CONFERENCE COMMITTEE REPORT FORM

Austin, Texas

May 24, 2017
Date

Honorable Dan Patrick
President of the Senate

Honorable Joe Straus
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on SB179 have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

José Menéndez	
Judith Zaffirini	
Jane Nelson	
Joan Huffman	
Brandon Creighton	
On the part of the Senate	On the part of the House

Note to Conference Committee Clerk:

Please type the names of the members of the Conference Committee under the lines provided for signature. Those members desiring to sign the report should sign each of the six copies. Attach a copy of the Conference Committee Report and a Section by Section side by side comparison to each of the six reporting forms. The original and two copies are filed in house of origin of the bill, and three copies in the other house.

15D 94

CONFERENCE COMMITTEE REPORT

3rd Printing

S.B. No. 179

A BILL TO BE ENTITLED

AN ACT

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

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

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

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

(a) In this section:

(1) "Bullying":

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

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

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

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

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

(B) includes cyberbullying.

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

(a-1) This section applies to:

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

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

(3) cyberbullying that occurs off school property or outside of a school-sponsored or school-related activity if the cyberbullying:

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

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

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

(1) prohibits the bullying of a student;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37.008 or expelled if the student:

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

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

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

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

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

Sec. 37.0151. REPORT TO LOCAL LAW ENFORCEMENT REGARDING CERTAIN CONDUCT CONSTITUTING ASSAULT OR HARASSMENT; LIABILITY. (a) The principal of a public primary or secondary school, or a person designated by the principal under Subsection (c), may 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 22.01 or 42.07(a)(7), Penal Code.

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

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

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

(d) 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 is not required to make a report under this section and may not be designated by the principal of a public primary or secondary school to make a report. A person who voluntarily makes a report under this section is immune from civil or criminal liability.

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

(f) Notwithstanding any other law, this section 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) 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) 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. Sections 37.218(a)(1) and (2), Education Code,

are amended to read as follows:

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

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

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

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

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

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

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

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

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

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

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

(B) criminal history records under Subchapter C,

Chapter 22;

(C) reading instruments and accelerated reading instruction programs under Section 28.006;

(D) accelerated instruction under Section 28.0211;

(E) high school graduation requirements under Section 28.025;

(F) special education programs under Subchapter A, Chapter 29;

(G) bilingual education under Subchapter B, Chapter 29;

(H) prekindergarten programs under Subchapter E or E-1, Chapter 29;

(I) extracurricular activities under Section 33.081;

(J) discipline management practices or behavior management techniques under Section 37.0021;

(K) health and safety under Chapter 38;

(L) public school accountability under Subchapters B, C, D, E, F, G, and J, Chapter 39;

(M) the requirement under Section 21.006 to report an educator's misconduct;

(N) intensive programs of instruction under Section 28.0213; [~~and~~]

(O) the right of a school employee to report a crime, as provided by Section 37.148;

(P) bullying prevention policies and procedures

under Section 37.0832;

(Q) 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

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

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

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

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

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

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

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

(1) grief-informed and trauma-informed practices;

(2) building skills related to managing emotions, establishing and maintaining positive relationships, and responsible decision-making;

(3) positive behavior interventions and supports; and

(4) a safe and supportive school climate.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CHAPTER 129A. RELIEF FOR CYBERBULLYING OF CHILD

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

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

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

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

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

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

(c) 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 individual was cyberbullying the recipient. 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 cyberbullying by the individual against the recipient.

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

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

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

(1) define the injury or state why it is irreparable;

(2) state why the order was granted without notice; or

(3) include an order setting the cause for trial on the merits with respect to the ultimate relief requested.

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

(b) The forms and instructions:

(1) must be written in language that is easily understood by the general public;

(2) shall be made readily available to the general public in the manner prescribed by the supreme court; and

(3) must be translated into the Spanish language.

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

(1) state:

(A) that the Spanish language translated form is to be used solely for the purpose of assisting in understanding the form and may not be submitted to the court; and

(B) that the English language version of the form must be submitted to the court; or

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

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

(f) A court shall 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.004. INAPPLICABILITY. (a) An action filed under this chapter may not be joined with an action filed under Title 1, 4, or 5, Family Code.

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

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

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

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

(1) early mental health intervention;

(2) mental health promotion [~~and positive youth development~~];

(3) substance abuse prevention;

(4) substance abuse intervention; [~~and~~]

(5) suicide prevention;

(6) grief-informed and trauma-informed practices;

(7) building skills related to managing emotions, establishing and maintaining positive relationships, and responsible decision-making;

(8) positive behavior interventions and supports and positive youth development; and

(9) safe and supportive school climate.

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

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

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

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

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

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

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

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

(1) the annual student handbook; and

(2) the district improvement plan under Section 11.252, Education Code.

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

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

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

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

(B) a communication made to a pager.

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

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

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

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

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

(i) commit suicide; or

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

(B) the actor has previously violated a temporary

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

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

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

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

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

Senate Bill 179
Conference Committee Report
Section-by-Section Analysis

SENATE VERSION	HOUSE VERSION (IE)	CONFERENCE
SECTION 1. This Act shall be known as David's Law.	SECTION 1. Same as Senate version.	SECTION 1. Same as Senate version.
No equivalent provision.	SECTION __. Section 5.001, Education Code, is amended by adding Subdivisions (5-a) and (9) to read as follows: (5-a) "Mental health condition" means an illness, disease, or disorder, other than epilepsy, dementia, substance abuse, or intellectual disability, that: (A) substantially impairs a person's thought, perception of reality, emotional process, or judgment; or (B) grossly impairs behavior as demonstrated by recent disturbed behavior. ***(9) "Substance abuse" means a patterned use of a substance, including a controlled substance, as defined by Chapter 481, Health and Safety Code, and alcohol, in which the person consumes the substance in amounts or with methods that are harmful to the person's self or to others.*** [FA2]	SECTION 6. Same as House version ***except omits definition for "substance abuse."***
SECTION 2. Amends Section 37.0832, Education Code, as follows:	SECTION 2. Same as Senate version except as follows:	SECTION 2. Same as Senate version except as follows:
(a) Redefines "bullying" and defines "cyberbullying" as bullying that is done through the use of any electronic communication ***device***.	(a) Same as Senate version except in the definition of cyberbullying, ***omits the term "device."***	(a) Same as Senate version.
(a-1) Establishes the section's applicability.	(a-1) Same as Senate version.	(a-1) Same as Senate version.
(c) The board of trustees of each school district shall adopt a policy, including any necessary procedures, concerning bullying that: (1)-(2)	(c) The board of trustees of each school district shall adopt a policy, including any necessary procedures, concerning bullying that: (1)-(2)	(c) The board of trustees of each school district shall adopt a policy, including any necessary procedures, concerning bullying that: (1)-(2)

SENATE VERSION	HOUSE VERSION (IE)	CONFERENCE
(3) establishes a procedure for providing notice of an incident of bullying to: (A) a parent or guardian of the alleged victim ***not later than the next school day after the incident is reported;*** and	(3) establishes a procedure for providing notice of an incident of bullying to a parent or guardian of the alleged victim and	(3) establishes a procedure for providing notice of an incident of bullying to: (A) a parent or guardian of the alleged victim ***on or before the third business day after the date the incident is reported;*** and
(B) a parent or guardian of the alleged bully within a reasonable amount of time after the incident; (4)-(5) (6) establishes procedures for reporting an incident of bullying, including procedures for a student, ***parent, teacher, or administrator*** to anonymously report an incident of bullying, investigating a reported incident of bullying, and determining whether the reported incident of bullying occurred; (7)-(8)	a parent or guardian of the alleged bully within a reasonable amount of time after the incident; (4)-(5) (6) establishes procedures for reporting an incident of bullying, including procedures for a student to anonymously report an incident of bullying, investigating a reported incident of bullying, and determining whether the reported incident of bullying occurred; (7)-(8)	(B) a parent or guardian of the alleged bully within a reasonable amount of time after the incident; (4)-(5) (6) establishes procedures for reporting an incident of bullying, including procedures for a student to anonymously report an incident of bullying, investigating a reported incident of bullying, and determining whether the reported incident of bullying occurred; (7)-(8)
(f) Each school district may establish a district-wide policy to assist in the prevention and mediation of bullying incidents between students that: (1) interfere with a student's educational opportunities; or (2) substantially disrupt the orderly operation of a classroom, school, or school-sponsored or school-related activity.	***No equivalent provision.***	(f) Same as Senate version.
SECTION 3. Subchapter A, Chapter 37, Education Code, is amended by adding Section 37.0052, relating to the placement or expulsion of students who have engaged in certain bullying behavior against ***a student***.	SECTION 3. Same as Senate version except applies to certain bullying behavior against ***a minor***.	SECTION 3. Same as Senate version.
SECTION 4. Subchapter A, Chapter 37, Education Code, is amended by adding Section 37.0151 to read as follows: Sec. 37.0151. REPORT TO LOCAL LAW ENFORCEMENT REGARDING CERTAIN CONDUCT CONSTITUTING	***No equivalent provision.***	SECTION 4. Same as Senate version.

