

A BILL TO BE ENTITLED

AN ACT

relating to harassment, bullying, and cyberbullying of a public school student or minor and injury to or death of a minor; creating a criminal offense.

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

SECTION 1. This Act shall be known as David's Law.

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

(a) In this section:

(1) "Bullying":

(A) [~~,"bullying"~~] means a single significant act or a pattern of acts by one or more students directed at another student that exploits an imbalance of power and involves~~[,"subject to Subsection (b),]~~ engaging in written or verbal expression, expression through electronic means, or physical conduct that satisfies the applicability requirements provided by Subsection (a-1), [~~that occurs on school property, at a school-sponsored or school-related activity, or in a vehicle operated by the district]~~ and that:

(i) [~~(1)~~] has the effect or will have the effect of physically harming a student, damaging a student's property, or placing a student in reasonable fear of harm to the student's person or of damage to the student's property; [~~or~~]

1 (ii) [~~2~~] is sufficiently severe,
2 persistent, or [~~and~~] pervasive enough that the action or threat
3 creates an intimidating, threatening, or abusive educational
4 environment for a student;

5 (iii) materially and substantially
6 disrupts the educational process or the orderly operation of a
7 classroom or school; or

8 (iv) infringes on the rights of the victim
9 at school; and

10 (B) includes cyberbullying.

11 (2) "Cyberbullying" means bullying that is done
12 through the use of any electronic communication device, including
13 through the use of a cellular or other type of telephone, a
14 computer, a camera, electronic mail, instant messaging, text
15 messaging, a social media application, an Internet website, or any
16 other Internet-based communication tool.

17 (a-1) This section applies to:

18 (1) bullying that occurs on or is delivered to school
19 property or to the site of a school-sponsored or school-related
20 activity on or off school property;

21 (2) bullying that occurs on a publicly or privately
22 owned school bus or vehicle being used for transportation of
23 students to or from school or a school-sponsored or school-related
24 activity; and

25 (3) cyberbullying that occurs off school property or
26 outside of a school-sponsored or school-related activity if the
27 cyberbullying:

1 (A) interferes with a student's educational
2 opportunities; or

3 (B) substantially disrupts the orderly operation
4 of a classroom, school, or school-sponsored or school-related
5 activity.

6 (c) The board of trustees of each school district shall
7 adopt a policy, including any necessary procedures, concerning
8 bullying that:

9 (1) prohibits the bullying of a student;

10 (2) prohibits retaliation against any person,
11 including a victim, a witness, or another person, who in good faith
12 provides information concerning an incident of bullying;

13 (3) establishes a procedure for providing notice of an
14 incident of bullying to:

15 (A) a parent or guardian of the alleged victim
16 not later than the next school day after the incident is reported;
17 and

18 (B) a parent or guardian of the alleged bully
19 within a reasonable amount of time after the incident;

20 (4) establishes the actions a student should take to
21 obtain assistance and intervention in response to bullying;

22 (5) sets out the available counseling options for a
23 student who is a victim of or a witness to bullying or who engages in
24 bullying;

25 (6) establishes procedures for reporting an incident
26 of bullying, including procedures for a student, parent, teacher,
27 or administrator to anonymously report an incident of bullying,

1 investigating a reported incident of bullying, and determining
2 whether the reported incident of bullying occurred;

3 (7) prohibits the imposition of a disciplinary measure
4 on a student who, after an investigation, is found to be a victim of
5 bullying, on the basis of that student's use of reasonable
6 self-defense in response to the bullying; and

7 (8) requires that discipline for bullying of a student
8 with disabilities comply with applicable requirements under
9 federal law, including the Individuals with Disabilities Education
10 Act (20 U.S.C. Section 1400 et seq.).

11 (f) Each school district may establish a district-wide
12 policy to assist in the prevention and mediation of bullying
13 incidents between students that:

14 (1) interfere with a student's educational
15 opportunities; or

16 (2) substantially disrupt the orderly operation of a
17 classroom, school, or school-sponsored or school-related activity.

