

BILL ANALYSIS

Senate Research Center

S.B. 393
By: West et al.
Jurisprudence
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Too many juveniles are entering the criminal justice system due to the fact that there are no other alternatives. It is often the case that minors who commit minor fine-only misdemeanors face more stringent fines and court costs than those minors who commit more heinous or felonious offenses. Additional diversionary measures are needed in order to provide early interventions for minors who commit certain minor offenses. This will allow more resources to be focused on those minors with the potential to commit more serious acts of violence.

S.B. 393 seeks to put in place statutory suggestions of the Texas Judicial Council, the policy-making body of the judiciary in this state, that provide for diversionary programs prior to the referral to municipal and justice courts. Specifically, the bill proposes to remove ticketing as a means to address certain behaviors on school district property and puts in place a complaint-based system, similar to what is currently done for truancy. It establishes graduated sanctions, such as warning letters, school-based community service, or referral to counseling, for juveniles who committed certain fine-only misdemeanors prior to referral to court. It expands the use of juvenile case managers by allowing for their use without a formal court order and prior to cases being filed. Finally, it authorizes local juvenile boards to authorize law enforcement to dispose of certain fine-only offenses without referral to a court, and adds Class C misdemeanors, other than traffic offenses, to the list of offenses that can be disposed of through the use of first offender programs.

S.B. 393 amends current law relating to the criminal procedures related to children who commit certain Class C misdemeanors.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to an attorney representing the state in SECTION 12 (Section 37.147, Education Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Article 42.15, Code of Criminal Procedure, by amending Subsection (b) and adding Subsections (d), (e), and (f), as follows:

(b) Authorizes a court, subject to Subsections (c) (relating to requiring the court to allow the defendant to pay the fine and costs in a misdemeanor case in specified portions at designated intervals if the court determines that the defendant is unable to pay immediately) and (d), rather than subject to Subsection (c), when imposing a fine and costs, to direct a defendant to pay a certain fine and costs at certain dates.

(d) Authorizes a judge to allow a defendant who is a child, as defined by Article 45.058(h) (defining "child"), to elect at the time of conviction, as defined by Section 133.101 (Meaning of Conviction), Local Government Code, to discharge the fine and costs by:

(1) performing community service or receiving tutoring under Article 45.0492 (Community Service or Tutoring in Satisfaction of Fine or Costs for Certain

Juvenile Defendants), as added by Chapter 227 (H.B. 350), Acts of the 82nd Legislature, Regular Session, 2011; or

(2) paying the fine and costs in a manner described by Subsection (b).

(e) Requires that the election under Subsection (d) be made in writing, signed by the defendant, and, if present, signed by the defendant's parent, guardian, or managing conservator. Requires the court to maintain the written election as a record of the court and provide a copy to the defendant.

(f) Provides that the requirement under Article 45.0492(a) (relating to providing that this article applies only to a defendant younger than 17 years of age who is assessed a fine or costs for a Class C misdemeanor occurring in a building or on the grounds of the primary or secondary school at which the defendant was enrolled at the time of the offense), as added by Chapter 227 (H.B. 350), Acts of the 82nd Legislature, Regular Session, 2011, that an offense occur in a building or on the grounds of the primary or secondary school at which the defendant was enrolled at the time of the offense does not apply to the performance of community service or the receipt of tutoring to discharge a fine or costs under Subsection (d)(1).

SECTION 2. Amends Article 43.091, Code of Criminal Procedure, as follows:

Art. 43.091. New heading: **WAIVER OF PAYMENT OF FINES AND COSTS FOR INDIGENT DEFENDANTS AND CHILDREN.** Authorizes a court to waive payment of a fine or cost imposed on a defendant who defaults in payment if the court determines that:

(1) the defendant is indigent or was, at the time the offense was committed, a child as defined by Article 45.058(h); and

(2) each alternative method of discharging the fine or cost under Article 43.09 (Fine Discharged) or 42.15 would impose an undue hardship on the defendant.

SECTION 3. Amends Article 44.2811, Code of Criminal Procedure, as follows:

Art. 44.2811. New heading: **RECORDS RELATING TO CHILDREN CONVICTED OF OR RECEIVING DEFERRED DISPOSITION FOR FINE-ONLY MISDEMEANORS.**

(a) Provides that this article applies only to a misdemeanor offense punishable by fine only, other than a traffic offense.

