

From: Frank Gilstrap

To: Stephen Yelenosky, Lamont Jefferson, Pete Schenkkan

Date: June 11, 2018

Re: Cyberbullying

Here are the docs attached to the December 2017 agenda together with the statute. I haven't seen any indication that this difficult item has been withdrawn. Do we want to take a final look before the July meeting? I'm hesitant to dive in if the consensus is to go with what we've got.

Nevertheless, I have a few comments

The Instructions:

(1) We start out talking about the "Petition" on pages 1 and 2, but we end up talking about the "Application" on pages 3 and 4.

(2) The statute says that the TRO and TI order do not have to set a trial date, thereby overruling Rule 683. *See* TEX.CIV.PRAC. & REM. CODE §129A.002(e). But the statute says nothing about the TI hearing, and Rule 680 and—certainly--due process require a TI hearing. The instructions barely mention this saying only that "you will have to have another hearing with the other parent or person present if you want additional orders" Instructions, p.3. There needs to be a clear warning that an evidentiary hearing will be required. Also, page 4 tells the petitioner that, if the TRO is

denied, he will have to decide whether to continue the suit. We should also tell him that, if he doesn't want to continue, he will have to take action to dismiss the suit. The current instructions could give the impression that if he does nothing, the suit will automatically go away/

(3) The instructions say that cyberbullying includes “threatening to use” the phone or internet. See instructions, p.1. In general, an injunction can be used to prevent “threatened” harm. But our statute is only available to “the recipient” of cyberbullying behavior. See TEX.CIV.PRAC. & REM. CODE §129A.002(a). If cyberbullying has only been “threatened” the plaintiff is not yet a “recipient” and the statute does not apply. Similarly, the court may grant injunctive relief “to prevent any further cyberbullying.” *Id.* §129A.002(b). And the plaintiff may obtain relief by “showing that the plaintiff is likely to succeed in establishing that the individual was cyberbullying the recipient.” *Id.* §129A.002(c).

The Petition:

The statute contemplates four different scenarios depending on the age of the victim and the age of the bully at the time suit is filed:

(1) When both the victim and the bully are minors, then the parent of the victim sues the parent of the bully.

(2) When the victim has turned 18 and the bully is still a minor, the victim sues the parent of the bully.

(3) When the victim is still a minor and the bully is over 18 then the parent of the victim sues the bully.

(4) When the victim has turned 18, and the bully is over 18, then the victim sues the bully.

This is complicated. When I sit down and try to fill out the Petition under each of the above scenarios, I grow somewhat confused. Maybe we need two forms: one for scenarios 1 and 3 and another for scenarios 2 and 4. The first is filled out by the parent. The second is filled out by the victim who has turned 18.

At any rate, the current petition could use some work. For example, instead of saying "Check the appropriate box" it could say "check one of the boxes below."