

TEXAS EDUCATORS: Jenna's Law became effective June 19, 2009

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On February 3, 2009, House Bill 1041 was filed. With minor modifications in the Texas House and Senate, it is now law in the state of Texas (highlighted version follows).

Purpose of Legislation

Each school district shall adopt and implement a policy addressing sexual abuse of children; the policy must address methods for increasing teacher, student and parent awareness regarding sexual abuse (including indicators of abuse in children), response plan (reporting the abuse and counseling for the abused).

Method for Achieving Purpose

A nine member Task Force is being created to study the issues, create goals and establish a strategy for reducing child sexual abuse and neglect. The Task Force can propose statutory changes, create new programs and coordinate other state agencies. Task Force members will be appointed by October 1, 2009, and will submit a strategic plan no later than November 1, 2010.

Commentary

Given the epidemic of sexual abuse in Texas schools over the past five years, this legislation is timely. To its credit, the Texas legislature has avoided the simple, though less-than-effective solution of merely requiring a different or more thorough criminal background check. Less than 10% of sexual abusers will *ever* encounter the criminal justice system. As a result, a more aggressive criminal background check provides limited protection from sexual abuse to Texas' school children.

Though 'appropriate' background checks are necessary, the problem of child sexual abuse is best addressed by proactive safety systems based on an *educational model*: raising awareness. The new law, Section 38.0041(b)(1), seems aimed at exactly that. Additionally, the new law affirms the importance of *including students and parents* as those needing awareness of sexual abuse issues. Oftentimes, an abuser will 'divide and conquer': *grooming* parents and care-givers, while convincing the child/victim that he or she is *the only one* and that *'no one will believe you'* if he/she tells of the abuse. If teachers, students and parents receive accurate information concerning sexual abuse and sexual abusers, grooming a child for abuse (and keeping abuse secret) becomes far more difficult.

The Task Force is being encouraged to consult with other state agencies, including the Texas Department of Family and Protective Services (TDFPS) and the Texas Department of State Health Services (TDSHS). It is expected that the Task Force will carefully consider the language

and requirements of the **Texas Youth Camp Act**, effective June of 2006. The Youth Camp Act was passed to reduce the risk of child sexual abuse in Texas camps, day camps and related activities. (This Act's definition of 'day camp' is extremely broad.) The Task Force will likely recommend a requirement for state-approved Sexual Abuse Awareness Training, much like that required by the Texas Youth Camp Act.

In sum, Texas is again leading the nation in measures designed to reduce the risk of child sexual abuse and neglect – beyond simply requiring additional or deeper criminal background checks. (For comparison, see Colorado Code Section 22-2-119, effective June 2008). Future policy recommendations will inevitably focus on mandatory Sexual Abuse Awareness Training for faculty, staff, volunteers, students and parents, and will probably require a description of the grooming process, abuser characteristics, indicators of abuse in children, reporting responsibilities, and responding to an outcry of abuse.

Task Force recommendations may include standardized sexual abuse policies and criminal background check requirements for faculty *and* volunteers. A proactive Task Force will address the issue of teachers leaving one school amidst allegations of abuse, then hired by a subsequent school, which may or may not be aware of prior allegations. Task Force members have an opportunity to create and recommend policies opening lines of communication *between schools*, so an abuser is not shuffled from one school to the next, or allowed to simply leave and apply elsewhere.

Private schools should sit up and take note. Public schools enjoy protections from civil litigation that private schools do not. Jenna's Law is the beginning of a new standard of care for education in the state of Texas (and possibly other states). These standards of care define '*what is (or is not) reasonable*' for school activities. Because the risks are identical in private schools, private school practices will be judged by the same standards of care.

About Gregory Love and Kimberlee Norris:

Love & Norris, Attorneys at Law

Gregory Love and Kimberlee Norris have a nationwide sexual abuse litigation practice representing victims of sexual abuse throughout the country. In addition, they represent ministry and secular organizations such as the Gladney Center for Adoption, Lena Pope Home (foster care), private schools, camps, churches and para-church ministries.

MinistrySafe/Abuse Prevention Systems

In addition to an active law practice, Love and Norris are co-founders and Directors of MinistrySafe and Abuse Prevention Systems, entities dedicated to sexual abuse awareness and prevention. MinistrySafe and Abuse Prevention Systems provide Sexual Abuse Awareness Training (live and online) and assist

child care entities and organizations in the design and implementation of safety systems which reduce the risk of child sexual abuse. Love and Norris are frequent speakers before educational entities, youth and children's ministries, youth camps, day care, and adoption and foster care organizations. They have addressed national and regional audiences for organizations such as the National Association of Church Business Administration (NACBA), National Council for Adoption (NCFA), Presbyterian General Assembly, Young Life, Hawaiian Islands Ministries, and Texas Alliance for Children and Families, and are featured writers for the upcoming NACBA resource entitled *Professional Practices in Church Administration*. Both serve as guest lecturers at Southwestern Baptist Theological Seminary, and are actively involved in High School and Children's Ministries at Christ Chapel Bible Church in Fort Worth, Texas.

