

1 AN ACT
2 relating to harassment, bullying, and cyberbullying of a public
3 school student or minor and certain mental health programs for
4 public school students; increasing a criminal penalty.

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

6 SECTION 1. This Act shall be known as David's Law.

7 SECTION 2. Section 37.0832, Education Code, is amended by
8 amending Subsections (a) and (c) and adding Subsections (a-1) and
9 (f) to read as follows:

10 (a) In this section:

11 (1) "Bullying":

12 (A) [~~,"bullying"~~] means a single significant act
13 or a pattern of acts by one or more students directed at another
14 student that exploits an imbalance of power and involves~~[,"subject~~
15 ~~to Subsection (b),]~~ engaging in written or verbal expression,
16 expression through electronic means, or physical conduct that
17 satisfies the applicability requirements provided by Subsection
18 (a-1), [~~that occurs on school property, at a school-sponsored or~~
19 ~~school-related activity, or in a vehicle operated by the district]~~
20 and that:

21 (i) [~~(1)~~] has the effect or will have the
22 effect of physically harming a student, damaging a student's
23 property, or placing a student in reasonable fear of harm to the
24 student's person or of damage to the student's property; [~~or~~]

1 (ii) [~~2~~] is sufficiently severe,
2 persistent, or [~~and~~] pervasive enough that the action or threat
3 creates an intimidating, threatening, or abusive educational
4 environment for a student;

5 (iii) materially and substantially
6 disrupts the educational process or the orderly operation of a
7 classroom or school; or

8 (iv) infringes on the rights of the victim
9 at school; and

10 (B) includes cyberbullying.

11 (2) "Cyberbullying" means bullying that is done
12 through the use of any electronic communication device, including
13 through the use of a cellular or other type of telephone, a
14 computer, a camera, electronic mail, instant messaging, text
15 messaging, a social media application, an Internet website, or any
16 other Internet-based communication tool.

17 (a-1) This section applies to:

18 (1) bullying that occurs on or is delivered to school
19 property or to the site of a school-sponsored or school-related
20 activity on or off school property;

21 (2) bullying that occurs on a publicly or privately
22 owned school bus or vehicle being used for transportation of
23 students to or from school or a school-sponsored or school-related
24 activity; and

25 (3) cyberbullying that occurs off school property or
26 outside of a school-sponsored or school-related activity if the
27 cyberbullying;

1 (A) interferes with a student's educational
2 opportunities; or

3 (B) substantially disrupts the orderly operation
4 of a classroom, school, or school-sponsored or school-related
5 activity.

6 (c) The board of trustees of each school district shall
7 adopt a policy, including any necessary procedures, concerning
8 bullying that:

9 (1) prohibits the bullying of a student;

10 (2) prohibits retaliation against any person,
11 including a victim, a witness, or another person, who in good faith
12 provides information concerning an incident of bullying;

13 (3) establishes a procedure for providing notice of an
14 incident of bullying to:

15 (A) a parent or guardian of the alleged victim on
16 or before the third business day after the date the incident is
17 reported; and

18 (B) a parent or guardian of the alleged bully
19 within a reasonable amount of time after the incident;

20 (4) establishes the actions a student should take to
21 obtain assistance and intervention in response to bullying;

22 (5) sets out the available counseling options for a
23 student who is a victim of or a witness to bullying or who engages in
24 bullying;

25 (6) establishes procedures for reporting an incident
26 of bullying, including procedures for a student to anonymously
27 report an incident of bullying, investigating a reported incident

1 of bullying, and determining whether the reported incident of
2 bullying occurred;

3 (7) prohibits the imposition of a disciplinary measure
4 on a student who, after an investigation, is found to be a victim of
5 bullying, on the basis of that student's use of reasonable
6 self-defense in response to the bullying; and

7 (8) requires that discipline for bullying of a student
8 with disabilities comply with applicable requirements under
9 federal law, including the Individuals with Disabilities Education
10 Act (20 U.S.C. Section 1400 et seq.).

