

By: West, et al.
(Lewis, Thompson of Harris)

S.B. No. 393

Substitute the following for S.B. No. 393:

By: Thompson of Harris

C.S.S.B. No. 393

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the criminal procedures related to children who commit
3 certain Class C 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 by amending Subsection (b) and adding Subsections (d), (e),
7 and (f) to read as follows:

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

10 (1) to pay the entire fine and costs when sentence is
11 pronounced;

12 (2) to pay the entire fine and costs at some later
13 date; or

14 (3) to pay a specified portion of the fine and costs at
15 designated intervals.

16 (d) A judge may allow a defendant who is a child, as defined
17 by Article 45.058(h), to elect at the time of conviction, as defined
18 by Section 133.101, Local Government Code, to discharge the fine
19 and costs by:

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

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

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

6 (f) The requirement under Article 45.0492(a), as added by
7 Chapter 227 (H.B. 350), Acts of the 82nd Legislature, Regular
8 Session, 2011, that an offense occur in a building or on the grounds
9 of the primary or secondary school at which the defendant was
10 enrolled at the time of the offense does not apply to the
11 performance of community service or the receipt of tutoring to
12 discharge a fine or costs under Subsection (d)(1).

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

15 Art. 43.091. WAIVER OF PAYMENT OF FINES AND COSTS FOR
16 INDIGENT DEFENDANTS AND CHILDREN. A court may waive payment of a
17 fine or cost imposed on a defendant who defaults in payment if the
18 court determines that:

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

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

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

26 Art. 44.2811. RECORDS RELATING TO CHILDREN CONVICTED OF OR
27 RECEIVING DEFERRED DISPOSITION FOR FINE-ONLY MISDEMEANORS.

1 (a) This article applies only to a misdemeanor offense punishable
2 by fine only, other than a traffic offense.

3 (b) All records and files and information stored by
4 electronic means or otherwise, from which a record or file could be
5 generated, relating to a child who is convicted of and has satisfied
6 the judgment for or who has received a dismissal after deferral of
7 disposition for an [a fine-only misdemeanor] offense described by
8 Subsection (a) [other than a traffic offense] are confidential and
9 may not be disclosed to the public except as provided under Article
10 45.0217(b). [~~All records and files and information stored by~~
11 ~~electronic means or otherwise, from which a record or file could be~~
12 ~~generated, relating to a child whose conviction for a fine-only~~
13 ~~misdemeanor other than a traffic offense is affirmed are~~
14 ~~confidential upon satisfaction of the judgment and may not be~~
15 ~~disclosed to the public except as provided under Article~~
16 ~~45.0217(b).~~]

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

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

23 (a-1) Except as provided by Article 15.27 and Subsection
24 (b), all records and files, including those held by law
25 enforcement, and information stored by electronic means or
26 otherwise, from which a record or file could be generated, relating
27 to a child who is convicted of and has satisfied the judgment for or

1 who has received a dismissal after deferral of disposition for an [a
2 fine-only misdemeanor] offense described by Subsection (a) [other
3 than a traffic offense] are confidential and may not be disclosed to
4 the public.

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

7 (1) judges or court staff;

8 (2) a criminal justice agency for a criminal justice
9 purpose, as those terms are defined by Section 411.082, Government
10 Code;

11 (3) the Department of Public Safety;

12 (4) an attorney for a party to the proceeding;

13 (5) the child defendant; or

14 (6) the defendant's parent, guardian, or managing
15 conservator.

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

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

21 (1) to pay:

22 (A) the entire fine and costs when sentence is
23 pronounced;

24 (B) the entire fine and costs at some later date;

25 or

26 (C) a specified portion of the fine and costs at
27 designated intervals;

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

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

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

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

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

13 (b-4) The election under Subsection (b-3) must be made in
14 writing, signed by the defendant, and, if present, signed by the
15 defendant's parent, guardian, or managing conservator. The court
16 shall maintain the written election as a record of the court and
17 provide a copy to the defendant.

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

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

27 Art. 45.0491. WAIVER OF PAYMENT OF FINES AND COSTS FOR

1 INDIGENT DEFENDANTS AND CHILDREN. A municipal court, regardless of
2 whether the court is a court of record, or a justice court may waive
3 payment of a fine or costs imposed on a defendant who defaults in
4 payment if the court determines that:

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

7 (2) discharging the fine and costs under Article
8 45.049 or as otherwise authorized by this chapter would impose an
9 undue hardship on the defendant.

10 SECTION 7. Articles 45.056(a) and (c), Code of Criminal
11 Procedure, are amended to read as follows:

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

17 (1) employ a case manager to provide services in cases
18 involving juvenile offenders who are before a court consistent with
19 the court's statutory powers or referred to a court by a school
20 administrator or designee for misconduct that would otherwise be
21 within the court's statutory powers prior to a case being filed,
22 with the consent of the juvenile and the juvenile's parents or
23 guardians; or

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

26 (c) A county or justice court on approval of the
27 commissioners court or a municipality or municipal court on

1 approval of the city council may employ one or more juvenile case
2 managers who:

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

6 (2) may provide:

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

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

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

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

17 SECTION 9. Section 37.081(b), Education Code, is amended to
18 read as follows:

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

21 (1) has the powers, privileges, and immunities of
22 peace officers;

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

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

27 (4) may dispose of cases in accordance with Section

1 52.03 or 52.031, Family Code.

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

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

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

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

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

16 SUBCHAPTER E-1. CRIMINAL PROCEDURE

17 Sec. 37.141. DEFINITIONS. In this subchapter:

18 (1) "Child" has the meaning assigned by Article
19 45.058(h), Code of Criminal Procedure, except that the person must
20 also be a student.

