

By: Hochberg

H.B. No. 71

A BILL TO BE ENTITLED

AN ACT

relating to gang-related activity in and around public schools;
providing a criminal penalty.

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

SECTION 1. Section 37.006, Education Code, is amended by
adding Subsection (f-1) to read as follows:

(f-1) A student may be removed from class and placed in a
disciplinary alternative education program under Section 37.008 if
the student is identified by the board of trustees, or the board's
designee, as a member of a criminal street gang, as defined by
Section 71.01, Penal Code, as evidenced through any two of the
following:

(1) self-admission by the student of criminal street
gang membership;

(2) identification of the student as a criminal street
gang member by a reliable informant or other individual who is not a
member of the board of trustees or the board's designee;

(3) a corroborated identification of the student as a
criminal street gang member by an informant or other individual of
unknown reliability;

(4) evidence that the student frequents a documented
area of a criminal street gang, associates with known criminal
street gang members, and uses criminal street gang dress, hand
signals, tattoos, or symbols; or

1 (5) evidence that the student has been arrested or
2 taken into custody with known criminal street gang members for an
3 offense or conduct consistent with criminal street gang activity.

4 SECTION 2. Sections 37.007(a) and (b), Education Code, are
5 amended to read as follows:

6 (a) A student shall be expelled from a school if the
7 student, on school property or while attending a school-sponsored
8 or school-related activity on or off of school property:

9 (1) uses, exhibits, or possesses:

10 (A) a firearm as defined by Section 46.01(3),
11 Penal Code;

12 (B) an illegal knife as defined by Section
13 46.01(6), Penal Code, or by local policy;

14 (C) a club as defined by Section 46.01(1), Penal
15 Code; or

16 (D) a weapon listed as a prohibited weapon under
17 Section 46.05, Penal Code;

18 (2) engages in conduct that contains the elements of
19 the offense of:

20 (A) aggravated assault under Section 22.02,
21 Penal Code, sexual assault under Section 22.011, Penal Code, or
22 aggravated sexual assault under Section 22.021, Penal Code;

23 (B) arson under Section 28.02, Penal Code;

24 (C) murder under Section 19.02, Penal Code,
25 capital murder under Section 19.03, Penal Code, or criminal
26 attempt, under Section 15.01, Penal Code, to commit murder or
27 capital murder;

(D) indecency with a child under Section 21.11,
Penal Code;
(E) aggravated kidnapping under Section 20.04,
Penal Code;
(F) aggravated robbery under Section 29.03,
Penal Code;
(G) manslaughter under Section 19.04, Penal
Code; or
(H) criminally negligent homicide under Section
19.05, Penal Code; ~~or~~

(3) engages in conduct specified by Section
37.006(a)(2)(C) or (D), if the conduct is punishable as a felony; or

(4) engages in conduct:

(A) that contains the elements of the offense of
assault under Section 22.01, Penal Code, deadly conduct under
Section 22.05, Penal Code, terroristic threat under Section 22.07,
Penal Code, or coercing, soliciting, or inducing gang membership
under Section 22.015 or 71.022, Penal Code; and

(B) that a reasonable person would believe is a
manifestation of membership in a criminal street gang, as defined
by Section 71.01, Penal Code.

(b) A student may be expelled if the student:

(1) engages in conduct involving a public school that
contains the elements of the offense of false alarm or report under
Section 42.06, Penal Code, or terroristic threat under Section
22.07, Penal Code;

(2) while on or within 300 feet of school property, as

1 measured from any point on the school's real property boundary
2 line, or while attending a school-sponsored or school-related
3 activity on or off of school property:

4 (A) sells, gives, or delivers to another person
5 or possesses, uses, or is under the influence of any amount of:

6 (i) marihuana or a controlled substance, as
7 defined by Chapter 481, Health and Safety Code, or by 21 U.S.C.
8 Section 801 et seq.;

9 (ii) a dangerous drug, as defined by
10 Chapter 483, Health and Safety Code; or

11 (iii) an alcoholic beverage, as defined by
12 Section 1.04, Alcoholic Beverage Code;

13 (B) engages in conduct that contains the elements
14 of an offense relating to an abusable volatile chemical under
15 Sections 485.031 through 485.034, Health and Safety Code;

16 (C) engages in conduct that contains the elements
17 of an offense under Section 22.01(a)(1), Penal Code, against a
18 school district employee or a volunteer as defined by Section
19 22.053; ~~or~~

20 (D) engages in conduct that contains the elements
21 of the offense of deadly conduct under Section 22.05, Penal Code; or

22 (E) solicits another student to participate in
23 the activities of or become a member of a criminal street gang, as
24 defined by Section 71.01, Penal Code, in a manner that does not
25 constitute an offense under Section 22.015 or 71.022, Penal Code;

26 (3) subject to Subsection (d), while within 300 feet
27 of school property, as measured from any point on the school's real

property boundary line:

(A) engages in conduct specified by Subsection (a); or

(B) possesses a firearm, as defined by 18 U.S.C. Section 921; or

(4) engages in conduct that contains the elements of any offense listed in Subsection (a)(2)(A) or (C) or the offense of aggravated robbery under Section 29.03, Penal Code, against another student, without regard to whether the conduct occurs on or off of school property or while attending a school-sponsored or school-related activity on or off of school property.