11 (f) Each school district may establish a district-wide
12 policy to assist in the prevention and mediation of bullying
13 incidents between students that:

14 (1) interfere with a student's educational
15 opportunities; or

16 (2) substantially disrupt the orderly operation of a
17 classroom, school, or school-sponsored or school-related activity.

18 SECTION 3. Subchapter A, Chapter 37, Education Code, is
19 amended by adding Section 37.0052 to read as follows:

20 Sec. 37.0052. PLACEMENT OR EXPULSION OF STUDENTS WHO HAVE
21 ENGAGED IN CERTAIN BULLYING BEHAVIOR. (a) In this section:

22 (1) "Bullying" has the meaning assigned by Section
23 37.0832.

24 (2) "Intimate visual material" has the meaning
25 assigned by Section 98B.001, Civil Practice and Remedies Code.

26 (b) A student may be removed from class and placed in a
27 disciplinary alternative education program as provided by Section

1 37.008 or expelled if the student:

2 (1) engages in bullying that encourages a student to
3 commit or attempt to commit suicide;

4 (2) incites violence against a student through group
5 bullying; or

6 (3) releases or threatens to release intimate visual
7 material of a minor or a student who is 18 years of age or older
8 without the student's consent.

9 (c) Nothing in this section exempts a school from reporting
10 a finding of intimate visual material of a minor.

11 SECTION 4. Subchapter A, Chapter 37, Education Code, is
12 amended by adding Section 37.0151 to read as follows:

13 Sec. 37.0151. REPORT TO LOCAL LAW ENFORCEMENT REGARDING
14 CERTAIN CONDUCT CONSTITUTING ASSAULT OR HARASSMENT; LIABILITY.

15 (a) The principal of a public primary or secondary school, or a
16 person designated by the principal under Subsection (c), may make a
17 report to any school district police department, if applicable, or
18 the police department of the municipality in which the school is
19 located or, if the school is not in a municipality, the sheriff of
20 the county in which the school is located if, after an investigation
21 is completed, the principal has reasonable grounds to believe that
22 a student engaged in conduct that constitutes an offense under
23 Section 22.01 or 42.07(a)(7), Penal Code.

24 (b) A person who makes a report under this section may
25 include the name and address of each student the person believes may
26 have participated in the conduct.

27 (c) The principal of a public primary or secondary school

1 may designate a school employee, other than a school counselor, who
2 is under the supervision of the principal to make the report under
3 this section.

4 (d) A person who is not a school employee but is employed by
5 an entity that contracts with a district or school to use school
6 property is not required to make a report under this section and may
7 not be designated by the principal of a public primary or secondary
8 school to make a report. A person who voluntarily makes a report
9 under this section is immune from civil or criminal liability.

10 (e) A person who takes any action under this section is
11 immune from civil or criminal liability or disciplinary action
12 resulting from that action.

13 (f) Notwithstanding any other law, this section does not
14 create a civil, criminal, or administrative cause of action or
15 liability or create a standard of care, obligation, or duty that
16 provides a basis for a cause of action for an act under this
17 section.

18 (g) A school district and school personnel and school
19 volunteers are immune from suit resulting from an act under this
20 section, including an act under related policies and procedures.

21 (h) An act by school personnel or a school volunteer under
22 this section, including an act under related policies and
23 procedures, is the exercise of judgment or discretion on the part of
24 the school personnel or school volunteer and is not considered to be
25 a ministerial act for purposes of liability of the school district
26 or the district's employees.

27 SECTION 5. Sections 37.218(a)(1) and (2), Education Code,

1 are amended to read as follows:

2 (1) "Bullying" has the meaning assigned by Section
3 37.0832 [~~25.0342~~].

4 (2) "Cyberbullying" has the meaning assigned by
5 Section 37.0832 [~~means the use of any electronic communication~~
6 ~~device to engage in bullying or intimidation~~].

