***Relevant Texas Education Code***

**School Safety-SB 11 (2019)**

* Public and Charter Schools are required to teach digital citizenship including the criminal consequences of cyberbullying.
* Public and Charter Schools are required to have a Safe and Supportive School Program Team. One of the six responsibilities of this team is to conduct behavioral threat assessments by assessing and reporting individuals who make threats of violence or exhibit harmful, threatening, or violent behavior and who gathers and analyzes data to determine the level of risk and appropriate intervention. The team serves as a safety net for the community and school by: 1. Conducting a fact‐based, systematic, and investigative approach to determining how likely a person is to carry out a threat of violence. 2. Identifying, assessing, and managing appropriate interventions of individuals who are at risk for violence against themselves and others. 3. Providing guidance to students and school employees on recognizing harmful, threatening, or violent behavior that may pose a threat to the community, school, or individual.
* "Harmful, threatening, or violent behavior" includes behaviors such as verbal threats, threats of self-harm, bullying, cyberbullying, fighting, the use or possession of a weapon, sexual assault, sexual harassment, dating violence, stalking, or assault, by a student. [TEC 37.115(a)(1)]
* "Team" means a Safe and Supportive School Program Team established by the board of trustees of a school district. [TEC 37.115(a)(2)]

* A “threat” is a concerning communication or behavior that indicates that an individual poses a danger to the safety of school staff or students through acts of violence or other behavior that would cause harm to self or others. The threat may be communicated behaviorally, orally, visually, in writing, electronically, or through any other means, and is considered a threat regardless of whether it is observed by or communicated directly to the target of the threat or observed by or communicated to a third party, and regardless of whether the target of the threat is aware of the threat.

**David’s Law Enhancements-SB 2050 (2021)**

* All school boards must adopt a policy for prevention and mediation of bullying incidents between students that interfere with the student’s educational opportunities or substantially disrupt orderly operations of a classroom, school, or school-sponsored or school-related activities.
* All school districts are required to adopt TEA’s minimum standards to address numerous issues:
  + a. Bullying prevention by focusing on school climate and building healthy relationships between students and staff.
  + b. Establish a committee that will address bullying by focusing on prevention efforts and health and wellness initiatives.
  + c. Students at each grade level to meet periodically for instruction on building relationships and preventing bullying, including cyberbullying.
  + d. All school districts must collect and report annually incidents of bullying and cyberbullying that have occurred on campus through the Public Education Information Management System (PEIMS).

Note: TEA will finalize and adopt the minimum standards prior to the 2022-2023 school year. School districts are expected to comply in good faith beginning with the 2021-2022 school year.

***Relevant Texas Criminal Code***

**Texas Penal Code - PENAL § 42.07. Harassment**

a) A person commits an offense if, with intent to harass, annoy, alarm, abuse, torment, or embarrass another, the person:

(1) initiates communication and in the course of the communication makes a comment, request, suggestion, or proposal that is obscene;

(2) threatens, in a manner reasonably likely to alarm the person receiving the threat, to inflict bodily injury on the person or to commit a felony against the person, a member of the person's family or household, or the person's property;

(3) conveys, in a manner reasonably likely to alarm the person receiving the report, a false report, which is known by the conveyor to be false, that another person has suffered death or serious bodily injury;

(4) causes the telephone of another to ring repeatedly or makes repeated telephone communications anonymously or in a manner reasonably likely to harass, annoy, alarm, abuse, torment, embarrass, or offend another;

(5) makes a telephone call and intentionally fails to hang up or disengage the connection;

(6) knowingly permits a telephone under the person's control to be used by another to commit an offense under this section;  or

(7) sends repeated electronic communications in a manner reasonably likely to harass, annoy, alarm, abuse, torment, embarrass, or offend another.

(b) In this section:

(1) “Electronic communication” means a transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic, or photo-optical system.  The term includes:

(A) a communication initiated through the use of electronic mail, instant message, network call, a cellular or other type of telephone, a computer, a camera, text message, a social media platform or application, an Internet website, any other Internet-based communication tool, or facsimile machine;  and

(B) a communication made to a pager.

(2) “Family” and “household” have the meaning assigned by Chapter 71, Family Code.

(3) “Obscene” means containing a patently offensive description of or a solicitation to commit an ultimate sex act, including sexual intercourse, masturbation, cunnilingus, fellatio, or anilingus, or a description of an excretory function.

