

## **BILL ANALYSIS**

C.S.S.B. 629  
By: Menéndez  
Public Education  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Texas' fentanyl overdose crisis is impacting Texans of all ages—and children are no exception. According to the CDC, from 2019 to 2021, teen overdose deaths involving fentanyl increased by 182 percent. In these cases, children often think they're taking a drug like Adderall, without knowing that the pill is laced with fentanyl—a synthetic opioid that is 50 times more potent than heroin and 100 times more potent than morphine. Other times, children don't even know they're taking a drug and may think they're eating candy, as many fentanyl-laced pills are colorful and shaped like sweets. Some school districts across Texas are adopting policies to ensure campuses are stocked with Narcan—the lifesaving drug that can reverse an opioid overdose—and to ensure each campus has at least one school employee who is trained and authorized to administer the medication in the case of an overdose emergency. For example, after losing several students to opioid overdoses last summer, Hays CISD adopted a policy regarding the maintenance and administration of Narcan in its schools. However, many schools are still wholly unequipped to respond to an overdosing student. C.S.S.B. 629 seeks to require each public school district to adopt a policy regarding the maintenance, administration, and disposal of opioid antagonists for schools serving students in grades 6 through 12. The bill gives private schools, charter schools, and schools not serving students in grades 6 through 12 the option to adopt such a policy.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 1 of this bill and jointly to the executive commissioner and the commissioner of education in SECTION 1 of this bill.

### **ANALYSIS**

C.S.S.B. 629 amends the Education Code to require each public school district to adopt and implement a policy regarding the maintenance, administration, and disposal of opioid antagonists at each campus in the district that serves students in grades 6 through 12 and to authorize each district to adopt and implement such a policy at each campus in the district, including campuses serving students in a grade level below grade 6. The bill authorizes an open-enrollment charter school or private school to adopt and implement such a policy, with respect to:

- campuses of the school that serve students in grades 6 through 12; or
- at each campus of the school, including campuses serving students in a grade level below grade 6.

A policy adopted by a district, charter school, or private school must:

- provide that school personnel and school volunteers who are authorized and trained may administer an opioid antagonist to a person who is reasonably believed to be experiencing an opioid-related drug overdose;
- require that each school campus subject to the policy have one or more of such school personnel members or school volunteers present during regular school hours;
- establish the number of opioid antagonists that must be available at each campus at any given time; and
- require that the supply of opioid antagonists at each school campus must be stored in a secure location and be easily accessible to such school personnel and school volunteers.

C.S.S.B. 629 requires the executive commissioner of the Health and Human Services Commission (HHSC), in consultation with the commissioner of education and not later than November 1, 2023, to adopt rules regarding the maintenance, administration, and disposal of opioid antagonists at a school campus with an adopted policy. The rules must establish the following:

- the process for checking the inventory of opioid antagonists at regular intervals for expiration and replacement; and
- the amount of training required for school personnel and school volunteers to administer an opioid antagonist.

The bill establishes that a district is not required to adopt a policy before January 1, 2024, with respect to each campus that serves students in grade 6 through 12.

C.S.S.B. 629 requires a school, not later than the 10th business day after the date a school personnel member or school volunteer administers an opioid antagonist, to report to the district, charter holder, or governing body of the private school, as applicable; the person who prescribed the opioid antagonist; and the commissioner of state health services the following information:

- the age of the person who received the administration of the opioid antagonist;
- whether the person who received the administration of the opioid antagonist was a student, a school personnel member or school volunteer, or a visitor;
- the physical location where the opioid antagonist was administered;
- the number of doses of opioid antagonist administered;
- the title of the person who administered the opioid antagonist; and
- any other information required by the commissioner of education.

C.S.S.B. 629 makes each district, charter school, or private school that adopts a policy under the bill's provisions responsible for training school personnel and school volunteers in the administration of an opioid antagonist and requires the training to do the following:

- include information on:
  - recognizing the signs and symptoms of an opioid-related drug overdose;
  - administering an opioid antagonist;
  - implementing emergency procedures, if necessary, after administering an opioid antagonist; and
  - properly disposing of used or expired opioid antagonists;
- be provided in a formal training session or through online education; and
- be provided in accordance with the professional development policy that each district board of trustees or governing body of a charter school must adopt annually.

The bill requires such a district, charter school, or private school to maintain records on the required training.

