

By: Strama

H.B. No. 968

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to expulsion from school or placement in a disciplinary  
3 alternative education program.

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

5 SECTION 1. Section 37.001(a), Education Code, is amended to  
6 read as follows:

7 (a) The board of trustees of an independent school district  
8 shall, with the advice of its district-level committee established  
9 under Subchapter F, Chapter 11, adopt a student code of conduct for  
10 the district. The student code of conduct must be posted and  
11 prominently displayed at each school campus or made available for  
12 review at the office of the campus principal. In addition to  
13 establishing standards for student conduct, the student code of  
14 conduct must:

15 (1) specify the circumstances, in accordance with this  
16 subchapter, under which a student may be removed from a classroom,  
17 campus, or disciplinary alternative education program, including  
18 circumstances in which a student engages in serious misbehavior  
19 under Section 37.007(c);

20 (2) specify conditions that authorize or require a  
21 principal or other appropriate administrator to transfer a student  
22 to a disciplinary alternative education program;

23 (3) outline conditions under which a student may be  
24 suspended as provided by Section 37.005 or expelled as provided by

1 Section 37.007;

2 (4) specify that consideration will be given, as a  
3 factor in each decision concerning suspension, removal to a  
4 disciplinary alternative education program, expulsion, or  
5 placement in a juvenile justice alternative education program,  
6 regardless of whether the decision concerns a mandatory or  
7 discretionary action, to:

8 (A) self-defense;

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

11 (C) a student's disciplinary history; or

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

15 (5) provide guidelines for setting the length of a  
16 term of:

17 (A) a removal under Section 37.006; and

18 (B) an expulsion under Section 37.007;

19 (6) address the notification of a student's parent or  
20 guardian of a violation of the student code of conduct committed by  
21 the student that results in suspension, removal to a disciplinary  
22 alternative education program, or expulsion;

23 (7) prohibit bullying, harassment, and making hit  
24 lists and ensure that district employees enforce those  
25 prohibitions; and

26 (8) provide, as appropriate for students at each grade  
27 level, methods, including options, for:

- 1 (A) managing students in the classroom and on  
2 school grounds;
- 3 (B) disciplining students; and
- 4 (C) preventing and intervening in student  
5 discipline problems, including bullying, harassment, and making  
6 hit lists.

7 SECTION 2. Sections 37.006(c) and (d), Education Code, are  
8 amended to read as follows:

9 (c) In addition to Subsections (a) and (b), a student shall  
10 be removed from class and placed in a disciplinary alternative  
11 education program under Section 37.008 based on conduct occurring  
12 off campus and while the student is not in attendance at a  
13 school-sponsored or school-related activity if:

14 (1) the student receives deferred prosecution under  
15 Section 53.03, Family Code, for conduct defined as:

- 16 (A) a felony offense in Title 5, Penal Code; or  
17 (B) the felony offense of aggravated robbery  
18 under Section 29.03, Penal Code;

19 (2) a court or jury finds that the student has engaged  
20 in delinquent conduct under Section 54.03, Family Code, for conduct  
21 defined as:

- 22 (A) a felony offense in Title 5, Penal Code; or  
23 (B) the felony offense of aggravated robbery  
24 under Section 29.03, Penal Code; or

25 (3) the superintendent or the superintendent's  
26 designee has a reasonable belief that the student has engaged in a  
27 conduct defined as:

1                    (A) a felony offense in Title 5, Penal Code; or  
2                    (B) the felony offense of aggravated robbery  
3 under Section 29.03, Penal Code.

4            (d) In addition to Subsections (a), (b), and (c), a student  
5 may be removed from class and placed in a disciplinary alternative  
6 education program under Section 37.008 based on conduct occurring  
7 more than 300 feet off campus and while the student is not in  
8 attendance at a school-sponsored or school-related activity if:

9            (1) the superintendent or the superintendent's  
10 designee has a reasonable belief that the student has engaged in  
11 conduct defined as a felony offense other than aggravated robbery  
12 under Section 29.03, Penal Code, or those offenses defined in Title  
13 5, Penal Code; and

14            (2) the continued presence of the student in the  
15 regular classroom threatens the safety of other students or  
16 teachers or will be detrimental to the educational process.

