Date of Hearing: March 22, 2023

ASSEMBLY COMMITTEE ON EDUCATION Al Muratsuchi, Chair AB 599 (Ward) – As Introduced February 9, 2023

SUBJECT: Suspensions and expulsions: controlled substances: tobacco

SUMMARY: Removes the possession of tobacco products and controlled substances on school grounds or at a school activity as bases for suspension from school or recommendations for expulsion, as of July 1, 2025. Requires the California Department of Education (CDE) to develop and make available a model policy for a public health approach to addressing student possession and use of illicit drugs on school property, by July 1, 2025. Specifically, **this bill**:

- 1) Removes possession of, or being under the influence of, a controlled substance as a basis for suspension from school or recommendation for expulsion, as of July 1, 2025.
- 2) Removes possession or use of tobacco, or products containing tobacco or nicotine, as a basis for suspension from school or recommendation for expulsion, as of July 1, 2025.
- 3) Removes the requirement for the principal or the superintendent to suspend or recommend expulsion of a student for unlawful possession of any controlled substance, as defined, at school, or at a school activity off school grounds, as of July 1, 2025.
- 4) Removes the requirement for a school district to inform the teacher of a student who has engaged in the possession or use of tobacco or a controlled substance, as of July 1, 2025.
- 5) Prohibits a student enrolled in a charter school from being suspended or recommended for expulsion solely based upon the possession or use of tobacco or products containing tobacco or nicotine, or possession, use, or being under the influence of a controlled substance, as specified, an alcoholic beverage, or an intoxicant of any kind, as of July 1, 2025.
- 6) Requires the CDE to develop and make available a model policy for a public health approach to addressing student possession and use of illicit drugs on school property, by July 1, 2025. Requires the CDE to collaborate with stakeholders, including treatment providers, local educational agencies (LEAs), and community-based organizations in the development of the model policy.
- 7) Requires LEAs, including school districts, county offices of education, and charter schools, to adopt a plan to address students who possess or use drugs on school property by July 1, 2025. Requires the plan to include specific information on where on campus and in the community students can receive education, treatment, or support for substance use. Requires LEAs to make a good faith effort to adopt a plan that is youth-informed.
- 8) Makes other technical and clarifying changes.

EXISTING LAW:

- 1) Prohibits a student from being suspended from school or recommended for expulsion, unless the superintendent of the school district, or the principal of the school, determines that the student has committed any of the following offenses:
 - a) Causing, attempting to cause, or threatening to cause physical injury to another person, or willfully using force or violence upon another person, except in self-defense;
 - b) Possessing, selling, or otherwise furnishing a firearm, knife, explosive, or other dangerous object, unless the student had obtained prior written permission to possess the item;
 - c) Unlawfully possessing, using, selling, or otherwise furnishing a controlled substance;
 - d) Unlawfully offering, arranging, or negotiating to sell a controlled substance, alcoholic beverage, or an intoxicant of any kind;
 - e) Committing or attempting to commit robbery or extortion;
 - f) Causing or attempting to cause damage to school property or private property;
 - g) Stealing or attempting to steal school property or private property;
 - h) Possessing or using tobacco, or products containing tobacco or nicotine products;
 - i) Committing an obscene act or engaging in habitual profanity or vulgarity;
 - j) Unlawfully possessing or unlawfully offering, arranging or negotiating to sell drug paraphernalia;
 - k) Disrupting school activities or otherwise willfully defying the authority of supervisors, teachers, administrators, school officials or other school personnel engaged in the performance of their duties; (Grades 4-12 only)
 - 1) Knowingly receiving stolen school property or private property;
 - m) Possessing an imitation firearm;
 - n) Committing or attempting to commit a sexual assault or sexual battery;
 - o) Harassing, threatening, or intimidating a student who is a complaining witness or a witness in a school disciplinary proceeding in order to prevent the student from being a witness or retaliating against that student for being a witness, or both;
 - p) Unlawfully offering, arranging to sell, or negotiating to sell the prescription drug Soma;
 - q) Engaging in or attempting to engage in hazing;

- r) Engaging in the act of bullying, including bullying committed by means of an electronic act;
- s) Committing sexual harassment (grades 4 through 12 only);
- t) Causing or attempting to cause, threatening to cause, or participating in an act of hate violence (grades 4 through 12 only);
- u) Engaging in harassment, threats, or intimidation against school district personnel or students that have the effect of disrupting classwork, creating substantial disorder, and invading the rights of either school personnel or students by creating an intimidating or hostile educational environment (grades 4 through 12 only); and,
- v) Making a terroristic threat against school officials, school property, or both.

