87R3796 TSS-F

By:  Bernal, Talarico H.B. No. 2278

A BILL TO BE ENTITLED

AN ACT

relating to the expulsion of public school students for engaging in conduct that constitutes serious offenses.

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

SECTION 1.  Section 37.007, Education Code, is amended to read as follows:

Sec. 37.007.  EXPULSION FOR SERIOUS OFFENSES. (a) Subject to the considerations required under Subsection (c) and except [~~Except~~] as provided by Subsection (h) [~~(k)~~], a student shall be expelled from a school if the student:

(1)  while[~~,~~] on school property or while attending a school-sponsored or school-related activity on or off of school property:

(A) [~~(1)~~]  engages in conduct that contains the elements of the offense of unlawfully carrying weapons under Section 46.02, Penal Code, or elements of an offense relating to prohibited weapons under Section 46.05, Penal Code;

(B) [~~(2)~~]  engages in conduct that contains the elements of the offense of:

(i) [~~(A)~~]  aggravated assault under Section 22.02, Penal Code, sexual assault under Section 22.011, Penal Code, or aggravated sexual assault under Section 22.021, Penal Code;

(ii) [~~(B)~~]  arson under Section 28.02, Penal Code;

(iii) [~~(C)~~]  murder under Section 19.02, Penal Code, capital murder under Section 19.03, Penal Code, or criminal attempt, under Section 15.01, Penal Code, to commit murder or capital murder;

(iv) [~~(D)~~]  indecency with a child under Section 21.11, Penal Code;

(v) [~~(E)~~]  aggravated kidnapping under Section 20.04, Penal Code;

(vi) [~~(F)~~]  aggravated robbery under Section 29.03, Penal Code;

(vii) [~~(G)~~]  manslaughter under Section 19.04, Penal Code;

(viii) [~~(H)~~]  criminally negligent homicide under Section 19.05, Penal Code; or

(ix) [~~(I)~~]  continuous sexual abuse of young child or children under Section 21.02, Penal Code; or

(C) [~~(3)~~]  engages in conduct specified by Section 37.006(a)(2)(C) or (D), if the conduct is punishable as a felony; or

(2)  engages in conduct that contains the elements of any offense listed in Subdivision (1) against any employee or volunteer in retaliation for or as a result of the person's employment or association with a school district, without regard to whether the conduct occurs on or off of school property or while attending a school-sponsored or school-related activity on or off of school property.

(b)  Subject to the considerations required under Subsection (c), a [~~A~~] student may be expelled if the student:

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

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

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

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

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

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

(B)  engages in conduct that contains the elements of an offense relating to an abusable volatile chemical under Section [~~Sections~~] 485.031, 485.032, 485.033, or [~~through~~] 485.034, Health and Safety Code;

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

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

(3)  subject to Subsection (a)(2) [~~(d)~~], while within 300 feet of school property, as measured from any point on the school's real property boundary line:

(A)  engages in conduct specified by Subsection (a)(1); or

(B)  possesses a firearm, as defined by 18 U.S.C. Section 921;

(4)  engages in conduct that contains the elements of any offense listed in Subsection (a)(1)(B)(i) [~~(a)(2)(A)~~] or (iii) [~~(C)~~] or the offense of aggravated robbery under Section 29.03, Penal Code, against another student, without regard to whether the conduct occurs on or off of school property or while attending a school-sponsored or school-related activity on or off of school property; [~~or~~]

(5)  engages in conduct that contains the elements of the offense of breach of computer security under Section 33.02, Penal Code, if:

(A)  the conduct involves accessing a computer, computer network, or computer system owned by or operated on behalf of a school district; and

(B)  the student knowingly:

(i)  alters, damages, or deletes school district property or information; or

(ii)  commits a breach of any other computer, computer network, or computer system;

(6)  [~~. (c) A student may be expelled if the student,~~] while placed in a disciplinary alternative education program, engages in any of the following documented serious misbehavior while on the program campus despite documented behavioral interventions[~~. For purposes of this subsection, "serious misbehavior" means~~]:

(A) [~~(1)~~]  deliberate violent behavior that poses a direct threat to the health or safety of others;

