

BILL ANALYSIS

Senate Research Center

C.S.S.B. 179
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State Affairs
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Cyberbullying is an epidemic in this country and state. The Centers 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. (Original Author's / Sponsor's Statement of Intent)

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

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

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) and (c) and adding Subsections (a-1) and (f), as follows:

(a) Redefines "bullying" and defines "cyberbullying."

(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 to adopt a policy, including any necessary procedures, that prohibits certain behavior and establishes certain procedures concerning bullying.

(f) Requires each school district to establish a district-wide mental health plan to prevent and mediate bullying incidents and address suicide prevention.

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) or expelled under certain circumstances.

(c) Provides that nothing in this section exempts a school from reporting a finding of intimate visual material of a minor.

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 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, if applicable, or 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, after an investigation is completed, the principal has reasonable grounds to believe that a student engaged in conduct that constitutes an offense under Section 22.081, 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) Exempts a person who is not a school employee but is employed by an entity that contracts with a district or school to use school property from the requirement of making a report under this section and prohibit that person from being designated by the principal of certain schools to make a report. Provides that a person who voluntarily makes a report under this section is immune from civil or criminal liability.

(e) Provides that a person who takes any action under this section is immune from civil or criminal liability or disciplinary action resulting from that action.

(f) Provides that this section, notwithstanding any other law, 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 under this section.

(g) Provides that a school district and school personnel and school volunteers are immune from suit resulting from an act under this section, including an act under related policies and procedures.

(h) Provides that an act by school personnel or a school volunteer under this section, including an 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 school district or the district's employees.

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

SECTION 6. Amends Section 12.104(b), Education Code, as follows:

(b) Provides that an open-enrollment charter school is subject to certain policies and procedures, including bullying prevention policies and procedures under Section 37.0832, the right of a school under Section 37.0052 to place a student who has engaged in certain bullying behavior in a disciplinary alternative education program or to expel the student, and the requirement under Section 37.0151 to report to local law enforcement certain conduct constituting harassment. Makes nonsubstantive changes.

SECTION 7. Amends Section 33.006, Education Code, by amending Subsection (b) and adding Subsection (c), as follows:

(b) Requires that the school counselor, in addition to a school counselor's responsibility under Subsection (a) (relating to the primary responsibilities of a school counselor), perform certain functions, including serving as an impartial, nonreporting conciliator for interpersonal conflicts and discord involving two or more students arising out of accusations of bullying under Section 37.0832 (Bullying Prevention Policies and Procedures).

(c) Provides that nothing in Subsection (b)(7) (relating to interpersonal conflicts involving two or more students arising out of accusations of bullying) exempts a school counselor from any mandatory reporting requirements imposed by other provisions of law.

SECTION 8. Amends Title 6, Civil Practice and Remedies Code, by adding Chapter 129A, as follows:

CHAPTER 129A. RELIEF FOR BULLYING OF CHILD

Sec. 129A.001. DEFINITIONS. Defines "bullying communication," "claimant," "communicator," "electronic communication," "intimate visual material," and "recipient."

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

Sec. 129A.003. LIABILITY. Provides that 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. Authorizes a claimant who prevails in a suit to recover actual damages for all physical, mental, or emotional injury proximately caused by the actionable bullying that is the subject of the suit. Authorizes the claimant to 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. Prohibits total damages under this section from exceeding \$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) Provides that a parent of or person standing in parental relation to a child who engages in actionable bullying directed toward the recipient is liable to the claimant for the lesser of certain amounts.

(b) Provides that it is an affirmative defense to liability under this chapter that a parent or person standing in parental relation took reasonable actions to supervise a communicator's use of the means employed by the communicator to direct

bullying communication to a recipient and either did not know about the bullying communication or, if the parent or person standing in parental relation knew about the bullying communication, took reasonable actions to cause the communicator to cease sending bullying communications.

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

(b) Authorizes a court to issue a temporary restraining order, temporary injunction, or permanent injunction appropriate under the circumstances to prevent any further bullying communication, including certain orders or injunctions.

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

(d) Provides that a plaintiff is entitled to a temporary or permanent injunction under this section on showing that the communicator sent bullying communication to the recipient.

