

By: Minjarez

H.B. No. 306

A BILL TO BE ENTITLED

AN ACT

relating to student harassment, bullying, cyberbullying, injury to or death of a minor; creating a criminal offense.

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

SECTION 1. This Act shall be known as David's Law.

SECTION 2. Section 37.0832, Education Code, is amended by amending Subsections (a), (c), (d), and (e) and adding Subsection (a-1) to read as follows:

(a) In this section:

(1) "Bullying":

(A) [~~"bullying"~~] means a single significant act or a pattern of acts by one or more students directed at another student that exploits an imbalance of power and involves [~~subject to Subsection (b),~~] engaging in written or verbal expression, expression through electronic means, or physical conduct, that satisfies the applicability requirements provided by Subsection (a-1), [~~that occurs on school property, at a school-sponsored or school-related activity, or in a vehicle operated by the district]~~ and that:

(i) [~~(1)~~] has the effect or will have the effect of physically harming a student, causing a student to experience substantial negative mental health effects, damaging a student's property, or placing a student in reasonable fear of harm to the student's person or of damage to the student's property; [~~or~~]

1 (ii) [~~2~~] is sufficiently severe,
2 persistent, and pervasive enough that the action or threat creates
3 an intimidating, threatening, or abusive educational environment
4 for a student;

5 (iii) materially and substantially
6 disrupts the educational process or the orderly operation of a
7 classroom or school; or

8 (iv) infringes on the rights of the victim
9 at school; and

10 (B) includes cyberbullying.

11 (2) "Cyberbullying" means bullying that is done
12 through the use of electronic communication, including through the
13 use of a cellular or other type of telephone, a computer, a pager, a
14 camera, electronic mail, instant messaging, text messaging, a
15 social media application, Internet website, or other
16 Internet-based communication tool.

17 (a-1) This section applies to:

18 (1) bullying that occurs on or is delivered to school
19 property or to the site of a school-sponsored or school-related
20 activity on or off school property;

21 (2) bullying that occurs on a publicly or privately
22 owned school bus or van being used for transportation of students to
23 or from school or a school-sponsored or school-related activity;
24 and

25 (3) cyberbullying that occurs off school property or
26 outside of a school-sponsored or school-related activity if the
27 cyberbullying;

1 (A) interferes with a student's educational
2 opportunities; or

3 (B) substantially disrupts the orderly operation
4 of a classroom, school, or school-sponsored or school-related
5 activity.

6 (c) The board of trustees of each school district and the
7 governing body of each open-enrollment charter school or private
8 school shall adopt a policy, including any necessary procedures,
9 concerning bullying that:

10 (1) prohibits the bullying and cyberbullying of a
11 student;

12 (2) prohibits retaliation against any person,
13 including a victim, a witness, or another person, who in good faith
14 provides information concerning an incident of bullying;

15 (3) establishes a procedure for providing notice of an
16 incident of bullying to a parent or guardian of the victim and a
17 parent or guardian of the bully not later than the next school day
18 ~~[within a reasonable amount of time]~~ after the incident is
19 reported;

20 (4) establishes the actions a student should take to
21 obtain assistance and intervention in response to bullying;

22 (5) sets out the available counseling options for a
23 student who is a victim of or a witness to bullying or who engages in
24 bullying;

25 (6) establishes procedures for reporting an incident
26 of bullying, including procedures for a student, parent, teacher,
27 or administrator to anonymously report an incident of bullying,

1 investigating a reported incident of bullying, and determining
2 whether the reported incident of bullying occurred;

3 (7) prohibits the imposition of a disciplinary measure
4 on a student who, after an investigation, is found to be a victim of
5 bullying, on the basis of that student's use of reasonable
6 self-defense in response to the bullying; and

7 (8) requires that discipline for bullying of a student
8 with disabilities comply with applicable requirements under
9 federal law, including the Individuals with Disabilities Education
10 Act (20 U.S.C. Section 1400 et seq.).

11 (d) The policy and any necessary procedures adopted under
12 Subsection (c) must be included:

13 (1) annually, in any ~~[the]~~ student and employee
14 ~~[school-district]~~ handbooks; and

15 (2) in the district improvement plan under Section
16 [11.252](#).

17 (e) The procedure for reporting bullying established under
18 Subsection (c) must be posted on the district's or school's Internet
19 website to the extent practicable.

20 SECTION 3. Subchapter A, Chapter [37](#), Education Code, is
21 amended by adding Section 37.0052 to read as follows:

22 Sec. 37.0052. PLACEMENT OR EXPULSION OF STUDENTS WHO HAVE
23 ENGAGED IN CERTAIN BULLYING BEHAVIOR. (a) In this section:

24 (1) "Bullying" has the meaning assigned by Section
25 [37.0832](#).

