

HOUSE BILL REPORT

ESHB 2268

As Passed House:

March 9, 2007

Title: An act relating to the possession of dangerous weapons on school facilities.

Brief Description: Revising provisions relating to possession of dangerous weapons on school facilities.

Sponsors: By House Committee on Judiciary (originally sponsored by Representatives Lantz, Lovick, Strow, Kagi, Eddy, Ericks, Green, B. Sullivan, McCoy, Moeller, Schual-Berke, Kenney, Hunt, Kelley and Ormsby).

Brief History:

Committee Activity:

Judiciary: 2/20/07, 2/27/07 [DPS].

Floor Activity:

Passed House: 3/9/07, 91-6.

Brief Summary of Engrossed Substitute Bill

- Expands and clarifies the list of weapons prohibited on school grounds.
- Streamlines and revises the list of exemptions for authorized possession of a weapon.
- Raises the criminal penalty for possession of a firearm on school property from a gross misdemeanor to a class C felony, except under certain circumstances.
- Changes procedures that occur after the arrest of a person under 21 years of age for a firearm violation under this section, including the addition of a recommended referral of certain incidents to a multi-disciplinary threat assessment team.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass.
Signed by 11 members: Representatives Lantz, Chair; Goodman, Vice Chair; Rodne, Ranking

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Minority Member; Warnick, Assistant Ranking Minority Member; Ahern, Flannigan, Kirby, Moeller, Pedersen, Ross and Williams.

Staff: Jasmine Vasavada (786-5793) and Bill Perry (786-7123).

Background:

With certain exceptions, it is a gross misdemeanor to possess a dangerous weapon on school property. School property includes the school premises, transportation systems, and areas of any facility while being used exclusively by a public or private school. In the 2005-06 school year, public schools reported 3,387 violations of the prohibition against possession of a dangerous weapon at school facilities.

The following dangerous weapons are prohibited: (a) firearms; (b) "nunchu-ka sticks"; (c) "throwing stars"; (d) air guns; and (e) "dangerous weapons" listed under another statute as slung shots, sand clubs, metal knuckles, devices for suppressing the noise of a firearm, and certain knives, such as switchblades.

Exceptions from the ban on possession of dangerous weapons are made for law enforcement, security or military personnel, persons involved in firearms safety events or competitions, persons with concealed pistol licenses who are picking up or dropping off students, and nonstudents 18 years or older in lawful possession of an unloaded firearm under certain circumstances.

Offenders face the following sanctions for possession of a firearm:

- three-year revocation of concealed pistol licenses, if any are possessed by the offender;
- mandatory expulsion for not less than one year if the offender is an elementary or secondary school student (under the state's education code);
- mandatory notification of law enforcement and a parent or guardian of the alleged violation by the appropriate school authority, if the offender is a student; and
- detention with no release within 72 hours until the person has been examined by a designated mental health professional (DMHP) (if an offender is arrested who is at least 12 years old and not older than 21). This examination may be waived at the court's discretion if the court has made a determination regarding probable cause or levied a probation bond or bail.

Mental Health Evaluation:

Minors or adults may be referred for voluntary or involuntary treatment of a mental disorder, including involuntary commitment if the individual poses a likelihood of serious harm or is gravely disabled. The DMHP also may refer the person to the county-designated chemical dependency specialist for evaluation. The results of the evaluation are sent to the court, and the court considers those results in making any determination about the person.

Multi-Disciplinary Threat Committees:

Some Washington school districts have developed local multi-disciplinary threat committees to evaluate and respond to threats of violence in schools. These include Seattle public schools, a county-wide program in Skagit County, and the Sunnyside School District in

Eastern Washington. Multi-disciplinary threat assessment committees may comprise school staff, trained mental health professionals, and representatives from local law enforcement agencies. The formation of such teams to help advise school officials on the assessment of threats, evaluation of the person posing the threat, and appropriate level of response is a best practice recommended by the United States Department of Education, the Federal Bureau of Investigation, and the United States Secret Service.

Summary of Engrossed Substitute Bill:

The list of dangerous weapons whose possession is banned on school facilities is revised to more closely conform to weapons already defined as dangerous under other sections of the Revised Code of Washington. Weapons newly listed in this section whose possession on school grounds is a gross misdemeanor include stun guns, live ammunition and ammunition magazines, and blackjacks.