(b) Creates this subsection from existing text. Provides that all records and files and information stored by electronic means or otherwise, from which a record or file could be generated, relating to a child who is convicted of and has satisfied the judgment for or who has received a dismissal after deferral of disposition for an offense described by Subsection (a), rather than relating to a child who is convicted of and has satisfied the judgment for a fine-only misdemeanor offense other than a traffic offense, are confidential and are prohibited from being disclosed to the public except as provided under Article 45.0217(b). Deletes existing text providing that all records and files and information stored by electronic means or otherwise, from which a record or file could be generated, relating to a child whose conviction for a fine-only misdemeanor other than a traffic offense is affirmed are confidential upon satisfaction of the judgment and are prohibited from being disclosed to the public except as provided under Article 45.0217(b).

SECTION 4. Amends Article 45.0217, Code of Criminal Procedure, as follows:

Art. 45.0217. New heading: **CONFIDENTIAL RECORDS RELATED TO THE CONVICTION OF OR DEFERRAL OF DISPOSITION FOR A CHILD.** (a) Provides

that this article applies only to a misdemeanor offense punishable by fine only, other than a traffic offense.

(a-1) Creates this subsection from existing text. Provides that except as provided by Article 15.27 (Notification to Schools Required) and Subsection (b), all records and files, including those held by law enforcement, and information stored by electronic means or otherwise, from which a record or file could be generated, relating to a child who is convicted of and has satisfied the judgment for or who has received a dismissal after deferral of disposition for an offense described by Subsection (a), rather than for a fine-only misdemeanor offense other than a traffic offense, are confidential and prohibited from being disclosed to the public.

(b) Authorizes information subject to Subsection (a-1), rather than subject to Subsection (a), to be open to inspection only by certain entities.

SECTION 5. Amends Article 45.041, Code of Criminal Procedure, by amending Subsection (b) and adding Subsections (b-3), (b-4), and (b-5), as follows:

(b) Authorizes the justice or judge, subject to Subsections (b-2) and (b-3), rather than subject to Subsection (b-2), to direct the defendant to pay a certain fine and costs at a certain date, to make restitution to any victim of the offense, and to satisfy any other sanction authorized by law.

(b-3) Authorizes a judge to allow a defendant who is a child, as defined by Article 45.058(h), to elect at the time of conviction, as defined by Section 133.101, Local Government Code, to discharge the fine and costs by:

(1) performing community service or receiving tutoring under Article 45.0492, as added by Chapter 227 (H.B. 350), Acts of the 82nd Legislature, Regular Session, 2011; or

(2) paying the fine and costs in a manner described by Subsection (b).

(b-4) Requires that the election under Subsection (b-3) be made in writing, signed by the defendant, and, if present, signed by the defendant's parent, guardian, or managing conservator. Requires the court to maintain the written election as a record of the court and provide a copy to the defendant.

(b-5) Provides that the requirement under Article 45.0492(a), as added by Chapter 227 (H.B. 350), Acts of the 82nd Legislature, Regular Session, 2011, that an offense occur in a building or on the grounds of the primary or secondary school at which the defendant was enrolled at the time of the offense does not apply to the performance of community service or the receipt of tutoring to discharge a fine or costs under Subsection (b-3)(1).

SECTION 6. Amends Article 45.0491, Code of Criminal Procedure, as follows:

Art. 45.0491. New heading: WAIVER OF PAYMENT OF FINES AND COSTS FOR INDIGENT DEFENDANTS AND CHILDREN. Authorizes a municipal court, regardless of whether the court is a court of record, or a justice court to waive payment of a fine or costs imposed on a defendant who defaults in payment if the court determines that:

(1) the defendant is indigent or was, at the time the offense was committed, a child as defined by Article 45.058(h); and

(2) discharging the fine and costs under Article 45.049 (Community Service in Satisfaction of Fine or Costs) or as otherwise authorized by this chapter (Justice and Municipal Courts) would impose an undue hardship on the defendant.

SECTION 7. Amends Articles 45.056(a) and (c), Code of Criminal Procedure, as follows:

(a) Authorizes a county court, justice court, municipal court, school district, juvenile probation department, or other appropriate governmental entity, on approval of the commissioners court, city council, school district board of trustees, juvenile board, or other appropriate authority, to:

(1) employ a case manager to provide services in cases involving juvenile offenders who are before a court consistent with the court's statutory powers or referred to a court by a school administrator or designee for misconduct that would otherwise be within the court's statutory powers prior to a case being filed, with the consent of the juvenile and the juvenile's parents or guardians, or to agree in accordance with Chapter 791 (Interlocal Cooperation Contracts), Government Code, to jointly employ a case manager.