26 (2) "Intimate visual material" has the meaning
27 assigned by Section [98B.001](#), Civil Practice and Remedies Code.

1 (b) A student may be removed from class and placed in a
2 disciplinary alternative education program as provided by Section
3 37.008 or expelled if the student:

4 (1) engages in bullying that encourages a minor to
5 commit or attempt to commit suicide;

6 (2) incites violence against a minor through group
7 bullying; or

8 (3) releases or threatens to release intimate visual
9 material of a minor.

10 SECTION 4. Subchapter A, Chapter 37, Education Code, is
11 amended by adding Section 37.0151 to read as follows:

12 Sec. 37.0151. REPORT TO LOCAL LAW ENFORCEMENT REGARDING
13 CERTAIN CONDUCT CONSTITUTING ASSAULT OR HARASSMENT; LIABILITY. (a)
14 The principal of a public or private primary or secondary school, or
15 a person designated by the principal under Subsection (c), shall
16 make a report to any school district police department and the
17 police department of the municipality in which the school is
18 located or, if the school is not in a municipality, the sheriff of
19 the county in which the school is located if the principal has
20 reasonable grounds to believe that a student engaged in conduct
21 that constitutes an offense under Section 22.01 or 42.07(a)(7),
22 Penal Code.

23 (b) A person who makes a report under this section shall
24 include the name and address of each student the person believes may
25 have participated in the conduct.

26 (c) The principal of a public or private primary or
27 secondary school may designate a school employee, other than a

1 school counselor, who is under the supervision of the principal to
2 make the report under this section.

3 (d) A person is not liable in civil damages for making a
4 report in good faith under this section.

5 SECTION 5. Sections 37.218(a)(1) and (2), Education Code,
6 are amended to read as follows:

7 (1) "Bullying" has the meaning assigned by Section
8 37.0832 [~~25.0342~~].

9 (2) "Cyberbullying" has the meaning assigned by
10 Section 37.0832 [~~means the use of any electronic communication~~
11 ~~device to engage in bullying or intimidation~~].

12 SECTION 6. Section 33.006(b), Education Code, is amended to
13 read as follows:

14 (b) In addition to a school counselor's responsibility
15 under Subsection (a), the school counselor shall:

16 (1) participate in planning, implementing, and
17 evaluating a comprehensive developmental guidance program to serve
18 all students and to address the special needs of students:

19 (A) who are at risk of dropping out of school,
20 becoming substance abusers, participating in gang activity, or
21 committing suicide;

22 (B) who are in need of modified instructional
23 strategies; or

24 (C) who are gifted and talented, with emphasis on
25 identifying and serving gifted and talented students who are
26 educationally disadvantaged;

27 (2) consult with a student's parent or guardian and

1 make referrals as appropriate in consultation with the student's
2 parent or guardian;

3 (3) consult with school staff, parents, and other
4 community members to help them increase the effectiveness of
5 student education and promote student success;

6 (4) coordinate people and resources in the school,
7 home, and community;

8 (5) with the assistance of school staff, interpret
9 standardized test results and other assessment data that help a
10 student make educational and career plans; ~~and~~

11 (6) deliver classroom guidance activities or serve as
12 a consultant to teachers conducting lessons based on the school's
13 guidance curriculum; and

14 (7) serve as an impartial mediator for interpersonal
15 conflicts involving two or more students, including accusations of
16 bullying or cyberbullying under Section 37.0832.

17 SECTION 7. Chapter 18, Civil Practice and Remedies Code, is
18 amended by adding Subchapter E to read as follows:

19 SUBCHAPTER E. SUBPOENAS

20 Sec. 18.101. PRE-SUIT SUBPOENAS FOR CERTAIN CLAIMS
21 INVOLVING MINORS. (a) The supreme court shall adopt rules of civil
22 procedure providing for the issuance of a pre-suit subpoena to:

23 (1) investigate a potential claim involving an injury
24 to or death of a minor; or

25 (2) perpetuate or obtain evidence or testimony from
26 any person for use in an anticipated action involving an injury to
27 or death of a minor.

1 (b) The rules must:

2 (1) allow a party to request a subpoena to compel an
3 oral or written deposition, the production of electronic or
4 magnetic data, or the production of documents or tangible things;
5 and

6 (2) require that a responding party provide any
7 electronic or magnetic data or documentary or tangible evidence to
8 the court under seal for the court to determine, after notice,
9 hearing, and an in camera inspection, if the evidence should be
10 released to the requesting party.

