

BILL ANALYSIS

Senate Research Center

S.B. 179
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Cyberbullying is an epidemic in this country and state. The Centers for Disease Control and Prevention (CDC) reports suicide rates are at an all-time high, especially for young adults. These increased rates correlate with an increase in cyberbullying.

Texas laws need to keep pace with evolving technology. Students are being threatened, harassed, and tormented online. S.B. 179 would require that school districts include cyberbullying in their district policies on bullying and notify parents if their child has been the victim of bullying or is the alleged aggressor.

Schools need more tools to combat and prevent cyberbullying. S.B. 179 would give schools the ability to investigate bullying off campus if it materially affects the school environment. When serious situations arise, such as a student attempting to take their life, schools can collaborate with law enforcement. Another tool schools gain with S.B. 179 is greater latitude to place students in a disciplinary alternative education program or to expel students for certain very serious bullying behavior such as coercing a child into committing or attempting to commit suicide.

Finally, recognizing that bullying is also a mental health issue, the bill would encourage schools to invest in counseling and rehabilitation services for the victim and the aggressor. (Original Author's / Sponsor's Statement of Intent)

S.B. 179 amends current law relating to harassment, bullying, and cyberbullying of a public school student or minor and certain mental health programs for public school students, and increases a criminal penalty.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Requires that this Act be known as David's Law.

SECTION 2. Amends Section 37.0832, Education Code, by amending Subsections (a) and (c) and adding Subsections (a-1) and (f), as follows:

(a) Redefines "bullying" and defines "cyberbullying."

(a-1) Provides that this section applies to bullying or cyberbullying that occurs in certain locations and has certain effects.

(c) Requires the board of trustees of each school district to adopt a policy, including any necessary procedures, that prohibits certain behavior and establishes certain procedures concerning bullying.

(f) Authorizes each school district to establish a district-wide policy to assist in the prevention and mediation of bullying incidents between students that interfere with a student's educational opportunities or substantially disrupt the orderly operation of a classroom, school, or school-sponsored or school-related activity.

SECTION 3. Amends Subchapter A, Chapter 37, Education Code, by adding Section 37.0052, as follows:

Sec. 37.0052. PLACEMENT OR EXPULSION OF STUDENTS WHO HAVE ENGAGED IN CERTAIN BULLYING BEHAVIOR. (a) Defines "bullying" and "intimate visual material."

(b) Authorizes a student to be removed from class and placed in a disciplinary alternative education program as provided by Section 37.008 (Disciplinary Alternative Education Programs) or expelled under certain circumstances.

(c) Provides that nothing in this section exempts a school from reporting a finding of intimate visual material of a minor.

SECTION 4. Amends Subchapter A, Chapter 37, Education Code, by adding Section 37.0151, as follows:

Sec. 37.0151. REPORT TO LOCAL LAW ENFORCEMENT REGARDING CERTAIN CONDUCT CONSTITUTING ASSAULT OR HARASSMENT; LIABILITY. (a) Authorizes the principal of certain schools, or a person designated by the principal, to make a report to any school district police department, if applicable, or the police department of the municipality in which the school is located or, if the school is not in a municipality, the sheriff of the county in which the school is located if, after an investigation is completed, the principal has reasonable grounds to believe that a student engaged in conduct that constitutes an offense under Section 22.01 (Assault) or 42.07(a)(7) (relating to the commission of an offense by sending certain repeated electronic communications), Penal Code.

(b) Authorizes a person who makes a report to include the name and address of each student the person believes may have participated in the conduct.

(c) Authorizes the principal of certain schools to designate a school employee, other than a school counselor, who is under the supervision of the principal to make the report.

(d) Exempts a person who is not a school employee but is employed by an entity that contracts with a district or school to use school property from the requirement of making a report under this section and prohibits that person from being designated by the principal of certain schools to make a report. Provides that a person who voluntarily makes a report under this section is immune from civil or criminal liability.

(e) Provides that a person who takes any action under this section is immune from civil or criminal liability or disciplinary action resulting from that action.

(f) Provides that this section, notwithstanding any other law, does not create a civil, criminal, or administrative cause of action or liability or create a standard of care, obligation, or duty that provides a basis for a cause of action for an act under this section.

