

By: Herrero

H.B. No. 3057

A BILL TO BE ENTITLED

AN ACT

relating to the prosecution of certain misdemeanor offenses committed by children and to school district law enforcement.

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

SECTION 1. Articles 45.056(a) and (c), Code of Criminal Procedure, are amended to read as follows:

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

~~employ a case manager~~ or agree, in accordance with Chapter 791, Government Code, to jointly employ a case manager to provide services in cases involving juvenile offenders who are:

(1) before a court consistent with the court's statutory powers; or

(2) referred to the case manager by a school administrator or designee before a complaint is filed with a court for a school offense, as defined by Section 37.141, Education Code, that would otherwise be within the court's jurisdiction, if the juvenile offender and the juvenile offender's parent or guardian consent to the referral to the ~~[agree in accordance with Chapter 791, Government Code, to jointly employ a]~~ case manager.

(c) A county or justice court on approval of the

1 commissioners court or a municipality or municipal court on  
2 approval of the city council may employ one or more juvenile case  
3 managers to:

4 (1) assist the court in administering the court's  
5 juvenile docket and in supervising its court orders in juvenile  
6 cases; and

7 (2) provide intervention services, with the consent of  
8 the juveniles and the juveniles' parents or guardians, to juveniles  
9 considered at-risk of entering the juvenile justice system and  
10 referred to the case manager by school administrators before cases  
11 are filed with the court for alleged Class C misdemeanors, other  
12 than traffic offenses.

13 SECTION 2. Section 25.0915, Education Code, is amended by  
14 adding Subsection (c) to read as follows:

15 (c) A court shall dismiss a complaint or referral made by a  
16 school district under this section that is not made in compliance  
17 with Subsection (b).

18 SECTION 3. Chapter 37, Education Code, is amended by adding  
19 Subchapter E-1 to read as follows:

20 SUBCHAPTER E-1. PROGRESSIVE SANCTIONS FOR CERTAIN  
21 MISDEMEANOR OFFENSES

22 Sec. 37.141. DEFINITIONS. In this subchapter:

23 (1) "Child" means a person who is:

24 (A) younger than 17 years of age; and

25 (B) not married, divorced, or widowed.

26 (2) "School offense" means an offense committed by a  
27 child enrolled in a public school that is:

1           (A) a Class C misdemeanor, other than a traffic  
2 offense, that is committed while the child is:

3                   (i) on the grounds of the school in which  
4 the child is enrolled; or

5                   (ii) a passenger in a vehicle that is under  
6 the control and jurisdiction of the school district that operates  
7 the school in which the child is enrolled; or

8           (B) an offense under Section 25.094, 37.124, or  
9 37.126.

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

13       Sec. 37.143. CITATION PROHIBITED; CUSTODY OF CHILD. (a) A  
14 peace officer may not issue a citation to a child who is alleged to  
15 have committed a school offense.

16           (b) This subchapter does not prohibit a child from being  
17 taken into custody under Section 52.01, Family Code.

18       Sec. 37.144. PROGRESSIVE SANCTIONS. (a) Before filing a  
19 complaint under Section 37.145 against a child alleging the  
20 commission of a school offense, a school district employee shall  
21 impose progressive sanctions on the child. Under the progressive  
22 sanctions, the employee shall:

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

27                   (2) impose a behavior contract on the child that must:

1           (A) be signed by the child, the child's parent or  
2 guardian, and an employee of the school; and

3           (B) include:

4           (i) a specific description of the behavior  
5 that is required or prohibited for the child;

6           (ii) the period for which the contract will  
7 be effective, not to exceed 45 school days after the date the  
8 contract becomes effective; and

9           (iii) the penalties for additional alleged  
10 school offenses, including additional disciplinary action or the  
11 filing of a complaint in a criminal court.

12           (b) In addition to the progressive sanctions imposed under  
13 Subsection (a), the school may refer the child to services which may  
14 include:

15           (1) school-based community service; and

16           (2) counseling, community-based services, or other  
17 in-school or out-of-school services aimed at addressing the child's  
18 behavioral problems.

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

21           Sec. 37.145. COMPLAINT. (a) If a child fails to comply  
22 with or complete progressive sanctions under Section 37.144, the  
23 school may file a complaint against the child with a criminal court  
24 in accordance with Section 37.146.

25           (b) Notwithstanding Section 37.144(a), a school may file a  
26 complaint alleging the commission of a school offense with a  
27 criminal court in accordance with Section 37.146 against a child if

1 the school has imposed progressive sanctions on the child for three  
2 or more previous school offenses committed during the same semester  
3 as the current school offense.

4 Sec. 37.146. REQUISITES OF COMPLAINT. (a) A complaint  
5 alleging the commission of a school offense must, in addition to the  
6 requirements imposed by Article 45.019, Code of Criminal Procedure:

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

10 (2) be accompanied by a statement from a school  
11 employee stating:

12 (A) whether the child is eligible for or receives  
13 special services under Subchapter A, Chapter 29; and

14 (B) the progressive sanctions that were imposed  
15 on the child before the complaint was filed.

16 (b) After a complaint has been filed under this subchapter,  
17 a summons may be issued under Articles 23.04 and 45.057(e), Code of  
18 Criminal Procedure.

19 SECTION 4. Section 37.081(f), Education Code, is amended to  
20 read as follows:

21 (f) The chief of police of the school district police  
22 department shall be accountable to the superintendent and shall  
23 report to the superintendent [~~or the superintendent's designee~~].  
24 School district police officers shall be supervised by the chief of  
25 police of the school district or the chief of police's designee and  
26 shall be licensed by the Commission on Law Enforcement Officer  
27 Standards and Education.

1 SECTION 5. Section 8.07, Penal Code, is amended by adding  
2 Subsections (d) and (e) to read as follows:

3 (d) Notwithstanding Subsection (a), a person may not be  
4 prosecuted for or convicted of an offense described by Subsection  
5 (a)(4) or (5) that the person committed when younger than 12 years  
6 of age.

7 (e) A person who is at least 12 years of age but younger than  
8 15 years of age is presumed incapable of committing an offense  
9 described by Subsection (a)(4) or (5). This presumption may be  
10 refuted if the prosecution proves to the court by a preponderance of  
11 the evidence that the actor had sufficient capacity to understand  
12 that the conduct engaged in was wrong at the time the conduct was  
13 engaged in. The prosecution is not required to prove that the actor  
14 at the time of engaging in the conduct knew that the act was a  
15 criminal offense or knew the legal consequences of the offense.

16 SECTION 6. Section 42.01, Penal Code, is amended by adding  
17 Subsection (a-1) to read as follows:

18 (a-1) For purposes of Subsection (a), the term "public  
19 place" includes a public school campus or the school grounds on  
20 which a public school is located.

21 SECTION 7. The changes in law made by this Act apply only to  
22 an offense committed on or after the effective date of this Act. An  
23 offense committed before the effective date of this Act is covered  
24 by the law in effect at the time the offense was committed, and the  
25 former law is continued in effect for that purpose. For the  
26 purposes of this section, an offense is committed before the  
27 effective date of this Act if any element of the offense was

1 committed before that date.

2 SECTION 8. This Act takes effect September 1, 2013.