(B) [~~(2)~~]  extortion, meaning the gaining of money or other property by force or threat;

(C) [~~(3)~~]  conduct that constitutes coercion, as defined by Section 1.07, Penal Code; or

(D) [~~(4)~~]  conduct that constitutes the offense of:

(i) [~~(A)~~]  public lewdness under Section 21.07, Penal Code;

(ii) [~~(B)~~]  indecent exposure under Section 21.08, Penal Code;

(iii) [~~(C)~~]  criminal mischief under Section 28.03, Penal Code;

(iv) [~~(D)~~]  personal hazing under Section 37.152; or

(v) [~~(E)~~]  harassment under Section 42.07(a)(1), Penal Code, of a student or district employee;

(7)  [~~. (d) A student shall be expelled if the student engages in conduct that contains the elements of any offense listed in Subsection (a), and may be expelled if the student~~] engages in conduct that contains the elements of any offense listed in Subdivision (2)(C) [~~Subsection (b)(2)(C)~~], against any employee or volunteer in retaliation for or as a result of the person's employment or association with a school district, without regard to whether the conduct occurs on or off of school property or while attending a school-sponsored or school-related activity on or off of school property;

(8)  engages in conduct that contains the elements of the offense of criminal mischief under Section 28.03, Penal Code, if the conduct is punishable as a felony under that section; or

(9)  engages in conduct described by Subsection (a)(1) while:

(A)  on school property of another district in this state; or

(B)  attending a school-sponsored or school-related activity of a school in another district in this state.

(c)  A school district shall consider each factor listed under Section 37.001(a)(4) before making a decision to expel a student under Subsection (a) or (b).

(d) [~~(e)~~]  In accordance with 20 U.S.C. Section 7151, a local educational agency, including a school district, home-rule school district, or open-enrollment charter school, shall expel a student who brings a firearm, as defined by 18 U.S.C. Section 921, to school. The student must be expelled from the student's regular campus for a period of at least one year, except that:

(1)  the superintendent or other chief administrative officer of the school district or of the other local educational agency, as defined by 20 U.S.C. Section 7801, may modify the length of the expulsion in the case of an individual student;

(2)  the district or other local educational agency shall provide educational services to an expelled student in a disciplinary alternative education program as provided by Section 37.008 if the student is younger than 10 years of age on the date of expulsion; and

(3)  the district or other local educational agency may provide educational services to an expelled student who is 10 years of age or older in a disciplinary alternative education program as provided in Section 37.008.

(e) [~~(f)~~]  A student who engages in conduct described by Subsection (b)(8) [~~that contains the elements of the offense of criminal mischief under Section 28.03, Penal Code, may be expelled at the district's discretion if the conduct is punishable as a felony under that section. The student~~] shall be referred to the authorized officer of the juvenile court regardless of whether the student is expelled under Subsection (b).

(f) [~~(g)~~]  In addition to any notice required under Article 15.27, Code of Criminal Procedure, a school district shall inform each educator who has responsibility for, or is under the direction and supervision of an educator who has responsibility for, the instruction of a student who has engaged in any violation listed in this section of the student's misconduct. Each educator shall keep the information received under this subsection confidential from any person not entitled to the information under this subsection, except that the educator may share the information with the student's parent or guardian as provided for by state or federal law. The State Board for Educator Certification may revoke or suspend the certification of an educator who intentionally violates this subsection.

(g) [~~(h)~~]  Subject to Subsection (d) [~~(e)~~], notwithstanding any other provision of this section, a student who is younger than 10 years of age may not be expelled for engaging in conduct described by this section.

(h)  [~~(i)  A student who engages in conduct described by Subsection (a) may be expelled from school by the district in which the student attends school if the student engages in that conduct:~~

[~~(1)  on school property of another district in this state; or~~

[~~(2)  while attending a school-sponsored or school-related activity of a school in another district in this state.~~

[~~(k)~~]  A student may not be expelled solely on the basis of the student's use, exhibition, or possession of a firearm that occurs:

(1)  at an approved target range facility that is not located on a school campus; and

(2)  while participating in or preparing for a school-sponsored shooting sports competition or a shooting sports educational activity that is sponsored or supported by the Parks and Wildlife Department or a shooting sports sanctioning organization working with the department.

(i) [~~(l)~~]  Subsection (h) [~~(k)~~] does not authorize a student to bring a firearm on school property to participate in or prepare for a school-sponsored shooting sports competition or a shooting sports educational activity described by that subsection.

SECTION 2.  Section 37.001(e), Education Code, is amended to read as follows:

(e)  Except as provided by Section 37.007(d) [~~37.007(e)~~], this subchapter does not require the student code of conduct to specify a minimum term of a removal under Section 37.006 or an expulsion under Section 37.007.

SECTION 3.  Section 37.002(d), Education Code, is amended to read as follows:

(d)  A teacher shall remove from class and send to the principal for placement in a disciplinary alternative education program or for expulsion, as appropriate, a student who engages in conduct described under Section 37.006 or 37.007. The student may not be returned to that teacher's class without the teacher's consent unless the committee established under Section 37.003 determines that such placement is the best or only alternative available. If the teacher removed the student from class because the student has engaged in the elements of any offense listed in Section 37.006(a)(2)(B) or Section 37.007(a)(1)(B)(i) [~~37.007(a)(2)(A)~~] or (b)(2)(C) against the teacher, the student may not be returned to the teacher's class without the teacher's consent. The teacher may not be coerced to consent.

SECTION 4.  Section 37.0021(f), Education Code, is amended to read as follows:

(f)  For purposes of this subsection, "weapon" includes any weapon described under Section 37.007(a)(1)(A) [~~37.007(a)(1)~~]. This section does not prevent a student's locked, unattended confinement in an emergency situation while awaiting the arrival of law enforcement personnel if:

(1)  the student possesses a weapon; and

(2)  the confinement is necessary to prevent the student from causing bodily harm to the student or another person.

SECTION 5.  Sections 37.006(b), (f), and (l), Education Code, are amended to read as follows:

(b)  Except as provided by Sections 37.007(a)(2) and (b)(7) [~~Section 37.007(d)~~], a student shall be removed from class and placed in a disciplinary alternative education program under Section 37.008 if the student engages in conduct on or off of school property that contains the elements of the offense of retaliation under Section 36.06, Penal Code, against any school employee.

(f)  Subject to Section 37.007(d) [~~37.007(e)~~], a student who is younger than 10 years of age shall be removed from class and placed in a disciplinary alternative education program under Section 37.008 if the student engages in conduct described by Section 37.007. An elementary school student may not be placed in a disciplinary alternative education program with any other student who is not an elementary school student.

(l)  Notwithstanding any other provision of this code, other than Section 37.007(d)(2) [~~37.007(e)(2)~~], a student who is younger than six years of age may not be removed from class and placed in a disciplinary alternative education program.

SECTION 6.  Section 37.010(b), Education Code, is amended to read as follows:

(b)  If a student is expelled under Section 37.007(b)(6) [~~37.007(c)~~], the board or its designee shall refer the student to the authorized officer of the juvenile court for appropriate proceedings under Title 3, Family Code.

SECTION 7.  Sections 37.011(b), (h), (k), (l), and (p), Education Code, are amended to read as follows:

(b)  If a student admitted into the public schools of a school district under Section 25.001(b) is expelled from school [~~for conduct for which expulsion is required~~] under Section 37.007(a) or (d) [~~37.007(a), (d), or (e)~~], or for conduct that contains the elements of the offense of terroristic threat as described by Section 22.07(c-1), (d), or (e), Penal Code, the juvenile court, the juvenile board, or the juvenile board's designee, as appropriate, shall:

(1)  if the student is placed on probation under Section 54.04, Family Code, order the student to attend the juvenile justice alternative education program in the county in which the student resides from the date of disposition as a condition of probation, unless the child is placed in a post-adjudication treatment facility;

(2)  if the student is placed on deferred prosecution under Section 53.03, Family Code, by the court, prosecutor, or probation department, require the student to immediately attend the juvenile justice alternative education program in the county in which the student resides for a period not to exceed six months as a condition of the deferred prosecution;

(3)  in determining the conditions of the deferred prosecution or court-ordered probation, consider the length of the school district's expulsion order for the student; and

(4)  provide timely educational services to the student in the juvenile justice alternative education program in the county in which the student resides, regardless of the student's age or whether the juvenile court has jurisdiction over the student.

