

OFFICE OF THE DISTRICT ATTORNEY



BRAZOS COUNTY, TEXAS

300 E. 26TH STREET  
SUITE 310  
BRAZOS COUNTY  
COURTHOUSE  
BRYAN, TEXAS 77803

OFF: 979 / 361-4320  
FAX: 979 / 361-4368

BILL TURNER  
District Attorney

QUEEN WALKER  
Victim Assistance  
Coordinator

GIL SCHULTZ  
STEVE MILLS  
Investigators

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OPINION COMMITTEE

Office of the Attorney General  
Opinion Committee  
P O Box 12548  
Austin TX 78711-2548

FILE # ML-42310-01  
I.D. # 42310

Dear Opinion Committee,

The following question is presented for your review and reply. Thank you for your assistance in this matter.

Summary of the Issue

Is it a violation of §37.123 of the Education Code to intentionally engage in conduct that has the effect of disrupting a school assembly, or does the statute require proof of an intent to disrupt the assembly? Precisely stated, is §37.123 of the Texas Education Code a result-oriented crime or a nature-oriented offense?

Analysis

Texas Education Code §37.123B provides that a person commits an offense if the person intentionally engages in "disruptive activity" on a school campus. Disruptive activity is defined as: "obstructing or restraining the passage of a person in an exit or hallway." A second definition of disruptive activity is: "to disrupt by force or violence a lawful assembly in progress."

The question presented is whether the statute requires proof that an actor intended to disrupt a lawful assembly or simply intended to engage in conduct that ultimately disrupted a school assembly, or obstructed a school hallway.

By way of illustration, assume that one student pushes another student in the hallway or classroom of a school. In response, the second student hits the first

student and a fight ensues. The fight is so loud it disrupts a teacher in the classroom who stops her class and tries to stop the fight. A crowd of other students, watching the fight, grows large enough to obstruct some students' ability to pass through the hallway. Are the two students who fought guilty of violating §37.123 of the Texas Education Code, even though they did not intend to disrupt the classroom or obstruct the hallway? Are they criminally responsible for "disruptive activity" even though their only intent was to engage in a fistfight?

There is no case law that classifies the Disruptive Activity statute as a result-oriented crime or nature-oriented crime; however, Texas Penal Code §36.06 (Obstruction and Retaliation) is similar in that it prohibits a person from intentionally harming another to prevent or delay the service of another. The San Antonio Appeals Court ruled that TPC 36.06 was a result-oriented crime in *Herrera v State*, 915 S.W.2d 94 (Tex.App.-San Antonio 1996). In resolving the issue, the *Herrera* Court stated:

"Section 36.06(a)(2) provides that a person commits an offense if he intentionally or knowingly harms or threatens to harm another by an unlawful act in order to prevent or delay the service of another as a public servant. TEX.PENAL CODE ANN. §36.06 (Vernon 1994). The mental state necessary to satisfy the elements of the offense are intent to cause harm or to threaten to cause harm and intent to prevent or delay the service of another. Intent to *engage in conduct* that results in the harm and the prevention or delay of a public servant is not an element of obstruction. *Cf. Alvarado v State*, 704 S.W.2d 36, 39 (Tex.Crim.App. 1985). Clearly then, the nature of the actor's conduct in committing obstruction is inconsequential to the commission of the crime. *See Cook v State*, 884 S.W.2d 485, 489 (Tex.Crim.App. 1994) (citing *Alvarado*, 704 S.W.2d at 39). The focus is on whether the conduct is done with the intent to effect the result specified in the statute. *See id.* That is, did the accused engage in action, regardless of what the action may have been, with the intent to harm and prevent or delay another as a public servant?"

If the *Herrera* analysis applies to the "disruptive activity" statute, it appears that the "disruptive activity" statute is indeed a result-oriented crime. That is, by

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the passage of the statute, the Legislature prohibited the intentional disruption of school assemblies and school hallways but did not prohibit intentionally engaging in conduct that ultimately results in disrupting of school activities.

Sincerely,



Bill Turner  
District Attorney  
Brazos County, Texas

BT/km

cc: Ken Burton, Chief of Police, City of Bryan  
Rod Anderson, Assistant County Attorney, Brazos County  
Julie Gannaway, City of Bryan  
Herman Smith, Superintendent, Bryan ISD