(c) Authorizes a county or justice court on approval of the commissioners court or a municipality or municipal court on approval of the city council to employ one or more juvenile case managers who:

(1) are required to assist the court in administering the court's juvenile docket and in supervising its court orders in juvenile cases; and

(2) are authorized to provide prevention services to a child considered at-risk of entering the juvenile justice system, and intervention services to juveniles engaged in misconduct prior to cases being filed, excluding traffic offenses.

SECTION 8. Amends Section 25.0915, Education Code, by adding Subsection (c), to require a court to dismiss a complaint or referral made by a school district under this section that is not made in compliance with Subsection (b) (relating to requiring that each referral to juvenile court for certain conduct or complaints alleging a violation filed in county, justice, or municipal court to be accompanied by a certain statement from the student's school and specify certain information).

SECTION 9. Amends Section 37.081(b), Education Code, to provide that in the peace officer's jurisdiction, a peace officer commissioned under this section, among other powers, privileges, and authority, is authorized to dispose of cases in accordance with Section 52.03 (Disposition Without Referral to Court) or 52.031 (First Offender Program), Family Code.

SECTION 10. Amends Section 37.124(d), Education Code, to provide that it is an exception to the application of Subsection (a) (relating to providing that a person commits an offense if the person, on school property or on public property within 500 feet of school property, alone or in concert with others, intentionally disrupts the conduct of classes or other school activities) that, at the time the person engaged in conduct prohibited under that subsection, the person was younger than 12 years of age, rather than the person was a student in the sixth grade or a lower grade level.

SECTION 11. Amends Section 37.126(c), Education Code, to provide that it is an exception to the application of Subsection (a)(1) (relating to providing that a person commits an offense, except as provided by Section 37.125, if the person intentionally disrupts, prevents, or interferes with the lawful transportation of children to or from school on a vehicle owned or operated by a county or independent school district) that, at the time the person engaged in conduct prohibited under that subdivision, the person was younger than 12 years of age, rather than the person was a student in the sixth grade or a lower grade level.

SECTION 12. Amends Chapter 37, Education Code, by adding Subchapter E-1, as follows:

SUBCHAPTER E-1. CRIMINAL PROCEDURE

Sec. 37.141. DEFINITIONS. Defines "child" and "school offense" in this subchapter.

Sec. 37.142. CONFLICT OF LAW. Provides that to the extent of any conflict, this subchapter controls over any other law applied to a school offense alleged to have been committed by a child.

Sec. 37.143. CITATION PROHIBITED; CUSTODY OF CHILD. (a) Prohibits a peace officer from issuing a citation to a child who is alleged to have committed a school offense.

(b) Provides that this subchapter does not prohibit a child from being taken into custody under Section 52.01 (Taking into Custody; Issuance of Warning Notice), Family Code.

Sec. 37.144. GRADUATED SANCTIONS FOR CERTAIN SCHOOL OFFENSES. (a) Authorizes a school district that commissions peace officers under Section 37.081 (School District Peace Officers and Security Personnel) to develop a system of graduated sanctions that the school district is authorized to require to be imposed on a child before a complaint is filed under Section 37.145 against the child for a school offense that is an offense under Section 37.124 (Disruption of Classes) or 37.126 (Disruption of Transportation) or under Section 42.01(a)(1) (relating to providing that a person commits an offense if he intentionally or knowingly uses abusive, indecent, profane, or vulgar language in public place, and the language by its very utterance tends to incite an immediate breach of the peace), (2) (relating to providing that a person commits an offense if he intentionally or knowingly makes an offensive gesture or display in a public place, and the gesture or display tends to incite an immediate breach of the peace), (3) (relating to providing that a person commits an offense if he intentionally or knowingly creates, by chemical means, a noxious and unreasonable odor in a public place), (4) (relating to providing that a person commits an offense if he intentionally or knowingly abuses or threatens a person in a public place in an obviously offensive manner), or (5) (relating to providing that a person commits an offense if he intentionally or knowingly makes unreasonable noise in a public place other than a sport shooting range, as defined by Section 250.001, Local Government Code, or in or near a private residence that he has no right to occupy), Penal Code. Requires that a system adopted under this section include multiple graduated sanctions. Authorizes the system to require:

(1) a warning letter to be issued to the child and the child's parent or guardian that specifically states the child's alleged school offense and explains the consequences if the child engages in additional misconduct;

(2) a behavior contract with the child that is required to be signed by the child, the child's parent or guardian, and an employee of the school and that includes a specific description of the behavior that is required or prohibited for the child and the penalties for additional alleged school offenses, including additional disciplinary action or the filing of a complaint in a criminal court;

(3) the performance of school-based community service by the child; and

(4) the referral of the child to counseling, community-based services, or other in-school or out-of-school services aimed at addressing the child's behavioral problems.

