

BILL ANALYSIS

Senate Research Center
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H.B. 2450
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

H.B. 2450 amends current law relating to a pilot program operated by certain public or private primary or secondary or open-enrollment charter schools in Webb County concerning searches and drug testing of students with parental consent and certain disciplinary measures and other procedures that may arise from such a search or test.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the board of trustees of a school district and governing body of a private school or open-enrollment charter school in SECTION 1 (Section 37.035, Education Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 37, Education Code, by adding Subchapter A-1, as follows:

SUBCHAPTER A-1. ALTERNATIVE DISCIPLINE PILOT PROGRAM

Sec. 37.031. DEFINITIONS. Defines "controlled substance" and "marihuana" in this subchapter.

Sec. 37.032. PILOT PROGRAM. Authorizes a public school district, private school, or open-enrollment charter school in Webb County to operate a pilot program described by this subchapter to determine whether the conduct of parental-consent searches of students and parental-consent drug or alcohol tests of students and the subsequent use of alternative juvenile discipline procedures for those students are effective in reducing drug or alcohol use while minimizing involvement in the criminal justice system for matters related to drug or alcohol use.

Sec. 37.033. PARENTAL-CONSENT SEARCH. (a) Authorizes a school principal who reasonably suspects a student possesses alcohol, marihuana, or a controlled substance, in a public school district or private primary or secondary school or open-enrollment charter school operating a pilot program under this subchapter, to seek written consent from the parent or guardian of the student to search the student and the possessions of the student for alcohol, marihuana, or a controlled substance. Authorizes the principal or the principal's designee, if the student's parent or guardian provides written consent for the search, to conduct the search in accordance with rules adopted by the board of trustees of a district or governing body of the private school or charter school under Section 37.035.

(b) Requires the principal of a public or private primary or secondary school or open-enrollment charter school or the principal's designee that conducts a search under this section to confiscate any alcohol, marihuana, or controlled substance discovered in the search and to immediately inform a local law enforcement agency. Requires a local law enforcement agency that receives notice under this subsection to take possession of the alcohol, marihuana, or controlled substance as soon as practicable but in no case later than 72 hours after the agency receives notice.

(c) Prohibits a student from being searched under this section more than one time in a week.

Sec. 37.034. PARENTAL-CONSENT DRUG OR ALCOHOL TESTS. (a) Authorizes a school principal, in a public school district or private primary or secondary school or open-enrollment charter school operating a pilot program under this subchapter, to seek written consent from the parent or guardian of a student younger than 17 years of age to perform a nonintrusive drug or alcohol test on the student if the principal reasonably believes that the student is using alcohol, marihuana, or a controlled substance.

(b) Authorizes a parent or guardian of a student younger than 17 years of age to request in writing that the school perform a nonintrusive drug or alcohol test on the student under this section if the parent or guardian reasonably believes that the student is using alcohol, marihuana, or a controlled substance.

(c) Authorizes a school that receives the written consent of a parent or guardian under Subsection (a) or a request in writing from a parent or guardian under Subsection (b) to perform a nonintrusive drug or alcohol test on the student in accordance with the rules and procedures adopted by the board of trustees of the district or governing body of the private school or open-enrollment charter school under Section 37.035.

(d) Requires that a second test, if a student tests positive in a nonintrusive drug or alcohol test administered under this section, be administered as soon as practicable to confirm the positive test results. Requires the principal to send all positive or negative test results to the student's parent or guardian.

(e) Authorizes a school that performs a nonintrusive drug or alcohol test on a student under this section to request the student's parent or guardian to reimburse the school for the cost of the drug or alcohol test.

(f) Authorizes a school to seek any available federal, state, or private funds, grants, or donations to defray costs of performing nonintrusive drug or alcohol tests under this section.

(g) Provides that this section does not prohibit or otherwise affect any other drug or alcohol testing program conducted by or on behalf of a school or school district.

(h) Prohibits a student from being administered a nonintrusive drug or alcohol test under this section more than one time in a month.

Sec. 37.035. RULES REGARDING PARENTAL-CONSENT SEARCH AND DRUG OR ALCOHOL TEST. (a) Requires the board of trustees of a school district or governing body of a private school or open-enrollment charter school that operates a pilot program under this subchapter to adopt rules concerning searches conducted under Section 37.033 and drug or alcohol tests administered under Section 37.034.

(b) Requires the board or governing body, in adopting rules under this section, to:

(1) develop a written consent form to be used by the parent or guardian to consent to a search or drug or alcohol test;

(2) provide that in the case where only one parent or guardian has authority to consent, pursuant to a custody agreement or any applicable court order, the consent of that parent is sufficient for purposes of this subchapter;

(3) specify that a principal of a school operating a pilot program under this subchapter may designate an appropriate staff member to conduct searches or drug or alcohol tests under this subchapter; and

(4) ensure that a search or drug or alcohol test conducted under the pilot program operated under this subchapter does not result in the student's involvement in the criminal justice system, including by receiving a citation or by being confined.

Sec. 37.036. DISCIPLINE FOR VIOLATIONS OF LAW OR SCHOOL POLICY DISCOVERED IN PARENTAL-CONSENT SEARCH OR DRUG OR ALCOHOL TESTING. (a) Prohibits a student found to be in violation of law or school policy based on a parental-consent search or a parental-consent drug or alcohol test conducted under a pilot program operated under this subchapter, notwithstanding Section 37.007(b) (relating to providing that a student is authorized to be expelled under certain circumstances) and except as otherwise provided by Subsection (c), from being expelled for the violation unless the student fails to comply with any requirements imposed under Subsection (b).