11 SECTION 8. Title 4, Civil Practice and Remedies Code, is
12 amended by adding Chapter 100B to read as follows:

13 CHAPTER 100B. LIABILITY FOR CERTAIN BULLYING OF CHILD

14 Sec. 100B.001. DEFINITIONS. In this chapter:

15 (1) "Bullying communication" means written or oral
16 expression, expression by means of electronic communication, or
17 non-verbal expression:

18 (A) that consists of multiple communications:

19 (i) with respect to which the individual
20 making the communication acts intentionally and with malice;

21 (ii) where the communications:

22 (a) when taken together, were extreme
23 and outrageous in light of the content, manner, time, place, and
24 number of such communications; or

25 (b) were harassing and offensive, and
26 the individual making the communication acts was acting in concert
27 with two or more other persons whose communications directed at the

1 recipient the individual making the communication acts knew to be
2 harassing and offensive, if such communications by the individual
3 making the communication acts and such other persons, when taken
4 together, were extreme and outrageous in light of the manner, time,
5 place, and number of such communications; and

6 (iii) with respect to which the actions of
7 the individual making the communication caused, or if made in
8 concert with other persons as provided in clause (1)(A)(ii)(b) of
9 this Section, contributed to causing, the recipient to suffer
10 severe emotional distress; or

11 (B) in which the individual making the
12 communication:

13 (i) urges or incites the recipient to
14 commit or attempt to commit suicide;

15 (ii) threatens to make available to any
16 third party, whether or not specified, by electronic communication
17 or otherwise, intimate visual material of or depicting the
18 recipient of the bullying communication; or

19 (iii) threatens bodily injury to the
20 recipient or a member of the recipient's family.

21 (2) "Claimant" means a party seeking to recover
22 damages under this chapter, including a plaintiff,
23 counterclaimant, cross-claimant, or third-party plaintiff, and
24 includes a party seeking recovery of damages under this chapter on
25 behalf of another person and the person on whose behalf the damages
26 are sought.

27 (3) "Defendant" includes any party from whom a

1 claimant seeks recovery of damages under this chapter, and includes
2 a person from whom a claimant seeks recovery under Section 100B.005
3 and the child who engaged in the actionable bullying that is the
4 subject of the action in which recovery is sought.

5 (4) "Electronic communication" means a transfer of
6 signs, signals, writing, images, sounds, data, or intelligence of
7 any nature transmitted wholly or partly by a wire, radio,
8 electromagnetic, photoelectronic, or photo-optical system
9 including through the use of a cellular or other type of telephone,
10 facsimile machine, a computer, a pager, a camera, electronic mail,
11 instant messaging, text messaging, a social media application,
12 Internet website, or other Internet-based communication tool.

13 (5) "Family" has the meaning assigned by Section
14 71.003, Family Code.

15 (6) "Interactive service" means an information
16 service, system, wireless telephone and text message service, or
17 access software provider that provides or enables electronic
18 communication through computer or wireless telephone access by
19 multiple users to a computer server or wireless telephone network,
20 including a system that provides access to the Internet or wireless
21 telephones.

22 (7) "Intimate visual material" has the meaning
23 assigned by Section 98B.001, Civil Practice and Remedies Code.

24 Sec. 100B.002. ACTIONABLE BULLYING. A person engages in
25 actionable bullying for the purposes of this chapter if the person
26 directs bullying communication toward a single recipient who, at
27 the time of the bullying communication, is younger than 18 years of

1 age.

2 Sec. 100B.003. LIABILITY. A defendant is liable to a
3 claimant as provided by this chapter if the claimant shows that the
4 defendant engaged in actionable bullying directed toward the
5 claimant.

6 Sec. 100B.004. DAMAGES. (a) A claimant who prevails in a
7 suit under this chapter may recover actual damages for all
8 physical, mental, or emotional injury caused by, resulting from, or
9 arising out of the actionable bullying that is the subject of the
10 suit. The claimant may recover actual damages for mental anguish
11 even if an injury other than mental anguish is not shown.

12 (b) Except as provided by Subsection (c), in addition to
13 damages awarded under Subsection (a), a claimant who prevails in a
14 suit under this chapter may recover:

15 (1) exemplary damages; and

16 (2) court costs and reasonable attorney's fees.

17 (c) Instead of recovering exemplary damages under
18 Subsection (b), a claimant who prevails in a suit under this chapter
19 may elect to treble the amount that would otherwise be awarded under
20 Subsection (a), not to exceed \$75,000.00 under this subsection (c)
21 per actionable claim, if the claimant shows that:

22 (1) the defendant used an interactive service to
23 transfer electronic communication to the claimant that constituted
24 actionable bullying; and

25 (2) the defendant knew that two or more other persons
26 were using that interactive service to transfer electronic
27 communication that constituted actionable bullying as to the

1 claimant within 24 hours of each transfer by the defendant
2 described by Subdivision (1).