7 SECTION 6. Section 5.001, Education Code, is amended by
8 adding Subdivision (5-a) to read as follows:

9 (5-a) "Mental health condition" means an illness,
10 disease, or disorder, other than epilepsy, dementia, substance
11 abuse, or intellectual disability, that:

12 (A) substantially impairs a person's thought,
13 perception of reality, emotional process, or judgment; or

14 (B) grossly impairs behavior as demonstrated by
15 recent disturbed behavior.

16 SECTION 7. Section 12.104(b), Education Code, is amended to
17 read as follows:

18 (b) An open-enrollment charter school is subject to:

19 (1) a provision of this title establishing a criminal
20 offense; and

21 (2) a prohibition, restriction, or requirement, as
22 applicable, imposed by this title or a rule adopted under this
23 title, relating to:

24 (A) the Public Education Information Management
25 System (PEIMS) to the extent necessary to monitor compliance with
26 this subchapter as determined by the commissioner;

27 (B) criminal history records under Subchapter C,

- 1 Chapter 22;
- 2 (C) reading instruments and accelerated reading
- 3 instruction programs under Section 28.006;
- 4 (D) accelerated instruction under Section
- 5 28.0211;
- 6 (E) high school graduation requirements under
- 7 Section 28.025;
- 8 (F) special education programs under Subchapter
- 9 A, Chapter 29;
- 10 (G) bilingual education under Subchapter B,
- 11 Chapter 29;
- 12 (H) prekindergarten programs under Subchapter E
- 13 or E-1, Chapter 29;
- 14 (I) extracurricular activities under Section
- 15 33.081;
- 16 (J) discipline management practices or behavior
- 17 management techniques under Section 37.0021;
- 18 (K) health and safety under Chapter 38;
- 19 (L) public school accountability under
- 20 Subchapters B, C, D, E, F, G, and J, Chapter 39;
- 21 (M) the requirement under Section 21.006 to
- 22 report an educator's misconduct;
- 23 (N) intensive programs of instruction under
- 24 Section 28.0213; ~~and~~
- 25 (O) the right of a school employee to report a
- 26 crime, as provided by Section 37.148;
- 27 (P) bullying prevention policies and procedures

1 under Section 37.0832;

2 (Q) the right of a school under Section 37.0052
3 to place a student who has engaged in certain bullying behavior in a
4 disciplinary alternative education program or to expel the student;
5 and

6 (R) the right under Section 37.0151 to report to
7 local law enforcement certain conduct constituting assault or
8 harassment.

9 SECTION 8. Section 21.054, Education Code, is amended by
10 adding Subsections (d-2) and (e-2) to read as follows:

11 (d-2) Continuing education requirements for a classroom
12 teacher may include instruction regarding how grief and trauma
13 affect student learning and behavior and how evidence-based,
14 grief-informed, and trauma-informed strategies support the
15 academic success of students affected by grief and trauma.

16 (e-2) Continuing education requirements for a principal may
17 include instruction regarding how grief and trauma affect student
18 learning and behavior and how evidence-based, grief-informed, and
19 trauma-informed strategies support the academic success of
20 students affected by grief and trauma.

21 SECTION 9. Subchapter J, Chapter 21, Education Code, is
22 amended by adding Section 21.462 to read as follows:

23 Sec. 21.462. RESOURCES REGARDING STUDENTS WITH MENTAL
24 HEALTH NEEDS. The agency, in coordination with the Health and Human
25 Services Commission, shall establish and maintain an Internet
26 website to provide resources for school district or open-enrollment
27 charter school employees regarding working with students with

1 mental health conditions. The agency must include on the Internet
2 website information about:

- 3 (1) grief-informed and trauma-informed practices;
4 (2) building skills related to managing emotions,
5 establishing and maintaining positive relationships, and
6 responsible decision-making;
7 (3) positive behavior interventions and supports; and
8 (4) a safe and supportive school climate.

