

1-1 By: Menéndez, et al. S.B. No. 179
 1-2 (In the Senate - Filed November 14, 2016; January 25, 2017,
 1-3 read first time and referred to Committee on State Affairs;
 1-4 April 25, 2017, reported adversely, with favorable Committee
 1-5 Substitute by the following vote: Yeas 6, Nays 1; April 25, 2017,
 1-6 sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11		X		
1-12	X			
1-13			X	
1-14	X			
1-15	X			
1-16			X	
1-17	X			

1-18 COMMITTEE SUBSTITUTE FOR S.B. No. 179 By: Creighton

1-19 A BILL TO BE ENTITLED
 1-20 AN ACT

1-21 relating to harassment, bullying, and cyberbullying of a public
 1-22 school student or minor and injury to or death of a minor; creating
 1-23 a criminal offense.

1-24 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-25 SECTION 1. This Act shall be known as David's Law.

1-26 SECTION 2. Section 37.0832, Education Code, is amended by
 1-27 amending Subsections (a) and (c) and adding Subsections (a-1) and
 1-28 (f) to read as follows:

1-29 (a) In this section:

1-30 (1) "Bullying":

1-31 (A) ~~["bullying"]~~ means a pattern of acts by one
 1-32 or more students directed at another student that exploits an
 1-33 imbalance of power and involves ~~subject to Subsection (b),~~
 1-34 engaging in written or verbal expression, expression through
 1-35 electronic means, or physical conduct that satisfies the
 1-36 applicability requirements provided by Subsection (a-1), ~~that~~
 1-37 ~~occurs on school property, at a school-sponsored or school-related~~
 1-38 ~~activity, or in a vehicle operated by the district] and that:~~

1-39 (i) ~~(1)~~ has the effect or will have the
 1-40 effect of physically harming a student, causing a student to
 1-41 experience substantial negative mental health effects, damaging a
 1-42 student's property, or placing a student in reasonable fear of harm
 1-43 to the student's person or of damage to the student's property; ~~or~~

1-44 (ii) ~~(2)~~ is sufficiently severe,
 1-45 persistent, or ~~and~~ pervasive enough that the action or threat
 1-46 creates an intimidating, threatening, or abusive educational
 1-47 environment for a student;

1-48 (iii) materially and substantially
 1-49 disrupts the educational process or the orderly operation of a
 1-50 classroom or school; or

1-51 (iv) infringes on the rights of the victim
 1-52 at school; and

1-53 (B) includes cyberbullying.

1-54 (2) "Cyberbullying" means bullying that is done
 1-55 through the use of any electronic communication device, including
 1-56 through the use of a cellular or other type of telephone, a
 1-57 computer, a camera, electronic mail, instant messaging, text
 1-58 messaging, a social media application, an Internet website, or any
 1-59 other Internet-based communication tool.

1-60 (a-1) This section applies to:

2-1 (1) bullying that occurs on or is delivered to school
2-2 property or to the site of a school-sponsored or school-related
2-3 activity on or off school property;

2-4 (2) bullying that occurs on a publicly or privately
2-5 owned school bus or vehicle being used for transportation of
2-6 students to or from school or a school-sponsored or school-related
2-7 activity; and

2-8 (3) cyberbullying that occurs off school property or
2-9 outside of a school-sponsored or school-related activity if the
2-10 cyberbullying:

2-11 (A) interferes with a student's educational
2-12 opportunities; or

2-13 (B) substantially disrupts the orderly operation
2-14 of a classroom, school, or school-sponsored or school-related
2-15 activity.

