

SECOND REGULAR SESSION

# HOUSE BILL NO. 1055

## 93RD GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES FRASER (Sponsor) AND JOLLY (Co-sponsor).

Pre-filed December 1, 2005 and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

3683L.01I

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### AN ACT

To repeal section 160.261, RSMo, and to enact in lieu thereof one new section relating to corporal punishment, with a penalty provision.

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*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Section 160.261, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 160.261, to read as follows:

160.261. 1. The local board of education of each school district shall clearly establish a written policy of discipline[, including the district's determination on the use of corporal punishment and the procedures in which punishment will be applied]. A written copy of the district's discipline policy [and corporal punishment procedures, if applicable,] shall be provided to the pupil and parent or legal guardian of every pupil enrolled in the district at the beginning of each school year and also made available in the office of the superintendent of such district, during normal business hours, for public inspection. **No corporal punishment shall be administered in any public school district in this state.** All employees of the district shall annually receive instruction related to the specific contents of the policy of discipline and any interpretations necessary to implement the provisions of the policy in the course of their duties, including but not limited to approved methods of dealing with acts of school violence, disciplining students with disabilities and instruction in the necessity and requirements for confidentiality.

2. The policy shall require school administrators to report acts of school violence to teachers and other school district employees with a need to know. For the purposes of this

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

chapter or chapter 167, RSMo, "need to know" is defined as school personnel who are directly responsible for the student's education or who otherwise interact with the student on a professional basis while acting within the scope of their assigned duties. As used in this section, the phrase "act of school violence" or "violent behavior" means the exertion of physical force by a student with the intent to do serious physical injury as defined in subdivision (6) of section 565.002, RSMo, to another person while on school property, including a school bus in service on behalf of the district, or while involved in school activities. The policy shall at a minimum require school administrators to report, as soon as reasonably practical, to the appropriate law enforcement agency any of the following felonies, or any act which if committed by an adult would be one of the following felonies:

- (1) First degree murder under section 565.020, RSMo;
- (2) Second degree murder under section 565.021, RSMo;
- (3) Kidnapping under section 565.110, RSMo;
- (4) First degree assault under section 565.050, RSMo;
- (5) Forcible rape under section 566.030, RSMo;
- (6) Forcible sodomy under section 566.060, RSMo;
- (7) Burglary in the first degree under section 569.160, RSMo;
- (8) Burglary in the second degree under section 569.170, RSMo;
- (9) Robbery in the first degree under section 569.020, RSMo;
- (10) Distribution of drugs under section 195.211, RSMo;
- (11) Distribution of drugs to a minor under section 195.212, RSMo;
- (12) Arson in the first degree under section 569.040, RSMo;
- (13) Voluntary manslaughter under section 565.023, RSMo;
- (14) Involuntary manslaughter under section 565.024, RSMo;
- (15) Second degree assault under section 565.060, RSMo;
- (16) Sexual assault under section 566.040, RSMo;
- (17) Felonious restraint under section 565.120, RSMo;
- (18) Property damage in the first degree under section 569.100, RSMo;
- (19) The possession of a weapon under chapter 571, RSMo;
- (20) Child molestation in the first degree pursuant to section 566.067, RSMo;
- (21) Deviate sexual assault pursuant to section 566.070, RSMo;
- (22) Sexual misconduct involving a child pursuant to section 566.083, RSMo; or
- (23) Sexual abuse pursuant to section 566.100, RSMo;

committed on school property, including but not limited to actions on any school bus in service on behalf of the district or while involved in school activities. The policy shall require that any

52 portion of a student's individualized education program that is related to demonstrated or  
53 potentially violent behavior shall be provided to any teacher and other school district employees  
54 who are directly responsible for the student's education or who otherwise interact with the  
55 student on an educational basis while acting within the scope of their assigned duties. The policy  
56 shall also contain the consequences of failure to obey standards of conduct set by the local board  
57 of education, and the importance of the standards to the maintenance of an atmosphere where  
58 orderly learning is possible and encouraged.

59         3. The policy shall provide that any student who is on suspension for any of the offenses  
60 listed in subsection 2 of this section or any act of violence or drug-related activity defined by  
61 school district policy as a serious violation of school discipline pursuant to subsection 9 of this  
62 section shall have as a condition of his or her suspension the requirement that such student is not  
63 allowed, while on such suspension, to be within one thousand feet of any public school in the  
64 school district where such student attended school unless:

65             (1) Such student is under the direct supervision of the student's parent, legal guardian,  
66 or custodian;

67             (2) Such student is under the direct supervision of another adult designated by the  
68 student's parent, legal guardian, or custodian, in advance, in writing, to the principal of the school  
69 which suspended the student;

70             (3) Such student is in an alternative school that is located within one thousand feet of a  
71 public school in the school district where such student attended school; or

72             (4) Such student resides within one thousand feet of any public school in the school  
73 district where such student attended school in which case such student may be on the property  
74 of his or her residence without direct adult supervision.

75         4. Any student who violates the condition of suspension required pursuant to subsection  
76 3 of this section may be subject to expulsion or further suspension pursuant to the provisions of  
77 sections 167.161, 167.164, and 167.171, RSMo. In making this determination consideration  
78 shall be given to whether the student poses a threat to the safety of any child or school employee  
79 and whether such student's unsupervised presence within one thousand feet of the school is  
80 disruptive to the educational process or undermines the effectiveness of the school's disciplinary  
81 policy. Removal of any pupil who is a student with a disability is subject to state and federal  
82 procedural rights.

83         5. The policy shall provide for a suspension for a period of not less than one year, or  
84 expulsion, for a student who is determined to have brought a weapon to school, including but  
85 not limited to the school playground or the school parking lot, brought a weapon on a school bus  
86 or brought a weapon to a school activity whether on or off of the school property in violation of  
87 district policy, except that:

88 (1) The superintendent or, in a school district with no high school, the principal of the  
89 school which such child attends may modify such suspension on a case-by-case basis; and

90 (2) This section shall not prevent the school district from providing educational services  
91 in an alternative setting to a student suspended under the provisions of this section.

92 6. For the purpose of this section, the term "weapon" shall mean a firearm as defined  
93 under 18 U.S.C. 921 and the following items, as defined in section 571.010, RSMo: a blackjack,  
94 a concealable firearm, an explosive weapon, a firearm, a firearm silencer, a gas gun, a knife,  
95 knuckles, a machine gun, a projectile weapon, a rifle, a shotgun, a spring gun or a switchblade  
96 knife; except that this section shall not be construed to prohibit a school board from adopting a  
97 policy to allow a Civil War reenactor to carry a Civil War era weapon on school property for  
98 educational purposes so long as the firearm is unloaded. The local board of education shall  
99 define weapon in the discipline policy. Such definition shall include the weapons defined in this  
100 subsection but may also include other weapons.

101 7. All school district personnel responsible for the care and supervision of students are  
102 authorized to hold every pupil strictly accountable for any disorderly conduct in school or on any  
103 property of the school, on any school bus going to or returning from school, during  
104 school-sponsored activities, or during intermission or recess periods.

105 8. Teachers and other authorized district personnel in public schools responsible for the  
106 care, supervision, and discipline of schoolchildren, including volunteers selected with reasonable  
107 care by the school district, shall not be civilly liable when acting in conformity with the  
108 established policy of discipline developed by each board under this section, or when reporting  
109 to his or her supervisor or other person as mandated by state law acts of school violence or  
110 threatened acts of school violence, within the course and scope of the duties of the teacher,  
111 authorized district personnel or volunteer, when such individual is acting in conformity with the  
112 established policies developed by the board. Nothing in this section shall be construed to create  
113 a new cause of action against such school district, or to relieve the school district from liability  
114 for the negligent acts of such persons.

115 9. Each school board shall define in its discipline policy acts of violence and any other  
116 acts that constitute a serious violation of that policy. Acts of violence as defined by school  
117 boards shall include but not be limited to exertion of physical force by a student with the intent  
118 to do serious bodily harm to another person while on school property, including a school bus in  
119 service on behalf of the district, or while involved in school activities. School districts shall for  
120 each student enrolled in the school district compile and maintain records of any serious violation  
121 of the district's discipline policy. Such records shall be made available to teachers and other  
122 school district employees with a need to know while acting within the scope of their assigned

123 duties, and shall be provided as required in section 167.020, RSMo, to any school district in  
124 which the student subsequently attempts to enroll.