(Education Code (EC) Sections 48900, 48900.2, 48900.3, 48900.4, 48900.7)

- 2) Requires the principal or superintendent of schools to recommend the expulsion of a student for any of the following acts committed at school or at a school activity off school grounds, unless it is determined that the expulsion should not be recommended under the circumstances or that an alternative means of correction would address the conduct:
 - a) Causing serious physical injury to another person, except in self-defense;
 - b) Possession of any knife or other dangerous object of no reasonable use to the student;
 - c) Unlawful possession of any controlled substance, as specified;
 - d) Robbery or extortion; and
 - e) Assault or battery, as defined, upon any school employee. (EC 48915)
- 3) Prohibits a student in kindergarten through 5th grade from being suspended for disrupting school activities or otherwise willfully defying the valid authority of school personnel and prohibits these acts from being grounds for any student from kindergarten through 12th grade to be recommended for expulsion. (EC 48900).
- 4) Prohibits a student in 6th through 8th grade from being suspended for disrupting school activities or otherwise willfully defying the valid authority of school personnel until July 1, 2025. (EC 48900)
- 5) Requires that a suspension only be imposed when other means of correction fail to bring about proper conduct. Specifies that other means of correction may include, but are not limited to, the following:
 - a) A conference between school personnel, the student's parent or guardian, and the student;
 - b) Referrals to the school counselor, psychologist, social worker, child welfare attendance personnel, or other school support personnel for case management and counseling;

- c) Study teams, guidance teams, resource panel teams, or other intervention-related teams that assess the behavior, and develop and implement individualized plans to address the behavior in partnership with the student and his or her parents;
- d) Referral for a comprehensive psychosocial or psychoeducational assessment;
- e) Enrollment in a program for teaching prosocial behavior or anger management;
- f) Participation in a restorative justice program;
- g) A positive behavior support approach with tiered interventions that occur during the schoolday on campus; and,
- h) After school programs that address specific behavioral issues or expose students to positive activities and behaviors. (EC 48900.5)
- 6) Defines Chapter 2 controlled substances as including, but not limited to:
 - a. Opiates;
 - b. Opium derivatives;
 - c. Hallucinogenic substances;
 - d. Depressants; and
 - e. Any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its isomers: Cocaine base, Fenethylline, including its salts, and N-Ethylamphetamine, including its salts. (Health and Safety Code 11054)

FISCAL EFFECT: The Office of Legislative Counsel has keyed this as a possible statemandated local program.

COMMENTS:

This bill removes specified offenses as the basis for suspension or a recommendation for expulsion from a school in a school district, including possession or being under the influence of a controlled substance listed in Chapter 2, as well as possession or use of tobacco or nicotine products. It also removes the mandatory requirement (unless the administrator determines that expulsion is not warranted under the circumstances) to recommend expulsion for the unlawful possession of any controlled substance. The bill also removes these offenses as bases for suspension or expulsion from a charter school. The table on the next page illustrates these proposed changes.

Finally, the bill requires the CDE to develop a model policy for a public health approach to addressing student possession and use of illicit drugs on school property, and requires LEAs to adopt a youth-informed plan consistent with this policy by July 1, 2025.

Provisions re: suspensions and expulsions relating to illicit drugs, alcohol, and tobacco.

