

SUBJECT: Bullying, cyberbullying, mental health, school policies, harassment

COMMITTEE: Public Education — committee substitute recommended

VOTE: 10 ayes — Huberty, Bernal, Bohac, Deshotel, Dutton, Gooden, King,
Koop, Meyer, VanDeaver

0 nays

1 absent — Allen

WITNESSES: For — Mark Wiggins, Association of Texas Professional Educators; Jennifer Tharp, Comal County Criminal District Attorney; Melissa Deuter, Jordan Gurwitz, Michael Morell, Blaine Scott, and Leo Vasquez, David's Legacy Foundation; Arati Singh, Texas PTA; and seven individuals; (*Registered, but did not testify*: Miryam Bujanda, Andrade-Van de Putte & Associates; Jo Cassandra Cuevas, AT&T; Jeff Coyle, City of San Antonio; Christopher Deuter, Jonathan Gurwitz, and Michelle Wittenburg, David's Legacy Foundation; Eric Woomer, Federation of Texas Psychiatry; Chris Frandsen, League of Women Voters of Texas; Stephanie Martinez, Live Oak Unitarian Universalist Church; Greg Hansch, National Alliance on Mental Illness (NAMI) Texas; Deborah Caldwell, North East Independent School District; Priscilla Camacho, San Antonio Chamber of Commerce; Seth Rau, San Antonio ISD; V.A. Stephens, SOS Liquid Waste Haulers, Carter Mayfield, San Antonio; Lee Parsley, Texans for Lawsuit Reform; Dwight Harris and Ted Melina Raab, Texas AFT (American Federation of Teachers); Jim Arnold, Texas Alliance of Boys and Girls Clubs; Courtney Boswell, Texas Aspires; Robert Flores, Texas Citizens Action Network; Ann Fickel, Texas Classroom Teachers Association; Joshua Houston, Texas Impact; and 27 individuals)

Against — Gyl Switzer, Mental Health America of Texas, Texas Suicide Prevention Council; Gabriella McDonald, Texas Appleseed; (*Registered, but did not testify*: Matt Simpson, ACLU of Texas; Adam Cahn, Cahnman's Musings; Ann Hettinger and Cecilia Wood, Center for the

Preservation of American Ideals; Josette Saxton, Texans Care for Children; Allen Place, Texas Criminal Defense Lawyers Association; Jaime Puente, Texas Graduate Student Diversity; Nicole Hudgens, Texas Values Action; Candace Aylor; Cynthia Doyle; Joey Gidseg; Megan Guidry; Brandy Pounds)

On — (*Registered, but did not testify*: David Madison, Southwestern Association of Episcopal Schools, Texas Private School Association; Caroline Joiner, TechNet; Ramiro Canales, Texas Association of School Administrators; Kara Belew and Candace Stoltz, Texas Education Agency; Jay Ferguson, Texas Private School Association; Josefina Barron; Esmeralda Gonzalez; Kristi Hassett)

BACKGROUND: Education Code, sec. 37.0832 requires school districts to adopt bullying prevention policies and procedures. Bullying is defined as, subject to certain conditions, engaging in written or verbal expression, expression through electronic means, or physical conduct on school property, at a school-sponsored or school-related activity, or in a vehicle operated by the district that:

- has or will have the effect of physically harming a student, damaging a student's property, or placing a student in reasonable fear of harm or of damage to their property; or
- is sufficiently severe, persistent, and pervasive enough that the action or threat creates an intimidating, threatening, or abusive educational environment for a student.

This conduct is considered bullying if it 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.

Health and Safety Code, sec. 161.325 requires the Department of State Health Services along with the Texas Education Agency and other entities to establish a list of recommended best practice-based programs in certain areas for schools. School districts may select from the list a program or

programs appropriate for implementation in the district. The list must include programs in early mental health intervention; mental health promotion and positive youth development; substance abuse prevention; substance abuse intervention; and suicide prevention.

Penal Code 42.07(a) makes harassment a crime. It is an offense to take certain actions with the intent to harass, annoy, alarm, abuse, torment, or embarrass another. The offense is a class B misdemeanor (up to 180 days in jail and/or a maximum fine of \$2,000). Repeat offenses are class A misdemeanors (up to one year in jail and/or a maximum fine of \$4,000)

DIGEST:

CSHB 306 revises requirements for school districts' bullying prevention and mental health education efforts, mandates cyberbullying be included in the policies, allows courts to issue temporary injunctions in cyberbullying cases, and includes bullying as part of the criminal offense of harassment.

School bullying prevention policies. The bill would revise provisions governing the bullying prevention policies that school districts are required to adopt.

The definition of bullying would be defined as a single significant act or pattern 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. The bill would add two conditions that could be used to define bullying. It could materially and substantially disrupt the educational process or the orderly operation of a classroom or school or infringe on the rights of the victim at school. The definition would include cyberbullying.

The bill would add to statute a definition of cyberbullying. Cyberbullying would be defined 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.

Education Code provisions on bullying would apply to bullying that occurred on school property or at the site of a school-sponsored or school-related activity on or off school property if the bullying interfered with a student's educational opportunities or substantially disrupted the orderly operation of a classroom, school, or school-sponsored or school-related activity. A school district's anti-bullying policy would be required to include procedures for students to anonymously report bullying.

The bill would require open-enrollment charter schools to meet the Education Code's requirements for districts to develop bullying prevention policies and procedures.

The bill would allow students to be removed from class and placed in a disciplinary alternative education program or expelled if the student:

- engaged in bullying that encouraged a minor to commit or attempt to commit suicide;
- incited violence against a minor through group bullying; or
- released or threatened to release intimate visual material of a minor.