(e) Authorizes a court granting a temporary restraining order or temporary injunction under this section to, on motion of either party or sua sponte, order the preservation of any relevant electronic communication. Provides that the temporary restraining order or temporary injunction is not required to define the injury or state why it is irreparable, state why the order was granted without notice, or include an order setting the cause for trial on the merits with respect to the ultimate relief requested.

Sec. 129A.007. PROMULGATION OF FORMS. (a) Requires the Texas Supreme Court (supreme court), as the supreme court finds appropriate, to promulgate forms for use as an application for initial injunctive relief by individuals representing themselves in suits involving bullying communication and instructions for the proper use of each form or set of forms.

(b) Requires the forms and instructions to be written in language that is easily understood by the general public, be made readily available to the general public in the manner prescribed by the supreme court, and be translated into the Spanish language.

(c) Requires the Spanish language translation of a form to state certain information or be incorporated into the English language version of the form in a manner that is understandable to both the court and members of the general public.

(d) Requires each form and its instructions to clearly and conspicuously state that the form is not a substitute for the advice of an attorney.

(e) Requires the Texas attorney general and the clerk of the court to make the form available free of charge.

(f) Requires a court to accept a form promulgated by the supreme court under this section unless the form has been completed in a manner that causes a substantive defect that cannot be cured.

Sec. 129A.008. ATTORNEY'S FEES AND COSTS. Authorizes the court, in proceeding under this chapter, to award any claimant or defendant costs and reasonable and necessary attorney's fees as are equitable and just. Prohibits the amount awarded to any party under this section for attorney's fees from exceeding \$5,000.

Sec. 129A.009. INAPPLICABILITY. (a) Prohibits an action filed under this chapter from being joined with an action filed under Title 1 (The Marriage Relationship), 4 (Protective Orders and Family Violence), or 5 (The Parent-Child Relationship and the Suit Affecting the Parent-Child Relationship), Family Code.

(b) Provides that Chapter 27 (Actions Involving the Exercise of Certain Constitutional Rights) does not apply to an action under this chapter.

Sec. 129A.010. CERTAIN CONDUCT EXCEPTED. Provides that this chapter does not apply to a claim brought against an interactive computer service, as defined by 47 U.S.C. Section 230, for bullying communication.

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

Sec. 22.081. HARASSMENT OF CHILD TO CAUSE SUICIDE OR SERIOUS BODILY INJURY. (a) Defines "child."

(b) Provides that a person commits an offense if the person directs multiple written, oral, or electronic communication toward a child in a manner that is reasonably likely to harass, annoy, alarm, abuse, torment, embarrass, or offend the child, with the intent that the child commit suicide or engage in conduct causing serious bodily injury to the child.

(c) Provides that an offense under this section is a Class B misdemeanor, except that the offense is a Class A misdemeanor if it is shown on the trial of the offense that the actor acted in concert with another person to engage in the conduct described in this section with respect to the same victim or has been previously convicted of an offense under this section; or the actor's conduct causes the child to commit suicide or causes the child to attempt to commit suicide and that attempt results in serious bodily injury to the child.

(d) Provides that for the purposes of Subsection (c)(1)(B) (relating to an offense being a Class A misdemeanor if it is shown at trial that the actor has been previously convicted of an offense under this section), a defendant has been previously convicted under this section if the defendant was adjusted guilty of the offense or entered a plea of guilty or nolo contendere in return for a grant of deferred adjudication community supervision, regardless of whether the sentence for the offense was ever imposed or whether the sentence was probated and the defendant was subsequently discharged from deferred adjudication community supervision.

(e) Authorizes a person who is subject to prosecution under both this section and another law to be prosecuted under either or both this section and the other law.

SECTION 10. Repealer: Section 37.0832(b) (relating to the requirements needed for conduct to be considered bullying), Education Code.

SECTION 11. Makes application of Chapter 129A, Civil Practice and Remedies Code, as added by this Act, prospective.

SECTION 12. Makes application of this Act prospective.

SECTION 13. Effective date: September 1, 2017.