activities when the student's presence poses a continuing danger to persons or property or an ongoing threat of disruption in such settings, and instead permits a student to be prohibited from participating in *extracurricular* activities in accordance with a district's general policy on suspension from extracurricular activities. The statutes do not require the policy to have any specific notice or opportunity for a hearing to be given to the student. In addition, the bill expands the enforcement authority of the policy to include "personnel employed by the district to direct, supervise, or coach a pupil activity program." The bill also changes the policy directive to one of prohibiting a student from participating in such activities rather than suspending them by changing the word "suspend" to "prohibit." (Sec. 3313.664.)

The bill permits a board of education to adopt a policy granting assistant principals and other administrators (not just superintendents and principals as under current law) the authority to suspend a pupil from school for a period of time as specified in the board's policy, not to exceed ten school days. It also specifically exempts schools from the notice and opportunity for a hearing requirements in the case of an *in-school* suspension. (Sec. 3313.66(A).)

### **Comprehensive school safety plan**

(sec. 3313.536)

The bill requires each school board to adopt a comprehensive school safety plan for each school building under its control. The board is to examine the environmental conditions and operations of each building to determine potential hazards to safety and propose operating changes to promote the prevention of potentially dangerous problems and circumstances. Community law enforcement and safety officials, parents, and teachers and other employees assigned to the building are to be given an opportunity to comment on the plan and offer suggestions. The board is to consider incorporating remediation strategies into the plan for any building where documented safety problems have occurred.

Each board must incorporate into its plan a protocol for addressing serious threats to the safety of school property, students, employees, or administrators and a protocol for responding to any emergency event that occurs and that compromises the safety of school property, students, employees, or administrators.

Each protocol must include procedures the board finds appropriate for responding to threats and emergency events, including such things as notification of appropriate law enforcement officials, calling specified emergency response personnel, and informing parents of affected students.

**Ohio Schools Facilities Commission to review designs for safety**

(sec. 3318.031)

The bill directs the Ohio Schools Facilities Commission to consider student and staff safety when reviewing design plans for state-assisted classroom facility construction projects. After consulting with appropriate education and law enforcement personnel, the Commission may require, as a condition of project approval, changes in the design plans that it believes will advance or improve student and staff safety in the proposed classroom facility.

The Commission must review with a focus on safety, any construction and design standards it uses in the project approval process, including any standards for location and number of exits and location of restrooms. If necessary, the Commission is to amend the standards it uses in the project approval process.

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**COMMENT**

1. The bill's definition of "school activity" is the same as the definition of "school activity" in existing sec. 2923.122, which sets forth the offenses of illegal conveyance or possession of a deadly weapon or dangerous ordnance on school premises and illegal possession of an object indistinguishable from a firearm on school premises. The bill repeals that definition in sec. 2923.122.

2. Sec. 4511.01 (not in the bill) defines "school bus" as every bus designed for carrying more than nine passengers which is owned by a public, private, or governmental agency or institution of learning and operated for the transportation of children to or from a school session or a school function, or owned by a private person and operated for compensation for the transportation of children to or from a school session or a school function. "School bus" does not include a bus operated by a municipally owned transportation system, a mass transit company operating exclusively within the territorial limits of a municipal corporation, or within those limits and the territorial limits of municipal corporations immediately contiguous to that municipal corporation, nor a common passenger carrier certified by the Public Utilities Commission unless such bus is devoted exclusively to the transportation of children to and from a school session or a school function, and "school bus" does not include a van or bus used by a licensed child day-care center or type A family day-care home to transport children from the child day-care

center or type A family day-care home to a school if the van or bus does not have more than 15 children in the van or bus at any time.

3. Sec. 2923.122(F)(4) defines "object that is indistinguishable from a firearm" as an object made, constructed, or altered so that, to a reasonable person without specialized training in firearms, the object appears to be a firearm.

4. Sec. 2901.01(A)(9) defines "offense of violence" as any of the following: aggravated murder, murder, voluntary manslaughter, involuntary manslaughter, felonious assault, aggravated assault, assault, aggravated menacing, menacing by stalking, menacing, kidnapping, abduction, extortion, rape, sexual battery, gross sexual imposition, aggravated arson, arson, aggravated robbery, robbery, aggravated burglary, inciting to violence, aggravated riot, riot, inducing panic, domestic violence, intimidation, intimidation of attorney, victim, or witness in a criminal case, escape, improperly discharging a firearm at or into a habitation or school, certain forms of burglary, or the former offense of felonious sexual penetration.

#### 5. **Federal Gun-Free Schools Act**

The Gun-Free Schools Act of 1994 makes a state's federal education funding contingent on the state adopting a law requiring local educational agencies (such as school districts) "to expel from school for a period of not less than one year a student who is determined to have brought a weapon to school . . ." (20 U.S.C. § 8921(b)(1)).

The Act also provides an exception to the otherwise mandatory one-year expulsion requirement, which is the basis for the discretion granted to the district board and superintendent in Revised Code section 3313.66(B)(2). The federal law specifies that the state law "*shall* allow the chief administrative officer of [the] local educational agency to modify [the] expulsion requirement for a student on a case-by-case basis" (20 U.S.C. § 8921(b)(1) (emphasis added)).

#### 6. **Current law on suspensions, expulsions, removal, and permanent exclusion**

Current law provides for "suspensions" for minor misconduct (sec. 3313.66(A)), "expulsions" for major infractions of the school discipline code (sec. 3313.66(B)), "removal" to prevent immediate threats (sec. 3313.66(C)), and "permanent exclusion" to prevent continued threats (sec. 3313.662 (not in the bill)).

Each district board of education must adopt a policy that specifies the types of misconduct that warrant each type of discipline (sec. 3313.661(A)). The decision to permanently exclude a student from the public schools is made by the state Superintendent of Public Instruction after a hearing and only upon the recommendation of the district board.