The bill would authorize continuing education for teachers and principals to include instruction on 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 Texas Education Agency would be required to work with the Health and Human Services Commission to create a website with resources for school employees about working with students with mental health conditions. The website would have to include information about:

- grief-informed and trauma-informed practices;
- building skills related to managing emotions, establishing and maintaining positive relationships, and responsible decision-

- making;
- positive behavior interventions and supports; and
- a safe and supportive school climate.

The bill would add to the responsibilities of counselors serving as an impartial, non-reporting resource for interpersonal conflicts and discord involving two or more students, including accusations of bullying.

The bill would revise the list of mental health, substance abuse, and suicide prevention topics on which the Department of State Health Services, in conjunction with other entities, would have to provide information for public schools. The bill would add four areas to the list:

- grief-informed and trauma-informed practices;
- building skills related to managing emotions, establishing and maintaining positive relationships, and responsible decision-making;
- positive behavior interventions and supports and positive youth development; and
- safe and supportive school climate.

The list would no longer include positive youth development.

The bill would require districts to adopt practices and policies in each of the nine program areas on the list.

Injunctive relief. The bill would allow recipients of cyberbullying who were younger than 18 years old or their parents to use the civil courts to seek injunctive relief against an individual who was cyberbullying, or the youth's parent if the person bullying was under 18 years old.

Courts would be authorized to issue temporary restraining orders, temporary injunctions, or permanent injunctions to prevent further cyberbullying. The orders could include prohibiting someone from engaging in cyberbullying and compelling a parent to take reasonable actions to cause someone younger than 18 to stop cyberbullying.

The bill would establish conditions under which someone would be entitled to a temporary restraining order, or a temporary or permanent injunction under certain conditions. The Supreme Court would be required, as it finds appropriate, to develop forms for persons asking for injunctive relief and representing themselves before the courts. Courts could award costs and attorney's fees in these suits, but awards for attorney's fees could not exceed \$5,000.

Harassment. The bill would make engaging in bullying a crime under harassment. Offenses would be class B misdemeanors, except they would be class A misdemeanors if the defendant had previously violated a temporary restraining order or injunction issued related to a civil lawsuit about bullying or if the bullying resulted in serious bodily injury or death.

The definition of electronic communication under the harassment offense would be amended to include cellular or other types of telephone, computers, cameras, text messages, social media platforms or applications, internet websites, and any other internet-based communication tool.

The bill would take effect September 1, 2017, and would apply only to offenses committed on or after the effective date.

**SUPPORTERS
SAY:**

CSHB 306 would help address bullying and the growing and serious issue of cyberbullying, updating Texas' laws to reflect changes in technology.

The bill would be called "David's Law" in honor of David Molak, a 16-year-old San Antonio high school student who committed suicide in 2016 after enduring relentless bullying. While parents play an important role in handling bullying, the state should do all it can to prevent tragic incidents like David's and those of other Texas youths who have taken their lives as a result of bullying.

The bill would focus on education, prevention and mental health issues by expanding, supporting, and increasing those efforts but also would expand

options for cases in which additional tools are needed. While focusing on prevention, these additional tools can be necessary to protect victims and take appropriate actions when bullying cases are serious and continual.

School bullying prevention policies. The bill would improve the ability of schools to address bullying. It would not burden districts, as the provisions of the bill would be incorporated into schools' existing bullying prevention and education efforts.

The bill would raise awareness of cyberbullying by requiring that district prevention efforts on bullying include education and resources on the issue. The bill would require schools' policies to include a way for students to anonymously report bullying to remove a barrier that could stop some students from reporting these incidents. In addition, schools would have to adopt policies relating to certain mental health issues, and teachers and principals could receive education on these topics.

CSHB 306 would increase resources for educators by requiring the creation of a website with information about mental health issues. Counselors could act as resources in bullying cases, which could increase services to students who need them and help prevent incidents from escalating. The role of the counselor as a non-reporting resource would be appropriate for these professionals, who often handle similar duties.

The bill would allow schools to handle the most serious cases with placement in disciplinary alternative education program or expulsion. For these consequences, the bullying would have to include encouraging suicide, inciting violence, or releasing intimate visual material. In these cases, it is important for schools to be able to intervene and separate the student doing the bullying from the victim in order to deal with the issue.

Schools would receive the ability to look into incidents off school property if they interfered with a student's educational opportunities or disrupted school-related activities. This is necessary because in some cases, schools have said they cannot intervene because bullying occurred away from school.

Injunctive relief. CSHB 306 would give victims of bullying another tool to try to stop the harm by authorizing injunctive relief, such as temporary restraining orders. This could allow courts to shut down abusive online bullying and to take other actions to stop bullying, offering respite to those being bullied. The bill would set reasonable conditions on the restraining orders and injunctions while still allowing victims to obtain relief.

Harassment offense. The bill would address gaps in the current criminal laws by adding bullying, as defined in the Education Code, to the harassment statute. This would be an update to a current offense to reflect a new kind of harassment, not an increase in criminalization. While prevention and education are important, law enforcement officers should have this tool available to address the most egregious cases of ongoing bullying.

Cases of harassment involving bullies would be handled through the juvenile justice system, which is focused on rehabilitation and uses progressive sanctions such as restitution, community service, counseling, and parental intervention. The sanctions would be graduated, with more serious penalties for violating a temporary restraining order or causing serious bodily injury so that offenses were dealt with appropriately.

**OPPONENTS
SAY:**

Education, not criminalization, would be the best tool for addressing bullying. Parents and educators should focus on prevention, early intervention, and other best-practice strategies. These would be more effective than criminal penalties and punitive measures such as expulsion. Criminalization and punitive measures could work against the goal of stopping bullying.

NOTES:

A companion bill, SB 179 by Menéndez, was reported favorably from the House Public Education Committee on May 8.