Current law (EC 48900) prohibits suspension or recommendation for expulsion unless student has committed a specified act, (i.e. provides discretion to administrator)	Current law (EC 48915) requires the expulsion of a student for specified acts, unless the administrator determines there are extenuating circumstances or alternative means of correction would address the conduct	AB 599 proposals
Unlawfully possessed, used , sold, or otherwise furnished, or been under the influence of, a controlled substance listed in Chapter 2, an alcoholic beverage, or an intoxicant of any kind.	Unlawful possession of any controlled substance listed in Chapter 2, except for either of the following: (i) The first offense for the possession of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis. (ii) The possession of over-the-counter medication for use by the student for medical purposes or medication prescribed for the student by a physician.	Removes "possessed, used" from the discretionary section (48900) and removes entire section on unlawful possession in the mandatory section (48915)
Unlawfully offered, arranged, or negotiated to sell a controlled substance, an alcoholic beverage, or an intoxicant of any kind, and either sold, delivered, or otherwise furnished to a person another liquid, substance, or material and represented the liquid, substance, or material as a controlled substance, alcoholic beverage, or intoxicant.		Retains the selling of illicit substances as a basis for suspension or expulsion.
Possessed or used tobacco, or products containing tobacco or nicotine products, including, but not limited to, cigarettes, cigars, miniature cigars, clove cigarettes, smokeless tobacco, snuff, chew packets, and betel. However, this section does not prohibit the use or possession by a student of the student's own prescription products.		Removes tobacco possession or use as basis for suspension or expulsion.

Need for the bill. According to the author, "AB 599 revises school suspension and expulsion policies for drug-related infractions - by requiring schools to create policies using a public health approach instead of suspensions and expulsions. Education Code 48900 allows school officials discretion in deciding whether to suspend or expel a student that unlawfully possessed, used, furnished, or been under the influence of a controlled substance. However, this discretion is not evenly exercised by school districts throughout the state. Over 60% of drug-related suspensions and expulsions are of boys, over 80% are of socioeconomically disadvantaged students and 80% are of youth of color. We know from research that arresting or disciplining students does not actually address student drug use, and instead, these practices associate substance abuse with shame and punishment, further pushing the issue into the shadows where it has grown unaddressed. We believe that we need to rethink strategies to address the crisis, and that we can't continue the decades long path of failed, punitive policies."

Drug, alcohol, and tobacco use among secondary students. The *Seventeenth Biennial State California Healthy Kids Survey* (CHKS) which was administered to a randomly-selected, representative state sample of secondary students in grades seven, nine, and eleven between fall 2017 and spring 2019 includes the following findings as compared to previous iterations of the survey:

- Little improvement has occurred in most engagement measures, including school connectedness, academic motivation, and self-reported grades. In 11th grade, only 53% were classified as being connected to the school, compared to 62% in 7th grade.
- Lifetime marijuana use was reported by 6%, 17%, and 29% of students by ascending grade. Trends varied, increasing by two points in 7th grade, stable in 9th, and down almost three points in 11th, after large declines in 2015/17.
- Current use of prescription drugs to get "high" declined slightly in 9th and 11th grade, by 1.5 points to 2% in both grades, continuing its decline since 2013/15. There was little change in current inhalant use in any grade, which remained below 2%.
- Current heavy drug use was reported by 2%, 6%, and 10% of 7th, 9th, and 11th graders, respectively, remaining unchanged from 2015/17. Heavy drug use has declined by between two and five percentage points since 2013/15.
- Current alcohol and other drug use on school property increased slightly in all grades (to 4%, 7%, and 8%) after declining since 2011/13. The uptick occurred primarily due to the increase in marijuana use at school.
- The percentage of high school students who were ever drunk or "high" on drugs on school property was stable in 9th grade at 8% but declined two points in 11th to 12%. The rate has steadily declined since 2011/13, by about half in all grades.

The authors contend that using alcohol or other drugs at school is an indicator of both heavy substance use and disengagement from school and learning.

Students are being suspended and expelled for illicit drug use or possession. According to CDE statewide data from 2021-22, a total of 50,467 or 17% of all suspensions, and 712 or 17% of all expulsions were illicit drug-related. These numbers are down from 2018-19, when there were 63,132 suspensions and 1,754 expulsions for illicit drug-related offenses. The data does not differentiate between possession, use, or sale of drugs. The suspensions and expulsions were disproportionately students of color as shown in the table below:

Ethnicity	% of total statewide enrollment	% of illicit drug expulsions	% of illicit drug suspensions
African American	5.2%	6.2%	7.6%
Hispanic or Latino	55.8%	71.9%	65.1%
White	21.0%	15.0%	18.7%

Source: CDE DataQuest 2021-22

Research suggests that zero tolerance policies are ineffective. A research paper, Beyond Zero Tolerance: A Reality-Based Approach to Drug Education and School Discipline, (Skager, 2013) found:

