



House of Representatives

General Assembly

File No. 308

February Session, 2018

Substitute House Bill No. 5170

House of Representatives, April 9, 2018

The Committee on Education reported through REP. FLEISCHMANN of the 18th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING STUDENTS' RIGHT TO PRIVACY IN THEIR MOBILE ELECTRONIC DEVICES.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

- 1 Section 1. (NEW) (*Effective July 1, 2018*) (a) As used in this section:
- 2 (1) "Mobile electronic device" means any hand-held or other
3 portable electronic equipment capable of providing data
4 communication between two or more individuals, including, but not
5 limited to, a mobile telephone, as defined in section 14-296aa of the
6 general statutes, a text messaging device, a paging device, a personal
7 digital assistant, a laptop computer, equipment that is capable of
8 playing a video game or a digital video disc or equipment on which
9 digital images are taken or transmitted;
- 10 (2) "School employee" means: (A) A teacher, substitute teacher,
11 administrator, school superintendent, guidance counselor, school
12 counselor, psychologist, social worker, nurse, physician, school

13 paraprofessional or coach employed by a local or regional board of
14 education or working in a public or private elementary, middle or high
15 school; or (B) any other person who, in the performance of his or her
16 duties, has regular contact with students and who provides services to
17 or on behalf of students enrolled in a public elementary, middle or
18 high school, pursuant to a contract with the local or regional board of
19 education;

20 (3) "School-sponsored activity" means any activity sponsored,
21 recognized or authorized by a board of education and includes
22 activities conducted on or off school property; and

23 (4) "Administrator" has the same meaning as provided in section 10-
24 144e of the general statutes.

25 (b) No school employee may (1) take custody of a student's mobile
26 electronic device for purposes of accessing any data or other content
27 stored upon or accessible from such device, or (2) compel a student to
28 produce, display, share or provide access to any data or other content
29 stored upon or accessible from such device, except a school employee
30 may take custody of a student's mobile electronic device if (A) such
31 device is located on school property or being used during a school-
32 sponsored activity, and (B) the school employee has a reasonable
33 suspicion that a student (i) has violated or is violating an educational
34 policy and that such device contains evidence of the suspected
35 violation, or (ii) poses a risk of imminent personal injury to such
36 student or others. Upon taking custody of a student's mobile electronic
37 device, the school employee shall immediately turn over such device
38 to an administrator.

39 (c) An administrator may conduct a search of a student's mobile
40 electronic device taken pursuant to subsection (b) of this section. Any
41 such search shall (1) be strictly limited to finding evidence of the
42 suspected policy violation or to prevent imminent personal injury to
43 such student or others, and (2) immediately cease upon (A) finding
44 sufficient evidence or no evidence of the suspected violation, or (B)
45 preventing such imminent personal injury to such student or others.

46 (d) A school employee who has taken custody of and turned over a
 47 mobile electronic device pursuant to subsection (b) of this section shall
 48 immediately submit a written report to the principal that explains the
 49 reasonable suspicion that gave rise to such school employee taking
 50 custody of such device and to whom such device was turned over to
 51 after taking custody of such device.

52 (e) Not later than twenty-four hours after the completion of the
 53 search pursuant to subsection (b) of this section, the principal shall
 54 notify the student and the parent or guardian of the student of the
 55 suspected violation and what data, if any, was accessed from such
 56 device during the search of such device, and provide a copy of the
 57 report explaining the reasonable suspicion that gave rise to the search.

58 (f) For the school year commencing July 1, 2018, and each school
 59 year thereafter, each local and regional board of education shall
 60 include the requirements of this section in the publication of the rules,
 61 procedures and standards of conduct for the school district and in all
 62 student handbooks.

This act shall take effect as follows and shall amend the following sections:		
Section 1	July 1, 2018	New section

Statement of Legislative Commissioners:

In Section 1(a), a definition of "administrator" was added for clarity.

ED *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact: None

Municipal Impact: None

Explanation

The bill does not result in a fiscal impact as it creates procedural standards for when a public school administrator can search a student's personal mobile electronic device, which does not fiscally impact a local or regional board of education.

