

By: Hochberg

H.B. No. 185

A BILL TO BE ENTITLED

1

AN ACT

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

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

5 SECTION 1. Section 37.006(a), Education Code, is amended to
6 read as follows:

7 (a) A student shall be removed from class and placed in a
8 disciplinary alternative education program as provided by Section
9 37.008 if the student:

10 (1) engages in conduct involving a public school that
11 contains the elements of the offense of false alarm or report under
12 Section 42.06, Penal Code, or terroristic threat under Section
13 22.07, Penal Code; or

14 (2) commits the following on or within 300 feet of
15 school property, as measured from any point on the school's real
16 property boundary line, or while attending a school-sponsored or
17 school-related activity on or off of school property:

18 (A) engages in conduct punishable as a felony;

19 (B) engages in conduct that contains the elements
20 of the offense of assault under Section 22.01(a)(1), Penal Code;

21 (C) sells, gives, or delivers to another person
22 or possesses or uses or is under the influence of:

23 (i) marihuana or a controlled substance, as
24 defined by Chapter 481, Health and Safety Code, or by 21 U.S.C.

1 Section 801 et seq.; or

2 (ii) a dangerous drug, as defined by
3 Chapter 483, Health and Safety Code;

4 (D) sells, gives, or delivers to another person
5 an alcoholic beverage, as defined by Section 1.04, Alcoholic
6 Beverage Code, commits a serious act or offense while under the
7 influence of alcohol, or possesses, uses, or is under the influence
8 of an alcoholic beverage;

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

12 (F) engages in conduct that contains the elements
13 of the offense of public lewdness under Section 21.07, Penal Code,
14 or indecent exposure under Section 21.08, Penal Code; or

15 (G) has been identified by a law enforcement
16 agency as a member of a criminal street gang, as defined by Section
17 71.01, Penal Code, using, at minimum, the criteria listed in Art.
18 61.02(c)(2), Code of Criminal Procedure, and engages in conduct
19 that a reasonable person would believe is a manifestation of
20 membership in a criminal street gang.

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

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

26 (1) uses, exhibits, or possesses:

27 (A) a firearm as defined by Section 46.01(3),

1 Penal Code;

2 (B) an illegal knife as defined by Section
3 46.01(6), Penal Code, or by local policy;

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

6 (D) a weapon listed as a prohibited weapon under
7 Section 46.05, Penal Code;

8 (2) engages in conduct that contains the elements of
9 the offense of:

10 (A) aggravated assault under Section 22.02,
11 Penal Code, sexual assault under Section 22.011, Penal Code, or
12 aggravated sexual assault under Section 22.021, Penal Code;

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

14 (C) murder under Section 19.02, Penal Code,
15 capital murder under Section 19.03, Penal Code, or criminal
16 attempt, under Section 15.01, Penal Code, to commit murder or
17 capital murder;

18 (D) indecency with a child under Section 21.11,
19 Penal Code;

20 (E) aggravated kidnapping under Section 20.04,
21 Penal Code;

22 (F) aggravated robbery under Section 29.03,
23 Penal Code;

24 (G) manslaughter under Section 19.04, Penal
25 Code; or

26 (H) criminally negligent homicide under Section
27 19.05, Penal Code; [~~or~~]

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

3 (4) engages in conduct:

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

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

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

13 (1) engages in conduct involving a public school that
14 contains the elements of the offense of false alarm or report under
15 Section 42.06, Penal Code, or terroristic threat under Section
16 22.07, Penal Code;

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

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

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

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

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

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

6 (C) engages in conduct that contains the elements
7 of an offense under Section 22.01(a)(1), Penal Code, against a
8 school district employee or a volunteer as defined by Section
9 22.053; ~~or~~

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

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

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

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

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

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

1 school-related activity on or off of school property.

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

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

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

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

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

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

17 (d) In this section, "public school fraternity, sorority,
18 or secret society [~~or gang~~]" means an organization composed wholly
19 or in part of students of public primary or secondary schools that
20 seeks to perpetuate itself by taking in additional members from the
21 students enrolled in school on the basis of the decision of its
22 membership rather than on the free choice of a student in the school
23 who is qualified by the rules of the school to fill the special aims
24 of the organization. The term does not include an agency for public
25 welfare, including Boy Scouts, Hi-Y, Girl Reserves, DeMolay,
26 Rainbow Girls, Pan-American Clubs, scholarship societies, or other
27 similar educational organizations sponsored by state or national

1 education authorities.

2 SECTION 5. Section 22.06, Penal Code, is amended to read as
3 follows:

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

9 (1) the conduct did not threaten or inflict serious
10 bodily injury; or

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

12 (A) his occupation;

13 (B) recognized medical treatment; or

14 (C) a scientific experiment conducted by
15 recognized methods.

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

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

23 (B) on premises where:

24 (i) an official school function is taking
25 place; or

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

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

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

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

7 (2) on premises where:

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

9 or

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

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

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

14 (2) engages in any conduct in a place described by
15 Subsection (a) that a reasonable person would believe is a
16 manifestation of membership in a criminal street gang.

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

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

21 SECTION 7. This Act applies beginning with the 2007-2008
22 school year.

23 SECTION 8. Section 5 of this Act shall not take effect if
24 another act containing language similar to that of Section 5 is
25 passed during the same legislative session and does not include the
26 limitation that the offense take place near a school or
27 school-related activity.

1 SECTION 9. This Act takes effect on September 1, 2007.