

By: Hochberg, Anchia, et al.

H.B. No. 185

Substitute the following for H.B. No. 185:

By: Hochberg

C.S.H.B. No. 185

A BILL TO BE ENTITLED

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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. 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.

SECTION 2. Sections 37.007(a) and (b), Education Code, are

1 amended to read as follows:

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

5 (1) uses, exhibits, or possesses:

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

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

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

12 (D) a weapon listed as a prohibited weapon under
13 Section 46.05, Penal Code;

14 (2) engages in conduct that contains the elements of
15 the offense of:

16 (A) aggravated assault under Section 22.02,
17 Penal Code, sexual assault under Section 22.011, Penal Code, or
18 aggravated sexual assault under Section 22.021, Penal Code;

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

20 (C) murder under Section 19.02, Penal Code,
21 capital murder under Section 19.03, Penal Code, or criminal
22 attempt, under Section 15.01, Penal Code, to commit murder or
23 capital murder;

24 (D) indecency with a child under Section 21.11,
25 Penal Code;

26 (E) aggravated kidnapping under Section 20.04,
27 Penal Code;

1 (F) aggravated robbery under Section 29.03,
2 Penal Code;

3 (G) manslaughter under Section 19.04, Penal
4 Code; or

5 (H) criminally negligent homicide under Section
6 19.05, Penal Code; [~~or~~]

7 (3) engages in conduct specified by Section
8 37.006(a)(2)(C) or (D), if the conduct is punishable as a felony; or

9 (4) engages in conduct:

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

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

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

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

23 (2) while on or within 300 feet of school property, as
24 measured from any point on the school's real property boundary
25 line, or while attending a school-sponsored or school-related
26 activity on or off of school property:

27 (A) sells, gives, or delivers to another person

1 or possesses, uses, or is under the influence of any amount of:

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

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

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

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

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

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

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

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

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

27 (B) possesses a firearm, as defined by 18 U.S.C.

1 Section 921; or

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

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

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

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

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

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

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

23 (d) In this section, "public school fraternity, sorority,
24 or secret society [~~, or gang~~]" means an organization composed wholly
25 or in part of students of public primary or secondary schools that
26 seeks to perpetuate itself by taking in additional members from the
27 students enrolled in school on the basis of the decision of its

1 membership rather than on the free choice of a student in the school
2 who is qualified by the rules of the school to fill the special aims
3 of the organization. The term does not include an agency for public
4 welfare, including Boy Scouts, Hi-Y, Girl Reserves, DeMolay,
5 Rainbow Girls, Pan-American Clubs, scholarship societies, or other
6 similar educational organizations sponsored by state or national
7 education authorities.

8 SECTION 5. Section 22.06, Penal Code, is amended to read as
9 follows:

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

15 (1) the conduct did not threaten or inflict serious
16 bodily injury; or

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

18 (A) his occupation;

19 (B) recognized medical treatment; or

20 (C) a scientific experiment conducted by
21 recognized methods.

22 (b) The defense to prosecution provided by Subsection (a) is
23 not available to a defendant who commits an offense described by
24 Subsection (a) as a condition of the defendant's or the victim's
25 initiation or continued membership in a criminal street gang, as
26 defined by Section 71.01, in a place that the defendant knows is:

27 (1) within 300 feet of the premises of a private or

1 public elementary or secondary school; or

2 (2) on premises where:

3 (A) an official school function is taking place;

4 or

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

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

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

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

19 (2) fails to either:

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

22 (B) cease engaging in the conduct described by
23 Subdivision (1) while the actor remains in the place described by
24 Subdivision (1) or take other remedial action after a school
25 employee or law enforcement officer requests that the actor cease
26 engaging in the conduct.

27 (g) If conduct that constitutes an offense under Subsection

1 (f) also constitutes an offense under another law, the person may be
2 prosecuted under this section, the other law, or both.

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