

1-1 By: West S.B. No. 393
 1-2 (In the Senate - Filed February 5, 2013; February 13, 2013,
 1-3 read first time and referred to Committee on Jurisprudence;
 1-4 March 28, 2013, reported adversely, with favorable Committee
 1-5 Substitute by the following vote: Yeas 5, Nays 0; March 28, 2013,
 1-6 sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11	X			
1-12			x	
1-13	X			
1-14			X	
1-15	X			

1-16 COMMITTEE SUBSTITUTE FOR S.B. No. 393 By: West

1-17 A BILL TO BE ENTITLED
 1-18 AN ACT

1-19 relating to the prosecution of children accused of certain Class C
 1-20 misdemeanors.

1-21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-22 SECTION 1. Subsections (a) and (c), Article 45.056, Code of
 1-23 Criminal Procedure, are amended to read as follows:

1-24 (a) On approval of the commissioners court, city council,
 1-25 school district board of trustees, juvenile board, or other
 1-26 appropriate authority, a county court, justice court, municipal
 1-27 court, school district, juvenile probation department, or other
 1-28 appropriate governmental entity may:

1-29 (1) employ a case manager to provide services in cases
 1-30 involving juvenile offenders who are before a court consistent with
 1-31 the court's statutory powers or referred to a court by a school
 1-32 administrator or designee for misconduct that would otherwise be
 1-33 within the court's statutory powers prior to a case being filed,
 1-34 with the consent of the juvenile and the juvenile's parents or
 1-35 guardians; or

1-36 (2) agree in accordance with Chapter 791, Government
 1-37 Code, to jointly employ a case manager.

1-38 (c) A county or justice court on approval of the
 1-39 commissioners court or a municipality or municipal court on
 1-40 approval of the city council may employ one or more juvenile case
 1-41 managers who:

1-42 (1) shall [to] assist the court in administering the
 1-43 court's juvenile docket and in supervising its court orders in
 1-44 juvenile cases; and

1-45 (2) may provide:

1-46 (A) prevention services to a child considered
 1-47 at-risk of entering the juvenile justice system; and

1-48 (B) intervention services to juveniles engaged
 1-49 in misconduct prior to cases being filed, excluding traffic
 1-50 offenses.

1-51 SECTION 2. Section 25.0915, Education Code, is amended by
 1-52 adding Subsection (c) to read as follows:

1-53 (c) A court shall dismiss a complaint or referral made by a
 1-54 school district under this section that is not made in compliance
 1-55 with Subsection (b).

1-56 SECTION 3. Subsection (b), Section 37.081, Education Code,
 1-57 is amended to read as follows:

1-58 (b) In a peace officer's jurisdiction, a peace officer
 1-59 commissioned under this section:

1-60 (1) has the powers, privileges, and immunities of

2-1 peace officers;

2-2 (2) may enforce all laws, including municipal
2-3 ordinances, county ordinances, and state laws; ~~and~~

2-4 (3) may, in accordance with Chapter 52, Family Code,
2-5 take a juvenile into custody; and

2-6 (4) may dispose of cases in accordance with Section
2-7 52.03 or 52.031, Family Code.

2-8 SECTION 4. Chapter 37, Education Code, is amended by adding
2-9 Subchapter E-1 to read as follows:

2-10 SUBCHAPTER E-1. CRIMINAL PROCEDURE

2-11 Sec. 37.141. DEFINITIONS. In this subchapter:

2-12 (1) "Child" has the meaning assigned by Article
2-13 45.058(h), Code of Criminal Procedure, except that the person must
2-14 also be a student.

2-15 (2) "School offense" means an offense committed by a
2-16 child enrolled in a public school that is a Class C misdemeanor
2-17 other than a traffic offense, that is committed on property under
2-18 the control and jurisdiction of a school district.

2-19 Sec. 37.142. CONFLICT OF LAW. To the extent of any
2-20 conflict, this subchapter controls over any other law applied to a
2-21 school offense alleged to have been committed by a child.

2-22 Sec. 37.143. CITATION PROHIBITED; CUSTODY OF CHILD. (a) A
2-23 peace officer may not issue a citation to a child who is alleged to
2-24 have committed a school offense.

2-25 (b) This subchapter does not prohibit a child from being
2-26 taken into custody under Section 52.01, Family Code.