9 SECTION 10. Section 33.006, Education Code, is amended by
10 amending Subsection (b) and adding Subsection (c) to read as
11 follows:

12 (b) In addition to a school counselor's responsibility
13 under Subsection (a), the school counselor shall:

14 (1) participate in planning, implementing, and
15 evaluating a comprehensive developmental guidance program to serve
16 all students and to address the special needs of students:

17 (A) who are at risk of dropping out of school,
18 becoming substance abusers, participating in gang activity, or
19 committing suicide;

20 (B) who are in need of modified instructional
21 strategies; or

22 (C) who are gifted and talented, with emphasis on
23 identifying and serving gifted and talented students who are
24 educationally disadvantaged;

25 (2) consult with a student's parent or guardian and
26 make referrals as appropriate in consultation with the student's
27 parent or guardian;

1 (3) consult with school staff, parents, and other
2 community members to help them increase the effectiveness of
3 student education and promote student success;

4 (4) coordinate people and resources in the school,
5 home, and community;

6 (5) with the assistance of school staff, interpret
7 standardized test results and other assessment data that help a
8 student make educational and career plans; ~~and~~

9 (6) deliver classroom guidance activities or serve as
10 a consultant to teachers conducting lessons based on the school's
11 guidance curriculum; and

12 (7) serve as an impartial, nonreporting resource for
13 interpersonal conflicts and discord involving two or more students,
14 including accusations of bullying under Section 37.0832.

15 (c) Nothing in Subsection (b)(7) exempts a school counselor
16 from any mandatory reporting requirements imposed by other
17 provisions of law.

18 SECTION 11. Title 6, Civil Practice and Remedies Code, is
19 amended by adding Chapter 129A to read as follows:

20 CHAPTER 129A. RELIEF FOR CYBERBULLYING OF CHILD

21 Sec. 129A.001. DEFINITION. In this chapter,
22 "cyberbullying" has the meaning assigned by Section 37.0832(a),
23 Education Code.

24 Sec. 129A.002. INJUNCTIVE RELIEF. (a) A recipient of
25 cyberbullying behavior who is younger than 18 years of age at the
26 time the cyberbullying occurs or a parent of or person standing in
27 parental relation to the recipient may seek injunctive relief under

1 this chapter against the individual who was cyberbullying the
2 recipient or, if the individual is younger than 18 years of age,
3 against a parent of or person standing in parental relation to the
4 individual.

5 (b) A court may issue a temporary restraining order,
6 temporary injunction, or permanent injunction appropriate under
7 the circumstances to prevent any further cyberbullying, including
8 an order or injunction:

9 (1) enjoining a defendant from engaging in
10 cyberbullying; or

11 (2) compelling a defendant who is a parent of or person
12 standing in parental relation to an individual who is younger than
13 18 years of age to take reasonable actions to cause the individual
14 to cease engaging in cyberbullying.

15 (c) A plaintiff in an action for injunctive relief brought
16 under this section is entitled to a temporary restraining order on
17 showing that the plaintiff is likely to succeed in establishing
18 that the individual was cyberbullying the recipient. The plaintiff
19 is not required to plead or prove that, before notice can be served
20 and a hearing can be held, immediate and irreparable injury, loss,
21 or damage is likely to result from past or future cyberbullying by
22 the individual against the recipient.

23 (d) A plaintiff is entitled to a temporary or permanent
24 injunction under this section on showing that the individual was
25 cyberbullying the recipient.

26 (e) A court granting a temporary restraining order or
27 temporary injunction under this section may, on motion of either

1 party or sua sponte, order the preservation of any relevant
2 electronic communication. The temporary restraining order or
3 temporary injunction is not required to:

- 4 (1) define the injury or state why it is irreparable;
5 (2) state why the order was granted without notice; or
6 (3) include an order setting the cause for trial on the
7 merits with respect to the ultimate relief requested.