(c) An offense under this section is a Class B misdemeanor, except that the offense is a Class A misdemeanor if:

(1) the actor has previously been convicted under this section;  or

(2) the offense was committed under Subsection (a)(7) and:

(A) the offense was committed against a child under 18 years of age with the intent that the child:

(i) commit suicide;  or

(ii) engage in conduct causing serious bodily injury to the child;  or

(B) the actor has previously violated a temporary restraining order or injunction issued under Chapter 129A, Civil Practice and Remedies Code.

# **Texas Penal Code § 33.07 Online Impersonation**

(a) A person commits an offense if the person, without obtaining the other person's consent and with the intent to harm, defraud, intimidate, or threaten any person, uses the name or persona of another person to:

(1) create a web page on a commercial social networking site or other Internet website;  or

(2) post or send one or more messages on or through a commercial social networking site or other Internet website, other than on or through an electronic mail program or message board program.

(b) A person commits an offense if the person sends an electronic mail, instant message, text message, or similar communication that references a name, domain address, phone number, or other item of identifying information belonging to any person:

(1) without obtaining the other person's consent;

(2) with the intent to cause a recipient of the communication to reasonably believe that the other person authorized or transmitted the communication; and

(3) with the intent to harm or defraud any person.

(c) An offense under Subsection (a) is a felony of the third degree.  An offense under Subsection (b) is a Class A misdemeanor, except that the offense is a felony of the third degree if the actor commits the offense with the intent to solicit a response by emergency personnel.

(d) If conduct that constitutes an offense under this section also constitutes an offense under any other law, the actor may be prosecuted under this section, the other law, or both.

(e) It is a defense to prosecution under this section that the actor is any of the following entities or that the actor's conduct consisted solely of action taken as an employee of any of the following entities:

(1) a commercial social networking site;

(2) an Internet service provider;

(3) an interactive computer service, as defined by [47 U.S.C. Section 230](https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000546&refType=LQ&originatingDoc=I38d855a0ee6911eab044cc65e119318f&cite=47USCAS230) ;

(4) a telecommunications provider, as defined by [Section 51.002, Utilities Code](https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1015461&refType=LQ&originatingDoc=I38d87cb0ee6911eab044cc65e119318f&cite=TXUTS51.002) ;  or

(5) a video service provider or cable service provider, as defined by [Section 66.002, Utilities Code](https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1015461&refType=LQ&originatingDoc=I38d8a3c0ee6911eab044cc65e119318f&cite=TXUTS66.002) .

(f) In this section:

(1) “Commercial social networking site” means any business, organization, or other similar entity operating a website that permits persons to become registered users for the purpose of establishing personal relationships with other users through direct or real-time communication with other users or the creation of web pages or profiles available to the public or to other users.  The term does not include an electronic mail program or a message board program.

(2) “Identifying information” has the meaning assigned by [Section 32.51](https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000182&refType=LQ&originatingDoc=I38da5170ee6911eab044cc65e119318f&cite=TXPES32.51) .

**Texas Penal Code - PENAL § 21.15. Invasive Visual Recording**

(a) In this section:

(1) “Female breast” means any portion of the female breast below the top of the areola.

(2) “Intimate area” means the naked or clothed genitals, pubic area, anus, buttocks, or female breast of a person.

(3) “Changing room” means a room or portioned area provided for or primarily used for the changing of clothing and includes dressing rooms, locker rooms, and swimwear changing areas.

(4) “Promote” has the meaning assigned by [Section 43.21](https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000182&refType=LQ&originatingDoc=I96ad7220ee5d11eab044cc65e119318f&cite=TXPES43.21) .

(b) A person commits an offense if, without the other person's consent and with intent to invade the privacy of the other person, the person:

(1) photographs or by videotape or other electronic means records, broadcasts, or transmits a visual image of an intimate area of another person if the other person has a reasonable expectation that the intimate area is not subject to public view;

(2) photographs or by videotape or other electronic means records, broadcasts, or transmits a visual image of another in a bathroom or changing room; or

(3) knowing the character and content of the photograph, recording, broadcast, or transmission, promotes a photograph, recording, broadcast, or transmission described by Subdivision (1) or (2).

(c) An offense under this section is a state jail felony.