(g) Provides that a school district and school personnel and school volunteers are immune from suit resulting from an act under this section, including an act under related policies and procedures.

(h) Provides that an act by school personnel or a school volunteer under this section, including an act under related policies and procedures, is the exercise of judgment or discretion on the part of the school personnel or school volunteer and is not considered to be a ministerial act for purposes of liability of the school district or the district's employees.

SECTION 5. Amends Sections 37.218(a)(1) and (2), Education Code, to redefine "bullying" and "cyberbullying."

SECTION 6. Amends Section 5.001, Education Code, by adding Subdivision (5-a), to define "mental health condition."

SECTION 7. Amends Section 12.104(b), Education Code, as follows:

(b) Provides that an open-enrollment charter school is subject to certain policies and procedures, including bullying prevention policies and procedures under Section 37.0832 (Bullying Prevention Policies and Procedures), the right of a school under Section 37.0052 to place a student who has engaged in certain bullying behavior in a disciplinary alternative education program or to expel the student, and the right under Section 37.0151 to report to local law enforcement certain conduct constituting assault or harassment. Makes nonsubstantive changes.

SECTION 8. Amends Section 21.054, Education Code, by adding Subsection (d-2) and (e-2), as follows:

(d-2) Authorizes continuing education requirements for a classroom teacher to include instruction regarding how grief and trauma affect student learning and behavior and how evidence-based, grief-informed, and trauma-informed strategies support the academic success of students affected by grief and trauma.

(e-2) Authorizes continuing education requirements for a principal to include instruction regarding how grief and trauma affect student learning and behavior and how evidence-based, grief-informed, and trauma-informed strategies support the academic success of students affected by grief and trauma.

SECTION 9. Amends Subchapter J, Chapter 21, Education Code, by adding Section 21.462, as follows:

Sec. 21.462. RESOURCES REGARDING STUDENTS WITH MENTAL HEALTH NEEDS. Requires the Texas Education Agency (TEA), in coordination with the Health and Human Services Commission, to establish and maintain an Internet website to provide resources for school district or open-enrollment charter school employees regarding working with students with mental health conditions. Requires TEA to include on the Internet website certain information.

SECTION 10. Amends Section 33.006, Education Code, by amending Subsection (b) and adding Subsection (c), as follows:

(b) Requires the school counselor, in addition to a school counselor's responsibility under Subsection (a) (relating to the primary responsibilities of a school counselor), to perform certain functions, including serving as an impartial, nonreporting resource for interpersonal conflicts and discord involving two or more students, including accusations of bullying under Section 37.0832.

(c) Provides that nothing in Subsection (b)(7) (relating to interpersonal conflicts involving two or more students arising out of accusations of bullying) exempts a school counselor from any mandatory reporting requirements imposed by other provisions of law.

SECTION 11. Amends Title 6, Civil Practice and Remedies Code, by adding Chapter 129A, as follows:

CHAPTER 129A. RELIEF FOR CYBERBULLYING OF CHILD

Sec. 129A.001. DEFINITION. Defines "cyberbullying."

Sec. 129A.002. INJUNCTIVE RELIEF. (a) Authorizes a recipient of cyberbullying behavior who is younger than 18 years of age at the time the cyberbullying occurs or a parent of or person standing in parental relation to the recipient to seek injunctive relief under this chapter against the individual who was cyberbullying the recipient or, if the individual is younger than 18 years of age, against a parent of or person standing in parental relation to the individual.

(b) Authorizes a court to issue a temporary restraining order, temporary injunction, or permanent injunction appropriate under the circumstances to prevent any further cyberbullying, including certain orders or injunctions.

(c) Provides that a plaintiff in an action for injunctive relief brought under this section is entitled to a temporary restraining order on showing that the plaintiff is likely to succeed in establishing that the individual was cyberbullying the recipient. Provides that the plaintiff is not required to plead or prove that, before notice can be served and a hearing can be held, immediate and irreparable injury, loss, or damage is likely to result from past or future cyberbullying by the individual against the recipient.

(d) Provides that a plaintiff is entitled to a temporary or permanent injunction under this section on showing that the individual was cyberbullying the recipient.

