

By: Whitmire

S.B. No. 2103

A BILL TO BE ENTITLED

AN ACT

relating to the expulsion and removal of students from schools.

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

SECTION 1. Section 37.001(4), Education Code, is amended by adding Subsections (E), (F), and (G) to read as follows:

(4) specify ~~whether~~ that consideration ~~is~~ will be given, as a factor in a decision to order suspension, removal to a disciplinary alternative education program, or expulsion, to:

(A) self-defense;

(B) intent or lack of intent at the time the student engaged in the conduct;

(C) a student's disciplinary history; or

(D) a disability that substantially impairs the student's capacity to appreciate the wrongfulness of the student's conduct; or

(E) a student's academic history; or

(F) a student's juvenile record; or

(G) exigent circumstances.

SECTION 2. Section 37.006(a), Education Code, is amended to read as follows:

(a) Upon receiving a determination from the conference, hearing, or review in accordance with Section 37.009, ~~(a) A~~ a student shall be removed from class and placed in a disciplinary alternative education program as provided by Section 37.008 if the

1 student:

2 (1) engages in conduct involving a public school that
3 contains the elements of the offense of false alarm or report under
4 Section 42.06, Penal Code, or terroristic threat under Section
5 22.07, Penal Code; or

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

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

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

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

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

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

20 (D) sells, gives, or delivers to another person
21 an alcoholic beverage, as defined by Section 1.04, Alcoholic
22 Beverage Code, commits a serious act or offense while under the
23 influence of alcohol, or possesses, uses, or is under the influence
24 of an alcoholic beverage;

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

1 (F) engages in conduct that contains the elements
2 of the offense of public lewdness under Section 21.07, Penal Code,
3 or indecent exposure under Section 21.08, Penal Code.

4 SECTION 3. Section 37.007(a), Education Code, is amended to
5 read as follows:

6 (a) Upon receiving a determination from the conference,
7 hearing, or review in accordance with Section 37.009, ~~(a) A~~ a
8 student shall be expelled from a school if the student, on school
9 property or while attending a school-sponsored or school-related
10 activity on or off of school property:

11 (1) uses, exhibits, or possesses:

12 (A) a firearm as defined by Section 46.01(3),
13 Penal Code;

14 (B) an illegal knife as defined by Section
15 46.01(6), Penal Code, or by local policy;

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

18 (D) a weapon listed as a prohibited weapon under
19 Section 46.05, Penal Code;

20 (2) engages in conduct that contains the elements of
21 the offense of:

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

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

26 (C) murder under Section 19.02, Penal Code,
27 capital murder under Section 19.03, Penal Code, or criminal

1 attempt, under Section 15.01, Penal Code, to commit murder or
2 capital murder;

3 (D) indecency with a child under Section 21.11,
4 Penal Code;

5 (E) aggravated kidnapping under Section 20.04,
6 Penal Code;

7 (F) aggravated robbery under Section 29.03,
8 Penal Code;

9 (G) manslaughter under Section 19.04, Penal
10 Code;

11 (H) criminally negligent homicide under Section
12 19.05, Penal Code; or

13 (I) continuous sexual abuse of young child or
14 children under Section 21.02, Penal Code; or

15 (3) engages in conduct specified by Section
16 37.006(a)(2)(C) or (D), if the conduct is punishable as a felony.

17 SECTION 4. Section 37.009(f), Education Code, is amended to
18 read as follows:

19 (f) Before a student may be expelled under Section 37.007,
20 the board or the board's designee must provide the student a
21 hearing. At the hearing, the board or the board's designee must
22 present a preponderance of evidence and demonstrate intent at the
23 time the student engaged in conduct. ~~at which the~~ The student is
24 shall be afforded appropriate due process as required by the
25 federal constitution and ~~which~~ the student's parent or guardian ~~is~~
26 will be invited, in writing, to attend. At the hearing, the student
27 is entitled to be represented by the student's parent or guardian or

1 another adult who can provide guidance to the student and who is not
2 an employee of the school district. ~~If the school district makes a~~
3 ~~good-faith effort to inform the student and the student's parent or~~
4 ~~guardian of the time and place of the hearing, the district may hold~~
5 ~~the hearing regardless of whether the student, the student's parent~~
6 ~~or guardian, or another adult representing the student attends.~~
7 The school district shall give the student and the student's parent
8 or guardian a minimum of 48 hours of notice by certified mail or
9 personal delivery of notice of the time and place of the hearing.
10 The board shall follow all hearing regulations and shall consider
11 Section 37.001 Subsections (4) (A) (B) (C) (D) (E) (F) before making
12 a decision to expel a student under section 37.007. If the
13 decision to expel a student is made by the board's designee, the
14 decision may be appealed to the board. If the decision finds the
15 student absolved of wrongdoing, no further action will be pursued
16 by the board. The decision of the board may be appealed by trial de
17 novo to a district court of the county in which the school
18 district's central administrative office is located.

19 SECTION 5. This Act takes effect immediately if it receives
20 a vote of two-thirds of all the members elected to each house, as
21 provided by Section 39, Article III, Texas Constitution. If this
22 Act does not receive the vote necessary for immediate effect, this
23 Act takes effect September 1, 2009.