

**SUBJECT:** Regulating gang activity in and around schools

**COMMITTEE:** Public Education — committee substitute recommended

**VOTE:** 7 ayes — Eissler, Delisi, Dutton, Hochberg, Mowery, Olivo, Patrick  
0 nays  
2 absent — Zedler, Branch

**WITNESSES:** For — Holly Eaton, Texas Classroom Teachers Association; Dwight Harris, Texas Federation of Teachers; Louis Stoerner, Alief ISD and Texas Association of School Administrators; (*Registered, but did not testify*: Jennifer Canaday, Association of Texas Professional Educators, Julie Shields, Texas Association of School Boards)  
  
Against — None  
  
On — (*Registered, but did not testify*: Benny Hernandez, ACLU of Texas)

**DIGEST:** CSHB 185 would amend Penal Code, sec. 42.01 to expand the disorderly conduct statute to include persons at least 17 years of age who were engaging in conduct that a reasonable person would believe was a manifestation of membership in a criminal street gang, including by using, in more than an incidental manner, dress, hand signals, tattoos, or symbols that were associated with a criminal street gang, if the offenders:

- knew they were within 300 feet of the premises of a private or public elementary or secondary school at which the actor was not enrolled as a student, and
- failed to leave or cease the gang-related conduct on request of a school employee or a law enforcement official.

If the conduct constituted an offense under another law, the actor could be prosecuted under this section, the other law, or both.

CSHB 185 also would amend Education Code, sec. 37.007 to require that a student be expelled from school if the student was on school property or attending a school-sponsored or school-related activity on or off the school

property and engaged in conduct containing the elements of assault (Penal Code, sec. 22.01), deadly conduct (sec. 22.05), terrorist threat (sec. 22.07), or coercing, soliciting, or inducing gang membership (sec. 22.015 or sec. 71.022). A reasonable person would have to believe the activities were a manifestation of membership in a criminal street gang.

Also, a student could be expelled for soliciting another student to participate in the activities of or become a member of a criminal street gang in a manner that did not constitute felony solicitation or inducement to join a street gang (sec. 22.015 ) or felony solicitation of membership in a criminal street gang (sec. 71.022 ).

Code of Criminal Procedure, Art. 61.03 would be amended to allow information related to gang activity gathered by law enforcement agencies to be shared with school districts and open-enrollment charter schools. The schools could use this information only for evaluating the nature of a student's conduct in determining if the student should be expelled under the Education Code provisions for gang-related activity established in this bill (secs. 37.007(a)(4) or (b)(2)(E)).

The bill also would amend Penal Code, sec. 22.06 to remove consent as a defense to assaultive conduct that occurred as a condition of the defendant's or the victim's initiation or continued membership in a criminal street gang if the defendant knew the defendant was within 300 feet of an elementary or secondary school or a premises where an official school function or UIL event was taking place.

References to gangs would be removed from sections of the Education Code that regulate fraternities, sororities, and secret societies.

The bill would take effect September 1, 2007.

**SUPPORTERS  
SAY:**

CSHB 185 would create a 300-foot gang member exclusion zone around school campuses and at off-campus school events. If a person engaged in gang-related activity in these places, a school administrator or a law enforcement official could ask the actor to leave or cease engaging in the gang-related activity. Failure to comply would subject an offender to a class C misdemeanor (maximum fine of \$500). CSHB 185 would target specific indications of gang activity to prevent misuse. The bill would empower schools and law enforcement and would prevent schools from being used as gang recruiting grounds.

The bill would include non-violent gang recruitment in the list of activities for which a student could be expelled and would include violent gang recruitment in the list of activities for which students would have to be expelled. Making gang recruitment grounds for expulsion is critical to breaking down these organizations, which need a certain number of new recruits coming in to maintain their numbers.

CSHB 185 also would allow school districts and open-enrollment charter schools to request information about gangs and gang members from criminal justice agencies, which could be helpful during disciplinary proceedings concerning the student's participation in gang activity. The bill would not grant schools carte blanche to access the information, but would ensure that the information was used only for such proceedings and not for other purposes.

In addition, the bill would address the problem of gang-related beatings of initiates or members on or near school grounds. These beatings, known as "jump ins," are required of initiates or members as a condition of initial or continued membership in the gang. Gangs are avoiding prosecution for these beatings by claiming or showing that the initiates or members consented to the beatings. Under current law, consent is considered a defense to assaultive conduct, and removing this defense would help prosecutors crack down on this practice.

CSHB 185 also would remove references to gangs from provisions in the Education Code that address fraternities and sororities. These groups are not the same, and establishing separate regulatory schemes would provide recognition for how serious gang activity has become. This also would direct courts and prosecutors to use the gang-specific laws for gang activity and would encourage the criminal justice system to recognize the magnitude of the problem of criminal gang activity.

**OPPONENTS  
SAY:**

CSHB 185 is unnecessary because authorities already have powers to combat gang-related activity, and penalties are available under current laws. Under the Education Code, school administrators could divert students engaged in certain disruptive conduct or offenses into disciplinary alternative education programs, and gang members could be punished for violent activity under existing violent crime statutes.

The bill would allow information-sharing among police, criminal justice agencies, and the schools. This could result in a student being implicated

for criminal behavior, which would be a particular problem if the list were not well maintained and reliable. This provision also would make the schools privy to the criminal justice investigations of the state and could divert the schools' attention from their primary function.

CSHB 185 would not address the fear of school administrators that reporting gang-related activity could affect school rankings or reputation. New laws would not fix this problem because administrators still might be reluctant to use them. Also, it is not always easy to distinguish activity that is gang related.

**NOTES:**

HB 185 as filed would have allowed for the transfer of students to disciplinary alternative education programs as provided in Education Code, sec. 37.008, if the students had engaged in gang-related activity within 300 feet of a school, and would have taken effect during the 2007-2008 school year.

The committee substitute added provisions for information-sharing between criminal justice agencies and schools and a minimum age of 17 for provisions related to engaging in gang-related activities as part of the disorderly conduct statute (sec. 42.01, Penal Code). It also removed language regarding Health and Safety Code, sec. 485.034 (failure to post a warning sign in a business establishment selling abusable volatile chemicals) from the list of activities that make a student eligible for expulsion.

A related bill, HB 184 by Hochberg, which would remove consent as a defense to assaultive conduct that occurred as a condition of the defendant's or victim's initiation or continued membership in a criminal street gang, passed the House by 136-0 on April 12.

HB 1658 by Hochberg, which would amend the criteria used to add a person to gang databases maintained by criminal justice agencies, was heard and left pending by the Criminal Jurisprudence Committee on April 10.