Most American high schools do not offer effective drug education, nor do they provide interventions to assist students struggling with abuse of alcohol and other drugs. Instead, they rely primarily on deterrent punishment for students who are caught violating the rules. Proponents of the "big four" consequences – exclusion from extracurricular activities, transfer to another school, suspension, and expulsion – believe that harsh consequences for those who are caught will deter other students from committing similar offenses, and too often constitute the whole of prevention. But research has shown that these punishments are not likely to change students' behavior. Ironically, rather than serving as an effective deterrent, drug education that lacks credibility and is backed by punitive measures often fosters resentment and oppositional behavior. The few secondary schools that offer drug education often repeat messages that may have had some credence for elementary school students but lack credibility for older, more experienced teenagers.

Impacts of exclusionary discipline policies. Research suggests that harsh discipline practices and the over-policing of students of color that occurs in many schools has undermined the creation of safe and inclusive learning environments. Disproportionalities in suspension and expulsion rates between students of color and their white peers appear as early as preschool and continue through the K-12th grades. Black youth often receive harsher punishments for minor offenses and are more than twice as likely as white students to receive a referral to law enforcement or be subject to a school-related arrest. (LPI, March 2021).

One study, *Educational and Criminal Justice Outcomes 12 Years After School Suspension*, (Rosenbaum 2018) notes that "school suspensions aim to obtain better behavior from the punished student and maintain school norms by removing students. Suspension removes disruptive students from schools temporarily and may improve school climate by reducing peer influences to engage in deviant behavior." The study goes on to note that a body of research has found that suspended students are more likely to:

- Engage in antisocial behavior;
- Have involvement with the criminal justice system;
- Be arrested both during the month of suspension and within a year of suspension; and
- Use marijuana and tobacco.

The study also cites various longitudinal research findings, including:

- Youth suspended in ninth grade were less likely to graduate high school, graduate on time, and enroll in postsecondary education; and
- Twelve years after suspension, suspended youth were less likely to have earned degrees or high school diplomas, and were more likely to have been arrested or on probation.

Some researchers conclude that "suspensions may act more as a reinforcer than a punisher for inappropriate behavior. Other research raises doubts as to whether harsh school discipline has a deterrent value. Frequent use of suspension alone has no measureable positive deterrent or academic benefit to either the students who are suspended or to non-suspended students." (Losen, 2011). The American Academy of Pediatrics states, "Without the services of trained professionals, such as pediatricians, mental health professionals, and school counselors, and without a parent at home during the day, students with out-of-school suspensions and expulsions are far more likely to commit crimes."

Researchers have pointed out that "many suspended students find school to be challenging and experience suspension from school as a reward. Suspensions may be reinforcing and even incentivizing the very behavior they are meant to correct." (Rumberger, 2017).

According to the U.S. Department of Education: "Teachers and students deserve school environments that are safe, supportive, and conducive to teaching and learning. Creating a supportive school climate—and decreasing suspensions and expulsions—requires close attention to the social, emotional, and behavioral needs of all students. Evidence does not show that discipline practices that remove students from instruction—such as suspensions and expulsions—help to improve either student behavior or school climate."

Disparities in the rate of school suspensions. The disproportionate incidence of suspensions and expulsions among certain populations of students, including African American students, has gained nationwide attention in recent years. A 2018 report by the U.S. Government Accountability Office (GAO), *K-12 Education: Discipline Disparities for Black Students, Boys, and Students with Disabilities,* found that black students, boys, and students with disabilities were disproportionately disciplined in K-12 schools, based upon an analysis of Civil Rights Data Collection (CRDC) data.