The Out Years

State Impact: None

Municipal Impact: None

OLR Bill Analysis**sHB 5170*****AN ACT CONCERNING STUDENTS' RIGHT TO PRIVACY IN THEIR MOBILE ELECTRONIC DEVICES.*****SUMMARY**

This bill creates a standard for determining when a public school administrator can search a student's personal mobile electronic device to access data or other content stored on or accessed from the device. Current case law holds that student searches by school administrators are subject to the Fourth Amendment and that reasonable cause is required before a student or the student's personal effects can be searched (see BACKGROUND).

The bill bans a school employee from taking a student's personal device to search it or compelling a student to provide access to it unless the device is on school property or being used during a school-sponsored activity and there is a reasonable suspicion that the student:

1. violated an educational policy and the device contains evidence of the suspected violation or
2. poses a risk of imminent personal injury to him or herself or others.

It limits the search to finding evidence of the suspected violation or the risk of imminent personal injury and requires other steps, including notifying the student and the student's parents within 24 hours of the search.

EFFECTIVE DATE: July 1, 2018

DEFINITIONS

The bill includes the following definitions:

1. “mobile electronic device” means any hand-held or other portable electronic equipment capable of providing data communication between individuals, including a mobile telephone (see BACKGROUND), a text messaging device, a paging device, a personal digital assistant, a laptop computer, equipment capable of playing a video game or a DVD, or equipment on which digital images are taken or transmitted;
2. “school employee” means (a) a teacher or substitute teacher, administrator or superintendent, guidance counselor, school counselor, psychologist, social worker, nurse, physician, school paraprofessional, or coach employed by a local or regional board of education or working in a public or private school or (b) any other person who, in the performance of his or her duties, has regular contact with students and who provides services to or on behalf of students enrolled in a public school, under a contract with the local or regional board of education;
3. “school-sponsored activity” means any activity sponsored, recognized, or authorized by a board of education and includes activities conducted on or off school property; and
4. “administrator” means a certified professional board of education employee in a position requiring an administrator whose administrative or supervisory duties take up more than 50% of the assigned time.

SEARCH CONDITIONS AND PROCEDURES

Under the bill, when a school employee takes a student’s personal device because of a reasonable suspicion that the student violated education policy or poses a risk of imminent personal injury, the employee must immediately turn the device over to a school administrator.

The school administrator must follow certain steps to conduct the search. Under the bill, the search is strictly limited to (1) finding evidence of the suspected policy violation or (2) preventing imminent personal injury to the student or others. It must immediately cease

upon (1) finding sufficient evidence or no evidence of the suspected violation or (2) preventing imminent personal injury.

Also, immediately after turning over the device, the school employee must report to the principal, in writing, the reasonable suspicion that gave rise to taking the device and to whom the device was turned over. Within 24 hours after the search, the principal must (1) notify the student and the student's parent or guardian of the suspected violation and what data was accessed from the device during the search and (2) provide them with a copy of the report explaining the reasonable suspicion that triggered the search.

STANDARDS OF CONDUCT AND STUDENT HANDBOOKS

Annually, starting with the 2018-19 school year, the bill requires each board of education to include the bill's requirements in the publication of the school district's rules, procedures, and standards of conduct and in all student handbooks.

BACKGROUND

Student Searches Supreme Court Case

In *New Jersey v. T.L.O.*, 469 U.S. 325 (1985), the court ruled that school administrators must have reasonable grounds to conduct a search at its start. Furthermore, the search must be reasonable in scope and not excessively intrusive in light of the student's age or sex. The search must be clearly related to the reasonable grounds or suspicion.

Mobile Telephone

State law defines "mobile telephone" as a cellular, analog, wireless, or digital telephone capable of sending or receiving telephone communications without an access line for service (CGS § 14-296aa).

COMMITTEE ACTION

Education Committee

Joint Favorable Substitute

Yea 35 Nay 0 (03/23/2018)