

BILL ANALYSIS

Senate Research Center

S.B. 179
By: Menéndez; Zaffirini
State Affairs
4/4/2017
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Cyberbullying is an epidemic in this country and state. The Center for Disease Control and Prevention (CDC) reports suicide rates are at an all-time high especially for young adults. These increased rates correlate with an increase in cyberbullying.

Texas laws need to keep pace with evolving technology. Students are being threatened, harassed, and tormented online. S.B. 179 would require that school districts include cyberbullying in their district policies on bullying and notify parents if their child has been the victim of bullying or is the alleged aggressor.

Schools need more tools to combat and prevent cyberbullying. S.B. 179 would give schools the ability to investigate bullying off campus if it materially affects the school environment. When serious situations arise, such as a student attempting to take their life, schools can collaborate with law enforcement. Another tool schools gain with S.B. 179 is greater latitude to place students in a disciplinary alternative education program or to expel students for certain very serious bullying behavior such as coercing a child into committing or attempting to commit suicide.

Finally, recognizing that bullying is also a mental health issue, the bill would encourage schools to invest in counseling and rehabilitation services for the victim and the aggressor.

As proposed, S.B. 179 amends current law relating to student harassment, bullying, cyberbullying, injury to or death of a minor; and creates a criminal offense.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Supreme Court of Texas in SECTION 7 (Section 18.101, Civil Practice and Remedies Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Requires that this Act be known as David's Law.

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

(a) Redefines "bullying."

(a-1) Provides that this section applies to bullying or cyberbullying that occurs in certain locations and has certain effects.

(c) Requires the board of trustees of each school district and the governing body of each open-enrollment charter school or private school to adopt a policy, including any necessary procedures, that prohibits certain behavior and establishes certain procedures concerning bullying.

(d) Requires the policy and any necessary procedures adopted under Subsection (c) to be included annually in any student and employee handbooks, and in the district improvement plan.

(e) Requires the procedure for reporting bullying established under Subsection (c) to be posted on the district's or school's Internet website, to the extent that it is practicable.

SECTION 3. Amends Subchapter A, Chapter 37, Education Code, by adding Section 37.0052, as follows:

Sec. 37.0052. PLACEMENT OR EXPULSION OF STUDENTS WHO HAVE ENGAGED IN CERTAIN BULLYING BEHAVIOR. (a) Defines "bullying" and "intimate visual material."

(b) Provides that a student may be removed from class and placed in a disciplinary alternative education program as provided by Section 37.008 (Disciplinary Alternative Education Programs), Education Code, or expelled under certain circumstances.

SECTION 4. Amends Subchapter A, Chapter 37, Education Code, by adding Section 37.0151, as follows:

Sec. 37.0151. REPORT TO LOCAL LAW ENFORCEMENT REGARDING CERTAIN CONDUCT CONSTITUTING ASSAULT OR HARASSMENT; LIABILITY. (a) Requires the principal of certain schools, or a person designated by the principal, to make a report to 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 a student engaged in conduct that constitutes an offense under Section 22.01 (Assault), or 42.07(a)(7) (relating to harassment by the sending of repeated electronic communications), Penal Code.

(b) Requires a person who makes a report to include the name and address of each student the person believes may have participated in the conduct.

(c) Authorizes the principal of certain schools to designate a school employee, other than a school counselor, who is under the supervision of the principal to make the report.

(d) Provides that a person is not liable in civil damages for making a report in good faith.

SECTION 5. Amends Sections 37.218(a)(1) and (2), Education Code, to redefine "bullying" and "cyberbullying."

SECTION 6. Amends Section 33.006(b), Education Code, to require that the school counselor, in addition to a school counselor's responsibility under Subsection (a) (relating to the primary responsibilities of a school counselor), serve as an impartial mediator for interpersonal conflicts involving two or more students, including accusations of bullying or cyberbullying under Section 37.0832 (Bullying Prevention Policies and Procedures), Education Code.

SECTION 7. Amends Chapter 18, Civil Practice and Remedies Code, by adding Subchapter E, as follows:

SUBCHAPTER E. SUBPOENAS

Sec. 18.101. PRE-SUIT SUBPOENAS FOR CERTAIN CLAIMS INVOLVING MINORS. (a) Requires the Texas supreme court (supreme court) to adopt rules of civil procedure providing for the issuance of a pre-suit subpoena for certain matters.