17            SECTION 3. Sections 37.007(a), (b), and (c), Education  
18 Code, are amended to read as follows:

19            (a) Except as provided by Subsection (k), a student shall be  
20 expelled from a school if the student, while on or within 300 feet  
21 of school property, as measured from any point on the school's real  
22 property boundary line, or while attending a school-sponsored or  
23 school-related activity on or off of school property:

24            (1) uses, exhibits, or possesses:

25                    (A) a firearm as defined by Section 46.01(3),  
26 Penal Code, or 18 U.S.C. Section 921;

27                    (B) an illegal knife as defined by Section

1 46.01(6), Penal Code, or by local policy;

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

4 (D) a weapon listed as a prohibited weapon under  
5 Section 46.05, Penal Code;

6 (2) engages in conduct that contains the elements of  
7 the offense of:

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

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

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

16 (D) indecency with a child under Section 21.11,  
17 Penal Code;

18 (E) aggravated kidnapping under Section 20.04,  
19 Penal Code;

20 (F) aggravated robbery under Section 29.03,  
21 Penal Code;

22 (G) manslaughter under Section 19.04, Penal  
23 Code;

24 (H) criminally negligent homicide under Section  
25 19.05, Penal Code; or

26 (I) continuous sexual abuse of young child or  
27 children under Section 21.02, 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.

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

4           (1) engages in conduct involving a public school that  
5 contains the elements of the offense of false alarm or report under  
6 Section 42.06, Penal Code, or terroristic threat under Section  
7 22.07, Penal Code;

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

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

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

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

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

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

24           (C) engages in conduct that contains the elements  
25 of an offense under Section 22.01(a)(1), Penal Code, against a  
26 school district employee or a volunteer as defined by Section  
27 22.053; or

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

3 (3) [~~subject to Subsection (d), while within 300 feet~~  
4 ~~of school property, as measured from any point on the school's real~~  
5 ~~property boundary line.~~

6 [(A) ~~engages in conduct specified by Subsection~~  
7 ~~(a), or~~

8 [(B) ~~possesses a firearm, as defined by 18 U.S.C.~~  
9 ~~Section 921, or~~

10 [(4)] engages in conduct that contains the elements of  
11 any offense listed in Subsection (a)(2)(A) or (C) or the offense of  
12 aggravated robbery under Section 29.03, Penal Code, against another  
13 student, if the conduct occurs more than 300 feet off campus and  
14 [~~without regard to whether the conduct occurs on or off of school~~  
15 ~~property or~~] while the student is not in attendance at [attending] a  
16 school-sponsored or school-related activity [~~on or off of school~~  
17 ~~property~~].

18 (c) A student may be expelled if the student, while placed  
19 in a disciplinary [an] alternative education program, engages [for  
20 disciplinary reasons, continues to engage] in documented serious  
21 [~~or persistent~~] misbehavior while on the program campus despite  
22 documented behavioral interventions [that violates the district's  
23 student code of conduct]. For purposes of this subsection,  
24 "serious misbehavior" means:

25 (1) deliberate violent behavior that poses a direct  
26 threat to the health or safety of others;

27 (2) extortion, meaning the gaining of money or other

1 property by force or threat;

2 (3) conduct that constitutes coercion, as defined by  
3 Section 1.07, Penal Code; or

4 (4) conduct that constitutes the offense of:

5 (A) public lewdness under Section 21.07, Penal  
6 Code;

7 (B) indecent exposure under Section 21.08, Penal  
8 Code;

9 (C) criminal mischief under Section 28.03, Penal  
10 Code;

11 (D) personal hazing under Section 37.152; or

12 (E) harassment under Section 42.07(a)(1), Penal  
13 Code, of a student or district employee.

14 SECTION 4. Section 37.0081(a), Education Code, is amended  
15 to read as follows:

16 (a) Subject to Subsection (h), but notwithstanding any  
17 other provision of this subchapter, the board of trustees of a  
18 school district, or the board's designee, after an opportunity for  
19 a hearing may expel a student and elect to place the student in an  
20 alternative setting as provided by Subsection (a-1) if:

21 (1) the student:

22 (A) has received deferred prosecution under  
23 Section 53.03, Family Code, for conduct defined as:

24 (i) a felony offense in Title 5, Penal Code;  
25 or

26 (ii) the felony offense of aggravated  
27 robbery under Section 29.03, Penal Code;



1 (B) has been found by a court or jury to have  
2 engaged in delinquent conduct under Section 54.03, Family Code, for  
3 conduct defined as:

4 (i) a felony offense in Title 5, Penal Code;  
5 or

6 (ii) the felony offense of aggravated  
7 robbery under Section 29.03, Penal Code;

8 (C) is charged with engaging in conduct defined  
9 as:

10 (i) a felony offense in Title 5, Penal Code;  
11 or

12 (ii) the felony offense of aggravated  
13 robbery under Section 29.03, Penal Code;

14 (D) has been referred to a juvenile court for  
15 allegedly engaging in delinquent conduct under Section 54.03,  
16 Family Code, for conduct defined as:

