

**LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS**

Bill Number: HB 234

51st Legislature, 1st Session, 2013

Tracking Number: .191509.1

Short Title: Create Crime of Bullying

Sponsor(s): Representative Mary Helen Garcia

Analyst: Travis Dulany

Date: March 6, 2013

Bill Summary:

Effective July 1, 2013, HB 234 would create a new section of the *Criminal Code* to create the crime of bullying and provide for penalties.

Among its provisions, the bill:

- defines bullying as a pattern of intentional conduct – including physical, verbal, written or electronic communication – that:
 - creates a hostile environment and substantially interferes with someone’s physical or psychological well-being;
 - is motivated by actual or perceived personal characteristics, including:
 - race or national origin;
 - marital status;
 - sex, sexual orientation, or gender identity;
 - religion or ancestry;
 - physical attribute;
 - socioeconomic or familial status; or
 - physical or mental ability or disability; and
 - is threatening or seriously intimidating; and
- establishes that whoever commits bullying is:
 - guilty of a petty misdemeanor; and
 - guilty of a misdemeanor if the bullying results in bodily harm or substantial emotional distress.

Fiscal Impact:

HB 234 does not contain an appropriation.

Fiscal Issues:

According to the *Criminal Code*, the execution of penalties for violations of the code can have actual and administrative fiscal implications. For example:

- penalties for a petty misdemeanor may include imprisonment up to six months;
- penalties for a misdemeanor may include imprisonment up to a year; and
- the court may order deferred or suspended sentences, in which case, they may impose supervised or unsupervised probation.

Substantive Issues:

- According to the Administrative Office of the Courts:
 - currently, a reported bullying incident is categorized by law enforcement as a “simple assault” or “public affray,” while extreme instances of bullying may result in battery charges; and
 - the court system categorizes bullying under “simple assault” or “public affray.”
- The Department of Public Safety bill analysis reports that “it is anticipated the brunt of enforcing [HB 234] would fall on school law enforcement and local municipalities.”
- The Attorney General’s Office bill analysis notes that:
 - the conduct proscribed by HB 234 is largely covered by current provisions in the *Criminal Code* regarding harassment and stalking;
 - the bill does not explicitly require the perpetrator to intend the logical consequence of his or her actions; and
 - the bill’s language would suggest that the victim’s response need not be held to any standard of reasonableness.
- According to the Public Defender Department:
 - HB 234 as written appears to be unconstitutional in that it covers conduct that would likely be constitutionally protected, including public statements repeatedly criticizing a policy-maker, actor, or other public figure which then injure that person’s psychological well-being or create a “hostile environment”; and
 - the bill could also be subject to vagueness challenges because it does not incorporate a “reasonable person” standard and thereby permits punishment regardless of whether the victim’s perception or injury is reasonable, rational, and foreseeable.
- According to the Department of Health:
 - approximately 30 percent of youth in the United States are estimated to be involved in bullying as either a bully, a target of bullying, or both;
 - a recent national survey of students in grades 6-10 revealed that:
 - 13 percent of respondents bullied others;
 - 11 percent of respondents were the target of bullying; and

- 6.0 percent of respondents said they bullied others and were victims of bullying themselves;
- bullying takes on different forms in male and female youth – males are more likely to report being hit, slapped, or pushed, while females are more likely to report being the targets of rumors and sexual comments; and
- children and youth who are bullied:
 - are typically anxious, insecure, and cautious;
 - suffer from low self-esteem;
 - rarely exhibit self defense or retaliation when confronted by students who bully them; and
 - are often socially isolated and lack social skills.
- A review of other state laws reveals that at least three states have succeeded in enacting laws that criminalize bullying:
 - Louisiana enacted in 2010:
 - LA R.S. § 14:40.7, which defines and criminalizes cyber-bullying and provides for penalties of fines of up to \$500, or imprisonment of up to six months, or both, although it reserves disposition of matters involving persons under the age of 17 to the *Children’s Code*, and notes that the section “shall not be construed to prohibit or restrict religious free speech”; and
 - LA R.S. § 14:81.1.1, which defines and criminalizes “sexting” between persons under the age of 17 and differentiates between transmission images of oneself to another, and transmission or retransmission of a “sext” *from* another minor *to* another minor:
 - ✓ penalties regarding the first instance are dealt with according to the *Children’s Code*;
 - ✓ penalties regarding transmission of another’s “sext” are harsher and successively more severe for repeated offenses.
 - The North Carolina General Assembly enacted Session Law 2009-551 in 2009, which describes cyber-bullying and makes it a Class 1 misdemeanor for adults or a Class 2 misdemeanor for minors. However, if the offense was committed before the defendant attained the age of 18, the court may, without entering a judgment of guilt and with the consent of the defendant, defer further proceedings and place the defendant on probation. Upon fulfillment of the terms and conditions of the probation, the court is required to discharge the defendant and dismiss proceedings against the defendant without court adjudication of guilt, and the offense is not to be deemed a conviction under certain sections of North Carolina law.
 - Idaho Code Ann. § 18-917A (2006) states that no student shall intentionally commit, or conspire to commit, an act of harassment, intimidation, or bullying against another student, and includes cyber-bullying. Any student who violates this law “may be guilty of an infraction.”

- Other states have statutes criminalizing internet stalking, and other such predation on children, but those statutes usually apply to adults preying on minors.¹
- In general, it should be noted that *physical* bullying, especially that which results in bodily harm, may be prosecuted under other provisions of criminal or juvenile justice.
- It may be important to note that, in the generic sense of the term, bullying can take many different forms, including physical bullying (hitting and shoving), verbal bullying (name-calling, teasing, and threats), and psychological bullying (public humiliation, manipulation, and shunning). On this point, criminal law attorneys have expressed issues with prosecuting bullies. As one New Jersey criminal law attorney notes, “Often bullying does not manifest itself through aggressive conduct but rather in passive-aggressive conduct, such as the ostracism of another. While assaulting someone is a crime, leaving him or her alone is not. Yet isolating a person can be far more painful than physically inflicting harm.”

Background:

Similar legislation was introduced during the 2011 regular legislative session; however, action on that legislation was postponed.

As early as 2003, the Legislative Education Study Committee (LESC) heard testimony from New Mexico Voices for Children about the consequences of bullying, not only for the bullies and their victims, but also for bystanders. These consequences include poor school performance; truancy; delinquency; further violence, including school shootings; depression; and suicide.

This testimony also noted that bullying prevention policies and programs reduce the incidence rate of bullying by 50 percent; and that, although such programs do not require a new curriculum, their successful implementation does require a comprehensive change in school culture and environment.

Also according to Voices for Children, the federal Office of Juvenile Justice and Delinquency Planning, the Health Resources Services Administration, and the US Department of Education are all promoting bullying prevention programs as a proven means to create safe schools, improve student performance, and reduce criminal behavior.

In 2004, LESG-endorsed legislation (SB 185, *Development of Bullying Prevention Programs*) was introduced to:

- define the term “bullying”;
- allow PED to establish guidelines for bullying prevention policies by local school boards;
- allow each local school board to promulgate a bullying prevention policy by August 2005; and
- allow each local school to implement a bullying prevention program by August 2007.

While SB 185 did not pass, the 2004 Legislature appropriated \$350,000 to PED to support bullying prevention statewide.

¹ See, e.g., [Ark. Code § 5-27-306 \(2005\)](#)

During the 2011 regular legislative session, LESC-endorsed legislation was enacted to require:

- PED to establish guidelines for bullying prevention policies; and
- local school boards to:
 - promulgate bullying prevention policies by August 2011; and
 - implement bullying prevention programs by August 2012.

Committee Referrals:

HJC

Related Bills:

HB 54 *School Board Cyberbullying Prevention*

HB 574 *Threatening School Violence Act*