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Submission to House Public Education Committee
Related to Interim Charges 1C and 1F

HB18 and SB11, as you know, have been highly controversial. The obvious need for safety, protection against violence and reversing the trend on teen suicide deserved a much more deliberative process. Therefore, it is not surprising that a ballot proposition showed up on the Texas Republican primary ballot reaffirming the right of parents and legal guardians to be the sole decisionmakers as to their children's health, mental health, contraception, and sex education. It is also not surprising that over 90% of Republican primary voters supported that proposition.¹

Our need for solutions also exposes us to risks in the form of agendas, programs that are untested, or that have not shown themselves to be effective in spite of tens of millions of dollars in spending.

In the case of mental health, there is also a history and current experience of fraud and abuse that needs to be front of mind when considering what programs are allowed access to the captive population of public-school students. Unfortunately, as time goes by, we have fewer legislators, staffers and advocates who experienced having to deal with rampant fraud in these systems. Some of us who do remember see the potential of history repeating itself.

HB18- The attempt at mental health education envisioned in HB18 and duplicated in SB11 is not new.

In 1946, Canadian psychiatrist G. Brock Chisholm stated:

*"The re-interpretation and eventually eradication of the concept of right and wrong, which has been the basis of child training, the substitution of intelligent and rational thinking for faith in the certainties of the old people, these are the belated objectives of practically all effective psychotherapy. Would they not be legitimate objectives of original education?"*²

He proposed:

*"psychology and sociology and simple psychopathology", should be taught in primary and secondary school. "while the study of such things as trigonometry, Latin, religions and others of specialist concern should be left to universities."*³

Why was this important?

*"If the race is to be freed from its crippling burden of good and evil it must be the psychiatrists who take original responsibility."*⁴

If Chisholm had been a fringe psychiatrist, a crackpot with strange ideas, this would be easy to ignore.

Chisholm was far from fringe. When the World Health Organization was established, he became its first Director-General.⁵ He was also a proponent of redistribution of wealth. He even proposed that it might actually be neurotic for one to defend one's belongings:

*"Even self defence [this spelling in original text] may involve a neurotic reaction when it means defending one's own excessive material wealth from others who are in great need."*⁶

Community values are important. That's why Texas Education Code Sec.28.004 leaves it to local School Health Advisory Councils to make recommendations on the age appropriateness of health curriculum and whether it aligns with community values. A basic problem with HB18, and repeated in SB11, is that it amends Texas Education Code Sec.28.002 to require a state mental health curriculum, while 28.004 leaves it to local districts to align this with community values and age appropriateness.

We were appalled to see that the proposed mental health curriculum justified by HB18/SB11 included teaching children as young as 9-years old about suicide and self-harm.

This is unconscionable. We know of no study that supports teaching children this young about suicide. While unintended adverse experiences with suicide prevention efforts are not well studied, a published review found at least some indication that some such curricula could be upsetting to students.⁷ It did not appear that the populations studied were so young either.⁸ Such curriculum itself could expose a very low risk population to potential risks.

Most of us try to shield our young children from disturbing content or situations that are not age appropriate. Thankfully, on the strength of a number of testimonies the State Board of Education chose not to recommend teaching these young children such subject matter.

While we appreciate the SBOE's actions, the problems with the curriculum are not entirely resolved.

We remain concerned about the number of complicated mental health concepts the proposed curriculum would teach young children beginning in kindergarten. How many young children will become confused? How many will come to believe their perfectly normal emotions are an indication they have an illness, a brain problem?

Schools as a marketplace- The fact is that our schools are a marketplace, not only for funding and programs, but for ideas and agendas. In 2016, Stat News reported on drug companies developing comic books, lesson plans and other materials meant to educate children on conditions for which they just happened to have product.⁹

We were reminded of this when we requested documents related to a mental health education program run by UT Southwestern Medical School and offered in a number of DFW area school districts. Although a local school district allowed us to examine the booklet that goes with the curriculum, we remain unable to see the interactive presentation or the policies and procedures related to the program. According to UTSW's argument to the Attorney General's Open Records Division:

We have explained how the University is a marketplace competitor. In addition, we have explained how the release of the submitted information will jeopardize the University's objectives and goals and result in specific harm to the University's marketplace interests. As such, the University asserts that the information at issue is protected from disclosure under § 552.104.

Any school health or mental health program or curriculum deserves full transparency. Any parent or individual should be able to know anything about a curriculum or program, its source, its objectives and whether the authors have connections with vested interests such as drug companies. Given a captive population of millions of students, and the considerable funding that follows them, we believe transparency should trump the marketplace interests of vendors. We believe you should be concerned about this lack of transparency too.

Texas should not expose children to complicated concepts that could be disturbing or that could lead them to believe their perfectly normal childhood emotions are a potential disease or brain defect.

Texas should be mindful of the fact that public school children are a captive marketplace and therefore need protections.

Texas should be sensitive to the fact that parents should be the final decision maker as to what content their children are exposed to.