17 (i) a felony offense in Title 5, Penal Code;  
18 or

19 (ii) the felony offense of aggravated  
20 robbery under Section 29.03, Penal Code;

21 (E) has received probation or deferred  
22 adjudication for a felony offense under Title 5, Penal Code, or the  
23 felony offense of aggravated robbery under Section 29.03, Penal  
24 Code;

25 (F) has been convicted of a felony offense under  
26 Title 5, Penal Code, or the felony offense of aggravated robbery  
27 under Section 29.03, Penal Code; or

1 (G) has been arrested for or charged with a  
2 felony offense under Title 5, Penal Code, or the felony offense of  
3 aggravated robbery under Section 29.03, Penal Code; and

4 (2) the board or the board's designee determines that  
5 the student's presence in the regular classroom:

6 (A) threatens the safety of other students or  
7 teachers;

8 (B) will be detrimental to the educational  
9 process; or

10 (C) is not in the best interests of the  
11 district's students.

12 SECTION 5. Section 37.009(c), Education Code, is amended to  
13 read as follows:

14 (c) Before it may place a student in a disciplinary  
15 alternative education program for a period that extends beyond the  
16 end of the school year, the board or the board's designee must  
17 determine that:

18 (1) the student's presence in the regular classroom  
19 program or at the student's regular campus presents a danger of  
20 physical harm to the student or to another individual; or

21 (2) the student has engaged in serious [~~or persistent~~]  
22 misbehavior, as defined by Section 37.007(c) [~~that violates the~~  
23 ~~district's student code of conduct~~].

24 SECTION 6. Sections 37.011(k) and (l), Education Code, are  
25 amended to read as follows:

26 (k) Each school district in a county with a population  
27 greater than 125,000 and the county juvenile board shall annually

1 enter into a joint memorandum of understanding that:

2 (1) outlines the responsibilities of the juvenile  
3 board concerning the establishment and operation of a juvenile  
4 justice alternative education program under this section;

5 (2) defines the amount and conditions on payments from  
6 the school district to the juvenile board for students of the school  
7 district served in the juvenile justice alternative education  
8 program whose placement was not made on the basis of an expulsion  
9 required under Section 37.007(a), (d), or (e);

10 (3) establishes [~~identifies those categories of~~  
11 ~~conduct~~] that [~~the school district has defined in its student code~~  
12 ~~of conduct as constituting serious or persistent misbehavior for~~  
13 ~~which~~] a student may be placed in the juvenile justice alternative  
14 education program if the student engages in serious misbehavior, as  
15 defined by Section 37.007(c);

16 (4) identifies and requires a timely placement and  
17 specifies a term of placement for expelled students for whom the  
18 school district has received a notice under Section 52.041(d),  
19 Family Code;

20 (5) establishes services for the transitioning of  
21 expelled students to the school district prior to the completion of  
22 the student's placement in the juvenile justice alternative  
23 education program;

24 (6) establishes a plan that provides transportation  
25 services for students placed in the juvenile justice alternative  
26 education program;

27 (7) establishes the circumstances and conditions

1 under which a juvenile may be allowed to remain in the juvenile  
2 justice alternative education program setting once the juvenile is  
3 no longer under juvenile court jurisdiction; and

4 (8) establishes a plan to address special education  
5 services required by law.

6 (1) The school district shall be responsible for providing  
7 an immediate educational program to students who engage in behavior  
8 resulting in expulsion under Section 37.007(b) [~~-(c)-~~] and (f) but  
9 who are not eligible for admission into the juvenile justice  
10 alternative education program in accordance with the memorandum of  
11 understanding required under this section. The school district may  
12 provide the program or the school district may contract with a  
13 county juvenile board, a private provider, or one or more other  
14 school districts to provide the program. The memorandum of  
15 understanding shall address the circumstances under which such  
16 students who continue to engage in serious [~~or persistent~~]  
17 misbehavior, as defined by Section 37.007(c), shall be admitted  
18 into the juvenile justice alternative education program.

19 SECTION 7. (a) Except as provided by Subsection (b) of this  
20 section, this Act applies beginning with the 2011-2012 school year.

21 (b) Sections 37.001(a), 37.007(c), 37.009(c), and 37.011(k)  
22 and (l), Education Code, as amended by this Act, apply beginning  
23 with the 2012-2013 school year.

24 SECTION 8. This Act takes effect immediately if it receives  
25 a vote of two-thirds of all the members elected to each house, as  
26 provided by Section 39, Article III, Texas Constitution. If this  
27 Act does not receive the vote necessary for immediate effect, this

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1 Act takes effect September 1, 2011.