

By: Larson

H.B. No. 2266

A BILL TO BE ENTITLED

AN ACT

1
2 Relating to the enforcement and prosecution of children for certain
3 fine-only misdemeanors.

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

5 SECTION 1. Article 42.15, Code of Criminal Procedure, is
6 amended to include subsections (d), (d-1), and (d-2) to read as
7 follows:

8 (d) A defendant who is a child shall elect at the time of
9 conviction to either discharge the fine and courts costs:

10 (1) by performing community service pursuant to
11 Article 43.09(h); or

12 (2) by making payments pursuant to Subsection (b).

13 (d-1) For purposes of this article, "conviction" has the
14 meaning provided by Section 133.101, Local Government Code.
15 "Child" has the meaning assigned by Article 45.058(h).

16 (d-2) The election made under Subsection (d) shall be made
17 in writing and signed by the defendant and, if present, the
18 defendant's parent, guardian, or managing conservator. The
19 election shall be maintained as a record of the court and a copy
20 shall be provided to the defendant.

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

23 Art. 43.091. WAIVER OF PAYMENT OF FINES AND COSTS FOR
24 INDIGENT DEFENDANTS AND CHILDREN. (a) A court may waive payment of

1 a fine or cost imposed on a defendant who defaults in payment if the
2 court determines that:

3 (1) the defendant is indigent, or a child at the time
4 of the offense; and

5 (2) each alternative method of discharging the fine or
6 cost under Article 43.09, or as otherwise authorized by this
7 chapter, would impose an undue hardship on the defendant.

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

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

12 Art. 44.2811. RECORDS RELATING TO CHILDREN ~~CONVICTED~~
13 ACCUSED OF FINE-ONLY MISDEMEANORS. All records and files and
14 information stored by electronic means or otherwise, from which a
15 record or file could be generated, relating to a child ~~who is~~
16 ~~convicted of and has satisfied the judgment for a fine-only~~
17 ~~misdemeanor offense other than a traffic offense are confidential~~
18 ~~and~~ may not be disclosed to the public except as provided under
19 Article 45.0217. ~~(b)~~

20 SECTION 4: Article 45.041, Code of Criminal Procedure, is
21 amended to read as follows:

22 Art. 45.041. JUDGMENT (a) The judgment and sentence, in
23 case of conviction in a criminal action before a justice of the
24 peace or municipal court judge, shall be that the defendant pays the
25 amount of the fine and costs to the state.

26 (b) Subject to Subsections (b-2) and (b-3), the justice or
27 judge may direct the defendant:

1 (1) to pay:

2 (A) the entire fine and costs when sentence is
3 pronounced;

4 (B) the entire fine and costs at some later date;
5 or

6 (C) a specified portion of the fine and costs at
7 designated intervals;

8 (2) if applicable, to make restitution to any victim
9 of the offense; and

10 (3) to satisfy any other sanction authorized by law.

11 (b-1) Restitution made under Subsection (b)(2) may not
12 exceed \$5,000 for an offense under Section 32.41, Penal Code.

13 (b-2) When imposing a fine and costs, if the justice or
14 judge determines that the defendant is unable to immediately pay
15 the fine and costs, the justice or judge shall allow the defendant
16 to pay the fine and costs in specified portions at designated
17 intervals.

18 (b-3) A defendant who is a child shall elect at the time of
19 conviction to either discharge the fine and costs:

20 (1) by performing community service as authorized
21 under this chapter; or

22 (2) by making payments pursuant to Subsection (b).

23 (b-4) The election made under Subsection (b-3) shall be made
24 in writing and signed by the defendant and, if present, the
25 defendant's parent, guardian, or managing conservator. The
26 election shall be maintained as a record of the court and a copy
27 shall be provided to the defendant.

1 (c) The justice or judge shall credit the defendant for time
2 served in jail as provided by Article 42.03. The credit shall be
3 applied to the amount of the fine and costs at the rate provided by
4 Article 45.048.

5 (d) All judgments, sentences, and final orders of the
6 justice or judge shall be rendered in open court.

