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H.B. No. 185

A BILL TO BE ENTITLED

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AN ACT

relating to discipline in public schools, including 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. Articles 61.03(a) and (b), Code of Criminal Procedure, are amended to read as follows:

(a) A criminal justice agency that maintains criminal information under this chapter may release the information on request to:

- (1) another criminal justice agency;
- (2) a court; [~~or~~]
- (3) a defendant in a criminal proceeding who is entitled to the discovery of the information under Chapter 39; or
- (4) a school district or open-enrollment charter school, as defined by Section 5.001, Education Code.

(b) A criminal justice agency or court may use information received under this article only for the administration of criminal justice. A defendant may use information received under this article only for a defense in a criminal proceeding. A school district or open-enrollment charter school may use the information received under this article only for assistance in determining the nature of a student's conduct under Section 37.007(a)(4) or (b)(2)(E), Education Code.

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

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

6 (1) uses, exhibits, or possesses:

7 (A) a firearm as defined by Section 46.01(3),
8 Penal Code;

9 (B) an illegal knife as defined by Section
10 46.01(6), Penal Code, or by local policy;

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

13 (D) a weapon listed as a prohibited weapon under
14 Section 46.05, Penal Code, or a stun gun, as defined by Section
15 38.14, Penal Code, including a stun gun manufactured by the Taser
16 company;

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

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

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

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

27 (D) indecency with a child under Section 21.11,

1 Penal Code;

2 (E) aggravated kidnapping under Section 20.04,

3 Penal Code;

4 (F) aggravated robbery under Section 29.03,

5 Penal Code;

6 (G) manslaughter under Section 19.04, Penal

7 Code; or

8 (H) criminally negligent homicide under Section

9 19.05, Penal Code; ~~or~~]

10 (3) engages in conduct specified by Section
11 37.006(a)(2)(C) or (D), if the conduct is punishable as a felony; or

12 (4) engages in conduct:

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

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

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

22 (1) engages in conduct involving a public school that
23 contains the elements of the offense of false alarm or report under
24 Section 42.06, Penal Code, or terroristic threat under Section
25 22.07, Penal Code;

26 (2) while on or within 300 feet of school property, as
27 measured from any point on the school's real property boundary

1 line, or while attending a school-sponsored or school-related
2 activity on or off of school property:

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

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

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

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

12 (B) engages in conduct that contains the elements
13 of an offense relating to an abusable volatile chemical under
14 Sections 485.031 through 485.033 [~~485.034~~], Health and Safety Code;

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (d) In this section, "public school fraternity, sorority,
27 or secret society [~~, or gang~~]" means an organization composed wholly

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

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

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

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

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

21 (A) his occupation;

22 (B) recognized medical treatment; or

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

25 (b) The defense to prosecution provided by Subsection (a) is
26 not available to a defendant who commits an offense described by
27 Subsection (a) as a condition of the defendant's or the victim's

1 initiation or continued membership in a criminal street gang, as
2 defined by Section 71.01, in a place that the defendant knows is:

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

5 (2) on premises where:

6 (A) an official school function is taking place;
7 or

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

10 SECTION 6. Section 42.01, Penal Code, is amended by adding
11 Subsections (f) and (g) to read as follows:

12 (f) A person who is 17 years of age or older commits an
13 offense if the person:

14 (1) engages in conduct that a reasonable person would
15 believe is a manifestation of membership in a criminal street gang,
16 as defined by Section 71.01, including by using in more than an
17 incidental manner dress, hand signals, tattoos, or symbols that are
18 associated with a criminal street gang, while at a place that the
19 actor knows is within 300 feet of the premises of a private or
20 public elementary or secondary school at which the actor is not
21 enrolled as a student; and

22 (2) fails to either:

23 (A) leave the place described by Subdivision (1)
24 on request of a school employee or law enforcement officer; or

25 (B) cease engaging in the conduct described by
26 Subdivision (1) while the actor remains in the place described by
27 Subdivision (1) or take other remedial action after a school

1 employee or law enforcement officer requests that the actor cease
2 engaging in the conduct.

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

6 SECTION 7. This Act takes effect September 1, 2007.