

BILL ANALYSIS

C.S.S.B. 393
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Judiciary & Civil Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

There is concern that 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 minors who commit more serious offenses. Interested parties contend that additional diversionary measures are needed in order to provide early interventions for minors who commit certain minor offenses to allow more resources to be focused on those minors with the potential to commit more serious acts of violence. Recently, the Texas Judicial Council, the policy-making body of the judiciary in Texas, made several recommendations for statutory updates to provide such diversionary programs prior to the referral to municipal and justice courts. C.S.S.B. 393 seeks to codify these recommendations.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.S.B. 393 amends the Code of Criminal Procedure to authorize a judge to allow a child defendant who is at least 10 years of age and younger than 17 years of age and who is charged with or convicted of a certain offense over which a justice or municipal court has jurisdiction, to elect at the time of conviction to discharge the fine and costs by performing community service or receiving tutoring prescribed under statutory provisions for juvenile defendants or by paying the fine and costs in the statutorily prescribed manner. The bill requires the election to be made in writing, signed by the defendant, and, if present, signed by the defendant's parent, guardian, or managing conservator and requires the court to maintain the written election as a record of the court and provide a copy to the defendant. The bill establishes that the requirement under provisions relating to community service or tutoring of certain juvenile defendants in satisfaction of a fine or cost 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 the bill's provisions.

C.S.S.B. 393 authorizes a court, and specifically a justice or municipal court, to waive payment of a fine or cost imposed on a defendant who defaults in payment if the court determines that the defendant was, at the time the offense was committed, a child and that each alternative method of discharging the fine or cost would impose undue hardship on the defendant. The bill makes this authorization apply to a sentencing proceeding that commences before, on, or after the bill's effective date. The bill, for purposes of statutory provisions regarding appeal and writ of error and procedures for justice and municipal courts, provides for the confidentiality of all records, files, and stored information from which a record or file could be generated, relating to a child who has received a dismissal after deferral of a disposition for a fine-only misdemeanor other than a traffic offense and removes such confidentiality provisions with respect to a child whose

conviction for such a misdemeanor is affirmed.

C.S.S.B. 393 expands the types of cases for which a juvenile case manager may be employed by a county court, justice court, municipal court, school district, juvenile probation department, or other appropriate governmental entity to include cases involving juvenile offenders 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 and conditions the employment of such a case manager on the consent of the juvenile and the juvenile's parents or guardians. The bill authorizes a juvenile case manager employed by a county or justice court 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.

C.S.S.B. 393 amends the Education Code to require a court to dismiss a truancy-related complaint or juvenile court referral that is not made in compliance with statutory referral and filing requirements. The bill authorizes a peace officer commissioned by the board of trustees of a school district to dispose of cases in the peace officer's jurisdiction in accordance with statutory provisions regarding the disposition of certain cases without juvenile court referral and first offender programs. The bill makes the exception to the application of the offenses of disruption of classes and disruption of the lawful transportation of children to or from school or an activity sponsored by a school apply to a person who, at the time the person engaged in the prohibited conduct, was younger than 12 years of age, rather than a student in the sixth grade or a lower grade level.

C.S.S.B. 393 prohibits a peace officer from issuing a citation to a child who is at least 10 years of age and younger than 17 years of age, who is a student enrolled in public school, and who is alleged to have committed a school offense that is a Class C misdemeanor, other than a traffic offense, committed on property under the control and jurisdiction of a school district. The bill's provisions do not prohibit a child from being taken into custody in accordance with relevant statutory provisions and, to the extent of any conflict, control over any law applied to a school offense alleged to have been committed by a child.

C.S.S.B. 393 requires a school district that commissions peace officers to develop a system of graduated sanctions, including multiple graduated sanctions, that must be imposed on a child before a complaint is filed against the child for a school offense that is an offense of disruption of classes or school-related transportation or certain types of disorderly conduct. The bill requires the system to require 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; a behavior contract with the child that must 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; the performance of school-based community service by the child; and 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, which may include participation by the child's parent or guardian if necessary. The bill authorizes the school to file a complaint against a child with a criminal court in accordance with the bill's provisions if the child fails to comply with or complete the graduated sanctions.

