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S.B. No. 393

A BILL TO BE ENTITLED

AN ACT

relating to the prosecution of children accused of certain Class C misdemeanors.

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

SECTION 1. Subsections (a) and (c), Article 45.056, 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:

(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

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

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

1 (1) shall [~~to~~] assist the court in administering the
2 court's juvenile docket and in supervising its court orders in
3 juvenile cases; and

4 (2) may provide:

5 (A) prevention services to a child considered
6 at-risk of entering the juvenile justice system; and

7 (B) intervention services to juveniles engaged
8 in misconduct prior to cases being filed, excluding traffic
9 offenses.

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

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

15 SECTION 3. Subsection (b), Section 37.081, Education Code,
16 is amended to read as follows:

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

19 (1) has the powers, privileges, and immunities of
20 peace officers;

21 (2) may enforce all laws, including municipal
22 ordinances, county ordinances, and state laws; [~~and~~]

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

25 (4) may dispose of cases in accordance with Section
26 52.03 or 52.031, Family Code.

27 SECTION 4. Chapter 37, Education Code, is amended by adding

1 Subchapter E-1 to read as follows:

2 SUBCHAPTER E-1. CRIMINAL PROCEDURE

3 Sec. 37.141. DEFINITIONS. In this subchapter:

4 (1) "Child" has the meaning assigned by Article
5 45.058(h), Code of Criminal Procedure, except that the person must
6 also be a student.

7 (2) "School offense" means an offense committed by a
8 child enrolled in a public school that is a Class C misdemeanor
9 other than a traffic offense, that is committed on property under
10 the control and jurisdiction of a school district.

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

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

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

19 Sec. 37.144. GRADUATED SANCTIONS FOR CERTAIN SCHOOL
20 OFFENSES. (a) A school district that commissions peace officers
21 under Section 37.081 shall develop a system of graduated sanctions
22 that must be imposed on a child before a complaint is filed under
23 Section 37.145 against the child for a school offense that is an
24 offense under Section 37.124 or 37.126 or under Section 42.01,
25 Penal Code. A system adopted under this section must include
26 multiple graduated sanctions. The system must require:

27 (1) a warning letter to be issued to the child and the

1 child's parent or guardian that specifically states the child's
2 alleged school offense and explains the consequences if the child
3 engages in additional misconduct;

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

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

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

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

18 Sec. 37.145. COMPLAINT. If a child fails to comply with or
19 complete graduated sanctions under Section 37.144, the school may
20 file a complaint against the child with a criminal court in
21 accordance with Section 37.146.

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

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

1 into custody or accused of a Class C misdemeanor, other than a
2 traffic offense, without referral to juvenile court or charging a
3 child in a court of competent criminal jurisdiction, if:

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

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

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

13 SECTION 7. Subsections (a), (d), (f), (i), and (j), Section
14 52.031, Family Code, are amended to read as follows:

15 (a) A juvenile board may establish a first offender program
16 under this section for the referral and disposition of children
17 taken into custody, or accused prior to the filing of a criminal
18 charge, of [for]:

19 (1) conduct indicating a need for supervision; ~~or~~

20 (2) a Class C misdemeanor, other than a traffic
21 offense; or

22 (3) delinquent conduct other than conduct that
23 constitutes:

24 (A) a felony of the first, second, or third
25 degree, an aggravated controlled substance felony, or a capital
26 felony; or

27 (B) a state jail felony or misdemeanor involving

1 violence to a person or the use or possession of a firearm, illegal
2 knife, or club, as those terms are defined by Section 46.01, Penal
3 Code, or a prohibited weapon, as described by Section 46.05, Penal
4 Code.

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

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

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

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

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

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

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

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

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

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

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

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

13 (2) the child or the parent, guardian, or other
14 custodian of the child terminates the child's participation in the
15 program before the child completes it; or

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

20 SECTION 8. The changes in law made by this Act apply only to
21 an offense committed on or after the effective date of this Act. An
22 offense committed before the effective date of this Act is covered
23 by the law in effect at the time the offense was committed, and the
24 former law is continued in effect for that purpose. For the
25 purposes of this section, an offense is committed before the
26 effective date of this Act if any element of the offense was
27 committed before that date.

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