SENATE VERSION	HOUSE VERSION (IE)	CONFERENCE
ASSAULT OR HARASSMENT; LIABILITY. (a) The principal of a public primary or secondary school, or a person designated by the principal under Subsection (c), may 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 22.01 or 42.07(a)(7), Penal Code. (b) A person who makes a report under this section may include the name and address of each student the person believes may have participated in the conduct. (c) The principal of a public primary or secondary school may designate a school employee, other than a school counselor, who is under the supervision of the principal to make the report under this section. (d) 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 is not required to make a report under this section and may not be designated by the principal of a public primary or secondary school to make a report. A person who voluntarily makes a report under this section is immune from civil or criminal liability. (e) A person who takes any action under this section is immune from civil or criminal liability or disciplinary action resulting from that action. (f) Notwithstanding any other law, this section 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		

SENATE VERSION	HOUSE VERSION (IE)	CONFERENCE
section. (g) 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) 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. Sections 37.218(a)(1) and (2), Education Code, are amended.	SECTION 4. Same as Senate version.	SECTION 5. Same as Senate version.
SECTION 6. Section 12.104(b), Education Code, is amended to read as follows: (b) An open-enrollment charter school is subject to: (1) a provision of this title establishing a criminal offense; and (2) a prohibition, restriction, or requirement, as applicable, imposed by this title or a rule adopted under this title, relating to: (A) - (O); (P) bullying prevention policies and procedures under Section 37.0832; (Q) 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 (R) the ***requirement*** under Section 37.0151 to report to local law enforcement certain conduct constituting harassment.	SECTION 5. Same as Senate version except ***omits Subsections (b)(2)(Q) and (R)***.	SECTION 7. Same as Senate version except as follows: (R) the ***right*** under Section 37.0151 to report to local law enforcement certain conduct constituting ***assault or***

SENATE VERSION	HOUSE VERSION (IE)	CONFERENCE
		harassment.
No equivalent provision.	SECTION 6. Section 21.054, Education Code, is amended by adding Subsections (d-2) and (e-2) to read as follows: (d-2) Continuing education requirements for a classroom teacher may include instruction regarding how grief and trauma affect student learning and behavior and how evidence-based, grief-informed, and trauma-informed strategies support the academic success of students affected by grief and trauma. (e-2) Continuing education requirements for a principal may include instruction regarding how grief and trauma affect student learning and behavior and how evidence-based, grief-informed, and trauma-informed strategies support the academic success of students affected by grief and trauma.	SECTION 8. Same as House version.
No equivalent provision.	SECTION 7. Subchapter J, Chapter 21, Education Code, is amended by adding Section 21.462 to read as follows: Sec. 21.462. RESOURCES REGARDING STUDENTS WITH MENTAL HEALTH NEEDS. The agency, in coordination with the Health and Human Services Commission, shall establish and maintain an Internet website to provide resources for school district or open-enrollment charter school employees regarding working with students with mental health conditions. The agency must include on the Internet website information about: (1) grief-informed and trauma-informed practices; (2) building skills related to managing emotions, establishing and maintaining positive relationships, and responsible decision-making; (3) positive behavior interventions and supports; and (4) a safe and supportive school climate.	SECTION 9. Same as House version.