(b) Requires that the rules allow a party to request a subpoena to compel an oral or written deposition, the production of electronic or magnetic data, or the product of documents or tangible things and require that a responding party provide certain items to the court under seal for the court to determine, after notice, hearing, and an in camera inspection, if the evidence should be released to the requesting party.

SECTION 8. Amends Title 4, Civil Practice and Remedies Code, by adding Chapter 100B, as follows:

CHAPTER 100B. LIABILITY FOR CERTAIN BULLYING OF CHILD

Sec. 100B.001. DEFINITIONS. Defines "bullying communication," "claimant," "defendant," "electronic communication," "family," "interactive service," and "intimate visual material."

Sec. 100B.002. ACTIONABLE BULLYING. Provides that a person engages in actionable bullying if the person directs bullying communication toward a single recipient who, at the time of the bullying communication, is younger than 18 years of age.

Sec. 100B.003. LIABILITY. Provides that a defendant is liable to a claimant if the claimant shows that the defendant engaged in actionable bullying directed toward the claimant.

Sec. 100B.004. DAMAGES. (a) Authorizes a claimant who prevails in a suit to recover actual damages for all physical, mental, or emotional injury caused by, resulting from, or arising out of the actionable bullying that is the subject of the suit. Authorizes the claimant to recover actual damages for mental anguish even if an injury other than mental anguish is not shown.

(b) Authorizes a claimant who prevails in a suit, except as provided by Subsection (c) and in addition to damages awarded under Subsection (a), to recover exemplary damages, court costs, and reasonable attorney's fees.

(c) Authorizes a claimant who prevails in a suit under this chapter, instead of recovering exemplary damages, to elect to treble the amount that would otherwise be awarded under Subsection (a), not to exceed \$75,000 per actionable claim, if the claimant shows certain elements.

Sec. 100B.005. PARENTAL RESPONSIBILITY. Provides that a parent or other person who has the duty of control and reasonable discipline of a child who engages in actionable bullying directed toward the claimant is liable to the claimant for the lesser of certain amounts, court costs, and reasonable attorney's fees.

Sec. 100B.006. INJUNCTIVE RELIEF. Authorizes a court to order any injunctive relief sought by the claimant that the court determines is appropriate under the circumstances, if a defendant is found liable.

Sec. 100B.007. DEFENSE. Provides that it is a defense to liability that the defendant was engaged in conduct that constituted a constitutionally protected exercise of the defendant's rights to free speech.

Sec. 100B.008. CAUSE OF ACTION CUMULATIVE. Provides that the cause of action created by this chapter is cumulative of any other remedy provided by common law or statute.

SECTION 9. Amends Chapter 22, Penal Code, by adding Section 22.081, as follows:

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

Sec. 22.081. DEFINITIONS. Defines "electronic communication," "intimate parts," "sexual conduct," "visual material," "intimate visual material," and "suicide baiting."

(a) Provides that a person commits an offense if such person intentionally and with malice directs one or more communications toward a child younger than 18 years of age by certain means and such communications were harassing, extreme and outrageous in light of the context, number, manner, time, and place of such communication, and the actor's conduct causes the suicide or the attempted suicide of such child that results in serious bodily injury, or the actor was acting in concert with two or more other persons whose communications directed at such child the actor knew to be harassing, extreme and outrageous in light of the content, number, manner, time, and place of such communication, and the cumulative effect was to cause the suicide of such child, or the attempted suicide of such child that resulted in serious bodily injury.

(b) Provides that a person commits an offense if such person intentionally and with malice directs one or more communications toward a child younger than 18 years of age by certain means, and in such communication(s) the person threatened to make available to any third party intimate visual material of or depicting such child, and such conduct by the actor causes the suicide of such child, or the attempted suicide of such child that results in serious bodily injury.

(c) Provides that an offense under this chapter is a Class A misdemeanor.

SECTION 10. Amends Section 42.07(b)(1), Penal Code, to redefine "electronic communication."

SECTION 11. Repealer: Section 37.0832(b) (relating to the requirements needed for conduct to be considered bullying), Education Code.

SECTION 12. Makes application of Chapter 100B, Civil Practice and Remedies Code, prospective.

SECTION 13. Makes application of this Act prospective.

SECTION 10. Effective date: September 1, 2017.