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The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Carla S. Roberts.

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## DIGEST

Present law provides for the crime of cyberbullying.

Proposed law maintains present law but also creates the crime of criminal bullying.

Proposed law provides that criminal bullying means that conduct which includes all of the following:

1. The malicious and willful intent to coerce, abuse, torment, or intimidate a person under the age of 18.
2. The conduct is severe, repeated, persistent, or pervasive.
3. The conduct serves as the greatest or sole cause of a minor's measurable physical harm or severe emotional distress.

Proposed law provides that purely verbal expression, whether oral or written, will only be deemed criminal bullying if such verbal expression meets all of the following:

1. Is the severe and pervasive use of threatening words, any of which is intended to incite an immediate breach of peace.
2. The verbal expression is the intentional placing of another in reasonable apprehension of receiving a battery.

Proposed law provides that the crime of criminal bullying will be subject to the following penalties:

1. For anyone 18 years or older, whoever commits the crime of criminal bullying will be fined not more than \$500, imprisoned for not more than six months, or both.
2. When the offender is under the age of eighteen, the disposition of the matter will be governed exclusively by the provisions of Title VII of the Children's Code.

Proposed law provides for the following exceptions:

1. Freedom of speech or expression which is protected pursuant to Art. I, §7 of the La. Const. and guaranteed by 1<sup>st</sup> Amend. to the U.S. Const.
2. Religious free speech which is protected pursuant to Art. I, §8 of the La. Const. and

guaranteed by the 1<sup>st</sup> Amend. of the U.S. Const.

Proposed law provides that all persons under the age of 18 are protected under the provisions prohibiting criminal bullying equally and without regard to the subject matter of the criminal bullying or motivating animus.

Present law provides that certain local public school boards will adopt a student code of conduct for the students in its school system which will include a prohibition against harassment, intimidation, and bullying. Present law exempts the parishes of Livingston, East Baton Rouge, East Feliciana, West Feliciana, St. Helena, and Tangipahoa.

Proposed law maintains present law but changes the prohibited conduct to bullying, criminal bullying, and cyberbullying and requires all parishes to implement a code of student conduct which includes BESE's policy prohibition against bullying, criminal bullying, or motivating animus.

Proposed law declares the following to be prohibited acts:

1. Bullying on school premises, at school-sponsored functions or school-sponsored activities, or while students are being transported by any school-sponsored means of transportation.
2. Criminal bullying on school premises, at school-sponsored functions or school-sponsored activities, or while students are being transported by any school-sponsored means of transportation.
3. Cyberbullying, where school-owned technology is used.

Proposed law provides that, as it relates to school policy, the following definitions will apply:

1. "Bullying" means that a written, verbal, or electronic communication, or physical act, by a student, that is intended, or that a reasonable person would know is likely, to harm one or more pupils either directly or indirectly by doing any of the following:
  - (a) Substantially interfering with an educational opportunity, benefit, or program of one or more students.
  - (b) Adversely affecting the ability of a pupil to participate in or benefit from an educational program or activity by placing the student in emotional distress.
  - (c) Causing substantial disruption in, or substantial interference with, the orderly operation of the school.
2. "Criminal bullying" means that conduct which is defined in proposed law.

3. "Cyberbullying" means that conduct which is defined in the criminal code. Present law provides for the crime of cyberbullying as follows: Cyberbullying is the transmission of any electronic textual, visual, written, or oral communication with the malicious and willful intent to coerce, abuse, torment, or intimidate a person under the age of eighteen.
4. "Parents" means each individual legal parent, each tutor, or each legal guardian.

Proposed law provides that, by not later than January 1, 2013, BESE will promulgate rules and regulations to advise school officials, school staff, students and parents as to all of the following:

1. That bullying on school premises is prohibited conduct.
2. That criminal bullying on school premises is prohibited conduct.
3. That cyberbullying through the use of school-owned technology is prohibited conduct.
4. The nature and description of acts which constitute bullying.
5. The consequences of bullying which subjects the offender to school discipline.
6. The nature and description of acts which constitute criminal bullying and cyberbullying .
7. The consequences of criminal bullying and cyberbullying which, not only include school discipline but, may invoke criminal penalties.
8. That retaliation against any person who reports in good faith, is thought to have reported, files a complaint, or otherwise participates in an investigation or inquiry concerning allegations of bullying, criminal bullying, or cyberbullying is prohibited conduct and that such retaliation will be subject to independent discipline.
9. That intentionally making false reports about bullying to school officials is prohibited conduct and will result in school discipline.
10. That intentionally making false reports about criminal bullying or cyberbullying to school officials is prohibited conduct and will result in school discipline and, if reported to law enforcement, may invoke criminal penalties pursuant to R.S. 14:59(5).
11. The proper process and procedure for reporting any incidents involving such prohibited conduct.

Proposed law provides that any student who believes that he or she has been, or is currently, the victim of bullying, criminal bullying, or cyberbullying may report the situation to the school official.

Proposed law further provides that a student may also report concerns regarding bullying,

criminal bullying, or cyberbullying to a teacher, counselor, or other school employee who will notify the school official.

Proposed law provides a school official is not required to investigate a report if made anonymously, unless good cause is shown or stated for filing anonymously or the school official has good reason to believe that a student or students may be in imminent risk of physical harm.

Proposed law provides students and staff may also report any situation that they observe and believe to be bullying, criminal bullying, behavior, or cyberbullying behavior, directed toward a student to the school official, teacher, school counselor or other staff.

Proposed law provides that all reported complaints, which are properly reported, that may violate the prohibition against bullying, criminal bullying, or cyberbullying, will be promptly investigated within 14 days after the complaint is received by the school official.

Proposed law provides that if the school official determines that criminal bullying or cyberbullying has occurred, the school official will take all of the following actions:

1. Notify the parents of the students involved. Proposed law further provides that if a report of bullying, criminal bullying, or cyberbullying is determined by a school official to warrant further investigation, before any student under the age of 18 is interviewed, his or her parent will be notified by the school official of the allegations made and will have the opportunity to attend any interviews with their child conducted as part of the investigation.
2. Conduct a meeting with the parents of the victim and the parents of the alleged perpetrator.
3. Take prompt and appropriate disciplinary action against the student that the school official determines has engaged in conduct which constitutes bullying or rises to the degree that it may constitute criminal bullying or cyberbullying were law enforcement to be notified.
4. If after the parents of both the victim and the alleged perpetrator have met, the following actions will be taken:
  - (a) If the parents of both students agree that school discipline, parental discipline, or both are in the best interest of both students, the school official will compose a written report containing the findings of the investigation and the decision by the parents. If possible, the report will be signed by both parents and the school official and will be placed in the school records of both students.
  - (b) If after the parents of both the victim and the alleged perpetrator have met and the parents of the victim wish to press criminal charges against the alleged perpetrator and the school official determines that the alleged perpetrator has engaged in

criminal bullying or cyberbullying, the school official will notify law enforcement officials that the school official believes that the alleged acts may be in violation of state law and that the parents of the victim wish to press criminal charges against the alleged perpetrator.

5. Promptly notify the complainant of the findings of the investigation and, that remedial action has been taken if such release of information does not violate the law.
6. Keep complaints and investigative reports confidential, except as required by federal or state law. Proposed law further requires that, in order to encourage communication between a student and a school official for the purpose of implementing appropriate student discipline, whenever a student admits to a school official that the student has engaged in conduct prohibited, that admission will be considered hearsay and will not be considered an exception to the hearsay rule and, therefore, will be deemed inadmissible in any court of law.
7. Maintain complaints and investigative reports for three years in the event that disclosure is warranted by law enforcement officials.
8. Provide copies of complaints and investigative reports to the governing authority of the school in order that the governing authority can provide information to the Dept. of Ed. which will report the incidences of bullying, criminal bullying, and cyberbullying.

Proposed law provides that retaliation against any person who reports in good faith, is thought to have reported, files a complaint, or otherwise participates in an investigation or inquiry concerning allegations of bullying, criminal bullying, or cyberbullying, is prohibited. Proposed law further provides that such retaliation will be subject to independent discipline.

Proposed law provides that making intentionally false reports about criminal bullying or cyberbullying to school officials is prohibited and is subject to discipline.

Proposed law provides that notice must be mailed to the parent or parents' home.

Proposed law provides that notice may not be made to the parents through an involved student. Proposed law further provides that such delivery, if made by an involved student, will not constitute proper notice.