8 Sec. 129A.003. PROMULGATION OF FORMS. (a) The supreme
9 court shall, as the court finds appropriate, promulgate forms for
10 use as an application for initial injunctive relief by individuals
11 representing themselves in suits involving cyberbullying and
12 instructions for the proper use of each form or set of forms.

13 (b) The forms and instructions:

- 14 (1) must be written in language that is easily
15 understood by the general public;
16 (2) shall be made readily available to the general
17 public in the manner prescribed by the supreme court; and
18 (3) must be translated into the Spanish language.

19 (c) The Spanish language translation of a form must:

- 20 (1) state:
21 (A) that the Spanish language translated form is
22 to be used solely for the purpose of assisting in understanding the
23 form and may not be submitted to the court; and
24 (B) that the English language version of the form
25 must be submitted to the court; or
26 (2) be incorporated into the English language version
27 of the form in a manner that is understandable to both the court and

1 members of the general public.

2 (d) Each form and its instructions must clearly and
3 conspicuously state that the form is not a substitute for the advice
4 of an attorney.

5 (e) The attorney general and the clerk of a court shall
6 inform members of the general public of the availability of a form
7 promulgated by the supreme court under this section as appropriate
8 and make the form available free of charge.

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

12 Sec. 129A.004. INAPPLICABILITY. (a) An action filed under
13 this chapter may not be joined with an action filed under Title 1,
14 4, or 5, Family Code.

15 (b) Chapter 27 does not apply to an action under this
16 chapter.

17 Sec. 129A.005. CERTAIN CONDUCT EXCEPTED. This chapter does
18 not apply to a claim brought against an interactive computer
19 service, as defined by 47 U.S.C. Section 230, for cyberbullying.

20 SECTION 12. Sections 161.325(a-1), (d), (e), (f), and (i),
21 Health and Safety Code, are amended to read as follows:

22 (a-1) The list must include programs in the following areas:

- 23 (1) early mental health intervention;
- 24 (2) mental health promotion [~~and positive youth~~
25 ~~development~~];
- 26 (3) substance abuse prevention;
- 27 (4) substance abuse intervention; [~~and~~]

- 1 (5) suicide prevention;
- 2 (6) grief-informed and trauma-informed practices;
- 3 (7) building skills related to managing emotions,
- 4 establishing and maintaining positive relationships, and
- 5 responsible decision-making;
- 6 (8) positive behavior interventions and supports and
- 7 positive youth development; and
- 8 (9) safe and supportive school climate.

9 (d) A [~~The board of trustees of each~~] school district may
10 develop practices and procedures [~~may adopt a policy~~] concerning
11 each area listed in Subsection (a-1), including mental health
12 promotion and intervention, substance abuse prevention and
13 intervention, and suicide prevention, that:

14 (1) include [~~establishes~~] a procedure for providing
15 notice of a recommendation for early mental health or substance
16 abuse intervention regarding a student to a parent or guardian of
17 the student within a reasonable amount of time after the
18 identification of early warning signs as described by Subsection
19 (b)(2);

20 (2) include [~~establishes~~] a procedure for providing
21 notice of a student identified as at risk of committing suicide to a
22 parent or guardian of the student within a reasonable amount of time
23 after the identification of early warning signs as described by
24 Subsection (b)(2);

25 (3) establish [~~establishes~~] that the district may
26 develop a reporting mechanism and may designate at least one person
27 to act as a liaison officer in the district for the purposes of

1 identifying students in need of early mental health or substance
2 abuse intervention or suicide prevention; and

3 (4) set [~~sets~~] out available counseling alternatives
4 for a parent or guardian to consider when their child is identified
5 as possibly being in need of early mental health or substance abuse
6 intervention or suicide prevention.

7 (e) The practices and procedures developed under Subsection
8 (d) [~~policy~~] must prohibit the use without the prior consent of a
9 student's parent or guardian of a medical screening of the student
10 as part of the process of identifying whether the student is
11 possibly in need of early mental health or substance abuse
12 intervention or suicide prevention.