C.S.S.B. 393 requires a complaint alleging the commission of a school offense, in addition to the statutory requirements for complaints filed in a justice or municipal court, to 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 to be accompanied by a statement from a school employee stating whether the child is eligible for or receives special services under the special education program and the graduated sanctions, if required, that were imposed on the child before the complaint was filed. The bill authorizes a summons to be issued under applicable statutory provisions after a complaint has been filed.

C.S.S.B. 393 authorizes an attorney representing the state in a court with jurisdiction to adopt rules pertaining to the filing of a complaint against a child by a school that the state considers necessary in order to determine whether there is probable cause to believe that the child committed the alleged offense, to review the circumstances and allegations in the complaint for legal sufficiency, and to see that justice is done.

C.S.S.B. 393 amends the Family Code to require a criminal 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 because of a determination relating to the child's mental illness, disability, or lack of capacity.

C.S.S.B. 393 authorizes a law-enforcement officer authorized to take a child into custody to dispose of the case of a child accused of a Class C misdemeanor, other than a traffic offense, without charging the child in a court of competent criminal jurisdiction under certain conditions. The bill expands the children eligible for a first offender program established by a juvenile board to include a child accused of a Class C misdemeanor, other than a traffic offense, prior to the filing of a criminal charge and updates statutory provisions regarding disposition procedures and requirements under the program to reflect that expansion.

C.S.S.B. 393 amends the Penal Code to prohibit a person from being prosecuted for or convicted of a misdemeanor punishable by fine only or a violation of a penal ordinance of a political subdivision that the person committed when younger than 10 years of age. The bill establishes that a person who is at least 10 years of age but younger than 15 years of age is presumed incapable of committing such offenses, other than an offense under a juvenile curfew ordinance or order, and authorizes the 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. The bill specifies 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.

C.S.S.B. 393 requires a court with jurisdiction of a misdemeanor punishable by fine only or a violation of a penal ordinance of a political subdivision, on motion by the state, the defendant, or a person standing in parental relation to the defendant, or on the court's own motion, to determine whether probable cause exists to believe that a child, including a child with a mental illness or developmental disability, 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 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. The bill authorizes the court, if the court determines that probable cause exists for such a finding, to dismiss the complaint after providing notice to the state and authorizes such a dismissal to be appealed. The bill defines a child, for purposes of its provisions regarding a child with mental illness, disability, or lack of capacity, as a person who is at least 10 years of age and younger than 17 years of age and who is charged with or convicted of a certain offense of which a justice or municipal court has jurisdiction.

C.S.S.B. 393 makes certain conduct constituting disorderly conduct inapplicable to a person who, at the time the person engaged in the prohibited conduct at a public school campus during regular hours, was a student younger than 12 years of age, rather than a student in the sixth grade or a lower grade level.

EFFECTIVE DATE

September 1, 2013.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.S.B. 393 may differ from the engrossed version in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the engrossed and committee substitute versions of the bill.

SENATE ENGROSSED

No equivalent provision.

HOUSE COMMITTEE SUBSTITUTE

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

(b) Subject to Subsections [~~Subsection~~] (c) and (d), when imposing a fine and costs, a court may direct a defendant:

- (1) to pay the entire fine and costs when sentence is pronounced;
- (2) to pay the entire fine and costs at some later date; or
- (3) to pay a specified portion of the fine and costs at designated intervals.

(d) A judge may 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).

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

(f) 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 (d)(1).

No equivalent provision.

SECTION 2. Article 43.091, Code of Criminal Procedure, is amended to read as follows:

Art. 43.091. WAIVER OF PAYMENT OF FINES AND COSTS FOR INDIGENT

DEFENDANTS AND CHILDREN. A court may 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 or 42.15 would impose an undue hardship on the defendant.

No equivalent provision.

