

By: Peña

H.B. No. 3341

A BILL TO BE ENTITLED

AN ACT

1
2 relating to a requirement that school district superintendents
3 report information relating to the use of restraints against
4 students and student arrests and enhancing the penalty prescribed
5 for certain acts of official oppression; creating a criminal
6 offense.

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

8 SECTION 1. Subchapter C, Chapter 37, Education Code, is
9 amended by adding Section 37.0815 to read as follows:

10 Sec. 37.0815. REPORT TO AGENCY ON USES OF RESTRAINTS
11 AGAINST AND ARRESTS OF STUDENTS. (a) In this section:

12 (1) "OC spray" means any aerosol-propelled
13 debilitation device that is composed of a lachrymatory chemical
14 compound that irritates the eyes to cause tears, pain, or temporary
15 blindness. The term includes pepper spray, capsicum spray, OC gas,
16 and oleoresin capsicum.

17 (2) "Restraint" means the use of physical force or a
18 mechanical device to significantly restrict the free movement of
19 all or a portion of a student's body. The term includes the use of:

20 (A) a baton or a similar club;

21 (B) OC spray; and

22 (C) a Taser.

23 (3) "Taser" means a device manufactured, sold, or
24 distributed by Taser International, Incorporated, that is

1 intended, designed, made, or adapted to incapacitate a person by
2 inflicting an electrical charge through the emission of a
3 projectile or conductive stream. The term, for purposes of this
4 section, includes a similar device manufactured, sold, or
5 distributed by another person.

6 (b) The superintendent of a school district shall notify a
7 student's parent or guardian as soon as practicable after the
8 student is subjected to a restraint or arrested on school property
9 or during a school-sponsored or school-related activity. The
10 notice must include information identifying:

11 (1) the nature of the incident underlying the use of
12 the restraint or the arrest;

13 (2) whether the underlying incident occurred during
14 regular school hours;

15 (3) whether the underlying incident occurred on school
16 property or off school property;

17 (4) the type of restraint administered to the student
18 or the offense for which the student was arrested, as applicable;
19 and

20 (5) the name of the person who administered the
21 restraint to or arrested the student and whether that person is a
22 peace officer who:

23 (A) is employed or commissioned by the district;
24 or

25 (B) provides, as a school resource officer, a
26 regular police presence on a campus in the district under a
27 memorandum of understanding between the district and a local law

1 enforcement agency.

2 (c) After the last day of classes each school year and not
3 later than the date specified by commissioner rule, the
4 superintendent of a school district shall submit to the agency a
5 report that contains information on the uses of restraints against
6 and arrests of students that occurred during the preceding school
7 year, organized by campus. The report must include, as applicable,
8 information identifying:

9 (1) the age of the student;

10 (2) the gender of the student;

11 (3) the race or ethnicity of the student;

12 (4) whether the student is eligible for special
13 education services under Section 29.003;

14 (5) whether the student is a student of limited
15 English proficiency, as defined by Section 29.052;

16 (6) the nature of the incident underlying the use of
17 the restraint or the arrest;

18 (7) whether the underlying incident occurred during
19 regular school hours;

20 (8) whether the underlying incident occurred on school
21 property or off school property while the student was attending a
22 school-sponsored or school-related activity;

23 (9) the type of restraint administered to the student;

24 (10) the offense for which the student was arrested;

25 and

26 (11) if known by the superintendent, any injuries
27 caused to the student during the underlying incident.

1 (d) A report required under Subsection (c) may not include
2 personally identifiable student information and must comply with
3 the Family Educational Rights and Privacy Act of 1974 (20 U.S.C.
4 Section 1232g).

5 (e) A school district that enters into a memorandum of
6 understanding with a local law enforcement agency for the provision
7 of a regular police presence on campus shall designate in the
8 memorandum of understanding which entity will be responsible for
9 collecting the information described by Subsection (c).

10 (f) A superintendent who knowingly fails to provide notice
11 or submit a report required by this section commits an offense. An
12 offense under this subsection is a Class A misdemeanor.

13 (g) The agency shall collect the reports required under this
14 section, compile the information, and make the information
15 available to the public.

16 SECTION 2. Section 39.03, Penal Code, is amended by
17 amending Subsection (d) and adding Subsection (e) to read as
18 follows:

19 (d) An offense under this section is a Class A misdemeanor,
20 except that an offense is:

21 (1) a state jail felony if the offense is committed
22 against a public primary or secondary school student on school
23 property or during a school-sponsored or school-related activity;
24 or

25 (2) a felony of the third degree if the public servant
26 acted with the intent to impair the accuracy of data reported to the
27 Texas Education Agency through the Public Education Information

1 Management System (PEIMS) described by Section 42.006, Education
2 Code, under a law requiring that reporting.

3 (e) If conduct constituting an offense under this section
4 also constitutes an offense under another section of this code, the
5 actor may be prosecuted under either section or both sections.

6 SECTION 3. (a) Section 37.0815, Education Code, as added by
7 this Act, applies beginning with the 2015-2016 school year.

8 (b) The change in law made by this Act to Section 39.03,
9 Penal Code, applies only to an offense committed on or after the
10 effective date of this Act. An offense committed before the
11 effective date of this Act is governed by the law in effect on the
12 date the offense was committed, and the former law is continued in
13 effect for that purpose. For purposes of this section, an offense
14 was committed before the effective date of this Act if any element
15 of the offense occurred before that date.

16 SECTION 4. This Act takes effect September 1, 2015.