

SENATE BILL NO. 4

INTRODUCED BY EMERSON

A BILL FOR AN ACT ENTITLED: "AN ACT REINSTITUTING SCHOOL DISCIPLINE POLICY THAT EXISTED PRIOR TO 1991 BY AUTHORIZING A TEACHER OR PRINCIPAL TO USE CORPORAL PUNISHMENT WITHOUT UNDUE ANGER TO MAINTAIN THE ORDERLY CONDUCT OF A PUPIL; REQUIRING THE PRESENCE OF A WITNESS DURING ADMINISTRATION OF CORPORAL PUNISHMENT; REQUIRING PRIOR NOTIFICATION OF A PARENT OR GUARDIAN EXCEPT IN CASES OF OPEN AND FLAGRANT DEFIANCE; PROVIDING THAT MALTREATMENT OR ABUSE OF A PUPIL BY A TEACHER OR PRINCIPAL IS A MISDEMEANOR; AMENDING SECTION 20-4-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 20-4-302, MCA, is amended to read:

"20-4-302. ~~Discipline and punishment of pupils -- definition of corporal punishment -- penalty -- defense~~ Authority of teacher or principal over pupils -- undue punishment. (1) A teacher or principal has the authority to hold a pupil to a strict accountability for disorderly conduct in school, on the way to or from school, or during intermission or recess.

~~(2) For the purposes of this section, "corporal punishment" means knowingly and purposely inflicting physical pain on a pupil as a disciplinary measure.~~

~~(3) A person who is employed or engaged by a school district may not inflict or cause to be inflicted corporal punishment on a pupil.~~

~~(4) (a) A person who is employed or engaged by a school district may use physical restraint, defined as the placing of hands on a pupil in a manner that is reasonable and necessary to:~~

~~(i) quell a disturbance;~~

~~(ii) provide self protection;~~

~~(iii) protect the pupil or others from physical injury;~~

~~(iv) obtain possession of a weapon or other dangerous object on the person of the pupil or within control of the pupil;~~

1 ~~(v) maintain the orderly conduct of a pupil including but not limited to relocating a pupil in a waiting~~
 2 ~~line, classroom, lunchroom, principal's office, or other on-campus facility; or~~

3 ~~(vi) protect property from serious harm.~~

4 ~~(b) Physical pain resulting from the use of physical restraint as defined in subsection (4)(a) does~~
 5 ~~not constitute corporal punishment as long as the restraint is reasonable and necessary. Whenever a~~
 6 ~~principal considers it necessary to inflict corporal punishment in order to maintain the orderly conduct of~~
 7 ~~a pupil, the principal shall administer the corporal punishment without undue anger and only in the presence~~
 8 ~~of a witness. Before any corporal punishment is administered, the parent or guardian must be notified of~~
 9 ~~the principal's intention to punish the child. However, in cases of open and flagrant defiance of the~~
 10 ~~teacher, principal, or authority of the school, the teacher or principal may administer corporal punishment~~
 11 ~~without giving the required notice.~~

12 ~~(6)(2) A teacher in a district employing neither a district superintendent nor a principal at the school~~
 13 ~~where the teacher is assigned has the authority to suspend a pupil for good cause and to administer~~
 14 ~~corporal punishment without undue anger in the presence of a witness. When either a district~~
 15 ~~superintendent or a school principal is employed, only the superintendent or principal has the authority to~~
 16 ~~suspend a pupil for good cause. Whenever a teacher suspends a pupil, the teacher shall notify the trustees~~
 17 ~~and the county superintendent immediately of the action.~~

18 ~~(6)(3) A teacher has the duty to report the truancy or incorrigibility of a pupil to the district~~
 19 ~~superintendent, the principal, or the trustees, ~~or the county superintendent,~~ whichever is applicable.~~

20 ~~(7) If a person who is employed or engaged by a school district uses corporal punishment or more~~
 21 ~~physical restraint than is reasonable or necessary, the person~~

22 ~~(4) A teacher or principal who maltreats or abuses a pupil by administering any undue or severe~~
 23 ~~punishment is guilty of a misdemeanor and, upon conviction of the misdemeanor by a court of competent~~
 24 ~~jurisdiction, shall be fined an amount not ~~less than \$25 or more than \$500~~ \$100.~~

25 ~~(8) A person named as a defendant in an action brought under this section may assert as an~~
 26 ~~affirmative defense that the use of physical restraint was reasonable or necessary. If that defense is denied~~
 27 ~~by the person bringing the charge, the issue of whether the restraint used was reasonable or necessary~~
 28 ~~must be determined by the trier of fact."~~

29
 30 **NEW SECTION. Section 2. Effective date.** [This act] is effective on passage and approval.

-END-

APPROVED BY COM ON EDUCATION
AND CULTURAL RESOURCES

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