SENATE VERSION	HOUSE VERSION (IE)	CONFERENCE
SECTION 7. Section 33.006, Education Code, is amended by amending Subsection (b) and adding Subsection (c) to read as follows: (b) In addition to a school counselor's responsibility under Subsection (a), the school counselor shall: (1) - (6); and (7) serve 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. ***(c) Nothing in Subsection (b)(7) exempts a school counselor from any mandatory reporting requirements imposed by other provisions of law.***	SECTION 8. Same as Senate version except as follows: (7) serve as an impartial, nonreporting ***resource*** for interpersonal conflicts and discord involving two or more students, ***including*** accusations of bullying under Section 37.0832.	SECTION 10. Same as Senate version except as follows: (7) serve as an impartial, nonreporting ***resource*** for interpersonal conflicts and discord involving two or more students, ***including*** accusations of bullying under Section 37.0832.
SECTION 8. Title 6, Civil Practice and Remedies Code, is amended by adding Chapter 129A to read as follows: CHAPTER 129A. RELIEF FOR CYBERBULLYING OF CHILD	SECTION 9. Same as Senate version except as follows:	SECTION 11. Same as Senate version except as follows:
Sec. 129A.001. DEFINITION.	Sec. 129A.001. Same as Senate version.	Sec. 129A.001. Same as Senate version.
Sec. 129A.002. INJUNCTIVE RELIEF Among other provisions: (e) A ***court granting*** a temporary restraining order or temporary injunction under this section ***may, on motion of either party or sua sponte,*** order the preservation of any relevant electronic communication. The temporary restraining order or temporary injunction is not required to: (1) define the injury or state why it is irreparable;	Sec. 129A.002. Same as Senate version except as follows: (e) A temporary restraining order or temporary injunction ***granted*** under this section ***shall*** order the preservation of any relevant electronic communication. The temporary restraining order or temporary injunction is not required to: (1) define the injury or state why it is irreparable; (2) state why the order was granted without notice; or (3)	Sec. 129A.002. Same as Senate version.

SENATE VERSION	HOUSE VERSION (IE)	CONFERENCE
(2) state why the order was granted without notice; or (3) include an order setting the cause for trial on the merits with respect to the ultimate relief requested.	include an order setting the cause for trial on the merits with respect to the ultimate relief requested.	
Sec. 129A.003. PROMULGATION OF FORMS. Among other provisions: (e) The attorney general and the clerk of a court shall make the forms available free of charge.	Sec. 129A.003. Same as Senate version except as follows: (e) The attorney general and the clerk of a court shall ***inform members of the general public of the availability of a form promulgated by the supreme court under this section as appropriate and*** make the form available free of charge.	Sec. 129A.003. Same as House version.
Sec. 129A.004. INAPPLICABILITY.	Sec. 129A.004. Same as Senate version.	Sec. 129A.004. Same as Senate version.
Sec. 129A.005. CERTAIN CONDUCT EXCEPTED.	Sec. 129A.005. Same as Senate version.	Sec. 129A.005. Same as Senate version.
No equivalent provision.	SECTION 10. Sections 161.325, (a-1), (d), (e), (f), and (i), Health and Safety Code, are amended to read as follows: (a-1) The list must include programs in the following areas: (1) early mental health intervention; (2) mental health promotion [~~and positive youth development~~]; (3) substance abuse prevention; (4) substance abuse intervention; [~~and~~] (5) suicide prevention; (6) grief-informed and trauma-informed practices; (7) building skills related to managing emotions, establishing and maintaining positive relationships, and responsible decision-making; (8) positive behavior interventions and supports and positive youth development; and (9) safe and supportive school climate.	SECTION 12. Same as House version except as follows:

SENATE VERSION	HOUSE VERSION (IE)	CONFERENCE
	(d) A [~~The board of trustees of each~~] school district ***shall*** develop practices and procedures [~~may adopt a policy~~] concerning each area listed in Subsection (a-1), including mental health promotion and intervention, substance abuse prevention and intervention, and suicide prevention that: (1) includes [~~establishes~~] a procedure for providing notice of a recommendation for early mental health or substance abuse intervention regarding a student to a parent or guardian of the student within a reasonable amount of time after the identification of early warning signs as described by Subsection (b)(2); (2) includes [~~establishes~~] a procedure for providing notice of a student identified as at risk of committing suicide to a parent or guardian of the student within a reasonable amount of time after the identification of early warning signs as described by Subsection (b)(2); (3) establishes that the district may develop a reporting mechanism and may designate at least one person to act as a liaison officer in the district for the purposes of identifying students in need of early mental health or substance abuse intervention or suicide prevention; and (4) sets out available counseling alternatives for a parent or guardian to consider when their child is identified as possibly being in need of early mental health or substance abuse intervention or suicide prevention. (e) The practices and procedures developed under Subsection (d) [~~policy~~] must prohibit the use without the prior consent of a student's parent or guardian of a medical screening of the student as part of the process of identifying whether the student is possibly in need of early mental health or substance abuse intervention or suicide prevention. (f) The practices [~~policy~~] and [~~any necessary~~] procedures	(d) A [~~The board of trustees of each~~] school district ***may*** develop practices and procedures [~~may adopt a policy~~] concerning each area listed in Subsection (a-1), including mental health promotion and intervention, substance abuse prevention and intervention, and suicide prevention, that: (1) include [~~establishes~~] a procedure for providing notice of a recommendation for early mental health or substance abuse intervention regarding a student to a parent or guardian of the student within a reasonable amount of time after the identification of early warning signs as described by Subsection (b)(2); (2) include [~~establishes~~] a procedure for providing notice of a student identified as at risk of committing suicide to a parent or guardian of the student within a reasonable amount of time after the identification of early warning signs as described by Subsection (b)(2); (3) establish [~~establishes~~] that the district may develop a reporting mechanism and may designate at least one person to act as a liaison officer in the district for the purposes of identifying students in need of early mental health or substance abuse intervention or suicide prevention; and (4) set [~~sets~~] out available counseling alternatives for a parent or guardian to consider when their child is identified as possibly being in need of early mental health or substance abuse intervention or suicide prevention.