Giving private providers access to our public schools is problematic- Given that public school students do represent a captive marketplace, you should also be concerned about school health and mental health clinics run by private providers, which is envisioned in HB18. What relationships do these providers have? Do they also own or operate inpatient mental health facilities? Are they a regular referral source? Do the personnel "moonlight" for psychiatric hospitals?

While the 86th Legislature was in session, a psychiatric hospital company near Dallas was under indictment, accused of holding voluntary patients against their will, among other things. In August 2019, they pled guilty.¹⁰

Also, in 2019, without admitting wrongdoing, the nation's largest chain of psychiatric facilities entered into a \$117 million federal settlement concerning admission and discharge practices, among other things. According to the US Department of Justice press release:

*"As part of a comprehensive civil settlement, UHS will pay the United States and participating states a total of \$117 million to resolve allegations that its hospitals and facilities knowingly submitted false claims for payment to the Medicare, Medicaid, TRICARE, Department of Veterans Affairs, and Federal Employee Health Benefit programs for inpatient behavioral health services that were not reasonable or medically necessary and/or failed to provide adequate and appropriate services for adults and children admitted to UHS facilities across the country."*¹¹

Then there is the problem of overreach: As you read this submission, Austin Independent School District has announced that it will be conducting 1-minute Zoom interviews of all 80,000 of its students to check up on their mental health.¹² A District official told KXAN that the district is "...providing an opportunity for them to reach out to an adult or to someone on the campus who connects with them."

This negates the fact that children have parents and other adults who care for them and who likely are much more familiar with them than a school official can become in a 1-minute Zoom interview. What is the consent process for this program? What are the questions? Where is the budget money for school mental health personnel to do a 1-minute Zoom conference with each of 80,000 students? Who gets the referrals?

Given concerns surrounding isolation during the pandemic, it would certainly be understandable if the District sent a series of e-mails to parents and conducted a Public Awareness campaign to make sure parents are aware of resources for their children, should they need them. This program seems much more direct, much more intrusive than that.

Perhaps this is the kind of overreach that led over 90% of voters in this year's Texas Republican Primary to agree with the proposition that parents or legal guardians should be the sole decision makers as to their children's health care, mental health care and sex education.

If unparalleled access to the captive market of Texas public school students leads to fraud and abuse, the harm related to such programs could far outweigh the benefit the legislature sought to achieve.

In 1992, a Congressional committee held hearings on rampant fraud schemes involving inpatient psychiatric hospitals, in which thousands of children, adolescents and adults were unnecessarily held. Among allegations was that school counselors had been paid kickbacks to identify and refer children. Texas Congressman Lamar Smith stated, *"Society should be judged on its ability to take care of its youngest and nothing is more fragile than childhood. Nothing is more shameful than allowing our children to believe something is wrong with them by fraudulently institutionalizing them."*¹³

The Texas Legislature should study and enact robust protections against fraud, coercion and abuse related to school mental health programs.

SB11- SB11 has some of the same features as HB18 but there's more. Many schools are conducting digital surveillance on students.

Texas invested significant spending on SB11 without really knowing how well these programs work.

In October 2019, the Houston Chronicle quoted a number of experts who cast doubt on whether threat assessment can achieve what was promised:

"It's very much in the beginning stages," said James Silver, a Worcester State University criminal justice professor who has worked with FBI behavioral analysts on threat assessment studies. "We're nowhere near able to predict" behavior.

"We can do a little bit better than chance," added Dewey Cornell, a University of Virginia professor considered a national authority on school threat assessment. "But it's not nearly good enough for life and death decisions."

“A lot of the variables associated with somebody who does these things are also associated with somebody who doesn’t,” said Neil Shortland, director of the Center for Terrorism and Security Studies at the University of Massachusetts Lowell. “There are a huge number of false positives — people who may look risky but who never are going to do anything.”¹⁴

The last quote gets to the heart of the problem- how many false positives are we creating? If students are identified as a risk, the idea that mental health intervention could mitigate the risk is wishful thinking. It’s also doubtful that such interventions are benign. What does happen to the false positives?

During the debate on SB11, there was little to no mention about the robust surveillance systems many schools are using. BuzzFeed News reported in November 2019 that some Texas schools are using a surveillance service that captures student “homework assignments, essays, emails, pictures, creative writing, songs they've written, and chats with friends and classmates.”¹⁵ This was one of a series of reports. BuzzFeed even posted some of its source documents. Further research has revealed a number surveillance services in use.

We all understand that certain rights and protections are surrendered or compromised at the schoolhouse door. In general, the principal can question you about bad behavior. Your backpack may be searched, etc. We do not believe existing law envisioned a 24-hour surveillance cycle that can follow children home.

During the current pandemic, the public uptake of digital contact tracing has been slow as many have voiced concerns about government intrusion.¹⁶

How comfortable would parents be to know the extent to which their children are being subjected to digital surveillance? How many internal family matters are revealed in this process? If you are comfortable with your child’s school surveillance system reading his or her e-mails, how comfortable would you be with the school reading his or her e-mails to you?