2-16 (c) The board of trustees of each school district shall
2-17 adopt a policy, including any necessary procedures, concerning
2-18 bullying that:

2-19 (1) prohibits the bullying of a student;

2-20 (2) prohibits retaliation against any person,
2-21 including a victim, a witness, or another person, who in good faith
2-22 provides information concerning an incident of bullying;

2-23 (3) establishes a procedure for providing notice of an
2-24 incident of bullying to:

2-25 (A) a parent or guardian of the alleged victim
2-26 not later than the next school day after the incident is reported;
2-27 and

2-28 (B) a parent or guardian of the alleged bully
2-29 within a reasonable amount of time after the incident;

2-30 (4) establishes the actions a student should take to
2-31 obtain assistance and intervention in response to bullying;

2-32 (5) sets out the available counseling options for a
2-33 student who is a victim of or a witness to bullying or who engages in
2-34 bullying;

2-35 (6) establishes procedures for reporting an incident
2-36 of bullying, including procedures for a student, parent, teacher,
2-37 or administrator to anonymously report an incident of bullying,
2-38 investigating a reported incident of bullying, and determining
2-39 whether the reported incident of bullying occurred;

2-40 (7) prohibits the imposition of a disciplinary measure
2-41 on a student who, after an investigation, is found to be a victim of
2-42 bullying, on the basis of that student's use of reasonable
2-43 self-defense in response to the bullying; and

2-44 (8) requires that discipline for bullying of a student
2-45 with disabilities comply with applicable requirements under
2-46 federal law, including the Individuals with Disabilities Education
2-47 Act (20 U.S.C. Section 1400 et seq.).

2-48 (f) Each school district shall establish a district-wide
2-49 mental health plan to prevent and mediate bullying incidents and
2-50 address suicide prevention.

2-51 SECTION 3. Subchapter A, Chapter 37, Education Code, is
2-52 amended by adding Section 37.0052 to read as follows:

2-53 Sec. 37.0052. PLACEMENT OR EXPULSION OF STUDENTS WHO HAVE
2-54 ENGAGED IN CERTAIN BULLYING BEHAVIOR. (a) In this section:

2-55 (1) "Bullying" has the meaning assigned by Section
2-56 37.0832.

2-57 (2) "Intimate visual material" has the meaning
2-58 assigned by Section 98B.001, Civil Practice and Remedies Code.

2-59 (b) A student may be removed from class and placed in a
2-60 disciplinary alternative education program as provided by Section
2-61 37.008 or expelled if the student:

2-62 (1) engages in bullying that encourages a student to
2-63 commit or attempt to commit suicide;

2-64 (2) incites violence against a student through group
2-65 bullying; or

2-66 (3) releases or threatens to release intimate visual
2-67 material of a minor or a student who is 18 years of age or older
2-68 without the student's consent.

2-69 (c) Nothing in this section exempts a school from reporting

3-1 a finding of intimate visual material of a minor.

3-2 SECTION 4. Subchapter A, Chapter 37, Education Code, is
3-3 amended by adding Section 37.0151 to read as follows:

3-4 Sec. 37.0151. REPORT TO LOCAL LAW ENFORCEMENT REGARDING
3-5 CERTAIN CONDUCT CONSTITUTING HARASSMENT; LIABILITY. (a) The
3-6 principal of a public primary or secondary school, or a person
3-7 designated by the principal under Subsection (c), shall make a
3-8 report to any school district police department, if applicable, or
3-9 the police department of the municipality in which the school is
3-10 located or, if the school is not in a municipality, the sheriff of
3-11 the county in which the school is located if, after an investigation
3-12 is completed, the principal has reasonable grounds to believe that
3-13 a student engaged in conduct that constitutes an offense under
3-14 Section 22.081, Penal Code.

3-15 (b) A person who makes a report under this section shall
3-16 include the name and address of each student the person believes may
3-17 have participated in the conduct.

3-18 (c) The principal of a public primary or secondary school
3-19 may designate a school employee, other than a school counselor, who
3-20 is under the supervision of the principal to make the report under
3-21 this section.

3-22 (d) A person who is not a school employee but is employed by
3-23 an entity that contracts with a district or school to use school
3-24 property is not required to make a report under this section and may
3-25 not be designated by the principal of a public primary or secondary
3-26 school to make a report. A person who voluntarily makes a report
3-27 under this section is immune from civil or criminal liability.

