

BILL ANALYSIS

C.S.H.B. 185
By: Hochberg
Public Education
Committee Report (Substituted)

BACKGROUND AND PURPOSE

This bill is designed to address the problem faced by many schools in curbing gang activity on their campuses and at school functions. Gang activity is an increasingly acute problem for schools in major urban areas in Texas, and the fear, intimidation, and disruption caused by gang activity significantly interferes with a student's ability to learn and grow in a peaceful, safe, and non-threatening environment.

This bill provides a number of mechanisms for addressing the problem of gang activity, as more fully described in the analysis section below, including expulsion of students involved in certain gang-related activities or recruitment, giving schools access to gang databases, removing a victim's consent as a defense to prosecution for certain gang-related assaultive conduct, and creating a criminal offense for certain gang-related activity occurring at or near a school.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

The bill amends the Code of Criminal Procedure to give school districts and open-enrollment charter schools access to information pertaining to criminal combinations and criminal street gangs maintained by criminal justice agencies. The bill specifies that school districts and open-enrollment charter schools may use such information only for assistance in determining whether the student's conduct involves gang-related activity under certain provisions added by this Act.

The bill amends the Education Code to provide that a student shall be expelled from a school if the student, while on school property or while attending a school-sponsored or school-related activity on or off school property engages in conduct that contains the elements of certain offenses under the Penal Code that a reasonable person would believe is a manifestation of membership in a criminal street gang, as defined under the Penal Code.

The bill amends the Education Code to provide that a student may be expelled if the student solicits another student to participate in the activities of or become a member of a criminal street gang, as defined under the Penal Code, in a manner that does not constitute an offense under certain specified provisions of the Penal Code.

The bill provides that a defendant who commits certain assaultive conduct as a condition of the defendant's or the victim's initiation or continued membership in a criminal street gang cannot use consent as a defense to prosecution, if the conduct occurs in a place the defendant knows is within 300 feet of the premises of a private or public elementary or secondary school, or on premises where an official school function is taking place, or an event sponsored or sanctioned by the University Interscholastic League is taking place.

The bill amends the Penal Code to provide that a person who is seventeen years of age or older commits an offense if the person engages in conduct that a reasonable person would believe is a manifestation of membership in a criminal street gang, including using in more than an incidental manner dress, hand-signals, tattoos, or symbols that are associated with a criminal street gang, while at a place the actor knows is within 300 feet of the premises of a private or public primary or secondary school at which the actor is not enrolled as a student, and the actor

fails to either leave such place on request of a school employee or law enforcement officer, or cease engaging in the above-described conduct while the actor remains in such place, or take other remedial action after a school employee or law enforcement officer requests that the actor cease engaging in the conduct.

The bill further provides that if the conduct described in the preceding paragraph constitutes an offense under another law, the person may be prosecuted under either or both laws.

The bill deletes references to "gang" or "gangs" in certain provisions of Section 37.121 of the Education Code.

The bill amends an existing provision of law relating to offenses involving the abuse of volatile chemicals by striking a reference to a provision that is not intended to be applicable to students.

EFFECTIVE DATE

September 1, 2007.

COMPARISON OF ORIGINAL TO SUBSTITUTE

The substitute adds a provision giving public school districts and charter schools access to certain criminal information maintained by criminal justice agencies for use in determining whether certain conduct is gang-related.

The original bill included a provision relating to the removal of a student from class, and placement of the student in a disciplinary alternative education program, if the student, while on or near school property or school sponsored or related activities, is identified by law enforcement as a member of a criminal street gang and engages in conduct that a reasonable person would believe is a manifestation of gang membership. The substitute bill does not include this provision.

The provisions of the original and the substitute differ with respect to the establishment of a criminal offense for certain gang-related activity. Both bills establish a Class C misdemeanor, but the particulars of the actor, the conduct, and the location giving rise to the offense are different in each bill.

The original bill provided that the Act applies beginning with the 2007-2008 school year. The substitute does not include this provision.

The original bill included a provision that Section 5 of the Act would not take effect if another Act containing similar language passed during this legislative session and did not include the limitation that the offense take place near a school or school-related activity. The substitute bill does not include this provision.