(e) Authorizes a court granting a temporary restraining order or temporary injunction under this section to, on motion of either party or sua sponte, order the preservation of any relevant electronic communication. Provides that the temporary restraining order or temporary injunction is not required to define the injury or state why it is irreparable, state why the order was granted without notice, or include an order setting the cause for trial on the merits with respect to the ultimate relief requested.

Sec. 129A.003. PROMULGATION OF FORMS. (a) Requires the Texas Supreme Court (supreme court), as the supreme court finds appropriate, to promulgate forms for use as an application for initial injunctive relief by individuals representing themselves in suits involving cyberbullying and instructions for the proper use of each form or set of forms.

(b) Requires that the forms and instructions be written in language that is easily understood by the general public, be made readily available to the general public in the manner prescribed by the supreme court, and be translated into the Spanish language.

(c) Requires that the Spanish language translation of a form state certain information or be incorporated into the English language version of the form in a manner that is understandable to both the court and members of the general public.

(d) Requires that each form and its instructions clearly and conspicuously state that the form is not a substitute for the advice of an attorney.

(e) Requires the Texas attorney general and the clerk of the court to inform members of the general public of the availability of a form promulgated by the supreme court under this section as appropriate and make the form available free of charge.

(f) Requires a court to accept a form promulgated by the supreme court under this section unless the form has been completed in a manner that causes a substantive defect that cannot be cured.

Sec. 129A.004. INAPPLICABILITY. (a) Prohibits an action filed under this chapter from being joined with an action filed under Title 1 (The Marriage Relationship), 4 (Protective Orders and Family Violence), or 5 (The Parent-Child Relationship and the Suit Affecting the Parent-Child Relationship), Family Code.

(b) Provides that Chapter 27 (Actions Involving the Exercise of Certain Constitutional Rights) does not apply to an action under this chapter.

Sec. 129A.005. CERTAIN CONDUCT EXCEPTED. Provides that this chapter does not apply to a claim brought against an interactive computer service, as defined by 47 U.S.C. Section 230, for cyberbullying.

SECTION 12. Amends Sections 161.325(a-1), (d), (e), (f), and (i), Health and Safety Code, as follows:

(a-1) Requires that the list include programs in certain areas.

(d) Authorizes a school district to develop practices and procedures, rather than authorizes the board of trustees of each school district to adopt a policy, concerning each area listed in Subsection (a-1), including mental health promotion and intervention, substance abuse prevention and intervention, and suicide prevention, that:

(1) and (2) changes references to establishes to include; and

(3) and (4) makes nonsubstantive changes.

(e) Requires that the practices and procedures developed under Subsection (d) prohibit the use without the prior consent of a student's parent or guardian of a medical screening of the student as part of the process of identifying whether the student is possibly in need of early mental health or substance abuse intervention or suicide prevention.

(f) Requires that the practices and procedures developed under Subsection (d), rather than the policy and any necessary procedures adopted under Subsection (d), be included in the annual student handbook and the district improvement plan under Section 11.252, (District-Level Planning and Decision-Making), Education Code.

(i) Provides that the practices and procedures developed, rather than the policy and procedures adopted, in accordance with this section are intended to notify a parent or guardian of a need for mental health or substance abuse intervention so that a parent or guardian may take appropriate action.

SECTION 13. Amends Section 42.07(b)(1), Penal Code, to redefine "electronic communication."

SECTION 14. Amends Section 42.07(c), Penal Code, as follows:

(c) Provides that an offense under this section is a Class B misdemeanor, except that the offense is a Class A misdemeanor if:

(1) creates this subdivision from existing text and makes a nonsubstantive change; or

(2) the offense was committed under Subsection (a)(7) and:

(A) the offense was committed against a child under 18 years of age with the intent that the child commit suicide or engage in conduct causing

serious bodily injury to the child or the actor has previously violated a temporary restraining order or injunction issued under Chapter 129A, Civil Practice and Remedies Code.

SECTION 15. Repealer: Section 37.0832(b) (relating to the requirements for conduct to be considered bullying), Education Code.

SECTION 16. Makes application of this Act prospective.

SECTION 17. Severability clause.

SECTION 18. Effective date: September 1, 2017.