(b) Authorizes a referral made under Subsection (a)(3) to include participation by the child's parent or guardian if necessary.

Sec. 37.145. COMPLAINT. Authorizes a school, if a child fails to comply with or complete graduated sanctions under Section 37.144, or if the school district has not elected to adopt a system of graduated sanctions under that section, to file a complaint against the child with a criminal court in accordance with Section 37.146.

Sec. 37.146. REQUISITES OF COMPLAINT. (a) Requires that a complaint alleging the commission of a school offense, in addition to the requirements imposed by Article 45.019 (Requisites of Complaint), Code of Criminal Procedure:

(1) be sworn to by a person who has personal knowledge of the underlying facts giving rise to probable cause to believe that an offense has been committed; and

(2) be accompanied by a statement from a school employee stating whether the child is eligible for or receives special services under Subchapter A (Special Education Program), Chapter 29 (Educational Programs) and the graduated sanctions, if required under Section 37.144, that were imposed on the child before the complaint was filed.

(b) Authorizes the issuance of a summons under Articles 23.04 (In Misdemeanor Case) and 45.057(e) (relating to requiring a parent to personally appear at the hearing with the child), Code of Criminal Procedure, after a complaint has been filed under this subchapter.

Sec. 37.147. PROSECUTING ATTORNEYS. Authorizes an attorney representing the state in a court with jurisdiction to adopt rules pertaining to the filing of a complaint under this subchapter that the state considers necessary in order to determine whether there is probable cause to believe that the child committed the alleged offense, review the circumstances and allegations in the complaint for legal sufficiency, and see that justice is done.

SECTION 13. Amends Section 51.08, Family Code, by adding Subsection (f), to require a court to waive original jurisdiction for a complaint against a child alleging a violation of a misdemeanor offense punishable by fine only, other than a traffic offense, and refer the child to juvenile court if the court or another court has previously dismissed a complaint against the child under Section 8.08, Penal Code.

SECTION 14. Amends the heading to Chapter 52, Family Code, to read as follows:

CHAPTER 52. PROCEEDINGS BEFORE AND INCLUDING REFERRAL TO COURT

SECTION 15. Amends Section 52.03(a), Family Code, as follows:

(a) Authorizes a law-enforcement officer authorized by this title to take a child into custody to dispose of the case of a child taken into custody or accused of a Class C misdemeanor, other than a traffic offense, without referral to juvenile court or charging a child in a court of competent criminal jurisdiction, if:

(1) guidelines for such disposition have been adopted by the juvenile board of the county in which the disposition is made as required by Section 52.032 (Informal Disposition Guidelines);

(2) the disposition is authorized by the guidelines; and

(3) the officer makes a written report of the officer's disposition to the law-enforcement agency, identifying the child and specifying the grounds for believing that the taking into custody or accusation of criminal conduct was authorized.

SECTION 16. Amends Sections 52.031(a), (d), (f), (i), and (j), Family Code, as follows:

(a) Authorizes a juvenile board to establish a first offender program under this section for the referral and disposition of children taken into custody, or accused prior to the filing of a criminal charge, of:

- (1) conduct indicating a need for supervision;
- (2) a Class C misdemeanor, other than a traffic offense; or
- (3) delinquent conduct other than conduct that constitutes certain offenses.

(d) Authorizes a law enforcement officer taking a child into custody or accusing a child of an offense described in Subsection (a)(2) to refer the child to the law enforcement officer or agency designated under Subsection (b) (relating to requiring each juvenile board in the county in which a first offender program is established to designate one or more law enforcement officers and agencies to process a child under the first offender program) for disposition under the first offender program and not refer the child to juvenile court or a court of competent criminal jurisdiction only if certain conditions are met, including if the officer reports in writing the referral to the agency, identifying the child and specifying the grounds for taking the child into custody or accusing a child of an offense described in Subsection (a)(2).

