

AMENDED IN SENATE MAY 24, 2011
AMENDED IN SENATE MAY 4, 2011
AMENDED IN SENATE APRIL 25, 2011
AMENDED IN SENATE MARCH 22, 2011

SENATE BILL

No. 453

Introduced by Senator Correa

February 16, 2011

An act to amend ~~Sections 48900 and 48915~~ *Section 48900* of, and to add Section 32286.5 to, the Education Code, relating to pupil rights.

LEGISLATIVE COUNSEL'S DIGEST

SB 453, as amended, Correa. Pupil rights: bullying: school safety plans: suspension and expulsion.

Existing law provides that each school district and county office of education is responsible for the overall development of all comprehensive school safety plans for its schools operating kindergarten or any of grades 1 to 12, inclusive, that include strategies aimed at the prevention of, and education about, potential incidents involving crime and violence on the school campus, as specified.

This bill would encourage, as comprehensive school safety plans are reviewed and updated, all plans, to the extent that resources are available, to include policies and procedures to ensure that appropriate strategies, resources, training, and other prevention or intervention efforts are in place to deal with the remediation and termination of bullying, as specified.

Existing law prohibits the suspension of a pupil from school or the recommendation of a pupil for expulsion from school unless a school district superintendent or the principal of the school in which the pupil

is enrolled determines that the pupil has committed any of several specified acts, among which is having engaged in an act of bullying. For purposes of this provision, bullying is defined to include an act of sexual harassment or hate violence, or threats or intimidation directed against school pupils or personnel, and to include bullying committed by electronic means, as defined.

This bill would also define bullying to include, but not be limited to, acts motivated by specified actual or perceived characteristics of the victim.

~~Existing law requires the principal or the superintendent of schools to recommend the expulsion of a pupil for commission of specified acts committed at school or at a school activity off school grounds, unless the principal or superintendent finds that expulsion is inappropriate, due to the particular circumstance.~~

~~This bill would include acts of bullying that have persisted and reoccurred despite repeated efforts at remediation and termination of the behavior by the principal or the superintendent of schools on the list of acts for which expulsion may be recommended.~~

~~Because the bill would increase the duties of local educational agencies, this bill would impose a state-mandated local program.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: *yes-no*.
State-mandated local program: *yes-no*.

The people of the State of California do enact as follows:

- 1 SECTION 1. (a) The Legislature finds and declares that the
- 2 State of California is committed to a safe and appropriate school
- 3 environment that is free from bullying.
- 4 (b) The Legislature finds and declares that the intent of this act
- 5 is to enact antibullying legislation that will be known as the
- 6 Michael Joseph Berry Bullying Prevention Bill of 2011 in
- 7 commemoration of all pupils that have suffered harassment, abuse,

1 discrimination, and other forms of intimidation in California
2 schools.

3 (c) The Legislature finds and declares all of the following:

4 (1) Bullying is a form of abuse and victimization that can
5 involve any combination of physical, verbal, or psychological
6 abuse, and it is a serious problem in K-12 schools that impacts the
7 academic performance and the self-esteem of all pupils.

8 (2) Poor academic performance and a devastating array of
9 psychological problems are severe consequences of bullying, for
10 both the victims and the perpetrators. Long-term consequences of
11 bullying have been linked to an array of disorders that include
12 criminal behaviors, substance abuse, and numerous mental health
13 problems.

14 (3) The National Institute of Child *Health* and Human
15 Development has reported that about 25 to 30 percent, inclusive,
16 of all pupils are subject to bullying, 17 percent of pupils are bullied
17 "sometimes or weekly," 19 percent bully others, 1.6 million
18 American children in grades 6 to 10, inclusive, are bullied at least
19 once per week, and 1.7 million American children bully others
20 frequently.

21 (4) The use of technology and the Internet has led to a
22 proliferation of "cyberbullying" with potentially disastrous
23 outcomes. Currently, about 20 percent of all teens have been the
24 victims of cyberbullying.

25 (5) Pupils with disabilities are two to three times more likely to
26 be bullied than their nondisabled peers. This bullying is often
27 chronic and directly related to their disability. Among 400 children
28 with autism, 88 percent were bullied at school, by peers whose
29 actions ranged from verbal abuse to physical contact.

30 (6) Bullying has severe consequences, both immediate and long
31 term, on both the victims and perpetrators, that include poor
32 academic performance and a devastating array of psychological
33 problems. Among adults, bullying has been linked to an increased
34 incidence of criminal behaviors, substance abuse, and numerous
35 mental health problems.

36 (7) Thus, bullying is a public health crisis that requires
37 immediate attention and effective prevention and intervention.