3 Sec. 100B.005. PARENTAL RESPONSIBILITY. A parent or other
4 person who has the duty of control and reasonable discipline of a
5 child who engages in actionable bullying directed toward the
6 claimant is liable to the claimant for:

7 (1) the lesser of:

8 (A) damages recoverable by the claimant under
9 Section 100B.004, including exemplary damages or multiplied
10 damages, as applicable; or

11 (B) \$50,000; and

12 (2) court costs and reasonable attorney's fees.

13 Sec. 100B.006. INJUNCTIVE RELIEF. If a defendant is found
14 liable under this chapter, a court may order any injunctive relief
15 sought by the claimant that the court determines is appropriate
16 under the circumstances.

17 Sec. 100B.007. DEFENSE. It is a defense to liability under
18 this chapter that the defendant was engaged in conduct that
19 constituted a constitutionally protected exercise of the
20 defendant's rights to free speech.

21 Sec. 100B.008. CAUSE OF ACTION CUMULATIVE. The cause of
22 action created by this chapter is cumulative of any other remedy
23 provided by common law or statute.

24 SECTION 9. Chapter 22, Penal Code, is amended by adding
25 Section 22.081 to read as follows:

26 Sec. 22.081. INDUCING SUICIDE OR ATTEMPTED SUICIDE OF A
27 MINOR BY NONPHYSICAL BULLYING.

1 Sec 22.081. DEFINITIONS. In this section:

2 (1) "Electronic communication" has the meaning
3 assigned by Section 42.07(b)(1), Penal Code.

4 (2) "Intimate parts," "sexual conduct," and "visual
5 material" have the meanings assigned by Section 21.16, Penal Code.

6 (3) "Intimate visual material" means visual material
7 that depicts a person:

8 (A) with the person's intimate parts exposed; or

9 (B) engaged in sexual conduct.

10 (4) "Suicide baiting" means a communication by a
11 person directed at another by written or verbal expression,
12 expression through an electronic communication, or non-verbal
13 expression, that urges or incites the other to commit or attempt to
14 commit suicide.

15 (a) A person commits an offense if such person intentionally
16 and with malice directs one or more communications toward a child
17 younger than 18 years of age by written or oral expression,
18 expression through electronic communications, or nonverbal
19 expression, and such communication was, or such communications when
20 taken together were, harassing, extreme and outrageous in light of
21 the content, number, manner, time, and place of such communication
22 or communications; and

23 (1) the actor's conduct causes the suicide, or the
24 attempted suicide of such child that results in serious bodily
25 injury; or

26 (2) the actor was acting in concert with two or more
27 other persons whose communications directed at such child the actor

1 knew to be harassing, extreme and outrageous in light of the
2 content, number, manner, time, and place of such other
3 communications, and the cumulative effect of such communication or
4 communications by the actor and such communications by such other
5 persons was to cause the suicide of such child, or the attempted
6 suicide of such child that results in serious bodily injury.

7 (b) A person commits an offense if such person intentionally
8 and with malice directs one or more communications toward a child
9 younger than 18 years of age by written or oral expression,
10 expression through electronic communications, or non-verbal
11 expression, and in such communication or communications the person
12 threatened to make available to any third party, whether or not
13 specified, by electronic communication, or otherwise, intimate
14 visual material of or depicting such child, and such conduct by the
15 actor causes the suicide of such child, or the attempted suicide of
16 such child that results in serious bodily injury.

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

18 SECTION 10. Section 42.07(b)(1), Penal Code, is amended to
19 read as follows:

20 (1) "Electronic communication" means a transfer of
21 signs, signals, writing, images, sounds, data, or intelligence of
22 any nature transmitted in whole or in part by a wire, radio,
23 electromagnetic, photoelectronic, or photo-optical system. The
24 term includes:

25 (A) a communication initiated by electronic
26 mail, instant message, Internet website, social media application,
27 network call, [~~or~~] facsimile machine, or other Internet-based

1 communication tool; and

2 (B) a communication made to a pager.

3 SECTION 11. Section 37.0832(b), Education Code, is
4 repealed.

5 SECTION 12. Chapter 100B, Civil Practice and Remedies Code,
6 as added by this Act, applies only with respect to bullying
7 communications engaged in on or after the effective date of this
8 Act.

9 SECTION 13. The change in law made by this Act applies only
10 to an offense committed or conduct violating a penal law of this
11 state that occurs on or after the effective date of this Act. An
12 offense committed or conduct that occurs before the effective date
13 of this Act is governed by the law in effect on the date the offense
14 was committed or conduct occurred, and the former law is continued
15 in effect for that purpose. For purposes of this section, an
16 offense was committed or conduct violating a penal law of this state
17 occurred before the effective date of this Act if any element of the
18 offense or conduct occurred before that date.

19 SECTION 14. This Act takes effect September 1, 2017.