13 (f) The practices [~~policy~~] and [~~any necessary~~] procedures
14 developed [~~adopted~~] under Subsection (d) must be included in:

- 15 (1) the annual student handbook; and
16 (2) the district improvement plan under Section
17 11.252, Education Code.

18 (i) Nothing in this section is intended to interfere with
19 the rights of parents or guardians and the decision-making
20 regarding the best interest of the child. Practices [~~Policy~~] and
21 procedures developed [~~adopted~~] in accordance with this section are
22 intended to notify a parent or guardian of a need for mental health
23 or substance abuse intervention so that a parent or guardian may
24 take appropriate action. Nothing in this section shall be
25 construed as giving school districts the authority to prescribe
26 medications. Any and all medical decisions are to be made by a
27 parent or guardian of a student.

1 SECTION 13. Section 42.07(b)(1), Penal Code, is amended to
2 read as follows:

3 (1) "Electronic communication" means a transfer of
4 signs, signals, writing, images, sounds, data, or intelligence of
5 any nature transmitted in whole or in part by a wire, radio,
6 electromagnetic, photoelectronic, or photo-optical system. The
7 term includes:

8 (A) a communication initiated through the use of
9 [by] electronic mail, instant message, network call, a cellular or
10 other type of telephone, a computer, a camera, text message, a
11 social media platform or application, an Internet website, any
12 other Internet-based communication tool, or facsimile machine; and

13 (B) a communication made to a pager.

14 SECTION 14. Section 42.07(c), Penal Code, is amended to
15 read as follows:

16 (c) An offense under this section is a Class B misdemeanor,
17 except that the offense is a Class A misdemeanor if:

18 (1) the actor has previously been convicted under this
19 section; or

20 (2) the offense was committed under Subsection (a)(7)
21 and:

22 (A) the offense was committed against a child
23 under 18 years of age with the intent that the child:

24 (i) commit suicide; or

25 (ii) engage in conduct causing serious
26 bodily injury to the child; or

27 (B) the actor has previously violated a temporary

1 restraining order or injunction issued under Chapter 129A, Civil
2 Practice and Remedies Code.

3 SECTION 15. Section 37.0832(b), Education Code, is
4 repealed.

5 SECTION 16. The change in law made by this Act applies only
6 to an offense committed or conduct violating a penal law of this
7 state that occurs on or after the effective date of this Act. An
8 offense committed or conduct that occurs before the effective date
9 of this Act is governed by the law in effect on the date the offense
10 was committed or conduct occurred, and the former law is continued
11 in effect for that purpose. For purposes of this section, an
12 offense was committed or conduct violating a penal law of this state
13 occurred before the effective date of this Act if any element of the
14 offense or conduct occurred before that date.

15 SECTION 17. It is the intent of the legislature that every
16 provision, section, subsection, sentence, clause, phrase, or word
17 in this Act, and every application of the provisions in this Act to
18 each person or entity, are severable from each other. If any
19 application of any provision in this Act to any person, group of
20 persons, or circumstances is found by a court to be invalid for any
21 reason, the remaining applications of that provision to all other
22 persons and circumstances shall be severed and may not be affected.

23 SECTION 18. This Act takes effect September 1, 2017.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 179 passed the Senate on May 3, 2017, by the following vote: Yeas 31, Nays 0; May 17, 2017, Senate refused to concur in House amendments and requested appointment of Conference Committee; May 19, 2017, House granted request of the Senate; May 27, 2017, Senate adopted Conference Committee Report by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

I hereby certify that S.B. No. 179 passed the House, with amendments, on May 12, 2017, by the following vote: Yeas 130, Nays 11, one present not voting; May 19, 2017, House granted request of the Senate for appointment of Conference Committee; May 27, 2017, House adopted Conference Committee Report by the following vote: Yeas 136, Nays 11, two present not voting.

Chief Clerk of the House

Approved:

Date

Governor