

## **BILL ANALYSIS**

C.S.H.B. 306  
By: Minjarez  
Public Education  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Interested parties note recent concerning instances of student harassment, bullying, and cyberbullying and call for legislation to prevent and combat bullying in a manner that keeps pace with evolving technology. C.S.H.B. 306 seeks to accomplish those goals by enacting David's Law, which gives schools and law enforcement more authority to prevent bullying and take disciplinary action when it occurs.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill expressly does one or more of the following: creates a criminal offense, increases the punishment for an existing criminal offense or category of offenses, or changes the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

C.S.H.B. 306 amends the Education Code to change the definition of "bullying" in provisions relating to bullying prevention policies and procedures in schools from engaging in written or verbal expression, expression through electronic means, or physical conduct that occurs on school property, at a school-sponsored or school-related activity, or in a vehicle operated by the school district and that meets certain criteria relating to the effect of the conduct to 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 engaging in written or verbal expression, expression through electronic means, or physical conduct, that satisfies certain location-related applicability requirements provided by the bill, and that meets similar criteria relating to the effect of the conduct or meets one of the following criteria added by the bill: materially and substantially disrupts the educational process or the orderly operation of a classroom or school or infringes on the rights of the victim at school. The bill includes cyberbullying in the definition and defines that term as bullying that is done through the use of electronic communication, 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, a website, or any other Internet-based communication tool. The bill repeals the provision establishing that applicable conduct is considered bullying if that conduct exploits an imbalance of power between the student perpetrator and the student victim through written or verbal expression or physical conduct and interferes with a student's education or substantially disrupts the operation of a school. The bill applies provisions relating to bullying prevention policies and procedures in schools to bullying that occurs on school property or at the site of a school-sponsored or school-related activity on or off school property if the bullying interferes with a student's educational opportunities or substantially disrupts the orderly operation of a classroom, school,

or school-sponsored or school-related activity.

C.S.H.B. 306 adds the specification, for purposes of the requirement that each public school district board of trustees adopt a policy concerning bullying that establishes a procedure for providing notice of an incident of bullying to a parent or guardian of the victim and a parent or guardian of the bully within a reasonable amount of time after the incident, that such victim is an alleged victim and that such bully is an alleged bully. The bill specifies that the procedures in the policy for reporting an incident of bullying include procedures for a student to anonymously report such an incident.

C.S.H.B. 306 authorizes a student's removal from class and placement in a disciplinary alternative education program or expulsion if the student engages in bullying that encourages a minor to commit or attempt to commit suicide, incites violence against a minor through group bullying, or releases or threatens to release intimate visual material of a minor. The bill defines "bullying" for such purpose as having the same meaning as in provisions relating to bullying prevention policies and procedures in schools and defines "intimate visual material" by reference as visual material that depicts a person with the person's intimate parts exposed or engaged in sexual conduct. The bill replaces the definitions of "bullying" and "cyberbullying" in a statutory provision relating to safety training programs developed by the Texas School Safety Center for use by school districts regarding the dangers of students sharing visual material depicting a minor engaged in sexual conduct with the bill's definitions of those terms as regards bullying prevention policies and procedures in schools.

C.S.H.B. 306 explicitly subjects an open-enrollment charter school to prohibitions, restrictions, or requirements, as applicable, relating to bullying prevention policies and procedures and imposed by Education Code provisions relating to public education or by a rule adopted under those provisions. The bill authorizes continuing education requirements for a classroom teacher and for a principal to 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. The bill includes among the specified duties of a school counselor beyond the counselor's primary responsibility a requirement that the counselor serve as an impartial, nonreporting resource for interpersonal conflicts and discord involving two or more students, including accusations of bullying.

C.S.H.B. 306 requires the Texas Education Agency (TEA), in coordination with the Health and Human Services Commission (HHSC), to establish and maintain a website to provide resources for district or charter school employees regarding working with students with mental health conditions and specifies content requirements for the website.