A separate category is created for weapons whose possession is criminalized only if the person possessing the weapon actually uses, attempts to use, threatens to use, or intends to use the object to cause death or substantial bodily harm. This category includes a broad range of objects, including certain knives, clubs, and some other devices such as a screwdriver whose possession is not in itself a crime. Development of a model policy is recommended to help school staff and threat assessment committees develop procedures to document evidence of a person's use of or intent to use a weapon on school grounds in violation of this section.

The criminal penalty for possession of a firearm is raised from a gross misdemeanor to a class C felony (subject to a presumptive sentence of up to 12 months incarceration for adults and up to 30 days detention for juveniles for a first offense). However, a student otherwise lawfully possessing a firearm secured in a locked vehicle is guilty of a gross misdemeanor, not a felony, if the student possessed the firearm with no intent to cause harm or alarm. In addition, a new exemption from the weapons prohibition is created for any person legally in possession of a weapon for the purpose of an authorized activity or class.

Current school disciplinary practice is clarified. Possession on school grounds of a weapon, other than a firearm, may constitute grounds for expulsion, but expulsion is not required.

Mandatory procedures following an arrest for a firearms violation are changed:

- The court has discretion to release any juvenile to his or her parent prior to a mental health evaluation. Detention of a juvenile under the age of twelve prior to the mental health evaluation is limited to home detention or electronic monitoring, rather than incarceration at a detention facility.
- A person ineligible for detention or other mental health services provided by a county mental health professional should be referred to a multidisciplinary threat or risk assessment committee, where one exists.
- A deadline is added to the requirement that schools notify law enforcement and parents, requiring such notification to occur within one business day of any allegation or

indication of a violation. Law enforcement must forward the notification to the prosecuting attorney.

Appropriation: None.

Fiscal Note: Requested on February 27, 2007.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony:

(In support) This bill presents huge opportunities to ensure that students are safe from objects that could be used as weapons. It addresses situations that are increasingly common where an object such as a sharpened screwdriver is brought onto school grounds to be used as a weapon.

In rural Eastern Washington, we have seen an increase in acts of violence on school campuses and a growing amount of gang activity. This bill makes a statement that we will not tolerate violence on our campuses. In a recent case, an intervention took place with a student who had a loaded gun on campus for two days. This student will not serve much jail time, sending a message that it is not a serious situation. Schools can expel students, but that simply sends them back out onto the street to wage war with their cohorts. We need laws with teeth to put students away who create violence on our campuses.

Incidents involving children and firearms on school grounds need to be more closely scrutinized. Through the process of referral to threat assessment teams, authorities are encouraged to ask more of a question about whether a particular child is a risk, and to consider the child in the entire context of his or her life. This process can help identify risk factors in children and have a tremendous impact in reconnecting disenfranchised kids. The current mental health assessment process is not very effective. The multidisciplinary threat assessment team approach can bring together information from police and schools and allows consideration of a person's living situation and other information that a mental health professional does not have. Through this process a student can be managed, not just assessed. The team follows the student in a case management approach.

(With concerns) Mandatory arrest for eight year olds gives us concern because they are presumed to be incapable of committing a crime. The list of prohibited weapons includes some objects such as a nail file that are not necessarily weapons but could be used as weapons, and in those cases we should add language that exists in some provisions limiting criminal penalties to situations where it has been shown that the object was used or intended to be used as a weapon. Ammunition should not be listed as a prohibited weapon.

Bills like this tend to focus on the bad guys and fail to take into account innocent people who fall afoul of the laws, such as a case in Enumclaw a couple years ago in which a student returned from hunting and did not remove empty shotgun shells from his pickup truck, only to

face expulsion under the school's zero tolerance policy. This may be an issue primarily east of the Cascades. A felony conviction for a student who forgets a firearm locked in his truck with no intent to cause any harm would lead to a lifetime loss of firearms rights. There should be prosecutorial discretion rather than automatic felony prosecution.

(Opposed) None.

Persons Testifying: (In support) Representative Lantz, prime sponsor; Craig Apperson, Office of the Superintendent of Public Instruction; Joe Pope, Association of Washington School Principals; Martin Speckmaier, Comprehensive School Safety, LLC; John Hughes, Sunnyside School District; and Charles Lind.

(With concerns) Don Pierce, Washington Association of Sheriffs and Police Chiefs; and Joe Waldron, Citizens Committee for the Right to Keep and Bear Arms.

Persons Signed In To Testify But Not Testifying: None.