3-28 (e) A person who takes any action under this section is
3-29 immune from civil or criminal liability or disciplinary action
3-30 resulting from that action.

3-31 (f) Notwithstanding any other law, this section does not
3-32 create a civil, criminal, or administrative cause of action or
3-33 liability or create a standard of care, obligation, or duty that
3-34 provides a basis for a cause of action for an act under this
3-35 section.

3-36 (g) A school district and school personnel and school
3-37 volunteers are immune from suit resulting from an act under this
3-38 section, including an act under related policies and procedures.

3-39 (h) An act by school personnel or a school volunteer under
3-40 this section, including an act under related policies and
3-41 procedures, is the exercise of judgment or discretion on the part of
3-42 the school personnel or school volunteer and is not considered to be
3-43 a ministerial act for purposes of liability of the school district
3-44 or the district's employees.

3-45 SECTION 5. Sections 37.218(a)(1) and (2), Education Code,
3-46 are amended to read as follows:

3-47 (1) "Bullying" has the meaning assigned by Section
3-48 37.0832 [25.0342].

3-49 (2) "Cyberbullying" has the meaning assigned by
3-50 Section 37.0832 [means the use of any electronic communication
3-51 device to engage in bullying or intimidation].

3-52 SECTION 6. Section 12.104(b), Education Code, is amended to
3-53 read as follows:

3-54 (b) An open-enrollment charter school is subject to:

3-55 (1) a provision of this title establishing a criminal
3-56 offense; and

3-57 (2) a prohibition, restriction, or requirement, as
3-58 applicable, imposed by this title or a rule adopted under this
3-59 title, relating to:

3-60 (A) the Public Education Information Management
3-61 System (PEIMS) to the extent necessary to monitor compliance with
3-62 this subchapter as determined by the commissioner;

3-63 (B) criminal history records under Subchapter C,
3-64 Chapter 22;

3-65 (C) reading instruments and accelerated reading
3-66 instruction programs under Section 28.006;

3-67 (D) accelerated instruction under Section
3-68 28.0211;

3-69 (E) high school graduation requirements under

4-1 Section 28.025;
4-2 (F) special education programs under Subchapter
4-3 A, Chapter 29;
4-4 (G) bilingual education under Subchapter B,
4-5 Chapter 29;
4-6 (H) prekindergarten programs under Subchapter E
4-7 or E-1, Chapter 29;
4-8 (I) extracurricular activities under Section
4-9 33.081;
4-10 (J) discipline management practices or behavior
4-11 management techniques under Section 37.0021;
4-12 (K) health and safety under Chapter 38;
4-13 (L) public school accountability under
4-14 Subchapters B, C, D, E, F, G, and J, Chapter 39;
4-15 (M) the requirement under Section 21.006 to
4-16 report an educator's misconduct;
4-17 (N) intensive programs of instruction under
4-18 Section 28.0213; ~~and~~
4-19 (O) the right of a school employee to report a
4-20 crime, as provided by Section 37.148;
4-21 (P) bullying prevention policies and procedures
4-22 under Section 37.0832;
4-23 (Q) the right of a school under Section 37.0052
4-24 to place a student who has engaged in certain bullying behavior in a
4-25 disciplinary alternative education program or to expel the student;
4-26 and
4-27 (R) the requirement under Section 37.0151 to
4-28 report to local law enforcement certain conduct constituting
4-29 harassment.
4-30 SECTION 7. Section 33.006, Education Code, is amended by
4-31 amending Subsection (b) and adding Subsection (c) to read as
4-32 follows:
4-33 (b) In addition to a school counselor's responsibility
4-34 under Subsection (a), the school counselor shall:
4-35 (1) participate in planning, implementing, and
4-36 evaluating a comprehensive developmental guidance program to serve
4-37 all students and to address the special needs of students:
4-38 (A) who are at risk of dropping out of school,
4-39 becoming substance abusers, participating in gang activity, or
4-40 committing suicide;
4-41 (B) who are in need of modified instructional
4-42 strategies; or
4-43 (C) who are gifted and talented, with emphasis on
4-44 identifying and serving gifted and talented students who are
4-45 educationally disadvantaged;
4-46 (2) consult with a student's parent or guardian and
4-47 make referrals as appropriate in consultation with the student's
4-48 parent or guardian;
4-49 (3) consult with school staff, parents, and other
4-50 community members to help them increase the effectiveness of
4-51 student education and promote student success;
4-52 (4) coordinate people and resources in the school,
4-53 home, and community;
4-54 (5) with the assistance of school staff, interpret
4-55 standardized test results and other assessment data that help a
4-56 student make educational and career plans; ~~and~~
4-57 (6) deliver classroom guidance activities or serve as
4-58 a consultant to teachers conducting lessons based on the school's
4-59 guidance curriculum; and
4-60 (7) serve as an impartial, nonreporting conciliator
4-61 for interpersonal conflicts and discord involving two or more
4-62 students arising out of accusations of bullying under Section
4-63 37.0832.
4-64 (c) Nothing in Subsection (b)(7) exempts a school counselor
4-65 from any mandatory reporting requirements imposed by other
4-66 provisions of law.
4-67 SECTION 8. Title 6, Civil Practice and Remedies Code, is
4-68 amended by adding Chapter 129A to read as follows:

CHAPTER 129A. RELIEF FOR BULLYING OF CHILD

Sec. 129A.001. DEFINITIONS. In this chapter:

(1) "Bullying communication" means unwanted electronic communication directed at a recipient by a communicator:

(A) that consists of multiple communications:

(i) with respect to which the communicator acts intentionally and with malice;

(ii) that:

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

(b) were harassing and offensive and were made by the communicator acting in concert with two or more individuals the communicator knew to be making harassing and offensive communications directed at the recipient if the communications, when taken together, were extreme and outrageous in light of the manner, time, place, and number of communications; and

(iii) with respect to which the actions of the communicator caused or, if made in concert with other individuals as provided by Subparagraph (ii)(b), contributed to causing the recipient to suffer severe emotional distress; or

(B) in which the communicator in multiple communications, acting intentionally and with malice:

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

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

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

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

(3) "Communicator" means a natural person who sends bullying communication.

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

(5) "Intimate visual material" has the meaning assigned by Section 98B.001.

(6) "Recipient" means a person who receives bullying communication.

Sec. 129A.002. ACTIONABLE BULLYING. A person engages in actionable bullying for the purposes of this chapter if the person directs bullying communication toward a single recipient who, at the time of the communication, is younger than 18 years of age.

Sec. 129A.003. LIABILITY. A defendant is liable to a claimant under this chapter if the claimant shows that the defendant engaged in actionable bullying directed toward the recipient that proximately caused harm to the recipient.

Sec. 129A.004. DAMAGES. A claimant who prevails in a suit under this chapter may recover actual damages for all physical, mental, or emotional injury proximately caused by the actionable bullying that is the subject of the suit. The claimant may recover actual damages for mental anguish in an amount not to exceed \$5,000 in a suit brought under this chapter, regardless of the number of defendants named in the suit. Total damages under this section may not exceed \$25,000 in a suit brought under this chapter, regardless of the number of defendants named in the suit.

Sec. 129A.005. PARENTAL RESPONSIBILITY. (a) A parent of or person standing in parental relation to a child who engages in

6-1 actionable bullying directed toward the recipient is liable to the
6-2 claimant for the lesser of:

6-3 (1) damages recoverable by the claimant under Section
6-4 129A.004; or

6-5 (2) \$10,000.