C.S.H.B. 306 amends the Civil Practice and Remedies Code to authorize a recipient of cyberbullying behavior who is younger than 18 years of age at the time the cyberbullying, as defined by the bill, occurs or a parent of or person standing in parental relation to the recipient to seek injunctive relief 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. The bill authorizes a court to issue a temporary restraining order, temporary injunction, or permanent injunction appropriate under the circumstances to prevent any further cyberbullying, including an order or injunction enjoining a defendant from engaging in cyberbullying or 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.S.H.B. 306 entitles a plaintiff in an action for injunctive relief for the cyberbullying of a child to a temporary restraining order on showing that the plaintiff is likely to succeed in establishing that the individual was cyberbullying the recipient and expressly does not require the plaintiff 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. The bill entitles a plaintiff to a temporary or permanent injunction on showing that the individual was cyberbullying the recipient and requires a temporary restraining order or temporary injunction to order the preservation of any relevant electronic communication but expressly does not require such an order or injunction to define the injury or state why it is irreparable, to state why the order was granted without notice, or to include an order setting the cause for trial on the merits with respect to the ultimate relief requested.

C.S.H.B. 306 requires the supreme court, as the court finds appropriate, to 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. The bill sets out requirements for the forms and instructions and for the required Spanish language translation of a form. The bill requires the attorney general and the clerk of a court to inform members of the general public of the availability of such a form as appropriate and to make the form available free of charge and requires a court to accept such a form unless the form has been completed in a manner that causes a substantive defect that cannot be cured.

C.S.H.B. 306 authorizes a court in a proceeding for injunctive relief for the cyberbullying of a child to award to any claimant or defendant costs and reasonable and necessary attorney's fees as are equitable and just and caps the award to any party for attorney's fees at \$5,000. The bill prohibits an action filed under the bill's provisions relating to injunctive relief for the cyberbullying of a child from being joined with an action under Family Code provisions relating to the marriage relationship, protective orders and family violence, or the parent-child relationship and the suit affecting the parent-child relationship and exempts such an action from the application of statutory provisions relating to actions involving the exercise of certain constitutional rights. The bill's provisions relating to injunctive relief for cyberbullying expressly do not apply to a claim for cyberbullying brought against an interactive computer service, as defined by federal law.

C.S.H.B. 306 amends the Health and Safety Code to include the following on the list of recommended best practice-based programs relating to mental health, substance abuse, and youth suicide the Department of State Health Services (DSHS), in coordination with TEA and regional education service centers, is required to provide and annually update for implementation by public elementary, junior high, middle, and high schools within the general education setting: programs in grief-informed and trauma-informed practices; programs in building skills related to managing emotions, establishing and maintaining positive relationships, and responsible decision-making; programs in positive behavior interventions and supports; and programs in safe and supportive school climate. The bill replaces the authorization for the board of trustees of each school district to adopt a policy concerning each required program area included in the DSHS list with a requirement that a district develop practices and procedures concerning each area. The bill replaces the requirement that the practices and procedures establish certain procedures with a requirement that the practices and procedures include those procedures.

C.S.H.B. 306 amends the Penal Code to expand the conduct that constitutes the Class B misdemeanor offense of harassment to include engaging in bullying, as defined by reference in the applicable Education Code provisions, as amended by the bill. The bill enhances the penalty to a Class A misdemeanor offense for an actor who engages in bullying if the actor has previously violated a temporary restraining order or injunction issued under the bill's provisions or if the actor's conduct results in serious bodily injury or death. The bill includes in the definition of electronic communication, as it relates to the offense of harassment, communication initiated through the use of a cellular or other type of telephone, a computer, a camera, text message, a social media platform or application, a website, or any other Internet-based communication tool beyond electronic mail, instant message, or network call.

C.S.H.B. 306 repeals Section 37.0832(b), Education Code.

## EFFECTIVE DATE

September 1, 2017.

## COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 306 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

### INTRODUCED

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

SECTION 2. Section 37.0832, Education Code, is amended by amending Subsections (a), (c), (d), and (e) and adding Subsection (a-1) 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, causing a student to experience substantial negative mental health effects, 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, 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 electronic

### HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Same as introduced version.

SECTION 2. Section 37.0832, Education Code, is amended by amending Subsections (a) and (c) and adding Subsection (a-1) 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 electronic

communication, including through the use of a cellular or other type of telephone, a computer, a pager, a camera, electronic mail, instant messaging, text messaging, a social media application, Internet website, or 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 van 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 and the governing body of each open-enrollment charter school or private school shall adopt a policy, including any necessary procedures, concerning bullying that:

(1) prohibits the bullying and cyberbullying 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 parent or guardian of the victim and a parent or guardian of the bully not later than the next school day [within a reasonable amount of time] after the incident is reported;

(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

communication, 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 bullying that occurs on school property or at the site of a school-sponsored or school-related activity on or off school property if the bullying:

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

(2) 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 parent or guardian of the alleged victim and 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, 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) 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.).

(d) The policy and any necessary procedures adopted under Subsection (c) must be included:

(1) annually, in any [the] student and employee [school-district] handbooks; and

(2) in the district improvement plan under Section 11.252.

(e) The procedure for reporting bullying established under Subsection (c) must be posted on the district's or school's Internet website to the extent practicable.

SECTION 3. Subchapter A, Chapter 37, Education Code, is amended.

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 or private primary or secondary school, or a person designated by the principal under Subsection (c), shall make a report to any school district police department and the police department of the municipality in which the school is located or, if the school is not in a municipality, the sheriff of the county in which the school is located if the principal has reasonable grounds to believe that a student engaged in conduct that constitutes an offense under Section 22.01 or 42.07(a)(7), Penal Code.

(b) A person who makes a report under this section shall include the name and address

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.).

SECTION 3. Same as introduced version.

No equivalent provision.

of each student the person believes may have participated in the conduct.

(c) The principal of a public or private 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 is not liable in civil damages for making a report in good faith under this section.

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

No equivalent provision.

SECTION 4. Same as introduced version.

SECTION 5. 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; and  
(P) bullying prevention policies and procedures under Section 37.0832.

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.

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 6. Section 33.006(b), Education Code, is amended to read as follows:

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

SECTION 8. Section 33.006(b), Education Code, is amended 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 mediator for interpersonal conflicts involving two or more students, including accusations of bullying or cyberbullying under Section 37.0832.

SECTION 7. Chapter 18, Civil Practice and Remedies Code, is amended by adding Subchapter E to read as follows:

**SUBCHAPTER E. SUBPOENAS**

**Sec. 18.101. PRE-SUIT SUBPOENAS FOR CERTAIN CLAIMS INVOLVING MINORS.** (a) The supreme court shall adopt rules of civil procedure providing for the issuance of a pre-suit subpoena to:

(1) investigate a potential claim involving an injury to or death of a minor; or

(2) perpetuate or obtain evidence or testimony from any person for use in an anticipated action involving an injury to or death of a minor.

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.

No equivalent provision.

(b) The rules must:

(1) allow a party to request a subpoena to compel an oral or written deposition, the production of electronic or magnetic data, or the production of documents or tangible things; and

(2) require that a responding party provide any electronic or magnetic data or documentary or tangible evidence to the court under seal for the court to determine, after notice, hearing, and an in camera inspection, if the evidence should be released to the requesting party.

SECTION 8. Title 4, Civil Practice and Remedies Code, is amended by adding Chapter 100B to read as follows:

CHAPTER 100B. LIABILITY FOR CERTAIN BULLYING OF CHILD

Sec. 100B.001. DEFINITIONS. In this chapter:

(1) "Bullying communication" means written or oral expression, expression by means of electronic communication, or non-verbal expression:

(A) that consists of multiple communications:

(i) with respect to which the individual making the communication acts intentionally and with malice;

(ii) where the communications:

(a) when taken together, were extreme and outrageous in light of the content, manner, time, place, and number of such communications; or

(b) were harassing and offensive, and the individual making the communication acts was acting in concert with two or more other persons whose communications directed at the recipient the individual making the communication acts knew to be harassing and offensive, if such communications by the individual making the communication acts and such other persons, when taken together, were extreme and outrageous in light of the manner, time, place, and number of such communications; and