SECTION 3. Article 44.2811, Code of Criminal Procedure, is amended to read as follows:

Art. 44.2811. RECORDS RELATING TO CHILDREN CONVICTED OF OR RECEIVING DEFERRED DISPOSITION FOR FINE-ONLY MISDEMEANORS. (a) This article applies only to a misdemeanor offense punishable by fine only, other than a traffic offense.

(b) 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 [a fine only misdemeanor] offense described by Subsection (a) [other than a traffic offense] are confidential and may not be disclosed to the public except as provided under Article 45.0217(b). [~~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 may not be disclosed to the public except as provided under Article 45.0217(b).~~]

No equivalent provision.

SECTION 4. Article 45.0217, Code of Criminal Procedure, is amended to read as follows:

Art. 45.0217. CONFIDENTIAL RECORDS RELATED TO THE CONVICTION OF OR DEFERRAL OF DISPOSITION FOR A CHILD. (a) This article applies only to a misdemeanor offense punishable by fine only, other than a traffic offense.

(a-1) Except as provided by Article 15.27 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 [a fine-only misdemeanor] offense described by Subsection (a) [other than a traffic offense] are confidential and may not be disclosed to the public.

(b) Information subject to Subsection (a-1) [~~(a)~~] may be open to inspection only by:

- (1) judges or court staff;
- (2) a criminal justice agency for a criminal justice purpose, as those terms are defined by Section 411.082, Government Code;
- (3) the Department of Public Safety;
- (4) an attorney for a party to the proceeding;
- (5) the child defendant; or
- (6) the defendant's parent, guardian, or managing conservator.

No equivalent provision.

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

(b) Subject to Subsections [Subsection] (b-2) and (b-3), the justice or judge may direct the defendant:

- (1) to pay:
 - (A) the entire fine and costs when sentence is pronounced;
 - (B) the entire fine and costs at some later date; or
 - (C) a specified portion of the fine and costs at designated intervals;
- (2) if applicable, to make restitution to any victim of the offense; and
- (3) to satisfy any other sanction authorized by law.

(b-3) A judge may 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) The election under Subsection (b-3) must be made in writing, signed by the defendant, and, if present, signed by the defendant's parent, guardian, or managing conservator. The

court shall maintain the written election as a record of the court and provide a copy to the defendant.

(b-5) 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).

No equivalent provision.

SECTION 6. Article 45.0491, Code of Criminal Procedure, is amended to read as follows:

Art. 45.0491. WAIVER OF PAYMENT OF FINES AND COSTS FOR INDIGENT DEFENDANTS AND CHILDREN. A municipal court, regardless of whether the court is a court of record, or a justice court may 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 or as otherwise authorized by this chapter would impose an undue hardship on the defendant.

SECTION 1. Subsections (a) and (c), Article 45.056, Code of Criminal Procedure, are amended.

SECTION 7. Same as engrossed version except for recitation.

SECTION 2. Section 25.0915, Education Code, is amended.

SECTION 8. Same as engrossed version.

SECTION 3. Subsection (b), Section 37.081, Education Code, is amended.

SECTION 9. Same as engrossed version except for recitation.

No equivalent provision.

SECTION 10. Section 37.124(d), Education Code, is amended to read as follows:

(d) It is an exception to the application of Subsection (a) that, at the time the person engaged in conduct prohibited under that subsection, the person was younger than 12 years of age [~~a student in the sixth grade or a~~

~~lower grade level~~].

No equivalent provision.

SECTION 4. Chapter 37, Education Code, is amended by adding Subchapter E-1 to read as follows:

SUBCHAPTER E-1. CRIMINAL PROCEDURE

Sec. 37.141. DEFINITIONS.

Sec. 37.142. CONFLICT OF LAW.

Sec. 37.143. CITATION PROHIBITED; CUSTODY OF CHILD.

Sec. 37.144. GRADUATED SANCTIONS FOR CERTAIN SCHOOL OFFENSES.