6-6 (b) It is an affirmative defense to liability under this
6-7 chapter that a parent or person standing in parental relation:

6-8 (1) took reasonable actions to supervise a
6-9 communicator's use of the means employed by the communicator to
6-10 direct bullying communication to a recipient; and

6-11 (2) either:

6-12 (A) did not know about the bullying
6-13 communication; or

6-14 (B) if the parent or person standing in parental
6-15 relation knew about the bullying communication, took reasonable
6-16 actions to cause the communicator to cease sending bullying
6-17 communications.

6-18 Sec. 129A.006. INJUNCTIVE RELIEF. (a) A recipient of
6-19 bullying communication who is younger than 18 years of age at the
6-20 time the communication is received or a parent of or person standing
6-21 in parental relation to the recipient may seek injunctive relief
6-22 under this chapter against the individual who sent the bullying
6-23 communication or, if the communicator is younger than 18 years of
6-24 age, against a parent of or person standing in parental relation to
6-25 the communicator.

6-26 (b) A court may issue a temporary restraining order,
6-27 temporary injunction, or permanent injunction appropriate under
6-28 the circumstances to prevent any further bullying communication,
6-29 including an order or injunction:

6-30 (1) enjoining a defendant from sending bullying
6-31 communication; or

6-32 (2) compelling a defendant who is a parent of or person
6-33 standing in parental relation to a communicator who is younger than
6-34 18 years of age to take reasonable actions to cause the communicator
6-35 to cease sending bullying communication.

6-36 (c) A plaintiff in an action for injunctive relief brought
6-37 under this section is entitled to a temporary restraining order on
6-38 showing that the plaintiff is likely to succeed in establishing
6-39 that the communicator sent bullying communication to the recipient.
6-40 The plaintiff is not required to plead or prove that, before notice
6-41 can be served and a hearing can be held, immediate and irreparable
6-42 injury, loss, or damage is likely to result from past or future
6-43 bullying communication by the communicator to the recipient.

6-44 (d) A plaintiff is entitled to a temporary or permanent
6-45 injunction under this section on showing that the communicator sent
6-46 bullying communication to the recipient.

6-47 (e) A court granting a temporary restraining order or
6-48 temporary injunction under this section may, on motion of either
6-49 party or sua sponte, order the preservation of any relevant
6-50 electronic communication. The temporary restraining order or
6-51 temporary injunction is not required to:

6-52 (1) define the injury or state why it is irreparable;

6-53 (2) state why the order was granted without notice; or

6-54 (3) include an order setting the cause for trial on the
6-55 merits with respect to the ultimate relief requested.

6-56 Sec. 129A.007. PROMULGATION OF FORMS. (a) The supreme
6-57 court shall, as the court finds appropriate, promulgate forms for
6-58 use as an application for initial injunctive relief by individuals
6-59 representing themselves in suits involving bullying communication
6-60 and instructions for the proper use of each form or set of forms.

6-61 (b) The forms and instructions:

6-62 (1) must be written in language that is easily
6-63 understood by the general public;

6-64 (2) shall be made readily available to the general
6-65 public in the manner prescribed by the supreme court; and

6-66 (3) must be translated into the Spanish language.

6-67 (c) The Spanish language translation of a form must:

6-68 (1) state:

6-69 (A) that the Spanish language translated form is

7-1 to be used solely for the purpose of assisting in understanding the
 7-2 form and may not be submitted to the court; and

7-3 (B) that the English language version of the form
 7-4 must be submitted to the court; or

7-5 (2) be incorporated into the English language version
 7-6 of the form in a manner that is understandable to both the court and
 7-7 members of the general public.

7-8 (d) Each form and its instructions must clearly and
 7-9 conspicuously state that the form is not a substitute for the advice
 7-10 of an attorney.

7-11 (e) The attorney general and the clerk of a court shall make
 7-12 the form available free of charge.

7-13 (f) A court shall accept a form promulgated by the supreme
 7-14 court under this section unless the form has been completed in a
 7-15 manner that causes a substantive defect that cannot be cured.