(d) If conduct that constitutes an offense under this section also constitutes an offense under any other law, the actor may be prosecuted under this section or the other law.

(e) For purposes of Subsection (b)(2), a sign or signs posted indicating that the person is being photographed or that a visual image of the person is being recorded, broadcast, or transmitted is not sufficient to establish the person's consent under that subdivision.

**Texas Sexting Laws Involving Young People**

Under [Texas Penal Code Section 43.261](https://statutes.capitol.texas.gov/Docs/PE/htm/PE.43.htm#43.261), it is a crime for a minor to “intentionally or knowingly” send another minor an obscene photo/video or a photo/video of a minor engaging in sexual conduct, if they know it was a minor. First-time offenses are punishable by a Class C misdemeanor, but the statute indicates that under some circumstances a first-time offender can be charged with a Class B misdemeanor.

In 2019, the Texas Legislature added [Penal Code 21.19](https://statutes.capitol.texas.gov/Docs/PE/htm/PE.21.htm#21.19) which states that a Class C misdemeanor is committed by a person if they knowingly transmit electronic visual material that depicts any person engaging in sexual conduct or with the person’s intimate parts exposed that is not sent at the request of or with the express consent of the recipient. This applies to all electronic platforms such as email, texts, apps, and social media.

**Texas Revenge Porn Law**

In 2015, the Texas Legislature passed [Texas Penal Code Section 21.16](https://statutes.capitol.texas.gov/Docs/PE/htm/PE.21.htm#21.16), the “Revenge Porn Statute.” In 2017, this law was amended updating the penalty from a Class A Misdemeanor to a state jail felony for someone to reveal or disclose images of someone engaged in sexual conduct or images of someone’s intimate parts unless that person gives their consent when that person had a reasonable expectation that the material would remain private.

**Texas Sextortion Laws**

[Texas Penal Code 33.021](https://statutes.capitol.texas.gov/Docs/PE/htm/PE.33.htm#33.021) makes it a felony offense to solicit anyone under the age of 17 (a minor), or anyone the offender believes to be under the age of 17, online for sexual contact or have sexually explicit communication with a minor, or someone they believe to be a minor.

[Texas Penal Code 33.07](https://statutes.capitol.texas.gov/Docs/PE/htm/PE.33.htm#33.07) states that if a person “uses the name or persona of another person” without that person’s consent and with the intent to harm, threaten, defraud, or intimidate the person, he or she has committed a felony offense.

[Texas Penal Code 21.18](https://statutes.capitol.texas.gov/Docs/PE/htm/PE.21.htm#21.18) defines sexual coercion as an act involving sexual conduct causing arousal or gratification. This section applies to a threat regardless of how that threat is communicated, including a threat transmitted through email or an internet website, social media account, or chat room and a threat made by other electronic or technological means. Such action is a felony offense.

<https://txssc.txstate.edu/tools/courses/before-you-text/module-3-2>

**The Definition of Hate Crimes**

Although the term, "Hate Crimes", is the most frequently used term throughout the U.S., the true definitions may differ depending on the jurisdiction and/or state you reside in. In the State of Texas if someone commits a crime against your person, or commits arson, criminal mischief, or graffiti to your property, and the person intentionally selected you because of their bias or prejudice against your race, color, disability, religion, national origin or ancestry, age, gender, or sexual preference or by your status as a peace officer or judge, that crime could be prosecuted as a hate crime. In addition, under the Matthew Shepard and James Byrd Jr. Hate Crimes Protection Act, there may be additional protected classes including being targeted because of your gender identity.

**Crimes with Bias Elements** occur when the victim is threatened, assaulted, robbed, has their property damaged, etc., by a suspect when, during the commission of the crime, any comments are made directly and/or indirectly that relate to the suspect's perception of the victim's race, color, disability, religion, national origin or ancestry, age, gender, or sexual preference, or by the victim’s status as a peace officer or judge, and those comments appear to be a motivation for the crime. The victim should follow the same protocol in calling 9-1-1 and reporting the incident.

**Bias Incidents** are non-criminal situations that do not fall within the above listed categories. Bias incidents are where a subject uses/directs offensive words at an individual and/or group during constitutionally protected free speech and the actor does not accompany those words with direct threats and/or actions. Recipient(s) consider the speech offensive.