(h)  Academically, the mission of juvenile justice alternative education programs shall be to enable students to perform at grade level. For purposes of accountability under Chapters 39 and 39A, a student enrolled in a juvenile justice alternative education program is reported as if the student were enrolled at the student's assigned campus in the student's regularly assigned education program, including a special education program. Annually the Texas Juvenile Justice Department, with the agreement of the commissioner, shall develop and implement a system of accountability consistent with Chapters 39 and 39A, where appropriate, to assure that students make progress toward grade level while attending a juvenile justice alternative education program. The department shall adopt rules for the distribution of funds appropriated under this section to juvenile boards in counties required to establish juvenile justice alternative education programs. Except as determined by the commissioner, a student served by a juvenile justice alternative education program on the basis of an expulsion [~~required~~] under Section 37.007(a) or (d) [~~37.007(a), (d), or (e)~~] is not eligible for Foundation School Program funding under Chapter 31 or 48 if the juvenile justice alternative education program receives funding from the department under this subchapter.

(k)  Each school district in a county with a population greater than 125,000 and the county juvenile board shall annually enter into a joint memorandum of understanding that:

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

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

(3)  establishes that a student may be placed in the juvenile justice alternative education program if the student engages in any serious misbehavior described[~~, as defined~~] by Section 37.007(b)(6) [~~37.007(c)~~];

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

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

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

(7)  establishes the circumstances and conditions under which a juvenile may be allowed to remain in the juvenile justice alternative education program setting once the juvenile is no longer under juvenile court jurisdiction; and

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

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

(p)  If a district elects to contract with the juvenile board for placement in the juvenile justice alternative education program of students expelled under Section 37.007(b)[~~, (c), and (f)~~] and the juvenile board and district are unable to reach an agreement in the memorandum of understanding, either party may request that the issues of dispute be referred to a binding arbitration process that uses a qualified alternative dispute resolution arbitrator in which each party will pay its pro rata share of the arbitration costs. Each party must submit its final proposal to the arbitrator. If the parties cannot agree on an arbitrator, the juvenile board shall select an arbitrator, the school districts shall select an arbitrator, and those two arbitrators shall select an arbitrator who will decide the issues in dispute. An arbitration decision issued under this subsection is enforceable in a court in the county in which the juvenile justice alternative education program is located. Any decision by an arbitrator concerning the amount of the funding for a student who is expelled and attending a juvenile justice alternative education program must provide an amount sufficient based on operation of the juvenile justice alternative education program in accordance with this chapter. In determining the amount to be paid by a school district for an expelled student enrolled in a juvenile justice alternative education program, the arbitrator shall consider the relevant factors, including evidence of:

(1)  the actual average total per student expenditure in the district's alternative education setting;

(2)  the expected per student cost in the juvenile justice alternative education program as described and agreed on in the memorandum of understanding and in compliance with this chapter; and

(3)  the costs necessary to achieve the accountability goals under this chapter.

SECTION 8.  Section 37.012(a), Education Code, is amended to read as follows:

(a)  Subject to Section 37.011(n), the school district in which a student is enrolled on the date the student is expelled [~~for conduct for which expulsion is permitted but not required~~] under Section 37.007(b) [~~37.007~~] shall, if the student is served by the juvenile justice alternative education program, provide funding to the juvenile board for the portion of the school year for which the juvenile justice alternative education program provides educational services in an amount determined by the memorandum of understanding under Section 37.011(k)(2).

SECTION 9.  Section 37.015(a), Education Code, is amended to read as follows:

(a)  The principal of a public or private primary or secondary school, or a person designated by the principal under Subsection (d), shall notify any school district police department and the police department of the municipality in which the school is located or, if the school is not in a municipality, the sheriff of the county in which the school is located if the principal has reasonable grounds to believe that any of the following activities occur in school, on school property, or at a school-sponsored or school-related activity on or off school property, whether or not the activity is investigated by school security officers:

(1)  conduct that may constitute an offense listed under Section 508.149, Government Code;

(2)  deadly conduct under Section 22.05, Penal Code;

(3)  a terroristic threat under Section 22.07, Penal Code;

(4)  the use, sale, or possession of a controlled substance, drug paraphernalia, or marihuana under Chapter 481, Health and Safety Code;

(5)  the possession of any of the weapons or devices listed under Sections 46.01(1)-(14) or Section 46.01(16), Penal Code;

(6)  conduct that may constitute a criminal offense under Section 71.02, Penal Code; or

(7)  conduct that may constitute a criminal offense for which a student may be expelled under Section 37.007(a) or (d) [~~37.007(a), (d), or (e)~~].

SECTION 10.  Section 37.020(c), Education Code, is amended to read as follows:

(c)  For each expulsion under Section 37.007, the district shall report:

(1)  information identifying the student, including the student's race, sex, and date of birth, that will enable the agency to compare placement data with information collected through other reports;

(2)  information indicating whether the expulsion was based on:

(A)  conduct described by [~~for which expulsion is required under~~] Section 37.007(a) [~~37.007, including information specifically indicating whether a student was expelled on the basis of Section 37.007(e)~~]; [~~or~~]

(B)  conduct described by [~~for which expulsion is permitted under~~] Section 37.007(b) [~~37.007~~]; or

(C)  conduct described by Section 37.007(d);

(3)  the number of full or partial days the student was expelled;

(4)  information indicating whether:

(A)  the student was placed in a juvenile justice alternative education program under Section 37.011;

(B)  the student was placed in a disciplinary alternative education program; or

(C)  the student was not placed in a juvenile justice or other disciplinary alternative education program; and

(5)  the number of expulsions that were inconsistent with the guidelines included in the student code of conduct under Section 37.001(a)(5).

SECTION 11.  Section 37.022(c), Education Code, is amended to read as follows:

(c)  Subject to Section 37.007(d) [~~37.007(e)~~], the district or school in which the student enrolls may continue the disciplinary action under the terms of the order or may allow the student to attend regular classes without completing the period of disciplinary action.

SECTION 12.  Section 37.310, Education Code, is amended to read as follows:

Sec. 37.310.  FUNDING FOR REGISTERED SEX OFFENDER PLACED IN JUVENILE JUSTICE ALTERNATIVE EDUCATION PROGRAM. A juvenile justice alternative education program is entitled to funding for a student who is placed in the program under this subchapter in the same manner as a juvenile justice alternative education program is entitled to funding under Section 37.012 for a student who is expelled and placed in a juvenile justice alternative education program for conduct described by [~~for which expulsion is permitted but not required under~~] Section 37.007(b) [~~37.007~~].

SECTION 13.  Section 51.03(b), Family Code, is amended to read as follows:

(b)  Conduct indicating a need for supervision is:

(1)  subject to Subsection (f), conduct, other than a traffic offense, that violates:

(A)  the penal laws of this state of the grade of misdemeanor that are punishable by fine only; or

(B)  the penal ordinances of any political subdivision of this state;

(2)  the voluntary absence of a child from the child's home without the consent of the child's parent or guardian for a substantial length of time or without intent to return;

(3)  conduct prohibited by city ordinance or by state law involving the inhalation of the fumes or vapors of paint and other protective coatings or glue and other adhesives and the volatile chemicals itemized in Section 485.001, Health and Safety Code;

(4)  an act that violates a school district's previously communicated written standards of student conduct for which the child has been expelled under Section 37.007(b)(6) [~~37.007(c)~~], Education Code;

(5)  notwithstanding Subsection (a)(1), conduct described by Section 43.02(a) or (b), Penal Code; or

(6)  notwithstanding Subsection (a)(1), conduct that violates Section 43.261, Penal Code.

SECTION 14.  This Act applies beginning with the 2021-2022 school year.

SECTION 15.  This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2021.