(a) A school district that commissions peace officers under Section 37.081 shall develop a system of graduated sanctions that must 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 or 37.126 or under Section 42.01, Penal Code. A system adopted under this section must include multiple graduated sanctions. The system must 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 must 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,

SECTION 11. Section 37.126(c), Education Code, is amended to read as follows:

(c) It is an exception to the application of Subsection (a)(1) that, at the time the person engaged in conduct prohibited under that subdivision, the person was younger than 12 years of age [a student in the sixth grade or a lower grade level].

SECTION 12. Chapter 37, Education Code, is amended by adding Subchapter E-1 to read as follows:

SUBCHAPTER E-1. CRIMINAL PROCEDURE

Sec. 37.141. DEFINITIONS.

Sec. 37.142. CONFLICT OF LAW.

Sec. 37.143. CITATION PROHIBITED; CUSTODY OF CHILD.

Sec. 37.144. GRADUATED SANCTIONS FOR CERTAIN SCHOOL OFFENSES.

(a) A school district that commissions peace officers under Section 37.081 shall develop a system of graduated sanctions that must 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 or 37.126 or under Section 42.01(a)(1), (2), (3), (4), (5), or (6), Penal Code. A system adopted under this section must include multiple graduated sanctions. The system must 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 must 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) A referral made under Subsection (a)(4) may include participation by the child's parent or guardian if necessary.

Sec. 37.145. COMPLAINT.

Sec. 37.146. REQUISITES OF COMPLAINT.

Sec. 37.147. PROSECUTING ATTORNEYS.

No equivalent provision.

SECTION 5. The heading to Chapter 52, Family Code, is amended.

SECTION 6. Subsection (a), Section 52.03, Family Code, is amended.

SECTION 7. Subsections (a), (d), (f), (i), and (j), Section 52.031, Family Code, are amended.

No equivalent provision.

community-based services, or other in-school or out-of-school services aimed at addressing the child's behavioral problems.

(b) A referral made under Subsection (a)(4) may include participation by the child's parent or guardian if necessary.

Sec. 37.145. COMPLAINT.

Sec. 37.146. REQUISITES OF COMPLAINT.

Sec. 37.147. PROSECUTING ATTORNEYS.

SECTION 13. Section 51.08, Family Code, is amended by adding Subsection (f) to read as follows:

(f) A court shall 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. Same as engrossed version.

SECTION 15. Same as engrossed version except for recitation.

SECTION 16. Substantially the same as engrossed version.

SECTION 17. Section 8.07, Penal Code, is amended by adding Subsections (d) and (e) to read as follows:

(d) Notwithstanding Subsection (a), a person may not be prosecuted for or convicted of an offense described by Subsection (a)(4) or (5) that the person committed when younger than 10 years of age.

(e) 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. This presumption may 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. 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.

No equivalent provision.

SECTION 18. Chapter 8, Penal Code, is amended by adding Section 8.08 to read as follows:

Sec. 8.08. CHILD WITH MENTAL ILLNESS, DISABILITY, OR LACK OF CAPACITY. (a) On motion by the state, 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) shall 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) If the court determines that probable cause exists for a finding under Subsection (a), after providing notice to the state, the court may dismiss the complaint.

(c) A dismissal of a complaint under Subsection (b) may be appealed as provided by Article 44.01, Code of Criminal Procedure.

(d) In this section, "child" has the meaning assigned by Article 45.058(h), Code of Criminal Procedure.

No equivalent provision.

SECTION 19. Section 42.01(f), Penal Code, is amended to read as follows:

(f) 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 younger than 12 years of age [~~in the sixth grade or a lower grade level~~], and the prohibited conduct occurred at a public school campus during regular school hours.

SECTION 8. The changes in law made

SECTION 20. **Except as provided by Sections**

by this Act apply only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is covered by the law in effect at the time the offense was committed, and the former law is continued in effect for that purpose. For the purposes of this section, an offense is committed before the effective date of this Act if any element of the offense was committed before that date.

No equivalent provision.

No equivalent provision.

SECTION 9. This Act takes effect September 1, 2013.

21 and 22 of this Act, the changes in law made by this Act apply only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

SECTION 21. (a) 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) 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. 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. Same as engrossed version.