CRDC data show that there was an overall 2% decline in the use of exclusionary discipline practices in public schools in the U.S. from the 2015-16 school year to the 2017-18 school year. However, there was an increase during this period of school-related arrests, expulsions with educational services, and referrals to law enforcement. The data also shows a continued disproportionality in exclusionary practices during the 2017-18 school year:

- Black students accounted for 15.1% of total student enrollment in the U.S. and received 38.8% of expulsions with educational services and 33.3% of expulsions without educational services.
- Students with disabilities represented 13.2% of enrollment and received 23.3% of expulsions with educational services and 14.8% of expulsions without educational services.
- Boys accounted for 51.4% of enrollment and received 69.5% of in-school suspensions and 70.5% of out-of-school suspensions.
- 31.4% of Black students received one or more in-school suspensions and 38.2% received one or more out-of-school suspensions.
- 20.5% of students with disabilities received one or more in-school suspensions and 24.5% received one or more out-of-school suspensions.
- Black students with disabilities represent 2.3% of student enrollment, 6.2% received one or more in-school suspensions and 8.8% received one or more out-of-school suspensions.
- Black students accounted for 28.7% of all students referred to law enforcement and 31.6% of all students arrested at school or during a school-related activity.

The GAO report review of research on the topic of disproportionate disciplinary actions suggest that "implicit bias on the part of teachers and staff may cause them to judge students' behaviors differently based on the students' race and sex. Teachers and staff sometimes have discretion to make case-by-case decisions about whether to discipline, and the form of discipline to impose in response to student behaviors, such as disobedience, defiance, and classroom disruption."

Research on student behavior, race, and discipline has found no evidence that African American over-representation in school suspension is due to higher rates of misbehavior. African American students were referred more often for behaviors that seem to require more subjective judgement on the part of the person making the referral (e.g. disrespect, excessive noise, threatening behavior, and loitering). (Losen, 2011)

Holding schools accountable for suspension and expulsion rates. California's Local Control Funding Formula (LCFF) and Local Control and Accountability Plan (LCAP) requirements include school climate as one of the eight state priorities. All California school districts, COEs, and charter schools are required to report and examine student suspension and expulsion rates on their LCAP and annual updates. It has been suggested that this requirement to clearly report disciplinary actions, in the aggregate as well as by subgroup, increases the pressure on schools to employ alternatives to suspension and expulsion.

Alternatives to suspension and expulsion. Schoolwide strategies employed by school districts to improve school climate and reduce exclusionary discipline include Positive Behavior Interventions and Support (PBIS), which is a schoolwide approach to discipline that is intended to create safe, predictable, and positive school environments. When PBIS is implemented with fidelity, schools see fewer students with serious behavior problems and an overall improvement in school climate. The key PBIS practices include:

- Clearly defining behavioral expectations of the school community;
- Proactively teaching what those expected behaviors look like in various school settings, on a regular basis;
- Frequently recognizing students who comply with behavioral expectations;
- Administering a clearly defined continuum of consequences for behavioral violations; and
- Continuously collecting and analyzing data to assess students' responsiveness to the behavioral supports provided.

Implementation of PBIS follows a multi-tiered response to intervention model:

- Tier 1 Universal support is provided to all students by being exposed to explicit instruction on behavioral expectations;
- Tier 2 Students who do not respond sufficiently to Tier 1 receive additional support, often in the form of a check-in/check-out program;
- Tier 3 Students with significant behavioral challenges receive individualized support by a behavioral support team, or are referred for additional services.

Restorative practices in schools are also considered a non-punitive approach as an alternative to harsh zero tolerance policies.

This bill proposes the development of a public health approach to dealing with drug, alcohol, and tobacco use by students rather than a punitive discipline approach using suspensions and expulsions.

Arguments in support. The California Alliance of Child and Family Services, sponsor of the measure, state: "Youth alcohol, tobacco, and other drug use is a significant public health concern linked to a wide range of academic, social, and health problems. Adolescent substance use is also highly predictive of adult substance use because the adolescent brain is still developing, making it more susceptible to addiction. Research notes that high feelings of school connectedness can decrease instances of drug use. Data from a 2017-19 survey reflects students who reported low levels of school connectedness were more likely to use alcohol or drugs in the last month.

Unfortunately, current school policies regarding drugs tend to widen the gap between students and high feelings of school connectedness. For students who encounter drug infractions, suspension and expulsion has proven to be ineffective and can have long-lasting consequences beyond substance use including increased dropout rates and accelerated delinquency. Current law grants school officials discretion in deciding whether to suspend or expel a student for substance use and/or possession in schools. However, this discretion has not been evenly applied: more than 60% of drug-related suspensions are applied to boys, more than 80% to socioeconomically disadvantaged students, and 80% to youth of color.