7 (e) For purposes of this article, "conviction" has the
8 meaning provided by Section 133.101, Local Government Code. "Child"
9 has the meaning assigned by Article 45.058(h).

10 SECTION 5: Article 45.0491, Code of Criminal Procedure, is
11 amended to read as follows:

12 Art. 45.0491. WAIVER OF PAYMENT OF FINES AND COSTS FOR
13 INDIGENT DEFENDANTS AND CHILDREN. (a) A municipal court,
14 regardless of whether the court is a court of record, or a justice
15 court may waive payment of a fine or costs imposed on a defendant
16 who defaults in payment if the court determines that:

17 (1) the defendant is indigent, or a child at the time
18 of the offense; and

19 (2) discharging the fine and costs under Article
20 45.049, or as otherwise authorized by this chapter, would impose an
21 undue hardship on the defendant.

22 (b) In this article, "child" has the meaning assigned by
23 Article 45.058(h).

24 SECTION 6: Articles 45.056 (a) and (c), Code of Criminal
25 Procedure, are amended to read as follows:

26 (a) On approval of the commissioners court, city council,
27 school district board of trustees, juvenile board, or other

1 appropriate authority, a county court, justice court, municipal
2 court, school district, juvenile probation department, or other
3 appropriate governmental entity may:

4 (1) employ a case manager to provide services in cases
5 involving juvenile offenders who are before a court consistent with
6 the court's statutory powers or referred to a court by a school
7 administrator or designee for misconduct that would otherwise be
8 within the court's statutory powers prior to a case being filed; or

9 (2) agree in accordance with Chapter 791, Government
10 Code, to jointly employ a case manager.

11 (b) A local entity may apply or more than one local entity
12 may jointly apply to the criminal justice division of the
13 governor's office for reimbursement of all or part of the costs of
14 employing one or more juvenile case managers from funds
15 appropriated to the governor's office or otherwise available for
16 that purpose. To be eligible for reimbursement, the entity applying
17 must present to the governor's office a comprehensive plan to
18 reduce juvenile crimes in the entity's jurisdiction that addresses
19 the role of the case manager in that effort.

20 (c) A county or justice court on approval of the
21 commissioners court or a municipality or municipal court on
22 approval of the city council may employ one or more juvenile case
23 managers to assist the court in administering the court's juvenile
24 docket, and in supervising its court orders in juvenile cases, and
25 to provide prevention services to juveniles considered at-risk and
26 intervention services to juveniles engaged in misconduct prior to
27 cases being filed.

1 SECTION 7: Article 45.0217, Code of Criminal Procedure, is
2 amended to read as follows:

3 Art. 45.0217. CONFIDENTIAL RECORDS RELATED TO ~~THE~~
4 ~~CONVICTION OF A CHILD.~~

5 (a) Except as provided by Article 15.27 and Subsection (b),
6 all records and files, including those held by law enforcement, and
7 information stored by electronic means or otherwise, from which a
8 record or file could be generated, relating to a child whose
9 complaint has been dismissed by a court upon deferral of final
10 disposition or who is convicted of and has satisfied the judgment
11 for a fine-only misdemeanor offense, other than a traffic offense,
12 are confidential and may not be disclosed to the public.

13 (b) Information subject to Subsection (a) may be open to
14 inspection only by:

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

24 SECTION 8: Section 25.0915, Education Code, is amended by
25 adding Subsection (c) to read as follows:

26 (c) A court shall dismiss a complaint or referral made by a
27 school district under this section that is not made in compliance

1 with this section.

2 SECTION 9: Section 37.081(b), Education Code, is amended
3 to read as follows:

4 (b) In a peace officer's jurisdiction, a peace officer
5 commissioned under this section:

6 (1) has the powers, privileges, and immunities of
7 peace officers;

8 (2) may enforce all laws, including municipal
9 ordinances, county ordinances, and state laws; and

10 (3) may, in accordance with Chapter 52, Family Code,
11 take a juvenile into custody; and

12 (4) may dispose of cases in accordance with Sections
13 52.03 and 52.031, Family Code.