38 SEC. 2. Section 32286.5 is added to the Education Code, to
39 read:

1 32286.5. (a) As comprehensive school safety plans are
2 reviewed and updated, the Legislature encourages all plans, to the
3 extent that resources are available, to include policies and
4 procedures to ensure that appropriate strategies, resources, training,
5 and other prevention and intervention efforts are in place to deal
6 with the remediation and termination of bullying, as defined in
7 Section 48900.

8 (b) At a minimum, the policies and procedures described in
9 subdivision (a) ~~should~~ *may* include, but not be limited to, all of
10 the following:

11 (1) Protections for the rights of all pupils that do not unfairly
12 target individual pupils or groups of pupils.

13 (2) Protections for the rights of victims.

14 (3) Safeguards against reprisal, retaliation, and false accusations.

15 (4) A process for advocates to assist parents and victims.

16 (5) The provision to teachers, paraprofessionals, volunteers,
17 school security personnel, and other appropriate individuals of
18 information and resources relating to best practices for the
19 prevention and intervention of bullying.

20 (6) The provision of information on bullying prevention and
21 intervention to pupils.

22 SEC. 3. Section 48900 of the Education Code is amended to
23 read:

24 48900. A pupil shall not be suspended from school or
25 recommended for expulsion, unless the superintendent or the
26 principal of the school in which the pupil is enrolled determines
27 that the pupil has committed an act as defined pursuant to any of
28 subdivisions (a) to (r), inclusive:

29 (a) (1) Caused, attempted to cause, or threatened to cause
30 physical injury to another person.

31 (2) Willfully used force or violence upon the person of another,
32 except in self-defense.

33 (b) Possessed, sold, or otherwise furnished a firearm, knife,
34 explosive, or other dangerous object, unless, in the case of
35 possession of an object of this type, the pupil had obtained written
36 permission to possess the item from a certificated school employee,
37 which is concurred in by the principal or the designee of the
38 principal.

39 (c) Unlawfully possessed, used, sold, or otherwise furnished,
40 or been under the influence of, a controlled substance listed in

1 Chapter 2 (commencing with Section 11053) of Division 10 of the
2 Health and Safety Code, an alcoholic beverage, or an intoxicant
3 of any kind.

4 (d) Unlawfully offered, arranged, or negotiated to sell a
5 controlled substance listed in Chapter 2 (commencing with Section
6 11053) of Division 10 of the Health and Safety Code, an alcoholic
7 beverage, or an intoxicant of any kind, and either sold, delivered,
8 or otherwise furnished to a person another liquid, substance, or
9 material and represented the liquid, substance, or material as a
10 controlled substance, alcoholic beverage, or intoxicant.

11 (e) Committed or attempted to commit robbery or extortion.

12 (f) Caused or attempted to cause damage to school property or
13 private property.

14 (g) Stolen or attempted to steal school property or private
15 property.

16 (h) Possessed or used tobacco, or products containing tobacco
17 or nicotine products, including, but not limited to, cigarettes, cigars,
18 miniature cigars, clove cigarettes, smokeless tobacco, snuff, chew
19 packets, and betel. However, this section does not prohibit use or
20 possession by a pupil of his or her own prescription products.

21 (i) Committed an obscene act or engaged in habitual profanity
22 or vulgarity.

23 (j) Unlawfully possessed or unlawfully offered, arranged, or
24 negotiated to sell drug paraphernalia, as defined in Section 11014.5
25 of the Health and Safety Code.

26 (k) Disrupted school activities or otherwise willfully defied the
27 valid authority of supervisors, teachers, administrators, school
28 officials, or other school personnel engaged in the performance of
29 their duties.

30 (l) Knowingly received stolen school property or private
31 property.

32 (m) Possessed an imitation firearm. As used in this section,
33 "imitation firearm" means a replica of a firearm that is so
34 substantially similar in physical properties to an existing firearm
35 as to lead a reasonable person to conclude that the replica is a
36 firearm.

37 (n) Committed or attempted to commit a sexual assault as
38 defined in Section 261, 266c, 286, 288, 288a, or 289 of the Penal
39 Code or committed a sexual battery as defined in Section 243.4
40 of the Penal Code.

1 (o) Harassed, threatened, or intimidated a pupil who is a
2 complaining witness or a witness in a school disciplinary
3 proceeding for the purpose of either preventing that pupil from
4 being a witness or retaliating against that pupil for being a witness,
5 or both.

6 (p) Unlawfully offered, arranged to sell, negotiated to sell, or
7 sold the prescription drug Soma.

8 (q) Engaged in, or attempted to engage in, hazing. For purposes
9 of this subdivision, "hazing" means a method of initiation or
10 preinitiation into a pupil organization or body, whether or not the
11 organization or body is officially recognized by an educational
12 institution, that is likely to cause serious bodily injury or personal
13 degradation or disgrace resulting in physical or mental harm to a
14 former, current, or prospective pupil. For purposes of this
15 subdivision, "hazing" does not include athletic events or
16 school-sanctioned events.