(iii) with respect to which the actions of the individual making the communication caused, or if made in concert with other persons as provided in clause (1)(A)(ii)(b) of this Section, contributed to causing, the recipient to suffer severe emotional distress;  
or

(B) in which the individual making the

No equivalent provision. (*But see SECTION 9 below.*)

communication:

(i) urges or incites the recipient to commit or attempt to commit suicide;

(ii) threatens to make available to any third party, whether or not specified, by electronic communication or otherwise, intimate visual material of or depicting the recipient of the bullying communication; or

(iii) threatens bodily injury to the recipient or a member of the recipient's family.

(2) "Claimant" means a party seeking to recover damages under this chapter, including a plaintiff, counterclaimant, cross-claimant, or third-party plaintiff, and includes a party seeking recovery of damages under this chapter on behalf of another person and the person on whose behalf the damages are sought.

(3) "Defendant" includes any party from whom a claimant seeks recovery of damages under this chapter, and includes a person from whom a claimant seeks recovery under Section 100B.005 and the child who engaged in the actionable bullying that is the subject of the action in which recovery is sought.

(4) "Electronic communication" means a transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted wholly or partly by a wire, radio, electromagnetic, photoelectronic, or photo-optical system including through the use of a cellular or other type of telephone, facsimile machine, a computer, a pager, a camera, electronic mail, instant messaging, text messaging, a social media application, Internet website, or other Internet-based communication tool.

(5) "Family" has the meaning assigned by Section 71.003, Family Code.

(6) "Interactive service" means an information service, system, wireless telephone and text message service, or access software provider that provides or enables electronic communication through computer or wireless telephone access by multiple users to a computer server or wireless telephone network, including a system that provides access to the Internet or wireless telephones.

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

Sec. 100B.002. ACTIONABLE BULLYING. A person engages in

actionable bullying for the purposes of this chapter if the person directs bullying communication toward a single recipient who, at the time of the bullying communication, is younger than 18 years of age.

Sec. 100B.003. LIABILITY. A defendant is liable to a claimant as provided by this chapter if the claimant shows that the defendant engaged in actionable bullying directed toward the claimant.

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

(b) Except as provided by Subsection (c), in addition to damages awarded under Subsection (a), a claimant who prevails in a suit under this chapter may recover:

- (1) exemplary damages; and
- (2) court costs and reasonable attorney's fees.

(c) Instead of recovering exemplary damages under Subsection (b), a claimant who prevails in a suit under this chapter may elect to treble the amount that would otherwise be awarded under Subsection (a), not to exceed \$75,000.00 under this subsection (c) per actionable claim, if the claimant shows that:

(1) the defendant used an interactive service to transfer electronic communication to the claimant that constituted actionable bullying; and

(2) the defendant knew that two or more other persons were using that interactive service to transfer electronic communication that constituted actionable bullying as to the claimant within 24 hours of each transfer by the defendant described by Subdivision (1).

Sec. 100B.005. PARENTAL RESPONSIBILITY. A parent or other person who has the duty of control and reasonable discipline of a child who engages in actionable bullying directed toward the claimant is liable to the claimant for:

- (1) the lesser of:
  - (A) damages recoverable by the claimant under Section 100B.004, including

exemplary damages or multiplied damages, as applicable; or  
(B) \$50,000; and  
(2) court costs and reasonable attorney's fees.

Sec. 100B.006. INJUNCTIVE RELIEF. If a defendant is found liable under this chapter, a court may order any injunctive relief sought by the claimant that the court determines is appropriate under the circumstances.

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

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

SECTION 9. Chapter 22, Penal Code, is amended by adding Section 22.081 to read as follows:

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

Sec 22.081. DEFINITIONS. In this section:

(1) "Electronic communication" has the meaning assigned by Section 42.07(b)(1), Penal Code.

(2) "Intimate parts," "sexual conduct," and "visual material" have the meanings assigned by Section 21.16, Penal Code.

(3) "Intimate visual material" means visual material that depicts a person:

(A) with the person's intimate parts exposed;  
or

(B) engaged in sexual conduct.