Schools, school-based health programs, and community-based organizations are ideally positioned to educate, prevent, and intervene early in youth substance use. A public health approach would include identifying and referring youth with substance use needs to community-

based services including mechanisms for screening and referral, education on overdose risk and training for school staff, and making connections with community-based support service providers. AB 599 would significantly improve the academic, behavioral health, and justice system outcomes for students with substance use needs. Every student deserves connectedness and support from their school to overcome substance use."

Recommended Committee Amendments. Staff recommend that the bill be amended as follows:

- 1) Retain the discretion of a school district administrator to suspend or recommend a student for expulsion based upon their possession of, or being under the influence of, a controlled substance in Section 48900.
- 2) Remove the prohibition on suspension or recommendation of expulsion from a charter school on the basis of unlawful possession, use, or being under the influence of a controlled substance in Section 48901.1
- 3) Reinstate the provisions authorizing students to possess and use their own prescription products in Sections 48900 (h).
- 4) Other technical and clarifying changes.

Related legislation. SB 274 (Skinner) of the 2023-24 Session would remove disrupting school activities or otherwise willfully defying the valid authority of supervisors, teachers, administrators, school officials, or other school personnel engaged in the performance of their duties from the list of acts for which a student, regardless of their grade of enrollment, may be suspended or recommended for expulsion. The bill would also extend the prohibition against the suspension of charter school students for those acts to all grades, indefinitely.

AB 2598 (Akilah Weber) Chapter 914, Statutes of 2022, requires the CDE to develop and post on its website by June 1, 2024, evidence-based best practices for restorative justice practices for LEAs to implement to improve campus culture and climate.

SB 419 (Skinner) Chapter 279, Statutes of 2019, commencing July 1, 2020, permanently extends the prohibition against suspending a student enrolled in kindergarten through grade 3 for disrupting school activities or otherwise willfully defying the valid authority of school staff to include grades 4 and 5 permanently; and to include grades 6 to 8, until July 1, 2025; and applies these prohibitions to charter schools.

AB 2698 (Weber) of the 2015-16 Session would have established the School Climate and Student Achievement Act, and required low-achieving schools, to begin an assessment of school climate on or before September 1, 2017, and complete this assessment by July 1, 2018; and would have required the CDE to convene an advisory committee comprised of stakeholders and professionals who have participated in the development and expansion of alternative discipline programs, such as restorative justice and positive behavioral interventions and supports. This bill was held in the Assembly Appropriations Committee.

AB 2489 (McCarty) of the 2015-16 Session would have required the CDE to develop a standard model to implement restorative justice practices on a school campus and make the standard model available for use by any school district that chose to implement restorative justice

practices as part of its campus culture. This bill was held in the Assembly Appropriations Committee.

AB 1455 (Campos) Chapter 229, Statutes of 2014, authorizes school officials to refer a victim of, witness to, or other student affected by an act of bullying, committed on or after January 1, 2015, to the school counselor, school psychologist, social worker, child welfare attendance personnel, school nurse, or other school support service personnel for case management, counseling, and participation in a restorative justice program.

AB 420 (Dickinson) Chapter 660, Statutes of 2014, eliminated the authority to suspend a student enrolled in kindergarten through 3rd grade, and the authority to recommend for expulsion a student enrolled in grades kindergarten through 12th grade, for disrupting school activities or otherwise willfully defying the valid authority of school personnel engaged in the performance of their duties. The bill sunset on July 1, 2018.

AB 1729 (Ammiano) Chapter 425, Statutes of 2012, reaffirms that superintendents and school principals have the discretion to implement alternatives to suspension and expulsion and expanded the list of other means of correction that must be implemented prior to suspension or expulsion to address most student misbehavior.

REGISTERED SUPPORT / OPPOSITION:

Support

American Lung Association of California
Aspiranet
California Association of Alcohol and Drug Executives
California Youth Empowerment Network
California Academy of Child and Adolescent Psychiatry
California Alliance of Child and Family Services
California Public Defenders Association
Children Now
Greater Hope Foundation for Children
Helpline Youth Counseling
Mental Health America of California
National Harm Reduction Coalition
Pacific Clinics
Penny Lane Centers
Sierra Vista Child and Family Services
The California Children's Trust

Opposition

None on file.

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