18 SECTION 3. Subchapter A, Chapter 37, Education Code, is
19 amended by adding Section 37.0052 to read as follows:

20 Sec. 37.0052. PLACEMENT OR EXPULSION OF STUDENTS WHO HAVE
21 ENGAGED IN CERTAIN BULLYING BEHAVIOR. (a) In this section:

22 (1) "Bullying" has the meaning assigned by Section
23 37.0832.

24 (2) "Intimate visual material" has the meaning
25 assigned by Section 98B.001, Civil Practice and Remedies Code.

26 (b) A student may be removed from class and placed in a
27 disciplinary alternative education program as provided by Section

1 37.008 or expelled if the student:

2 (1) engages in bullying that encourages a student to
3 commit or attempt to commit suicide;

4 (2) incites violence against a student through group
5 bullying; or

6 (3) releases or threatens to release intimate visual
7 material of a minor or a student who is 18 years of age or older
8 without the student's consent.

9 (c) Nothing in this section exempts a school from reporting
10 a finding of intimate visual material of a minor.

11 SECTION 4. Subchapter A, Chapter 37, Education Code, is
12 amended by adding Section 37.0151 to read as follows:

13 Sec. 37.0151. REPORT TO LOCAL LAW ENFORCEMENT REGARDING
14 CERTAIN CONDUCT CONSTITUTING ASSAULT OR HARASSMENT; LIABILITY.

15 (a) The principal of a public primary or secondary school, or a
16 person designated by the principal under Subsection (c), may make a
17 report to any school district police department, if applicable, or
18 the police department of the municipality in which the school is
19 located or, if the school is not in a municipality, the sheriff of
20 the county in which the school is located if, after an investigation
21 is completed, the principal has reasonable grounds to believe that
22 a student engaged in conduct that constitutes an offense under
23 Section 22.01 or 42.07(a)(7), Penal Code.

24 (b) A person who makes a report under this section may
25 include the name and address of each student the person believes may
26 have participated in the conduct.

27 (c) The principal of a public primary or secondary school

1 may designate a school employee, other than a school counselor, who
2 is under the supervision of the principal to make the report under
3 this section.

4 (d) A person who is not a school employee but is employed by
5 an entity that contracts with a district or school to use school
6 property is not required to make a report under this section and may
7 not be designated by the principal of a public primary or secondary
8 school to make a report. A person who voluntarily makes a report
9 under this section is immune from civil or criminal liability.

10 (e) A person who takes any action under this section is
11 immune from civil or criminal liability or disciplinary action
12 resulting from that action.

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

18 (g) A school district and school personnel and school
19 volunteers are immune from suit resulting from an act under this
20 section, including an act under related policies and procedures.

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

27 SECTION 5. Sections [37.218](#)(a)(1) and (2), Education Code,

1 are amended to read as follows:

2 (1) "Bullying" has the meaning assigned by Section
3 [37.0832](#) [~~25.0342~~].

4 (2) "Cyberbullying" has the meaning assigned by
5 Section [37.0832](#) [~~means the use of any electronic communication~~
6 ~~device to engage in bullying or intimidation~~].

7 SECTION 6. Section [12.104](#)(b), Education Code, is amended to
8 read as follows:

9 (b) An open-enrollment charter school is subject to:

10 (1) a provision of this title establishing a criminal
11 offense; and

12 (2) a prohibition, restriction, or requirement, as
13 applicable, imposed by this title or a rule adopted under this
14 title, relating to:

15 (A) the Public Education Information Management
16 System (PEIMS) to the extent necessary to monitor compliance with
17 this subchapter as determined by the commissioner;

18 (B) criminal history records under Subchapter C,
19 Chapter [22](#);

20 (C) reading instruments and accelerated reading
21 instruction programs under Section [28.006](#);

22 (D) accelerated instruction under Section
23 [28.0211](#);