MinistrySafe is endorsed by LifeWay Christian Resources, the Association of Christian Schools International (ACSI) and the Texas Department of Insurance.

House Bill 1041, passed June 19th 2009, effective immediately.

AN ACT ("Jenna's Law")

relating to school district policies addressing sexual abuse of children and establishment of a state strategy to reduce child abuse and neglect and improve child welfare.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. This Act shall be known as Jenna's Law.

SECTION 2. Subchapter A, Chapter 38, Education Code, is amended by adding Section 38.0041 to read as follows:

Sec. 38.0041. POLICIES ADDRESSING SEXUAL ABUSE OF CHILDREN. (a) Each school district shall adopt and implement a policy addressing sexual abuse of children to be included in the district improvement plan under Section 11.252 and any informational handbook provided to students and parents.

(b) A policy required by this section must address:

(1) methods for increasing teacher, student, and parent awareness of issues regarding sexual abuse of children, including knowledge of likely warning signs indicating that a

child may be a victim of sexual abuse, using resources developed by the agency under Section 38.004;

(2) actions that a child who is a victim of sexual abuse should take to obtain assistance and intervention; and

(3) available counseling options for students affected by sexual abuse.

SECTION 3. (a) In this section, "task force" means the task force established under this section to establish a strategy for reducing child abuse and neglect and improving child welfare.

(b) The task force consists of nine members appointed as follows:

(1) five members appointed by the governor;

(2) two members appointed by the lieutenant governor; and

(3) two members appointed by the speaker of the house of representatives.

(c) Members of the task force must be individuals who are actively involved in the fields of the prevention of child abuse and neglect and child welfare. The appointment of members must reflect the geographic diversity of the state.

(d) The task force shall elect a presiding officer by a majority vote of the membership of the task force.

(e) The task force shall meet at the call of the presiding officer.

(f) Chapter 2110, Government Code, does not apply to the task force.

(g) The task force shall establish a strategy for reducing child abuse and neglect and for improving child welfare in this state. In establishing that strategy, the task force shall:

(1) gather information concerning child safety, child abuse and neglect, and child welfare throughout the state;

(2) review the exemptions from criminal liability provided under the Penal Code to a mother who injures her unborn child by using a controlled substance, as defined by Chapter 481, Health and Safety Code, other than a controlled substance legally obtained by prescription, during her pregnancy and examine the effect that repealing the exemptions will have on reducing the number of babies who are born addicted to a controlled substance;

(3) receive reports and testimony from individuals, state and local agencies, community-based organizations, and other public and private organizations;

(4) create goals for state policy that would improve child safety, prevent child abuse and neglect, and improve child welfare; and

(5) submit a strategic plan to accomplish those goals.

(h) The strategic plan submitted under Subsection (g) of this section may include proposals for specific statutory changes, the creation of new programs, and methods to foster cooperation among state agencies and between the state and local government.

(i) The task force shall consult with employees of the Department of Family and Protective Services, the Department of State Health Services, and the Texas Department of Criminal Justice as necessary to accomplish the task force's responsibilities under this Act.

(j) The task force may cooperate as necessary with any other appropriate state agency.

(k) The governor, lieutenant governor, and speaker of the house of representatives shall appoint the members of the task force not later than October 1, 2009.

(l) Not later than November 1, 2010, the task force shall submit the strategic plan required by Subsection (g) of this section to the governor, lieutenant governor, and speaker of the house of representatives.

(m) The task force is abolished and this section expires on September 1, 2011.

SECTION 4. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2009.

President of the Senate

Speaker of the House

I certify that H.B. No. 1041 was passed by the House on May 7, 2009, by the following vote: Yeas 146, Nays 0, 1 present, not voting; that the House refused to concur in Senate amendments to H.B. No. 1041 on May 29, 2009, and requested the appointment of a conference committee to consider the differences between the two houses; and that the House adopted the conference committee report on H.B. No. 1041 on May 31, 2009, by the following vote: Yeas 145, Nays 0, 1 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 1041 was passed by the Senate, with amendments, on May 25, 2009, by the following vote: Yeas 31, Nays 0; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; and that the Senate adopted the conference committee report on H.B. No. 1041 on May 31, 2009, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor