

By: Raymond

H. B. No. 2450

A BILL TO BE ENTITLED

# 1 AN ACT

2 relating to a pilot program operated by certain public or private  
3 primary or secondary or open-enrollment charter schools in Webb  
4 County concerning searches and drug testing of students with  
5 parental consent and certain disciplinary measures and other  
6 procedures that may arise from such a search or test.

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

8 SECTION 1. Chapter 37, Education Code, is amended by adding  
9 Subchapter A-1 to read as follows:

10 SUBCHAPTER A-1. ALTERNATIVE DISCIPLINE PILOT PROGRAM

11                   Sec. 37.031. DEFINITIONS. In this subchapter, "controlled  
12                   substance" and "marihuana" have the meanings assigned by Section  
13                   481.002, Health and Safety Code.

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

23                   Sec. 37.033. PARENTAL-CONSENT SEARCH. (a) In a public  
24 school district or private primary or secondary school or

1 open-enrollment charter school operating a pilot program under this  
2 subchapter, a school principal who reasonably suspects a student  
3 possesses alcohol, marihuana, or a controlled substance may seek  
4 written consent from the parent or guardian of the student to search  
5 the student and the possessions of the student for alcohol,  
6 marihuana, or a controlled substance. If the student's parent or  
7 guardian provides written consent for the search, the principal or  
8 the principal's designee may conduct the search in accordance with  
9 rules adopted by the board of trustees of a district or governing  
10 body of the private school or charter school under Section 37.035.

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

20       (c) A student may not be searched under this section more  
21 than one time in a week.

22       Sec. 37.034. PARENTAL-CONSENT DRUG OR ALCOHOL TESTS. (a)  
23 In a public school district or private primary or secondary school  
24 or open-enrollment charter school operating a pilot program under  
25 this subchapter, a school principal may seek written consent from  
26 the parent or guardian of a student younger than 17 years of age to  
27 perform a nonintrusive drug or alcohol test on the student if the

1 principal reasonably believes that the student is using alcohol,  
2 marijuana, or a controlled substance.

3       (b) A parent or guardian of a student younger than 17 years  
4 of age may request in writing that the school perform a nonintrusive  
5 drug or alcohol test on the student under this section if the parent  
6 or guardian reasonably believes that the student is using alcohol,  
7 marijuana, or a controlled substance.

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

15       (d) If a student tests positive in a nonintrusive drug or  
16 alcohol test administered under this section, a second test must be  
17 administered as soon as practicable to confirm the positive test  
18 results. The principal must send all positive or negative test  
19 results to the student's parent or guardian.

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

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

27       (g) This section does not prohibit or otherwise affect any

1 other drug or alcohol testing program conducted by or on behalf of a  
2 school or school district.

3 (h) A student may not be administered a nonintrusive drug or  
4 alcohol test under this section more than one time in a month.

5 Sec. 37.035. RULES REGARDING PARENTAL-CONSENT SEARCH AND  
6 DRUG OR ALCOHOL TEST. (a) The board of trustees of a school  
7 district or governing body of a private school or open-enrollment  
8 charter school that operates a pilot program under this subchapter  
9 shall adopt rules concerning searches conducted under Section  
10 37.033 and drug or alcohol tests administered under Section 37.034.

11 (b) In adopting rules under this section, the board or  
12 governing body shall:

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

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

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

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

1           Sec. 37.036. DISCIPLINE FOR VIOLATIONS OF LAW OR SCHOOL  
2   POLICY DISCOVERED IN PARENTAL-CONSENT SEARCH OR DRUG OR ALCOHOL  
3   TESTING. (a) Notwithstanding Section 37.007(b) and except as  
4    otherwise provided by Subsection (c), a student found to be in  
5    violation of law or school policy based on a parental-consent  
6    search or a parental-consent drug or alcohol test conducted under a  
7    pilot program operated under this subchapter may not be expelled  
8    for the violation unless the student fails to comply with any  
9    requirements imposed under Subsection (b).

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

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

24           Sec. 37.037. SCHOOL JUVENILE CASE MANAGER. (a) The board of  
25   trustees of a school district or governing body of a private school  
26   or an open-enrollment charter school operating a pilot program  
27   under this subchapter may employ a juvenile case manager in the

1 manner provided by Article 45.056, Code of Criminal Procedure, to  
2 provide services in a special juvenile docket composed of those  
3 juvenile cases arising from a parental-consent search or a  
4 parental-consent drug or alcohol test conducted under a pilot  
5 program operated under this subchapter.

6       (b) If a private school, school district, or charter school  
7 operating a pilot program under this subchapter is within the  
8 jurisdiction of a designated juvenile court in the county and the  
9 district or school employs a school juvenile case manager, the case  
10 manager shall assist the court in administering the special  
11 juvenile docket described by Subsection (a).

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

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

25       Sec. 37.038. SUBSTANCE ABUSE TREATMENT PROGRAM. The board  
26 of trustees of a school district or governing body of an  
27 open-enrollment charter school or private school that operates a

1 pilot program under this subchapter may cooperate with the juvenile  
2 board of the county, the local juvenile probation department, or  
3 any designated juvenile court in the county in establishing a  
4 substance abuse treatment program for students who violate a law or  
5 school policy by engaging in prohibited conduct related to the use,  
6 possession, or delivery of alcohol, marihuana, or a controlled  
7 substance.

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

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

15          (b) A juvenile court may defer adjudication proceedings  
16 under Section 54.03, Family Code, for not more than 180 days if a  
17 child described by Subsection (a) presents to the court a written  
18 request to attend a substance abuse treatment program under Section  
19 37.038.

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

1           (d) A case dismissed under this section may not be part of  
2 the child's records for any purpose.

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

10           (1) the governor;  
11           (2) the lieutenant governor;  
12           (3) the speaker of the house of representatives; and  
13           (4) the presiding officers of the standing committees  
14 of the senate and house of representatives having primary  
15 jurisdiction over education issues and over criminal justice  
16 issues.

17           Sec. 37.041. CONCLUSION; EXPIRATION. A pilot program  
18 operated under this subchapter concludes and this subchapter  
19 expires June 15, 2015.

20           SECTION 2. Section 58.003, Family Code, is amended by  
21 adding Subsections (c-7), (d-1), and (d-2) to read as follows:

22           (c-7) This subsection applies only to a child who, based on  
23 evidence obtained pursuant to a parental-consent search or a  
24 parental-consent drug or alcohol test conducted under a pilot  
25 program operated under Subchapter A-1, Chapter 37, Education Code,  
26 is adjudicated to have engaged in conduct indicating a need for  
27 supervision or delinquent conduct. Notwithstanding Subsections

1        (a) and (c) and subject to Subsection (b), a juvenile court may  
2        order the sealing of records concerning a child described by this  
3        subsection if the child successfully completed a program described  
4        by Section 37.038, Education Code, or graduated from high school or  
5        received the child's certificate of high school equivalency. The  
6        court may:

7                (1) order the sealing of the records immediately and  
8        without a hearing; or  
9                (2) hold a hearing to determine whether to seal the  
10      records.

11                (d-1) The court may grant the relief authorized under  
12      Subsection (c-7) at any time after the child satisfies the  
13      requirements of that subsection. If the child is referred to the  
14      juvenile court for conduct constituting any offense and at the  
15      adjudication hearing the child is found to be not guilty of each  
16      offense alleged, the court shall immediately and without any  
17      additional hearing order the sealing of all files and records  
18      relating to the case.

19                (d-2) This subsection and Subsections (c-7) and (d-1)  
20      expire June 15, 2015.

21                SECTION 3. Notwithstanding Section 58.003(d-2), Family  
22      Code, as added by this Act, on or after June 15, 2015, a court may  
23      order the sealing of juvenile court records of a child entitled  
24      before that date to the sealing of records under Section  
25      58.003(c-7), Family Code, as added by this Act.

26                SECTION 4. This Act takes effect immediately if it receives  
27      a vote of two-thirds of all the members elected to each house, as

H.B. No. 2450

1 provided by Section 39, Article III, Texas Constitution. If this  
2 Act does not receive the vote necessary for immediate effect, this  
3 Act takes effect September 1, 2013.