Proposed law provides that nothing in proposed law will be deemed to interfere with the parental authority and the parental responsibility that a parent has for the student when the student is not on the school premises, is not engaged in a school-sponsored function or school-sponsored activity, and is not being transported by school-sponsored transportation.

Proposed law provides that nothing in proposed law is to be interpreted to infringe upon the free speech rights of students which is protected pursuant to Art. I, §7 of the La. Const. and guaranteed under the 1<sup>st</sup> Amend. of the U.S. Const. and, therefore, is not intended to prohibit

expression of religious, philosophical, or political views, provided that such expression does not cause an actual, material disruption of the work of the school which may subject the student to discipline.

Proposed law provides that nothing in proposed law is to be interpreted to infringe upon the religious free speech rights of students which is protected pursuant to Art. I, §8 of the La. Const. and guaranteed under the 1<sup>st</sup> Amend. of the U.S. Const. and, therefore, is not intended to prohibit expression of religious views, provided that such expression does not cause an actual, material disruption of the work of the school which may subject the student to discipline.

Proposed law provides that all public school students will be protected equally and without regard to the subject matter of the bullying, criminal bullying, or cyberbullying or motivating animus.

Proposed law provides that nothing in proposed law is to be interpreted to impede or preclude a student, the student's parents, or school officials from directly reporting to law enforcement officials any behavior that the reporting individual believes constitutes a violation of criminal law.

Proposed law provides that nothing in proposed law is to be interpreted to conflict with or supercede the provisions requiring mandatory reporting of incidence of child abuse.

Present law provides that the Dept. of Ed. will develop a behavior incidence checklist that the governing authority of each public elementary and secondary school will use to document the details of each reported incident of harassment, intimidation, and bullying, including cyberbullying.

Proposed law retains present law but changes the terminology of the prohibited conduct which is to be reported from "harassment, intimidation, and bullying, including cyberbullying" to "bullying, criminal bullying, and cyberbullying."

Present law provides that the governing authority of each public elementary and secondary school will report all such documented incidences of harassment, intimidation, and bullying, including cyberbullying, to the Dept. of Ed. as prescribed in rules adopted by BESE in accordance with the APA.

Proposed law retains present law but changes the terminology of the prohibited conduct which is to be reported from "harassment, intimidation, and bullying, including cyberbullying" to "bullying, criminal bullying, and cyberbullying."

Proposed law provides that, by not later than Jan. 1, 2013, BESE will produce a pamphlet which explains, defines and prohibits bullying, criminal bullying, and cyberbullying, in an age appropriate manner.

Proposed law provides that, in order to minimize the cost to the individual school districts and

individual schools associated with producing the pamphlet and to minimize the technical costs of updating the respective websites, BESE will produce an electronic version of the pamphlet or pamphlets and will forward them to the school districts, who will in turn, forward the pamphlet to the individual schools for posting to the school's website (if the school has a website) and for photocopying the pamphlet.

Proposed law provides that the individual schools will photocopy, or otherwise produce the pamphlet in writing, and will include the pamphlet as part of the materials associated with the school's discipline policy.

Proposed law provides that BESE may produce more than one pamphlet if BESE believes that this is the best possible manner to advise students in an age and grade appropriate manner.

Proposed law provides that the contents and the compilation of the pamphlet will be promulgated pursuant to the APA.

Proposed law provides that, once BESE publishes the promulgation of the pamphlet in the La. Register, the accompanying law which prohibits bullying, criminal bullying, and cyberbullying will supercede and repeal present law which provides for various and differing prohibition against harassment, intimidation, and bullying that some, but not all, of the parishes and local school boards have developed.

Proposed law provides legislative intent as follows:

1. According to La. Constitution, it is the role of the legislature to provide for the education of the people of this state and to establish and maintain a public education system.
2. A safe and civil environment in school is necessary for students to learn and achieve high academic success and that bullying, criminal bullying, cyberbullying and other disruptive or violent behavior is conduct that disrupts both a student's ability to learn and a school's ability to educate its students.

Proposed law provides that the purpose of the Act is to insure that all school districts have and maintain a uniform policy throughout all school districts and individual schools to protect all children from bullying, criminal bullying, and cyberbullying.

Proposed law provides that the Act shall be known as the "Tesa Middlebrook Anti-bullying Act."

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Amends R.S. 17:416.20; adds R.S. 14:40.8, R.S. 17:418, 418.1 and 418.2; repeals R.S. 17:416.13)