125       10. [Spanking, when administered by certificated personnel of a school district in a  
126 reasonable manner in accordance with the local board of education's written policy of discipline,  
127 is not abuse within the meaning of chapter 210, RSMo. The provisions of sections 210.110 to  
128 210.165, RSMo, notwithstanding, the division of family services shall not have jurisdiction over  
129 or investigate any report of alleged child abuse arising out of or related to any spanking  
130 administered in a reasonable manner by any certificated school personnel pursuant to a written  
131 policy of discipline established by the board of education of the school district.] Upon receipt  
132 of any reports of child abuse by the division of family services pursuant to sections 210.110 to  
133 210.165, RSMo, which allegedly involves personnel of a school district, the division of family  
134 services shall notify the superintendent of schools of the district or, if the person named in the  
135 alleged incident is the superintendent of schools, the president of the school board of the school  
136 district where the alleged incident occurred. If, after an initial investigation, the superintendent  
137 of schools or the president of the school board finds that the report involves an alleged incident  
138 of child abuse [other than the administration of a spanking by certificated school personnel  
139 pursuant to a written policy of discipline or a report made for the sole purpose of harassing a  
140 public school employee], the superintendent of schools or the president of the school board shall  
141 immediately refer the matter back to the division of family services and take no further action.  
142 In all matters referred back to the division of family services, the division of family services shall  
143 treat the report in the same manner as other reports of alleged child abuse received by the  
144 division. [If the report pertains to an alleged incident which arose out of or is related to a  
145 spanking administered by certificated personnel of a school district pursuant to a written policy  
146 of discipline or a report made for the sole purpose of harassing a public school employee, a  
147 notification of the reported child abuse shall be sent by the superintendent of schools or the  
148 president of the school board to the juvenile officer of the county in which the alleged incident  
149 occurred. The report shall be jointly investigated by the juvenile officer or a law enforcement  
150 officer designated by the juvenile officer and the superintendent of schools or, if the subject of  
151 the report is the superintendent of schools, by the juvenile officer or a law enforcement officer  
152 designated by the juvenile officer and the president of the school board or such president's  
153 designee. The investigation shall begin no later than forty-eight hours after notification from the  
154 division of family services is received, and shall consist of, but need not be limited to,  
155 interviewing and recording statements of the child and the child's parents or guardian within two  
156 working days after the start of the investigation, of the school district personnel allegedly  
157 involved in the report, and of any witnesses to the alleged incident. The juvenile officer or a law  
158 enforcement officer designated by the juvenile officer and the investigating school district

personnel shall issue separate reports of their findings and recommendations after the conclusion of the investigation to the school board of the school district within seven days after receiving notice from the division of family services. The reports shall contain a statement of conclusion as to whether the report of alleged child abuse is substantiated or is unsubstantiated. The school board shall consider the separate reports and shall issue its findings and conclusions and the action to be taken, if any, within seven days after receiving the last of the two reports. The findings and conclusions shall be made in substantially the following form:

(1) The report of the alleged child abuse is unsubstantiated. The juvenile officer or a law enforcement officer designated by the juvenile officer and the investigating school board personnel agree that the evidence shows that no abuse occurred;

(2) The report of the alleged child abuse is substantiated. The juvenile officer or a law enforcement officer designated by the juvenile officer and the investigating school district personnel agree that the evidence is sufficient to support a finding that the alleged incident of child abuse did occur;

(3) The issue involved in the alleged incident of child abuse is unresolved. The juvenile officer or a law enforcement officer designated by the juvenile officer and the investigating school personnel are unable to agree on their findings and conclusions on the alleged incident.

11. The findings and conclusions of the school board shall be sent to the division of family services. If the findings and conclusions of the school board are that the report of the alleged child abuse is unsubstantiated, the investigation shall be terminated, the case closed, and no record shall be entered in the division of family services' central registry. If the findings and conclusions of the school board are that the report of the alleged child abuse is substantiated, the division of family services shall report the incident to the prosecuting attorney of the appropriate county along with the findings and conclusions of the school district and shall include the information in the division's central registry. If the findings and conclusions of the school board are that the issue involved in the alleged incident of child abuse is unresolved, the division of family services shall report the incident to the prosecuting attorney of the appropriate county along with the findings and conclusions of the school board, however, the incident and the names of the parties allegedly involved shall not be entered into the central registry of the division of family services unless and until the alleged child abuse is substantiated by a court of competent jurisdiction.

12.] 11. Any superintendent of schools, president of a school board or such person's designee or juvenile officer who knowingly falsifies any report of any matter pursuant to this section or who knowingly withholds any information relative to any investigation or report pursuant to this section is guilty of a class A misdemeanor.

194           [13.] **12.** In order to ensure the safety of all students, should a student be expelled for  
195 bringing a weapon to school, violent behavior, or for an act of school violence, that student shall  
196 not, for the purposes of the accreditation process of the Missouri school improvement plan, be  
197 considered a dropout or be included in the calculation of that district's educational persistence  
198 ratio.

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