SECTION 3. The heading to Section 37.121, Education Code, is amended to read as follows:

Sec. 37.121. FRATERNITIES, SORORITIES, AND SECRET SOCIETIES[~~, AND GANGS~~].

SECTION 4. Sections 37.121(a) and (d), Education Code, are amended to read as follows:

(a) A person commits an offense if the person:

(1) is a member of, pledges to become a member of, joins, or solicits another person to join or pledge to become a member of a public school fraternity, sorority, or secret society[~~, or gang~~]; or

(2) is not enrolled in a public school and solicits another person to attend a meeting of a public school fraternity, sorority, or secret society[~~, or gang~~] or a meeting at which membership in one of those groups is encouraged.

(d) In this section, "public school fraternity, sorority,

1 or secret society[~~, or gang~~]" means an organization composed wholly
2 or in part of students of public primary or secondary schools that
3 seeks to perpetuate itself by taking in additional members from the
4 students enrolled in school on the basis of the decision of its
5 membership rather than on the free choice of a student in the school
6 who is qualified by the rules of the school to fill the special aims
7 of the organization. The term does not include an agency for public
8 welfare, including Boy Scouts, Hi-Y, Girl Reserves, DeMolay,
9 Rainbow Girls, Pan-American Clubs, scholarship societies, or other
10 similar educational organizations sponsored by state or national
11 education authorities.

12 SECTION 5. Section 22.06, Penal Code, is amended to read as
13 follows:

14 Sec. 22.06. CONSENT AS DEFENSE TO ASSAULTIVE CONDUCT. (a)
15 The victim's effective consent or the actor's reasonable belief
16 that the victim consented to the actor's conduct is a defense to
17 prosecution under Section 22.01 (Assault), 22.02 (Aggravated
18 Assault), or 22.05 (Deadly Conduct) if:

19 (1) the conduct did not threaten or inflict serious
20 bodily injury; or

21 (2) the victim knew the conduct was a risk of:

22 (A) his occupation;

23 (B) recognized medical treatment; or

24 (C) a scientific experiment conducted by
25 recognized methods.

26 (b) The defense to prosecution provided by Subsection (a) is
27 not available to a defendant who:

1 (1) is a member of a criminal street gang, as defined
2 by Section 71.01; and

3 (2) commits an offense described by Subsection (a) as
4 a condition of the defendant's or the victim's initiation or
5 continued membership in the criminal street gang in a place that the
6 defendant knows is:

7 (A) within 300 feet of the premises of a private
8 or public elementary or secondary school; or

9 (B) on premises where:

10 (i) an official school function is taking
11 place; or

12 (ii) an event sponsored or sanctioned by
13 the University Interscholastic League is taking place.

14 SECTION 6. Chapter 71, Penal Code, is amended by adding
15 Section 71.025 to read as follows:

16 Sec. 71.025. GANG-FREE SCHOOL ZONE. (a) This section
17 applies to conduct that occurs in a place that the actor knows is:

18 (1) within 300 feet of the premises of a private or
19 public elementary or secondary school; or

20 (2) on premises where:

21 (A) an official school function is taking place;
22 or

23 (B) an event sponsored or sanctioned by the
24 University Interscholastic League is taking place.

25 (b) A person commits an offense if the person:

26 (1) is a member of a criminal street gang; and

27 (2) engages in any conduct in a place described by

1 Subsection (a) that a reasonable person would believe is a
2 manifestation of membership in a criminal street gang.

3 (c) An offense under this section is a Class C misdemeanor.

4 (d) If conduct that constitutes an offense under this
5 section also constitutes an offense under another law, the person
6 may be prosecuted under this section, the other law, or both.

7 SECTION 7. This Act applies beginning with the 2006-2007
8 school year.

9 SECTION 8. This Act takes effect immediately if it receives
10 a vote of two-thirds of all the members elected to each house, as
11 provided by Section 39, Article III, Texas Constitution. If this
12 Act does not receive the vote necessary for immediate effect, this
13 Act takes effect on the 91st day after the last day of the
14 legislative session.