**Suspension.** District superintendents and school principals may suspend students for up to ten days for misconduct. If at the time the suspension is imposed there are less than ten days left in the school year, the superintendent, and only the superintendent, may apply part or all of the period of the suspension to the following school year. Prior to suspending a student, the superintendent or principal must provide the student with written notice of the intention to suspend the student and an opportunity for an informal hearing to challenge the reasons for the intended suspension or to explain the student's actions. (Sec. 3313.66(A).)

**Expulsion--permissive.** Only a district superintendent may expel a student. For misconduct that does *not* involve conveying or possessing a firearm or knife at school or on other school property, the superintendent may expel a student for up to the greater of 80 days or for the number of days remaining in the semester or term. If at the time the expulsion is imposed there are less than 80 days left in the school year, the superintendent may apply part or all of the period of the expulsion to the following school year. (Sec. 3313.66(B)(1).) Any student who is expelled must be removed from the regular school setting, but the district is permitted to provide that student with educational services in an alternative setting (sec. 3313.66(I)).

**Expulsion--mandatory.** In response to the federal "Gun-Free Schools Act of 1994," existing state law also provides that a district superintendent *must* expel for a period of one year any student who has brought a firearm to school or onto other property owned or controlled by the school district. The superintendent may reduce the expulsion period on a "case-by-case basis" pursuant to the policy adopted by the district board. Any expulsion imposed under that provision *must* extend as necessary into the school year following the school year in which the incident took place that gave rise to the expulsion. (Sec. 3313.66(B)(2).)

**Additional grounds for one-year expulsion.** In addition to the federally required provision, state law also permits a district board to adopt a resolution authorizing the superintendent to expel for up to one year any student who has brought a knife to school or onto other school property or who has possessed either a firearm or knife at school or on other school property when the knife or firearm was brought there by another person. The resolution may also authorize the district superintendent to extend these expulsions, as necessary, into the school year following the school year in which the incident takes place. If a school board

adopts this resolution, the district's student discipline policy must define "knife" for purposes of these expulsions. The policy must also specify any reasons for which the district superintendent may reduce any required expulsion period on a case-by-case basis. (Secs. 3313.66(B)(3) and 3313.661(A).)

**Due process requirements--expulsion.** An expulsion requires written notice to the pupil and the pupil's parent, guardian, or custodian and an opportunity to appear before the superintendent to explain the pupil's actions (sec. 3313.66(B)(5)). Further, the pupil has a right to representation at such appearance, the right to appeal the superintendent's decision to the district board, and a right to appeal the board's decision to the court of common pleas (sec. 3313.66(D) to (E)). The notice also must include notification that the student may be subject to permanent exclusion pursuant to section 3313.662 (not in the bill) if the student is at least 16 years of age and the expulsion is based on a violation any of certain enumerated offenses, which include, among other acts, the conveyance or possession of a deadly weapon or ordnance on school premises (sec. 3313.66(D)).

**Applicability of expulsion in another district.** A school district may temporarily deny admittance to any student who has been expelled from the schools of another school district if the student's expulsion period in that district has not expired. A school district must offer the student a hearing before temporarily denying the student admittance and must grant admittance upon expiration of the student's expulsion period. (Sec. 3313.66(J)(1).)

The law also generally allows school districts to honor out-of-state expulsions in a similar manner. When a student coming from out of state becomes entitled to attend school in a school district in Ohio and when that student has been expelled or otherwise removed for disciplinary purposes from an out-of-state public school and that expulsion or removal period has not expired, the act allows Ohio school districts to temporarily deny admittance to the student. As under the law for in-state expulsions, the Ohio school district must offer the student a hearing before temporarily denying the student admittance. Unlike in-state expulsions, however, the out-of-state expulsion or removal period does not automatically apply. An Ohio school district may deny admittance only for the *shorter* of the following two periods: (1) for the remainder of the expulsion or removal period imposed by the out-of-state school or (2) for a period established by the Ohio district, beginning with the date of expulsion or removal from the out-of-state school, that is no greater than the period of expulsion that the pupil would have received under the disciplinary policy of the Ohio district had the offense that gave rise to the out-of-state expulsion or removal been committed while enrolled in the Ohio district. (Sec. 3313.66(J)(2).) For example, if a student has served 15 out of 40 days of an out-of-state expulsion (25 remaining days) and if that student

would have been expelled 60 days if the offense had occurred while enrolled in the Ohio district (45 remaining days), the student may be denied admittance only up to the number of days remaining on the out-of-state expulsion, which is the lesser of the two remaining amounts. If, on the other hand, the student had served 15 out of 80 days of an out-of-state expulsion (65 remaining days) and if that student would have been expelled 40 days if the offense had occurred while enrolled in the Ohio district (25 remaining days), the student could be denied admittance only up to the lesser remaining amount, which is 25 days.

**Removal from curricular or extracurricular activities.** The superintendent or principal or assistant principal may remove a student from curricular *or* extracurricular activities (or a teacher may remove a student from activities that are under the teacher's supervision) without the prior notice and hearing requirements when the student's presence poses a continuing danger to persons or property or an ongoing threat of disrupting the academic process taking place either within a classroom or elsewhere on the school premises. However, when a student is immediately removed from such settings, notice must be provided as soon as practicable prior to the hearing, which must be held within three school days from the time the initial removal of the student is ordered. (Sec. 3313.66(C).)

A district extracurricular activity suspension policy may authorize the district superintendent or other district administrative personnel to suspend a student from all or any particular extracurricular activities of the district or a school of the district for a period of time as provided in the district's policy (sec. 3313.664).

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## HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	01-20-99	p. 25

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