(b) Authorizes a student found to be in violation of law or school policy based on a parental-consent search or a parental-consent drug or alcohol test conducted under a pilot program operated under this subchapter to, with the consent of the student's parent or guardian, be subject to compulsory attendance at a substance abuse treatment program established under Section 37.038.

(c) Provides that if after a search conducted under Section 37.033 a student is found in possession of alcohol, marihuana, or a controlled substance for the second or subsequent time during a one-year period, or if the student tests positive for drugs or alcohol under Section 37.034 for the second or subsequent time during a one-year period, notwithstanding rules adopted under Section 37.035, the student is subject to all disciplinary measures according to school policy or other applicable law.

Sec. 37.037. SCHOOL JUVENILE CASE MANAGER. (a) Authorizes the board of trustees of a school district or governing body of a private school or an open-enrollment charter school operating a pilot program under this subchapter to employ a juvenile case manager in the manner provided by Article 45.056 (Juvenile Case Managers), Code of Criminal Procedure, to provide services in a special juvenile docket composed of those juvenile cases arising from a parental-consent search or a parental-consent drug or alcohol test conducted under a pilot program operated under this subchapter.

(b) Requires a school juvenile case manager, if a private school, school district, or charter school operating a pilot program under this subchapter is within the jurisdiction of a designated juvenile court in the county and the district or school employs the case manager, to assist the court in administering the special juvenile docket described by Subsection (a).

(c) Requires the judge of the designated juvenile court in the county, in presiding over the special juvenile docket described by Subsection (a), to coordinate with the school juvenile case manager and the private school, school district, or charter school to provide alternative juvenile discipline solutions that do not involve the student's involvement in the criminal justice system.

(d) Authorizes a designated juvenile court in the county to coordinate with a school juvenile case manager employed by a private school, school district, or charter school and the private school, school district, or charter school to establish a special juvenile disciplinary drug-intervention program for students of the private school, school district, or charter school whose juvenile cases are in the special juvenile docket described by Subsection (a).

Sec. 37.038. SUBSTANCE ABUSE TREATMENT PROGRAM. Authorizes the board of trustees of a school district or governing body of an open-enrollment charter school or private school that operates a pilot program under this subchapter to cooperate with the juvenile board of the county, the local juvenile probation department, or any designated juvenile court in the county in establishing a substance abuse treatment program for students who violate a law or school policy by engaging in prohibited conduct related to the use, possession, or delivery of alcohol, marihuana, or a controlled substance.

Sec. 37.039. DEFERRAL OF ADJUDICATION AND DISMISSAL OF CERTAIN CASES ON COMPLETION OF SUBSTANCE ABUSE TREATMENT PROGRAM.

(a) Provides that this section applies only to a child who, based on evidence obtained pursuant to a parental-consent search or a parental-consent drug or alcohol test conducted under a pilot program operated under this subchapter, is alleged to have engaged in conduct indicating a need for supervision or delinquent conduct.

(b) Authorizes a juvenile court to defer adjudication proceedings under Section 54.03 (Adjudication Hearing), Family Code, for not more than 180 days if a child described by Subsection (a) presents to the court a written request to attend a substance abuse treatment program under Section 37.038.

(c) Requires a child for whom adjudication proceedings are deferred under Subsection (b) to complete the substance abuse treatment program not later than the 90th day after the date the hearing to determine punishment is held or the last day of the deferral period, whichever date is earlier. Requires the court to dismiss the case with prejudice at the time the child presents satisfactory evidence that the child has successfully completed the substance abuse treatment program.

(d) Prohibits a case dismissed under this section from being part of the child's records for any purpose.

Sec. 37.040. REPORT. Requires the board of trustees of a school district or the governing body of an open-enrollment charter school that operates an alternative discipline pilot program under this subchapter to, not later than December 1, 2014, submit a report containing the board or governing body's conclusions regarding whether the pilot program reduced drug or alcohol use and related involvement in the criminal justice system among students to certain persons.

Sec. 37.041. CONCLUSION; EXPIRATION. Provides that a pilot program operated under this subchapter concludes and this subchapter expires June 15, 2015.

SECTION 2. Amends Section 58.003, Family Code, by adding Subsections (c-7), (d-1), and (d-2), as follows:

(c-7) Provides that this subsection applies only to a child who, based on evidence obtained pursuant to a parental-consent search or a parental-consent drug or alcohol test conducted under a pilot program operated under Subchapter A-1, Chapter 37, Education Code, is adjudicated to have engaged in conduct indicating a need for supervision or delinquent conduct. Authorizes a juvenile court, notwithstanding Subsections (a) and (c) and subject to Subsection (b), to order the sealing of records concerning a child described by this subsection if the child successfully completed a program described by Section 37.038, Education Code, or graduated from high school or received the child's certificate of high school equivalency. Authorizes the court to order the sealing of the records immediately and without a hearing, or hold a hearing to determine whether to seal the records.

(d-1) Authorizes the court to grant the relief authorized under Subsection (c-7) at any time after the child satisfies the requirements of that subsection. Requires the juvenile court, if the child is referred to the court for conduct constituting any offense and at the adjudication hearing the child is found to be not guilty of each offense alleged, to

immediately and without any additional hearing order the sealing of all files and records relating to the case.

(d-2) Provides that this subsection and Subsections (c-7) and (d-1) expire June 15, 2015.

SECTION 3. Authorizes a court, notwithstanding Section 58.003(d-2), Family Code, as added by this Act, on or after June 15, 2015, to order the sealing of juvenile court records of a child entitled before that date to the sealing of records under Section 58.003(c-7), Family Code, as added by this Act.

SECTION 4. Effective date: upon or September 1, 2013.