24 (E) high school graduation requirements under
25 Section [28.025](#);

26 (F) special education programs under Subchapter
27 A, Chapter [29](#);

- 1 (G) bilingual education under Subchapter B,
2 Chapter 29;
- 3 (H) prekindergarten programs under Subchapter E
4 or E-1, Chapter 29;
- 5 (I) extracurricular activities under Section
6 33.081;
- 7 (J) discipline management practices or behavior
8 management techniques under Section 37.0021;
- 9 (K) health and safety under Chapter 38;
- 10 (L) public school accountability under
11 Subchapters B, C, D, E, F, G, and J, Chapter 39;
- 12 (M) the requirement under Section 21.006 to
13 report an educator's misconduct;
- 14 (N) intensive programs of instruction under
15 Section 28.0213; ~~and~~
- 16 (O) the right of a school employee to report a
17 crime, as provided by Section 37.148;
- 18 (P) bullying prevention policies and procedures
19 under Section 37.0832;
- 20 (Q) the right of a school under Section 37.0052
21 to place a student who has engaged in certain bullying behavior in a
22 disciplinary alternative education program or to expel the student;
23 and
- 24 (R) the requirement under Section 37.0151 to
25 report to local law enforcement certain conduct constituting
26 harassment.

27 SECTION 7. Section 33.006, Education Code, is amended by

1 amending Subsection (b) and adding Subsection (c) to read as
2 follows:

3 (b) In addition to a school counselor's responsibility
4 under Subsection (a), the school counselor shall:

5 (1) participate in planning, implementing, and
6 evaluating a comprehensive developmental guidance program to serve
7 all students and to address the special needs of students:

8 (A) who are at risk of dropping out of school,
9 becoming substance abusers, participating in gang activity, or
10 committing suicide;

11 (B) who are in need of modified instructional
12 strategies; or

13 (C) who are gifted and talented, with emphasis on
14 identifying and serving gifted and talented students who are
15 educationally disadvantaged;

16 (2) consult with a student's parent or guardian and
17 make referrals as appropriate in consultation with the student's
18 parent or guardian;

19 (3) consult with school staff, parents, and other
20 community members to help them increase the effectiveness of
21 student education and promote student success;

22 (4) coordinate people and resources in the school,
23 home, and community;

24 (5) with the assistance of school staff, interpret
25 standardized test results and other assessment data that help a
26 student make educational and career plans; ~~and~~

27 (6) deliver classroom guidance activities or serve as

1 a consultant to teachers conducting lessons based on the school's
2 guidance curriculum; and

3 (7) serve as an impartial, nonreporting conciliator
4 for interpersonal conflicts and discord involving two or more
5 students arising out of accusations of bullying under Section
6 37.0832.

7 (c) Nothing in Subsection (b)(7) exempts a school counselor
8 from any mandatory reporting requirements imposed by other
9 provisions of law.

10 SECTION 8. Title 6, Civil Practice and Remedies Code, is
11 amended by adding Chapter 129A to read as follows:

12 CHAPTER 129A. RELIEF FOR CYBERBULLYING OF CHILD

13 Sec. 129A.001. DEFINITION. In this chapter,
14 "cyberbullying" has the meaning assigned by Section 37.0832(a),
15 Education Code.

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

24 (b) A court may issue a temporary restraining order,
25 temporary injunction, or permanent injunction appropriate under
26 the circumstances to prevent any further cyberbullying, including
27 an order or injunction:

1 (1) enjoining a defendant from engaging in
2 cyberbullying; or

3 (2) compelling a defendant who is a parent of or person
4 standing in parental relation to an individual who is younger than
5 18 years of age to take reasonable actions to cause the individual
6 to cease engaging in cyberbullying.

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

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

18 (e) A court granting a temporary restraining order or
19 temporary injunction under this section may, on motion of either
20 party or sua sponte, order the preservation of any relevant
21 electronic communication. The temporary restraining order or
22 temporary injunction is not required to:

- 23 (1) define the injury or state why it is irreparable;
24 (2) state why the order was granted without notice; or
25 (3) include an order setting the cause for trial on the
26 merits with respect to the ultimate relief requested.

27 Sec. 129A.003. PROMULGATION OF FORMS. (a) The supreme

1 court shall, as the court finds appropriate, promulgate forms for
2 use as an application for initial injunctive relief by individuals
3 representing themselves in suits involving cyberbullying and
4 instructions for the proper use of each form or set of forms.

5 (b) The forms and instructions:

6 (1) must be written in language that is easily
7 understood by the general public;

8 (2) shall be made readily available to the general
9 public in the manner prescribed by the supreme court; and

10 (3) must be translated into the Spanish language.

11 (c) The Spanish language translation of a form must:

12 (1) state:

13 (A) that the Spanish language translated form is
14 to be used solely for the purpose of assisting in understanding the
15 form and may not be submitted to the court; and

16 (B) that the English language version of the form
17 must be submitted to the court; or

18 (2) be incorporated into the English language version
19 of the form in a manner that is understandable to both the court and
20 members of the general public.

21 (d) Each form and its instructions must clearly and
22 conspicuously state that the form is not a substitute for the advice
23 of an attorney.

24 (e) The attorney general and the clerk of a court shall make
25 the forms available free of charge.

26 (f) A court shall accept a form promulgated by the supreme
27 court under this section unless the form has been completed in a

1 manner that causes a substantive defect that cannot be cured.

2 Sec. 129A.004. INAPPLICABILITY. (a) An action filed under
3 this chapter may not be joined with an action filed under Title 1,
4 4, or 5, Family Code.

5 (b) Chapter 27 does not apply to an action under this
6 chapter.

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

10 SECTION 9. Section 42.07(b)(1), Penal Code, is amended to
11 read as follows:

12 (1) "Electronic communication" means a transfer of
13 signs, signals, writing, images, sounds, data, or intelligence of
14 any nature transmitted in whole or in part by a wire, radio,
15 electromagnetic, photoelectronic, or photo-optical system. The
16 term includes:

17 (A) a communication initiated through the use of
18 [by] electronic mail, instant message, network call, a cellular or
19 other type of telephone, a computer, a camera, text message, a
20 social media platform or application, an Internet website, any
21 other Internet-based communication tool, or facsimile machine; and

22 (B) a communication made to a pager.

23 SECTION 10. Section 42.07(c), Penal Code, is amended to
24 read as follows:

25 (c) An offense under this section is a Class B misdemeanor,
26 except that the offense is a Class A misdemeanor if:

27 (1) the actor has previously been convicted under this

1 section; or

2 (2) the offense was committed under Subsection (a)(7)
3 against a child under 18 years of age with the intent that the
4 child:

5 (A) commit suicide; or

6 (B) engage in conduct causing serious bodily
7 injury to the child.

8 SECTION 11. Section 37.0832(b), Education Code, is
9 repealed.

10 SECTION 12. Chapter 129A, Civil Practice and Remedies Code,
11 as added by this Act, applies only to a cause of action that accrues
12 on or after the effective date of this Act. A cause of action that
13 accrues before the effective date of this Act is governed by the law
14 in effect immediately before that date, and that law is continued in
15 effect for that purpose.

16 SECTION 13. The change in law made by this Act applies only
17 to an offense committed or conduct violating a penal law of this
18 state that occurs on or after the effective date of this Act. An
19 offense committed or conduct that occurs before the effective date
20 of this Act is governed by the law in effect on the date the offense
21 was committed or conduct occurred, and the former law is continued
22 in effect for that purpose. For purposes of this section, an
23 offense was committed or conduct violating a penal law of this state
24 occurred before the effective date of this Act if any element of the
25 offense or conduct occurred before that date.

26 SECTION 14. This Act takes effect September 1, 2017.