(4) "Suicide baiting" means a communication by a person directed at another by written or verbal expression, expression through an electronic communication, or non-verbal expression, that urges or incites the other to commit or attempt to commit suicide.

(a) A person commits an offense if such person intentionally and with malice directs one or more communications toward a child younger than 18 years of age by written or oral expression, expression through electronic communications, or nonverbal expression, and such communication was, or such communications when taken together

No equivalent provision.

were, harassing, extreme and outrageous in light of the content, number, manner, time, and place of such communication or communications; and

(1) the actor's conduct causes the suicide, or the attempted suicide of such child that results in serious bodily injury; or

(2) the actor was acting in concert with two or more other persons whose communications directed at such child the actor knew to be harassing, extreme and outrageous in light of the content, number, manner, time, and place of such other communications, and the cumulative effect of such communication or communications by the actor and such communications by such other persons was to cause the suicide of such child, or the attempted suicide of such child that results in serious bodily injury.

(b) A person commits an offense if such person intentionally and with malice directs one or more communications toward a child younger than 18 years of age by written or oral expression, expression through electronic communications, or non-verbal expression, and in such communication or communications the person threatened to make available to any third party, whether or not specified, by electronic communication, or otherwise, intimate visual material of or depicting such child, and such conduct by the actor causes the suicide of such child, or the attempted suicide of such child that results in serious bodily injury.

(c) An offense under this section is a Class A misdemeanor.

No equivalent provision. (*But see SECTION 8 above.*)

SECTION 9. 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 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) 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. ATTORNEY'S FEES AND COSTS. In a proceeding under this chapter, the court may award to any claimant or defendant costs and reasonable and necessary attorney's fees as are equitable and just. The amount awarded to any party under this section for attorney's fees may not exceed \$5,000.

Sec. 129A.005. 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.006. 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.

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.

(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 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.

No equivalent provision.

SECTION 11. Sections 42.07(a) and (c), Penal Code, are amended to read as follows:

(a) A person commits an offense if, with intent to harass, annoy, alarm, abuse, torment, or embarrass another, the person:

(1) initiates communication and in the course of the communication makes a comment, request, suggestion, or proposal that is obscene;

(2) threatens, in a manner reasonably likely to alarm the person receiving the threat, to inflict bodily injury on the person or to commit a felony against the person, a member of the person's family or household, or the person's property;

(3) conveys, in a manner reasonably likely to alarm the person receiving the report, a false report, which is known by the conveyor to be false, that another person has suffered death or serious bodily injury;

(4) causes the telephone of another to ring repeatedly or makes repeated telephone communications anonymously or in a

manner reasonably likely to harass, annoy, alarm, abuse, torment, embarrass, or offend another;

(5) makes a telephone call and intentionally fails to hang up or disengage the connection;

(6) knowingly permits a telephone under the person's control to be used by another to commit an offense under this section; [ø]

(7) sends repeated electronic communications in a manner reasonably likely to harass, annoy, alarm, abuse, torment, embarrass, or offend another; or

(8) engages in bullying, as that term is defined by Section 37.0832(a), Education Code.

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

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

(2) engages in the conduct described by Subsection (a)(8) and:

(A) the actor has previously violated a temporary restraining order or injunction issued under Chapter 129A, Civil Practice and Remedies Code; or

(B) the actor's conduct results in serious bodily injury or death.

SECTION 10. 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 by electronic mail, instant message, Internet website, social media application, network call, [ø] facsimile machine, or other Internet-based communication tool; and

(B) a communication made to a pager.

SECTION 11. Section 37.0832(b), Education Code, is repealed.

SECTION 12. Chapter 100B, Civil Practice and Remedies Code, as added by this Act, applies only with respect to bullying communications engaged in on or after the effective date of this Act.

SECTION 12. 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 13. Same as introduced version.

No equivalent provision.

SECTION 13. 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.

No equivalent provision.

SECTION 14. This Act takes effect September 1, 2017.

SECTION 14. Same as introduced version.

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 16. Same as introduced version.