C.S.S.B. 629 authorizes a physician or person who has been delegated prescriptive authority in accordance with state law to prescribe opioid antagonists in the name of a district, charter school, or private school and requires such person to provide a general standing order to the district, charter school, or private school for the administration of the opioid antagonist. The standing order is not required to be patient-specific, and the opioid antagonist may be administered to a person without a previously established physician-patient relationship. The bill establishes that

supervision or delegation by a physician is considered adequate if the physician periodically reviews the order and is available through direct telecommunication as needed. The general standing order must contain the following:

- the name and signature of the prescribing physician or other person;
- the name of the district or school to which the order is issued;
- the quantity of opioid antagonists to be obtained and maintained under the order; and
- the date of issue.

The bill authorizes a pharmacist to dispense an opioid antagonist to a district, charter school, or private school without requiring any identifying information relating to the user. The bill authorizes a district, charter school, or private school to accept gifts, grants, donations, and federal and local funds to implement the bill.

C.S.S.B. 629 grants a person who in good faith takes, or fails to take, any action regarding the maintenance and administration of opioid antagonists immunity from civil or criminal liability or disciplinary action resulting from that action or failure to act, including:

- issuing an order for opioid antagonists;
- supervising or delegating the administration of an opioid antagonist;
- possessing, maintaining, storing, or disposing of an opioid antagonist;
- prescribing an opioid antagonist;
- dispensing an opioid antagonist;
- administering, or assisting in administering, an opioid antagonist;
- providing, or assisting in providing, training, consultation, or advice in the development, adoption, or implementation of policies, guidelines, rules, or plans; or
- undertaking any other act permitted or required under the bill's provisions.

The bill establishes that those immunities and protection are in addition to other immunities or limitations of liability provided by law. The bill establishes that a cause of action does not arise from an act or omission described by the bill. The bill expressly does not create a civil, criminal, or administrative cause of action or liability or create a standard of care, obligation, or duty that provides a basis for a cause of action for an act or omission under the bill's provisions.

C.S.S.B. 629 grants immunity to a district, charter school, or private school and school personnel and school volunteers from suit resulting from an act, or failure to act, under the bill's provisions, including an act or failure to act under related policies and procedures. The bill establishes that an act or failure to act by school personnel or a school volunteer under the bill's provisions, including an act or failure to act under related policies and procedures, is the exercise of judgment or discretion on the part of the school personnel or school volunteer and is not considered to be a ministerial act for purposes of liability of the district, charter school, or private school.

C.S.S.B. 629 requires the commissioner of education and the executive commissioner of HHSC, not later than November 1, 2023, to jointly adopt rules necessary to implement the bill's provisions, except with respect to rules adopted by the executive commissioner regarding the maintenance, administration, and disposal of opioid antagonists at a school campus that adopts the policy.

C.S.S.B. 629 defines "opioid antagonist" by reference as any drug that binds to opioid receptors and blocks or otherwise inhibits the effects of opioids acting on those receptors. The bill defines "opioid-related drug overdose" by reference as a condition, evidenced by symptoms such as extreme physical illness, decreased level of consciousness, constriction of the pupils, respiratory depression, or coma, that a layperson would reasonably believe to be the result of the consumption or use of an opioid. The bill defines "physician" as a person who holds a license to practice medicine in Texas.

C.S.S.B. 629 amends the Government Code to specify that the authorized uses of appropriated money from the opioid abatement account by an applicable state agency includes supporting

efforts to prevent or reduce deaths from opioid-related harms by a school under a policy adopted under the bill's provisions regarding the maintenance, administration, and disposal of opioid antagonists.

### **EFFECTIVE DATE**

On passage, or, if the bill does not receive the necessary vote, September 1, 2023.

### **COMPARISON OF SENATE ENGROSSED AND SUBSTITUTE**

While C.S.S.B. 629 may differ from the engrossed in minor or nonsubstantive ways, the following summarizes the substantial differences between the engrossed and committee substitute versions of the bill.

Both the engrossed and substitute set out provisions relating to the maintenance, administration, and disposal of opioid antagonists in public school districts, open-enrollment charter schools, and private schools. However, the engrossed version did so by amending Education Code provisions relating to the maintenance and administration of epinephrine auto-injectors and asthma medicine. Accordingly, the provisions in the engrossed version included opioid antagonists among the medications for which the executive commissioner of HHSC must adopt rules on the maintenance, administration, and disposal and for which the rules must establish the process to check inventory and the amount of training required to administer the medication.