14 SECTION 10: Section 37.124(d) of the Education Code is
15 amended to read as follows:

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

20 SECTION 11: Section 37.126(c) of the Education Code is
21 amended to read as follows:

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

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

SUBCHAPTER E-1. CRIMINAL PROCEDURE

Sec. 37.127. APPLICATION. (a) This subchapter governs criminal procedures to be utilized when a child is alleged to have committed an offense on property under the control and jurisdiction of a school district which is a Class C misdemeanor, excluding traffic offenses.

(b) For purposes of this subchapter, "child" has the meaning assigned by Article 45.058(h), Code of Criminal Procedure, who is also a student.

Sec. 37.128. INITIATION BY COMPLAINT.

(a) Notwithstanding, Article 14.06(b), Code of Criminal Procedure, a citation may not be issued to a child who is alleged to have committed an offense on property under the control and jurisdiction of a school district.

(b) In lieu of charging a child by issuing a citation, a complaint must be filed per Article 45.018 and Article 45.019, Code of Criminal Procedure and in accordance with the requirements of this subchapter.

(c) A court shall dismiss a complaint alleging an offense by a child that is not filed in compliance with this subchapter.

(d) Nothing in this subchapter prohibits a child from being taken into custody under Section 52.01, Family Code or from issuing a citation to a student who is not a child.

Sec. 37.129. PROGRESSIVE SANCTIONS. (a) Prior to the filing of a complaint alleging an offense under Section 37.124, Section 37.126, or Section 42.01, Penal Code, progressive sanctions shall be imposed by a school district employee in a school district

1 that commissions peace officers under Section 37.081. Progressive
2 sanctions, under this subchapter shall include:

3 (1) a warning letter issued by the school to the child
4 and the child's parent or guardian or a behavior contract signed by
5 the student. A warning letter shall specifically state the problem
6 behavior and the consequences if the child continues to engage in
7 such behavior. If a school district employee opts to have the child
8 sign a behavior contract rather than issuing a warning letter, the
9 contract will be signed by the child, the child's parent or
10 guardian, and an employee of the school where the child attends. The
11 contract will include:

12 (a) a specific description of the problem behavior to
13 be avoided;

14 (b) a period of time for which the contract will be in
15 place, not to exceed 45 school days from the date the agreement is
16 signed; and

17 (c) the penalties for further alleged offenses
18 governed by this section, including additional disciplinary action
19 or the filing of a complaint;

20 (2) school-based chores or community service; and

21 (3) referral to counseling or community-based
22 services aimed at addressing the child's behavioral problems; or

23 (4) another sanction deemed appropriate, if
24 counseling or services are not available in the student's
25 community.

26 (b) A referral under (a)(3) may include participation of a
27 parent or guardian if necessary to address the child's behavioral

1 problems.

2 (c) After proceeding under subsection (a), a complaint may
3 be filed pursuant to Section 37.130.

4 Sec. 37.130. REQUISITIES OF A COMPLAINT. (a) A complaint
5 charging a child with the commission of an offense that is a Class C
6 misdemeanor under this subchapter shall, in addition to Article
7 45.019, Code of Criminal Procedure, satisfy the following
8 requisites:

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

12 (2) it must be accompanied by a statement from a school
13 employee stating:

14 (A) whether the child is eligible for or receives
15 special education services under Subchapter A, Chapter 29, and

16 (B) what progressive sanctions, if required
17 under Section, 37.129 were imposed before the complaint was filed.

18 (b) Once a complaint has been filed per this subchapter, a
19 summons may be issued under Articles 23.04 and 45.057(e), Code of
20 Criminal Procedure.

21 Sec. 37.131. PROSECUTING ATTORNEYS. An attorney
22 representing the State in a court with jurisdiction may adopt rules
23 pertaining to the filing of a complaint under this subchapter that
24 the State considers necessary in order to:

25 (1) determine whether there is probable cause to
26 believe that the child committed the alleged offense;

27 (2) review the circumstances and allegations in the

1 complaint for legal sufficiency; and

2 (3) see that justice is done.