There are questions about the evidence that these surveillance programs work, as well as questions about how they impact children of color, LGBTQ population or others.¹⁷ How comfortable should parents be that such surveillance could fall heavily on their children because of race, gender or disability issues?

The risk of digital surveillance is not limited to privacy. In January, Houston’s KPRC TV reported that more teachers are getting caught having sex with students.¹⁸ Given this growing problem, we question the wisdom of the Texas School Safety Center’s issuance of a Digital Threat Assessment Toolkit that shows school personnel how to monitor a student’s social media without getting caught.¹⁹ We would submit that law enforcement would be the more appropriate user of such techniques and then only with probable cause.

A more recent development is that some providers of surveillance services now claim to be able to use “machine learning” or “artificial intelligence” to determine whether are children are potentially violent, self-harming, or even depressed. Our takeaway from a school “success story” was:

- Surveillance does not stop at the schoolhouse door. In some cases, it is 24/7/365.²⁰
- Intervention and “support” include hauling children off to hospitals.
- In addition to the risk of psychiatric labeling, drugs, or hospitalization, there could be juvenile justice implications.

We are vehemently opposed to any system of mental health surveillance or covert screening of students.

Schools already have an affirmative duty to seek out children they suspect of having disabling conditions. It’s called ChildFind. Unlike covert surveillance, it has procedural safeguards, parents are partners and children are treated as students, not suspects.

We are deeply concerned about informed parental consent. If schools were doing formal mental health screenings, parental notification and written informed parental consent would be required. We do not believe existing law envisioned a 24/7 system of surveillance and mental health observation by machine learning.

There is already controversy surrounding the use of mental health AI in mobile apps. We have no assurance as to how well these products work, any biases that may be inherent in these programs, or even that programs, once adopted, wouldn't change to something else. Unlike physical textbooks, apps are dynamic. They change, they are updated.

While we were not one of the groups expressing concern that children would be mental health screened without consent, perhaps all of us, including the members of this committee should have been more concerned.

Is it even possible to give truly informed consent to a potentially 24-hour cycle of surveillance and mental health monitoring?

Texas must incorporate adequate privacy protections into the Education Code.

Digital mental health monitoring has no place in our public schools.

Schools have no business gathering personal, mental health, or family data on students and their families unless it is part of a formal special education process in which parents are volunteering such information in order to access services.

Education Code sections related to parental consent for psychological screening need to be updated in light of these new developments.

Digital surveillance has no business being a school service. It should be a law enforcement tool used only when triggered by a certain type of event.

More should be done to protect any data that is gathered, even when it is de identified.

We continue to oppose school-based mental health clinics, if for no other reason than overreach and inherent potential for adverse experiences, fraud and abuse.

¹ <https://www.texasgop.org/republican-primary-ballot-propositions/>

² <https://mikemclaughry.files.wordpress.com/2012/12/psychiatry-of-enduring-peace-and-social-progress-chisholm-and-sullivan-1946.pdf>

³ Ibid

⁴ Ibid

⁵ [https://wfmh.global/about-](https://wfmh.global/about-us/history/#:~:text=George%20Brock%20Chisholm%2C%20a%20Canadian,organizations%20and%20United%20Nations%20agencies.&text=The%20original%20purpose%20of%20the%20ICMH%20was%20mental%20hospital%20reform.)

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⁶ Op Cit at 1.

⁷ <https://onlinelibrary.wiley.com/doi/full/10.1111/sltb.12492>

⁸ <https://onlinelibrary.wiley.com/doi/full/10.1111/sltb.12492>

⁹ <https://www.statnews.com/2016/06/02/drug-marketing-kids>

¹⁰ <https://dfw.cbslocal.com/2019/08/30/sundance-mental-hospital-pleads-guilty-to-criminal-charge-in-plea-deal/>

¹¹ <https://www.justice.gov/opa/pr/universal-health-services-inc-and-related-entities-pay-122-million-settle-false-claims-act>

¹² <https://www.kxan.com/news/education/austin-isd-plans-1-minute-1-on-1-meetings-with-all-80000-students/>

¹³ <https://babel.hathitrust.org/cgi/pt?id=umn.31951d00282733c&view=1up&seq=12>

¹⁴ <https://www.houstonchronicle.com/news/politics/texas/article/Gov-Abbott-wants-to-identify-mass-shooters-14653314.php>

¹⁵ <https://www.buzzfeednews.com/article/carolinehaskins1/gaggle-school-surveillance-technology-education>

¹⁶ <https://fortune.com/2020/08/17/contact-tracing-privacy-coronavirus-google-apple/>

¹⁷ <https://scholarship.law.unc.edu/cgi/viewcontent.cgi?article=6749&context=nclr>

¹⁸ <https://www.click2houston.com/news/2018/11/13/sex-with-students-why-more-texas-teachers-are-getting-caught/>

¹⁹ <https://txssc.txstate.edu/tools/dta-toolkit/1-what-is-dta/social-media-tool>

²⁰ <https://www.gaggle.net/success-stories/dickinson-independent-school-district/>