However, the substitute sets out provisions relating to the maintenance, administration, and disposal of opioid antagonists in public school districts, open-enrollment charter schools, and private schools by adding provisions to the Education Code. The substitute requires the executive commissioner to adopt rules regarding the maintenance, administration, and disposal of opioid antagonists and requires the rules to establish the process for checking inventory and the amount of training required to administer an opioid antagonist. The substitute also includes a November 1, 2023, deadline by which the executive commissioner is required to adopt those rules.

Whereas the engrossed revised the duties and composition of the stock epinephrine advisory committee to include certain duties and qualifications for members relating to opioid antagonists, and accordingly renamed the committee from the stock epinephrine advisory committee to the stock medicine advisory committee, the substitute does not make these revisions or rename the committee. The adoption of rules on the maintenance, administration, and disposal of opioid antagonists by the executive commissioner was in consultation with the commissioner of education and with advice from the advisory committee in the engrossed, whereas the adoption of such rules is in consultation with the commissioner on education in the substitute.

The substitute requires the executive commissioner and the commissioner of education to jointly adopt rules necessary to implement the bill's provisions not later than November 1, 2023, except with respect to rules adopted by the executive commissioner regarding the maintenance, administration, and disposal of opioid antagonists. This requirement does not appear in the engrossed. The substitute includes a provision establishing that the bill does not require a district to comply with the requirement to adopt a policy before January 1, 2024, while the engrossed made the bill apply beginning with the 2023-2024 school year.

The substitute replaces the authorization present in the engrossed for a district to adopt and implement a policy regarding the maintenance, administration, and disposal of opioid antagonists at each campus in the district with a requirement for a district to adopt and implement such a policy with respect to each campus that serves students in grades 6 through 12.

The substitute includes a specification not in the engrossed that a charter school or private school that adopts such a policy may apply the policy as follows:

- only at campuses of the school serving students in grades 6 through 12; or
- at each campus of the school, including campuses serving students in a grade level below grade 6.

While both the engrossed and substitute require a policy adopted by a district, charter school, or private school to provide that school personnel and school volunteers who are authorized and trained may administer an opioid antagonist to a person who is reasonably believed to be experiencing an opioid-related drug overdose on a school campus, the substitute omits the specification present in the engrossed that the administration of the opioid antagonist be on a school campus.

The substitute omits an authorization present in the engrossed for the policy to provide that school personnel and school volunteers who are authorized and trained to administer an opioid antagonist to a person who is reasonably believed to be experiencing an opioid-related drug overdose may do so at an off-campus school event or while in transit to or from a school event.

Whereas the engrossed required each district, charter school, and private school that adopts the policy to require that each campus have one or more school personnel members or school volunteers authorized and trained to administer an opioid antagonist present during all hours the campus is open, the substitute instead requires the adopted policy itself to require that each school campus have one or more school personnel members or school volunteers authorized and trained to administer an opioid antagonist present during regular school hours.

Whereas the engrossed required the rules adopted by the executive commissioner to establish the number of opioid antagonists available at each campus, the substitute does not include this requirement. The substitute includes a requirement for the policy adopted by a district, charter school, or private school instead to establish the number of opioid antagonists that must be available at each campus at any given time.

The engrossed required the supply of opioid antagonists at each campus to be stored in a secure location and easily accessible to school personnel and school volunteers authorized and trained to administer an opioid antagonist, while the substitute requires the policy adopted by a district, charter school, or private school to include that requirement.

The substitute includes an authorization absent from the engrossed for a district, charter school, or private school to accept gifts, grants, donations, and federal and local funds to implement the bill.

While both the engrossed and substitute grant a person who in good faith takes, or fails to take, any action regarding the maintenance and administration of opioid antagonists immunity from civil or criminal liability or disciplinary action resulting from that action or failure to act, the substitute includes the following provisions, which were absent from the engrossed:

- a provision establishing that such immunities and protections are in addition to other immunities or limitations of liability provided by law;
- a provision establishing that a cause of action does not arise from an act or omission described by the bill;
- a provision establishing that the bill expressly does not create a civil, criminal, or administrative cause of action or liability or create a standard of care, obligation, or duty that provides a basis for a cause of action for an act or omission under the bill's provisions;
- a provision granting immunity to a district, charter school, or private school and school personnel and school volunteers from suit resulting from an act, or failure to act, under the bill's provisions, including an act or failure to act under related policies and procedures; and

- a provision establishing that an act or failure to act by school personnel or a school volunteer under the bill's provisions, including an act or failure to act under related policies and procedures, is the exercise of judgment or discretion on the part of the school personnel or school volunteer and is not considered to be a ministerial act for purposes of liability of the district, charter school, or private school.

The substitute includes a definition of "physician," which was absent from the engrossed.