3 SECTION 13: The heading to Chapter 52, Family Code, is
4 amended to read as follows:

5 CHAPTER 52. PROCEEDINGS BEFORE AND INCLUDING REFERRAL TO ~~JUVENILE~~
6 COURT

7 SECTION 14: Section 51.08 of the Family Code is amended to
8 add subsection (f) as follows:

9 (f) A court in which there is a pending complaint against a
10 child alleging a violation of a misdemeanor offense punishable by
11 fine only other than a traffic offense shall waive its original
12 jurisdiction and refer the child to juvenile court if the court has
13 previously dismissed a complaint against the child under Section
14 8.071 of the Penal Code.

15 SECTION 15: Section 52.03(a), Family Code, is amended to
16 read as follows:

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

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

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

27 (3) the officer makes a written report of the officer's

1 disposition to the law-enforcement agency, identifying the child
2 and specifying the grounds for believing that the taking into
3 custody or accusation of criminal conduct was authorized.

4 SECTION 16: Section 52.031 of the Family Code is amended to
5 read as follows:

6 Sec. 52.031. FIRST OFFENDER PROGRAM. (a) A juvenile board
7 may establish a first offender program under this section for the
8 referral and disposition of children taken into custody, or accused
9 prior to the filing of a criminal charge, of:

10 (1) conduct indicating a need for supervision; or

11 (2) a Class C misdemeanor, other than a traffic
12 offense; or

13 ~~(2)~~ (3) delinquent conduct other than conduct that
14 constitutes:

15 (A) a felony of the first, second, or third
16 degree, an aggravated controlled substance felony, or a capital
17 felony; or

18 (B) a state jail felony or misdemeanor involving
19 violence to a person or the use or possession of a firearm, illegal
20 knife, or club, as those terms are defined by Section 46.01, Penal
21 Code, or a prohibited weapon, as described by Section 46.05, Penal
22 Code.

23 (b) Each juvenile board in the county in which a first
24 offender program is established shall designate one or more law
25 enforcement officers and agencies, which may be law enforcement
26 agencies, to process a child under the first offender program.

27 (c) The disposition of a child under the first offender

1 program may not take place until guidelines for the disposition
2 have been adopted by the juvenile board of the county in which the
3 disposition is made as required by Section 52.032.

4 (d) A law enforcement officer taking a child into custody or
5 accusing a child of an offense described in subsection (a)(2) may
6 refer the child to the law enforcement officer or agency designated
7 under Subsection (b) for disposition under the first offender
8 program and not refer the child to juvenile court or a court of
9 competent criminal jurisdiction only if:

10 (1) the child has not previously been adjudicated as
11 having engaged in delinquent conduct;

12 (2) the referral complies with guidelines for
13 disposition under Subsection (c); and

14 (3) the officer reports in writing the referral to the
15 agency, identifying the child and specifying the grounds for taking
16 the child into custody or accusing a child of an offense described
17 in subsection (a)(2).

18 (e) A child referred for disposition under the first
19 offender program may not be detained in law enforcement custody.

20 (f) The parent, guardian, or other custodian of the child
21 must receive notice that the child has been referred for
22 disposition under the first offender program. The notice must:

23 (1) state the grounds for taking the child into
24 custody or accusing a child of an offense described in subsection
25 (a)(2);

26 (2) identify the law enforcement officer or agency to
27 which the child was referred;

1 (3) briefly describe the nature of the program; and

2 (4) state that the child's failure to complete the
3 program will result in the child being referred to the juvenile
4 court or a court of competent criminal jurisdiction.

5 (g) The child and the parent, guardian, or other custodian
6 of the child must consent to participation by the child in the first
7 offender program.

8 (h) Disposition under a first offender program may include:

9 (1) voluntary restitution by the child or the parent,
10 guardian, or other custodian of the child to the victim of the
11 conduct of the child;

12 (2) voluntary community service restitution by the
13 child;

14 (3) educational, vocational training, counseling, or
15 other rehabilitative services; and

16 (4) periodic reporting by the child to the law
17 enforcement officer or agency to which the child has been referred.

