

**SUBJECT:** Expelling students from school for intentionally exhibiting a weapon

**COMMITTEE:** Public Education — committee substitute recommended

**VOTE:** 6 ayes — Grusendorf, Branch, Delisi, Eissler, Hochberg, Mowery  
0 nays  
3 absent — Oliveira, Dutton, B. Keffer

**WITNESSES:** For — Tim Bacon, Texas State Teachers Association; Lonnie Hollingsworth, Texas Classroom Teachers Association; Kay Lambert, Advocacy, Inc.; Frank Edward  
  
Against — None  
  
On — Ramiro Canales, Texas Association of School Administrators, Texas Association of School Boards; Marc Levin, Texas Public Policy Foundation; Ted Melina Raab, Texas Federation of Teachers

**BACKGROUND:** Education Code, sec. 37.007, requires that a student be expelled from school if the student uses, exhibits, or possesses a firearm, illegal knife, club, or weapon on school property or while attending a school-sponsored or school-related activity on or off of school property.

Penal Code, sec. 6.03, includes definitions of culpable mental states concerning a person's conduct. Intentionally means having a conscious objective or desire to engage in the conduct or cause the result. Knowingly means being aware of the nature of a person's conduct or that certain circumstances exist. Acting knowingly with respect to a result of a conduct means being aware that this conduct is reasonably certain to cause the result. Recklessly means being aware of but consciously disregarding a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of such a nature and degree that its disregard constitutes a gross deviation from the standard of care that an ordinary person would exercise under all circumstances as viewed from the actor's standpoint.

**DIGEST:** CSHB 603 would amend Education Code, sec. 37.007 to require that a student be expelled from school if the student intentionally, knowingly or recklessly uses, exhibits, or possesses a firearm, illegal knife, club or weapon on school property or while attending a school-sponsored or school-related activity on or off of school property. A student who, at the time of the conduct, had a disability that substantially impaired the student's capacity to appreciate the wrongfulness of his or her conduct would not have to be expelled.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2005.

**SUPPORTERS SAY:** CSHB 603 would give principals more flexibility in enforcing the state's zero-tolerance laws regarding the possession of weapons in schools by allowing for consideration of whether the behavior was conducted intentionally, knowingly, or recklessly. Since these zero-tolerance laws were enacted in 1997, there have been reports of students being expelled for such actions as accidentally bringing a paring knife to school, even though the student had no intention of using the knife.

Principals have no discretion under current law to respond to individual situations in which expelling a student may not be warranted. As a result, students end up in alternative education programs that often do not offer the same quality of education as a regular classroom, and even excellent students have difficulty maintaining their grades. The bill would not limit a principal's authority to expel students who intentionally bring weapons to school.

The terms intentionally, knowingly, or recklessly are clearly defined in the Penal Code, so principals would not be able to exercise total discretion or favoritism in determining whether a student's behavior met these standards.

**OPPONENTS SAY:** The bill would give principals too much discretion in deciding whether a student intentionally, knowingly or recklessly committed the offense. This should be handled by courts rather than by a principal, who may know the offender and be too inclined towards leniency or stringency depending on the particular student.

NOTES:

The author plans introduce a floor amendment that would require the school board to specify in the district student code of conduct whether consideration be given to intent or lack of intent at the time the student engaged in the conduct, or the student's disciplinary history as a factor in a decision to order suspension, removal to a disciplinary alternative education program, or expulsion. The amendment is identical to SB 126 by Lindsay, which passed the Senate by 29-0 on April 18 and has been referred to the House Public Education Committee.

The committee substitute added a provision stipulating that a student who engaged in the conduct described in the bill would not responsible if the student, at the time of the conduct, had a disability that substantially impaired his or her capacity to appreciate the wrongfulness of the conduct.