SENATE VERSION	HOUSE VERSION (IE)	CONFERENCE
	developed [~~adopted~~] under Subsection (d) must be included in: (1) the annual student handbook; and (2) the district improvement plan under Section 11.252, Education Code. (i) Nothing in this section is intended to interfere with the rights of parents or guardians and the decision-making regarding the best interest of the child. Practices [~~Policy~~] and procedures developed [~~adopted~~] in accordance with this section are intended to notify a parent or guardian of a need for mental health or substance abuse intervention so that a parent or guardian may take appropriate action. Nothing in this section shall be construed as giving school districts the authority to prescribe medications. Any and all medical decisions are to be made by a parent or guardian of a student.	
SECTION 9. Section 42.07(b)(1), Penal Code, is amended.	SECTION 12. Same as Senate version.	SECTION 13. Same as Senate version.
SECTION 10. Section 42.07(c), Penal Code, is amended to read as follows: (c) An offense under this section is a Class B misdemeanor, except that the offense is a Class A misdemeanor if: (1) the actor has previously been convicted under this section; or (2) the offense was committed under Subsection (a)(7) ***against a child under 18 years of age with the intent that the child:*** (A) commit suicide; or (B) engage in conduct causing serious bodily injury to the child.	SECTION 11. Section 42.07(c), Penal Code, is amended to read as follows: (c) An offense under this section is a Class B misdemeanor, except that the offense is a Class A misdemeanor if: (1) the actor has previously been convicted under this section; or (2) the offense was committed under Subsection (a)(7) ***and the actor:*** ***(A) has previously violated a temporary restraining order or injunction issued under Chapter 129A, Civil Practice and Remedies Code; or*** ***(B) intentionally causes a child under 18 years of age to:*** (i) commit suicide; or (ii) engage in conduct causing serious bodily injury to the	SECTION 14. Same as House version excepts as follows: (2) the offense was committed under Subsection (a)(7) ***and:*** ***(A) the offense was committed against a child under 18 years of age with the intent that the child:*** (i) commit suicide; or (ii) engage in conduct causing serious bodily injury to the child; or ….

SENATE VERSION	HOUSE VERSION (IE)	CONFERENCE
	child. [FA1]	
SECTION 11. Section 37.0832(b), Education Code, is repealed.	SECTION 13. Same as Senate version.	SECTION 15. Same as Senate version.
SECTION 12. Chapter 129A, Civil Practice and Remedies Code, as added by this Act, applies only to a cause of action that accrues on or after the effective date of this Act. A cause of action that accrues before the effective date of this Act is governed by the law in effect immediately before that date, and that law is continued in effect for that purpose.	***No equivalent provision.***	Same as House version.
SECTION 13. Savings provision.	SECTION 14. Same as Senate version.	SECTION 16. Same as Senate version.
No equivalent provision.	SECTION 15. It is the intent of the legislature that every provision, section, subsection, sentence, clause, phrase, or word in this Act, and every application of the provisions in this Act to each person or entity, are severable from each other. If any application of any provision in this Act to any person, group of persons, or circumstances is found by a court to be invalid for any reason, the remaining applications of that provision to all other persons and circumstances shall be severed and may not be affected.	SECTION 17. Same as House version.
SECTION 14. This Act takes effect September 1, 2017.	SECTION 16. Same as Senate version.	SECTION 18. Same as Senate version.

