

## **BILL ANALYSIS**

Senate Research Center

H.B. 185  
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Criminal Justice  
4/27/2007  
Engrossed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Gang activity is an increasingly acute problem for schools in major urban areas in Texas. The fear, intimidation, and disruption such activity causes can significantly interfere with students' ability to learn and grow in a peaceful, safe, and non-threatening environment.

H.B. 185 provides a number of mechanisms for addressing the problem of gang activity, including the expulsion of students involved in certain gang-related activities or recruitment, the provision of school access to gang databases, the removal of a victim's consent as a defense to prosecution for certain gang-related assaultive conduct, and the creation of a criminal offense for certain gang-related activity occurring at or near a school.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Articles 61.03(a) and (b), Code of Criminal Procedure, to include among the information that a criminal justice agency that maintains criminal information under this chapter is authorized to release upon request, a school district or open-enrollment charter school, as defined by Section 5.001, Education Code. Authorizes a school district or open-enrollment charter school to use the information received under this article only for assistance in determining the nature of a student's conduct under Section 37.007(a)(4) or (b)(2)(E) (relating to expulsion for serious offenses), Education Code.

SECTION 2. Amends Sections 37.007(a) and (b), Education Code, as follows:

(a) Requires a student to be expelled from a school if the student, on school property or while attending a school-sponsored or school-related activity on or off of school property, uses, exhibits, or possesses a stun gun, as defined by Section 38.14, Penal Code, including a stun gun manufactured by the Taser company, among the list of prohibited weapons. Requires a student to be expelled from a school if the student, on school property or while attending a school-sponsored or school-related activity on or off of school property, engages in conduct that contains the elements of the offense of assault under Section 22.01, Penal Code, deadly conduct under Section 22.05, Penal Code, terroristic threat under Section 22.07, Penal Code, or coercing, soliciting, or inducing gang membership under Section 22.015 or 71.022, Penal Code, and that a reasonable person would believe is a manifestation of membership in a criminal street gang, as defined by Section 71.01, Penal Code.

(b) Authorizes a student to be expelled if the student, while on or within 300 feet of school property, as measured from any point on the school's real property boundary line, or while attending a school-sponsored or school-related activity on or off of school property, engages in conduct that contains the elements of an offense relating to an abusable volatile chemical under Sections 485.031 through 485.033 (relating to the possession and use of an abusable volatile chemical, delivery to a minor, and inhalant paraphernalia), Health and Safety Code, or solicits another student to participate in the activities of or become a member of a criminal street gang, as defined by Section 71.01,

Penal Code, in a manner that does not constitute an offense under Section 22.015 or 71.022, Penal Code.

SECTION 3. Amends the heading to Section 37.121, Education Code, to read as follows:

Sec. 37.121. FRATERNITIES, SORORITIES, AND SECRET SOCIETIES.

SECTION 4. Amends Sections 37.121(a) and (d), Education Code, to delete references to a member of a gang.

SECTION 5. Amends Section 22.06, Penal Code, as follows:

Sec. 22.06. CONSENT AS DEFENSE TO ASSAULTIVE CONDUCT. (a) Creates this subsection from existing text.

(b) Provides that the defense to prosecution provided by Subsection (a) is not available to a defendant who commits an offense described by Subsection (a) as a condition of the defendant's or the victim's initiation or continued membership in a criminal street gang, as defined by Section 71.01, in a place that the defendant knows is within 300 feet of the premises of a private or public elementary or secondary school, or on premises where an official school function is taking place or an event sponsored or sanctioned by the University Interscholastic League is taking place.

SECTION 6. Amends Section 42.01, Penal Code, by adding Subsections (f) and (g), as follows:

(f) Provides that a person who is 17 years of age or older commits an offense if the person engages in conduct that a reasonable person would believe is a manifestation of membership in a criminal street gang, as defined by Section 71.01, including by using in more than an incidental manner dress, hand signals, tattoos, or symbols that are associated with a criminal street gang, while at a place that the actor knows is within 300 feet of the premises of a private or public elementary or secondary school at which the actor is not enrolled as a student; and fails to either leave the place described by Subdivision (1) on request of a school employee or law enforcement officer or cease engaging in the conduct described by Subdivision (1) while the actor remains in the place described by Subdivision (1), or take other remedial action after a school employee or law enforcement officer requests that the actor cease engaging in the conduct.

(g) Authorizes a person, if a conduct that constitutes an offense under Subsection (f) also constitutes an offense under another law, to be prosecuted under this section, the other law, or both.

SECTION 7. Effective date: September 1, 2007.