18 (i) The case of a child who successfully completes the first
19 offender program is closed and may not be referred to juvenile court
20 or a court of competent criminal jurisdiction, unless the child is
21 taken into custody under circumstances described by Subsection
22 (j)(3).

23 (j) The case of a child referred for disposition under the
24 first offender program shall be referred to juvenile court or a
25 court of competent criminal jurisdiction if:

26 (1) the child fails to complete the program;

27 (2) the child or the parent, guardian, or other

1 custodian of the child terminates the child's participation in the
2 program before the child completes it; or

3 (3) the child completes the program but is taken into
4 custody under Section 52.01 before the 90th day after the date the
5 child completes the program for conduct other than the conduct for
6 which the child was referred to the first offender program.

7 (k) A statement made by a child to a person giving advice or
8 supervision or participating in the first offender program may not
9 be used against the child in any proceeding under this title or any
10 criminal proceeding.

11 (1) The law enforcement agency must report to the juvenile
12 board in December of each year the following:

13 (1) the last known address of the child, including the
14 census tract;

15 (2) the gender and ethnicity of the child referred to
16 the program; and

17 (3) the offense committed by the child.

18 SECTION 17: Section 8.07 of the Penal Code is amended to add
19 subsections (d) and (e) as follows:

20 (d) Notwithstanding subsection (a), a person may not be
21 prosecuted or convicted of any offense described by Subsections
22 (a)(4)-(5) that the person committed when younger than 10 years of
23 age.

24 (e) A person who is at least 10 years of age and younger than
25 15 years of age is presumed incapable of committing an offense
26 described by Subsections (a)(4)-(5).

27 (1) The presumption under this Subsection may be

1 refuted by proof of preponderance of the evidence presented by the
2 prosecution to the court establishing that the child has sufficient
3 capacity to understand the offense and to know that the conduct was
4 wrong at the time it occurred.

5 (2) In order to refute the presumption under this
6 Subsection, the prosecution is not required to prove that the child
7 knew at the time of the offense:

8 (A) that the act was illegal, or

9 (B) the legal consequences of the offense.

10 SECTION 18: The Penal Code is amended to add Section 8.071
11 as follows:

12 Sec. 8.071 CHILD WITH MENTAL ILLNESS, DISABILITY, LACK OF
13 CAPACITY (a) Upon its own motion, or a motion by the State, the
14 defendant, or a person standing in parental relation, a court with
15 jurisdiction of an offense described by Section 8.07 (a)(4)-(5)
16 shall determine whether probable cause exists to believe that a
17 child:

18 (1) has a mental illness or developmental disability;

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

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

25 (b) If the court determines that probable cause exists under
26 Subsection (a), after providing notice to the State, the court
27 shall dismiss the complaint;

1 (c) A dismissal of a complaint under Subsection (b) may be
2 appealed per Article 44.01, Code of Criminal Procedure;

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

5 SECTION 19: Section 42.01(f) of the Penal Code is amended as
6 follows:

7 (f) It is an exception to the application of Subsections
8 (a)(1), (2), (3), (5), and (6) ~~do not apply that~~, at the time the
9 person engaged in conduct prohibited under the applicable
10 subdivision, he or she was a student in the sixth grade or a lower
11 grade level and younger than 12 years of age, and the prohibited
12 conduct occurred at a public school campus during regular school
13 hours.

14 SECTION 20: The changes in law made by the Act apply only to
15 an offense committed on or after the effective date of this Act. An
16 offense committed before the effective date of this Act is covered
17 by the law in effect at the time the offense was committed, and the
18 former law is continued in effect for that purpose. For the
19 purposes of this section, an offense is committed before the
20 effective data of this Act if any element of the offense was
21 committed before that date.

22 SECTION 21: The changes in law made by this Act apply only
23 to sentencing proceedings that commence on or after the effective
24 date of this Act. A sentencing proceeding that commences before the
25 effective date of this Act is governed by the law in effect at the
26 time the proceeding commences, and the former law is continued in
27 effect for that purpose.

1 SECTION 22: This Act takes effect September 1, 2013.