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION

May 26, 2017

TO: Honorable Dan Patrick, Lieutenant Governor, Senate
Honorable Joe Straus, Speaker of the House, House of Representatives

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: **SB179** by Menéndez (Relating to harassment, bullying, and cyberbullying of a public school student or minor and certain mental health programs for public school students; increasing a criminal penalty.), **Conference Committee Report**

No significant fiscal implication to the State is anticipated.

The bill would amend Education Code provisions regarding bullying to include cyberbullying; to allow school districts to establish a districtwide policy related to bullying prevention and mediation; to specify the placement or expulsion of certain students; and to specify reports school principals may make to local law enforcement. The bill would allow continuing education requirements for classroom teachers and principals to include instruction related to grief-informed and trauma-informed strategies. The bill would require the Texas Education Agency (TEA) to maintain a website with resources related to student mental health needs. The bill would amend the Health and Safety Code to expand the list of certain procedures that school districts may develop. The bill would amend the Civil Practice and Remedies Code to specify relief for cyberbullying of a child, and to require that the Texas Supreme Court promulgate forms for use as an application for injunctive relief in suits relating to cyberbullying. The bill would also amend the Penal Code to include certain actions within the offense of harassment.

No significant fiscal impact on the state court system is anticipated. This analysis assumes the provisions of the bill addressing sanctions for criminal offenses would not result in a significant impact on state correctional agencies.

It is anticipated that the Texas Education Agency and the Office of Court Administration could implement the bill with existing resources.

Local Government Impact

School districts and open-enrollment charter schools may incur costs to adopt cyberbullying and reporting policies. The requirement for counselors to serve as resources may result in the need for additional counselor training and staff time. The Texas Education Agency estimates these provisions could be implemented at minimal local cost, and that costs will vary depending on the size of the district and current policies and practices.

A Class A misdemeanor is punishable by a fine of not more than $4,000, confinement in jail for a term not to exceed one year, or both. Costs associated with enforcement, prosecution, and

confinement could likely be absorbed within existing resources. Revenue gain from fines imposed and collected is not anticipated to have a significant fiscal implication.

No significant fiscal impact on the local courts is anticipated.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 701 Texas Education Agency

LBB Staff: UP, THo, AM, RSt, JPo, JGA, AG, AW

LEGISLATIVE BUDGET BOARD
Austin, Texas

CRIMINAL JUSTICE IMPACT STATEMENT

85TH LEGISLATIVE REGULAR SESSION

May 26, 2017

TO: Honorable Dan Patrick, Lieutenant Governor, Senate
Honorable Joe Straus, Speaker of the House, House of Representatives

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: **SB179** by Menéndez (Relating to harassment, bullying, and cyberbullying of a public school student or minor and certain mental health programs for public school students; increasing a criminal penalty.), **Conference Committee Report**

The provisions of the bill addressed by this analysis would amend the Penal Code as it relates to the offense of harassment. Under the provisions of the bill, the circumstances for the prosecution of harassment would be expanded and would be punishable by a Class A misdemeanor.

A Class A misdemeanor is punishable by a fine of not more than $4,000, confinement in a county jail for a term not to exceed one year, or both.

This analysis assumes the provisions of the bill would not result in a significant impact on the demand for state correctional resources.

Source Agencies:

LBB Staff: UP, JPo, LM

Certification of Compliance with

Rule 13, Section 6(b), House Rules of Procedure

Rule 13, Section 6(b), House Rules of Procedure, requires a copy of a conference committee report signed by a majority of each committee of the conference to be furnished to each member of the committee in person or, if unable to deliver in person, by placing a copy in the member's newspaper mailbox at least one hour before the report is furnished to each member of the house under Rule 13, Section 10(a). The paper copies of the report submitted to the chief clerk under Rule 13, Section 10(b), must contain a certificate that the requirement of Rule 13, Section 6(b), has been satisfied, and that certificate must be attached to the copy of the report furnished to each member under Rule 13, Section 10(d). Failure to comply with this requirement is not a sustainable point of order under Rule 13.

I certify that a copy of the conference committee report on SB 179 was furnished to each member of the conference committee in compliance with Rule 13, Section 6(b), House Rules of Procedure, before submission of the paper copies of the report to the chief clerk under Rule 13, Section 10(b), House Rules of Procedure.

(name) INA Minjarez

5/24/17

(date)

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