21 (2) "School offense" means an offense committed by a
22 child enrolled in a public school that is a Class C misdemeanor
23 other than a traffic offense and that is committed on property under
24 the control and jurisdiction of a school district.

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

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

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

6 Sec. 37.144. GRADUATED SANCTIONS FOR CERTAIN SCHOOL
7 OFFENSES. (a) A school district that commissions peace officers
8 under Section 37.081 shall develop a system of graduated sanctions
9 that must be imposed on a child before a complaint is filed under
10 Section 37.145 against the child for a school offense that is an
11 offense under Section 37.124 or 37.126 or under Section
12 42.01(a)(1), (2), (3), (4), (5), or (6), Penal Code. A system
13 adopted under this section must include multiple graduated
14 sanctions. The system must require:

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

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

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

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

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

6 Sec. 37.145. COMPLAINT. If a child fails to comply with or
7 complete graduated sanctions under Section 37.144, the school may
8 file a complaint against the child with a criminal court in
9 accordance with Section 37.146.

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

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

16 (2) be accompanied by a statement from a school
17 employee stating:

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

20 (B) the graduated sanctions, if required under
21 Section 37.144, that were imposed on the child before the complaint
22 was filed.

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

26 Sec. 37.147. PROSECUTING ATTORNEYS. An attorney
27 representing the state in a court with jurisdiction may adopt rules

1 pertaining to the filing of a complaint under this subchapter that
2 the state considers necessary in order to:

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

5 (2) review the circumstances and allegations in the
6 complaint for legal sufficiency; and

7 (3) see that justice is done.

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

10 (f) A court shall waive original jurisdiction for a
11 complaint against a child alleging a violation of a misdemeanor
12 offense punishable by fine only, other than a traffic offense, and
13 refer the child to juvenile court if the court or another court has
14 previously dismissed a complaint against the child under Section
15 8.08, Penal Code.

16 SECTION 14. The heading to Chapter 52, Family Code, is
17 amended to read as follows:

18 CHAPTER 52. PROCEEDINGS BEFORE AND INCLUDING REFERRAL TO
19 ~~JUVENILE~~ COURT

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

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

27 (1) guidelines for such disposition have been adopted

1 by the juvenile board of the county in which the disposition is made
2 as required by Section 52.032;

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

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

9 SECTION 16. Sections 52.031(a), (d), (f), (i), and (j),
10 Family Code, are amended to read as follows:

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

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

16 (2) a Class C misdemeanor, other than a traffic
17 offense; or

18 (3) delinquent conduct other than conduct that
19 constitutes:

20 (A) a felony of the first, second, or third
21 degree, an aggravated controlled substance felony, or a capital
22 felony; or

23 (B) a state jail felony or misdemeanor involving
24 violence to a person or the use or possession of a firearm, illegal
25 knife, or club, as those terms are defined by Section 46.01, Penal
26 Code, or a prohibited weapon, as described by Section 46.05, Penal
27 Code.

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

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

9 (2) the referral complies with guidelines for
10 disposition under Subsection (c); and

11 (3) the officer reports in writing the referral to the
12 agency, identifying the child and specifying the grounds for taking
13 the child into custody or accusing a child of an offense described
14 in Subsection (a)(2).

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

18 (1) state the grounds for taking the child into
19 custody or accusing a child of an offense described in Subsection
20 (a)(2);

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

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

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

27 (i) The case of a child who successfully completes the first

1 offender program is closed and may not be referred to juvenile court
2 or a court of competent criminal jurisdiction, unless the child is
3 taken into custody under circumstances described by Subsection
4 (j)(3).

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

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

9 (2) the child or the parent, guardian, or other
10 custodian of the child terminates the child's participation in the
11 program before the child completes it; or

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

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

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

22 (e) A person who is at least 10 years of age but younger than
23 15 years of age is presumed incapable of committing an offense
24 described by Subsection (a)(4) or (5), other than an offense under a
25 juvenile curfew ordinance or order. This presumption may be
26 refuted if the prosecution proves to the court by a preponderance of
27 the evidence that the actor had sufficient capacity to understand

1 that the conduct engaged in was wrong at the time the conduct was
2 engaged in. The prosecution is not required to prove that the actor
3 at the time of engaging in the conduct knew that the act was a
4 criminal offense or knew the legal consequences of the offense.

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

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

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

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

20 (b) If the court determines that probable cause exists for a
21 finding under Subsection (a), after providing notice to the state,
22 the court may dismiss the complaint.

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

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

27 SECTION 19. Section 42.01(f), Penal Code, is amended to

1 read as follows:

2 (f) Subsections (a)(1), (2), (3), (5), and (6) do not apply
3 to a person who, at the time the person engaged in conduct
4 prohibited under the applicable subdivision, was a student younger
5 than 12 years of age [~~in the sixth grade or a lower grade level~~], and
6 the prohibited conduct occurred at a public school campus during
7 regular school hours.

8 SECTION 20. Except as provided by Sections 21 and 22 of this
9 Act, the changes in law made by this Act apply only to an offense
10 committed on or after the effective date of this Act. An offense
11 committed before the effective date of this Act is governed by the
12 law in effect on the date the offense was committed, and the former
13 law is continued in effect for that purpose. For purposes of this
14 section, an offense was committed before the effective date of this
15 Act if any element of the offense occurred before that date.

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

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

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

1 SECTION 23. This Act takes effect September 1, 2013.