7-16 Sec. 129A.008. ATTORNEY'S FEES AND COSTS. In a proceeding
 7-17 under this chapter, the court may award to any claimant or defendant
 7-18 costs and reasonable and necessary attorney's fees as are equitable
 7-19 and just. The amount awarded to any party under this section for
 7-20 attorney's fees may not exceed \$5,000.

7-21 Sec. 129A.009. INAPPLICABILITY. (a) An action filed under
 7-22 this chapter may not be joined with an action filed under Title 1,
 7-23 4, or 5, Family Code.

7-24 (b) Chapter 27 does not apply to an action under this
 7-25 chapter.

7-26 Sec. 129A.010. CERTAIN CONDUCT EXCEPTED. This chapter does
 7-27 not apply to a claim brought against an interactive computer
 7-28 service, as defined by 47 U.S.C. Section 230, for bullying
 7-29 communication.

7-30 SECTION 9. Chapter 22, Penal Code, is amended by adding
 7-31 Section 22.081 to read as follows:

7-32 Sec. 22.081. HARASSMENT OF CHILD TO CAUSE SUICIDE OR
 7-33 SERIOUS BODILY INJURY. (a) In this section, "child" means a
 7-34 person younger than 18 years of age.

7-35 (b) A person commits an offense if the person directs
 7-36 multiple written, oral, or electronic communication toward a child
 7-37 in a manner that is reasonably likely to harass, annoy, alarm,
 7-38 abuse, torment, embarrass, or offend the child, with the intent
 7-39 that the child:

7-40 (1) commit suicide; or

7-41 (2) engage in conduct causing serious bodily injury to
 7-42 the child.

7-43 (c) An offense under this section is a Class B misdemeanor,
 7-44 except that the offense is a Class A misdemeanor if:

7-45 (1) it is shown on the trial of the offense that the
 7-46 actor:

7-47 (A) acted in concert with another person to
 7-48 engage in the conduct described in this section with respect to the
 7-49 same victim; or

7-50 (B) has been previously convicted of an offense
 7-51 under this section; or

7-52 (2) the actor's conduct causes the child to commit
 7-53 suicide or causes the child to attempt to commit suicide and that
 7-54 attempt results in serious bodily injury to the child.

7-55 (d) For the purposes of Subsection (c)(1)(B), a defendant
 7-56 has been previously convicted under this section if the defendant
 7-57 was adjudged guilty of the offense or entered a plea of guilty or
 7-58 nolo contendere in return for a grant of deferred adjudication
 7-59 community supervision, regardless of whether the sentence for the
 7-60 offense was ever imposed or whether the sentence was probated and
 7-61 the defendant was subsequently discharged from deferred
 7-62 adjudication community supervision.

7-63 (e) A person who is subject to prosecution under both this
 7-64 section and another law may be prosecuted under either or both this
 7-65 section and the other law.

7-66 SECTION 10. Section 37.0832(b), Education Code, is
 7-67 repealed.

7-68 SECTION 11. Chapter 129A, Civil Practice and Remedies Code,
 7-69 as added by this Act, applies only to a cause of action that accrues

8-1 on or after the effective date of this Act. A cause of action that
8-2 accrues before the effective date of this Act is governed by the law
8-3 in effect immediately before that date, and that law is continued in
8-4 effect for that purpose.

8-5 SECTION 12. The change in law made by this Act applies only
8-6 to an offense committed or conduct violating a penal law of this
8-7 state that occurs on or after the effective date of this Act. An
8-8 offense committed or conduct that occurs before the effective date
8-9 of this Act is governed by the law in effect on the date the offense
8-10 was committed or conduct occurred, and the former law is continued
8-11 in effect for that purpose. For purposes of this section, an
8-12 offense was committed or conduct violating a penal law of this state
8-13 occurred before the effective date of this Act if any element of the
8-14 offense or conduct occurred before that date.

8-15 SECTION 13. This Act takes effect September 1, 2017.

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