(f) Requires that a notice notifying the parent, guardian, or other custodian of the child of the child's referral for disposition under the first offender program contain certain information, including that it state the grounds for taking the child into custody or accusing a child of an offense described in Subsection (a)(2) and state that the child's failure to complete the program will result in the child being referred to the juvenile court or a court of competent criminal jurisdiction.

(i) Provides that the case of a child who successfully completes the first offender program is closed and is prohibited from being referred to juvenile court or a court of competent criminal jurisdiction, unless the child is taken into custody under circumstances described by Subsection (j)(3).

(j) Requires that the case of a child referred for disposition under the first offender program be referred to juvenile court or a court of competent criminal jurisdiction if:

- (1) the child fails to complete the program;
- (2) the child or the parent, guardian, or other custodian of the child terminates the child's participation in the program before the child completes it; or
- (3) the child completes the program but is taken into custody under Section 52.01 before the 90th day after the date the child completes the program for conduct other than the conduct for which the child was referred to the first offender program.

SECTION 17. Amends Section 8.07, Penal Code, by adding Subsections (d) and (e), as follows:

(d) Prohibits a person, notwithstanding Subsection (a), from being prosecuted for or convicted of an offense described by Subsection (a)(4) (relating to prohibiting a person from being prosecuted for or convicted of any offense that the person committed when younger than 15 years of age except a misdemeanor punishable by fine only) or (5) (relating to prohibiting a person from being prosecuted for or convicted of any offense that the person committed when younger than 15 years of age except a violation of a penal ordinance of a political subdivision) that the person committed when younger than 10 years of age.

(e) Provides that a person who is at least 10 years of age but younger than 15 years of age is presumed incapable of committing an offense described by Subsection (a)(4) or (5), other than an offense under a juvenile curfew ordinance or order. Authorizes this presumption to be refuted if the prosecution proves to the court by a preponderance of the evidence that the actor had sufficient capacity to understand that the conduct engaged in was wrong at the time the conduct was engaged in. Provides that the prosecution is not

required to prove that the actor at the time of engaging in the conduct knew that the act was a criminal offense or knew the legal consequences of the offense.

SECTION 18. Amends Chapter 8, Penal Code, by adding Section 8.08, as follows:

Sec. 8.08. CHILD WITH MENTAL ILLNESS, DISABILITY, OR LACK OF CAPACITY. (a) Requires the defendant, or a person standing in parental relation to the defendant, or on the court's own motion, a court with jurisdiction of an offense described by Section 8.07(a)(4) or (5), on motion by the state, to determine whether probable cause exists to believe that a child, including a child with a mental illness or developmental disability:

(1) lacks the capacity to understand the proceedings in criminal court or to assist in the child's own defense and is unfit to proceed; or

(2) lacks substantial capacity either to appreciate the wrongfulness of the child's own conduct or to conform the child's conduct to the requirement of the law.

(b) Authorizes the court to dismiss the complaint if the court determines that probable cause exists for a finding under Subsection (a), after providing notice to the state.

(c) Authorizes a dismissal of a complaint under Subsection (b) to be appealed as provided by Article 44.01 (Appeal by State), Code of Criminal Procedure.

(d) Defines "child" in this section.

SECTION 19. Amends Section 42.01(f), Penal Code, to delete existing text providing that Subsections (a)(1), (2), (3), (5), and (6) do not apply to a person who, at the time the person engaged in conduct prohibited under the applicable subdivision, was a student in the sixth grade or a lower grade level.

SECTION 20. Makes application of the changes in law made by this Act, except as provided by Sections 21 and 22 of this Act, prospective.

SECTION 21. (a) Provides that Articles 42.15 and 45.041, Code of Criminal Procedure, as amended by this Act, apply only to a sentencing proceeding that commences on or after the effective date of this Act.

(b) Provides that Articles 43.091 and 45.0491, Code of Criminal Procedure, as amended by this Act, apply to a sentencing proceeding that commences before, on, or after the effective date of this Act.

SECTION 22. Provides that Articles 44.2811 and 45.0217, Code of Criminal Procedure, as amended by this Act, apply to the disclosure of a record or file on or after the effective date of this Act regardless of whether the offense that is the subject of the record or file was committed before, on, or after the effective date of this Act.

SECTION 23. Effective date: September 1, 2013.