17 (r) (1) Engaged in an act of bullying, including, but not limited
18 to, bullying committed by means of an electronic act, as defined
19 in subdivisions (f) and (g) of Section 32261, directed specifically
20 toward a pupil or school personnel.

21 (2) Engaged in an act of bullying, including, but not limited to,
22 bullying committed by means of an electronic act, as defined in
23 subdivisions (f) and (g) of Section 32261, directed specifically
24 toward a pupil or school personnel motivated by the actual or
25 perceived characteristics of the victim, including, but not limited
26 to:

27 (A) Disability.

28 (B) Gender.

29 (C) Nationality.

30 (D) Race or ethnicity.

31 (E) Religion.

32 (F) Sexual orientation.

33 (G) Association with a person or group with one or more of
34 these actual or perceived characteristics.

35 (3) For the purpose of this subdivision, "an act of bullying"
36 means a type of aggression, either verbal, physical, or
37 psychological, that includes, but is not limited to, any of the
38 following:

39 (A) Behavior that is intended to harm or disturb the target or
40 victim, and may be carried out repeatedly over time.

1 (B) Behavior that reflects a physical or psychological imbalance
2 of power.

3 (C) Behavior in the form of physical acts, threats, intimidation,
4 verbal abuse, or taunting. An act of bullying also can be indirect,
5 in the form of making faces, making obscene gestures, exclusion,
6 or the spreading of rumors.

7 (D) Acts using modern communication devices, including, but
8 limited to, e-mail, instant messaging, chat rooms, *Internet* Web
9 sites, social networking sites, ~~cell phones~~ *cellular telephones*, and
10 all other forms of technology, to intentionally embarrass, humiliate,
11 threaten, intimidate, or gain power or control over, an individual
12 or group.

13 (s) A pupil shall not be suspended or expelled for any of the
14 acts enumerated in this section, unless that act is related to school
15 activity or school attendance occurring within a school under the
16 jurisdiction of the superintendent of the school district or principal
17 or occurring within any other school district. A pupil may be
18 suspended or expelled for acts that are enumerated in this section
19 and related to school activity or attendance that occur at any time,
20 including, but not limited to, any of the following:

21 (1) While on school grounds.

22 (2) While going to or coming from school.

23 (3) During the lunch period whether on or off campus.

24 (4) During, or while going to or coming from, a school
25 sponsored activity.

26 (t) A pupil who aids or abets, as defined in Section 31 of the
27 Penal Code, the infliction or attempted infliction of physical injury
28 to another person may be subject to suspension, but not expulsion,
29 pursuant to this section, except that a pupil who has been adjudged
30 by a juvenile court to have committed, as an aider and abettor, a
31 crime of physical violence in which the victim suffered great bodily
32 injury or serious bodily injury shall be subject to discipline pursuant
33 to subdivision (a).

34 (u) As used in this section, "school property" includes, but is
35 not limited to, electronic files and databases.

36 (v) A superintendent of the school district or principal may use
37 his or her discretion to provide alternatives to suspension or
38 expulsion, including, but not limited to, counseling and an anger
39 management program, for a pupil subject to discipline under this
40 section.

1 (w) It is the intent of the Legislature that alternatives to
2 suspension or expulsion be imposed against a pupil who is truant,
3 tardy, or otherwise absent from school activities.

4 ~~SEC. 4. Section 48915 of the Education Code is amended to~~
5 ~~read:~~

6 ~~48915. (a) Except as provided in subdivisions (c) and (e), the~~
7 ~~principal or the superintendent of schools shall recommend the~~
8 ~~expulsion of a pupil for any of the following acts committed at~~
9 ~~school or at a school activity off school grounds, unless the~~
10 ~~principal or superintendent finds that expulsion is inappropriate,~~
11 ~~due to the particular circumstance:~~

12 ~~(1) Causing serious physical injury to another person, except~~
13 ~~in self-defense.~~

14 ~~(2) Possession of any knife or other dangerous object of no~~
15 ~~reasonable use to the pupil.~~

16 ~~(3) Unlawful possession of any controlled substance listed in~~
17 ~~Chapter 2 (commencing with Section 11053) of Division 10 of the~~
18 ~~Health and Safety Code, except for the first offense for the~~
19 ~~possession of not more than one avoirdupois ounce of marijuana,~~
20 ~~other than concentrated cannabis.~~

21 ~~(4) Robbery or extortion.~~

22 ~~(5) Assault or battery, as defined in Sections 240 and 242 of the~~
23 ~~Penal Code, upon any school employee.~~

24 ~~(6) (A) Acts of bullying, as defined in subdivision (r) of Section~~
25 ~~48900, that have persisted and reoccurred despite repeated efforts~~
26 ~~at remediation and termination of the behavior by the principal or~~
27 ~~the superintendent of schools.~~

28 ~~(B) A principal or superintendent of schools shall only~~
29 ~~recommend expulsion pursuant to this paragraph as a last resort~~
30 ~~if all other prevention or intervention efforts have failed. As~~
31 ~~comprehensive school safety plans are reviewed and updated, all~~
32 ~~plans, to the extent that resources are available, shall include the~~
33 ~~policies and procedures relating to bullying listed in subdivision~~
34 ~~(b) of Section 32286.5.~~

35 ~~(b) Upon recommendation by the principal, superintendent of~~
36 ~~schools, or by a hearing officer or administrative panel appointed~~
37 ~~pursuant to subdivision (d) of Section 48918, the governing board~~
38 ~~may order a pupil expelled upon finding that the pupil committed~~
39 ~~an act listed in subdivision (a) or in subdivision (a), (b), (c), (d),~~

1 or (e) of Section 48900. A decision to expel shall be based on a
2 finding of one or both of the following:

3 (1) Other means of correction are not feasible or have repeatedly
4 failed to bring about proper conduct.

5 (2) Due to the nature of the act, the presence of the pupil causes
6 a continuing danger to the physical safety of the pupil or others.

7 (e) The principal or superintendent of schools shall immediately
8 suspend, pursuant to Section 48911, and shall recommend
9 expulsion of, a pupil that he or she determines has committed any
10 of the following acts at school or at a school activity off school
11 grounds:

12 (1) Possessing, selling, or otherwise furnishing a firearm. This
13 subdivision does not apply to an act of possessing a firearm if the
14 pupil had obtained prior written permission to possess the firearm
15 from a certificated school employee, which is concurred in by the
16 principal or the designee of the principal. This subdivision applies
17 to an act of possessing a firearm only if the possession is verified
18 by an employee of a school district.

19 (2) Brandishing a knife at another person.

20 (3) Unlawfully selling a controlled substance listed in Chapter
21 2 (commencing with Section 11053) of Division 10 of the Health
22 and Safety Code.

23 (4) Committing or attempting to commit a sexual assault as
24 defined in subdivision (n) of Section 48900 or committing a sexual
25 battery as defined in subdivision (n) of Section 48900.

26 (5) Possession of an explosive.

27 (d) The governing board shall order a pupil expelled upon
28 finding that the pupil committed an act listed in subdivision (e);
29 and shall refer that pupil to a program of study that meets all of
30 the following conditions:

31 (1) Is appropriately prepared to accommodate pupils who exhibit
32 discipline problems.

33 (2) Is not provided at a comprehensive middle, junior, or senior
34 high school, or at any elementary school.

35 (3) Is not housed at the schoolsite attended by the pupil at the
36 time of suspension.

37 (e) Upon recommendation by the principal, superintendent of
38 schools, or by a hearing officer or administrative panel appointed
39 pursuant to subdivision (d) of Section 48918, the governing board
40 may order a pupil expelled upon finding that the pupil, at school

1 or at a school activity off of school grounds, violated subdivision
2 (f), (g), (h), (i), (j), (k), (l), or (m) of Section 48900, or Section
3 48900.2, 48900.3, or 48900.4, and either of the following:

4 (1) That other means of correction are not feasible or have
5 repeatedly failed to bring about proper conduct.

6 (2) That due to the nature of the violation, the presence of the
7 pupil causes a continuing danger to the physical safety of the pupil
8 or others.

9 (f) The governing board shall refer a pupil who has been
10 expelled pursuant to subdivision (b) or (c) to a program of study
11 that meets all of the conditions specified in subdivision (d).
12 Notwithstanding this subdivision, with respect to a pupil expelled
13 pursuant to subdivision (c), if the county superintendent of schools
14 certifies that an alternative program of study is not available at a
15 site away from a comprehensive middle, junior, or senior high
16 school, or an elementary school, and that the only option for
17 placement is at another comprehensive middle, junior, or senior
18 high school, or another elementary school, the pupil may be
19 referred to a program of study that is provided at a comprehensive
20 middle, junior, or senior high school, or at an elementary school.

21 (g) As used in this section, “knife” means any dirk, dagger, or
22 other weapon with a fixed, sharpened blade fitted primarily for
23 stabbing, a weapon with a blade fitted primarily for stabbing, a
24 weapon with a blade longer than 3 ½ inches, a folding knife with
25 a blade that locks into place, or a razor with an unguarded blade.

26 (h) As used in this section, the term “explosive” means
27 “destructive device” as described in Section 921 of Title 18 of the
28 United States Code.

29 SEC. 5. If the Commission on State Mandates determines that
30 this act contains costs mandated by the state, reimbursement to
31 local agencies and school districts for those costs shall be made
32 pursuant to Part 7 (commencing with Section 17500) of Division
33 4 of Title 2 of the Government Code.