2-27 Sec. 37.144. GRADUATED SANCTIONS FOR CERTAIN SCHOOL
2-28 OFFENSES. (a) A school district that commissions peace officers
2-29 under Section 37.081 shall develop a system of graduated sanctions
2-30 that must be imposed on a child before a complaint is filed under
2-31 Section 37.145 against the child for a school offense that is an
2-32 offense under Section 37.124 or 37.126 or under Section 42.01,
2-33 Penal Code. A system adopted under this section must include
2-34 multiple graduated sanctions. The system must require:

2-35 (1) a warning letter to be issued to the child and the
2-36 child's parent or guardian that specifically states the child's
2-37 alleged school offense and explains the consequences if the child
2-38 engages in additional misconduct;

2-39 (2) a behavior contract with the child that must be
2-40 signed by the child, the child's parent or guardian, and an employee
2-41 of the school and that includes a specific description of the
2-42 behavior that is required or prohibited for the child and the
2-43 penalties for additional alleged school offenses, including
2-44 additional disciplinary action or the filing of a complaint in a
2-45 criminal court;

2-46 (3) the performance of school-based community service
2-47 by the child; and

2-48 (4) the referral of the child to counseling,
2-49 community-based services, or other in-school or out-of-school
2-50 services aimed at addressing the child's behavioral problems.

2-51 (b) A referral made under Subsection (a)(4) may include
2-52 participation by the child's parent or guardian if necessary.

2-53 Sec. 37.145. COMPLAINT. If a child fails to comply with or
2-54 complete graduated sanctions under Section 37.144, the school may
2-55 file a complaint against the child with a criminal court in
2-56 accordance with Section 37.146.

2-57 Sec. 37.146. REQUISITES OF COMPLAINT. (a) A complaint
2-58 alleging the commission of a school offense must, in addition to the
2-59 requirements imposed by Article 45.019, Code of Criminal Procedure:

2-60 (1) be sworn to by a person who has personal knowledge
2-61 of the underlying facts giving rise to probable cause to believe
2-62 that an offense has been committed; and

2-63 (2) be accompanied by a statement from a school
2-64 employee stating:

2-65 (A) whether the child is eligible for or receives
2-66 special services under Subchapter A, Chapter 29; and

2-67 (B) the graduated sanctions, if required under
2-68 Section 37.144, that were imposed on the child before the complaint
2-69 was filed.

3-1 (b) After a complaint has been filed under this subchapter,
3-2 a summons may be issued under Articles 23.04 and 45.057(e), Code of
3-3 Criminal Procedure.

3-4 Sec. 37.147. PROSECUTING ATTORNEYS. An attorney
3-5 representing the state in a court with jurisdiction may adopt rules
3-6 pertaining to the filing of a complaint under this subchapter that
3-7 the state considers necessary in order to:

3-8 (1) determine whether there is probable cause to
3-9 believe that the child committed the alleged offense;

3-10 (2) review the circumstances and allegations in the
3-11 complaint for legal sufficiency; and

3-12 (3) see that justice is done.

3-13 SECTION 5. The heading to Chapter 52, Family Code, is
3-14 amended to read as follows:

3-15 CHAPTER 52. PROCEEDINGS BEFORE AND INCLUDING REFERRAL TO
3-16 [JUVENILE] COURT

3-17 SECTION 6. Subsection (a), Section 52.03, Family Code, is
3-18 amended to read as follows:

3-19 (a) A law-enforcement officer authorized by this title to
3-20 take a child into custody may dispose of the case of a child taken
3-21 into custody or accused of a Class C misdemeanor, other than a
3-22 traffic offense, without referral to juvenile court or charging a
3-23 child in a court of competent criminal jurisdiction, if:

3-24 (1) guidelines for such disposition have been adopted
3-25 by the juvenile board of the county in which the disposition is made
3-26 as required by Section 52.032;

3-27 (2) the disposition is authorized by the guidelines;
3-28 and

3-29 (3) the officer makes a written report of the officer's
3-30 disposition to the law-enforcement agency, identifying the child
3-31 and specifying the grounds for believing that the taking into
3-32 custody or accusation of criminal conduct was authorized.

3-33 SECTION 7. Subsections (a), (d), (f), (i), and (j), Section
3-34 52.031, Family Code, are amended to read as follows:

3-35 (a) A juvenile board may establish a first offender program
3-36 under this section for the referral and disposition of children
3-37 taken into custody, or accused prior to the filing of a criminal
3-38 charge, of [for]:

3-39 (1) conduct indicating a need for supervision; [or]

3-40 (2) a Class C misdemeanor, other than a traffic
3-41 offense; or

3-42 (3) delinquent conduct other than conduct that
3-43 constitutes:

3-44 (A) a felony of the first, second, or third
3-45 degree, an aggravated controlled substance felony, or a capital
3-46 felony; or

3-47 (B) a state jail felony or misdemeanor involving
3-48 violence to a person or the use or possession of a firearm, illegal
3-49 knife, or club, as those terms are defined by Section 46.01, Penal
3-50 Code, or a prohibited weapon, as described by Section 46.05, Penal
3-51 Code.

3-52 (d) A law enforcement officer taking a child into custody or
3-53 accusing a child of an offense described in Subsection (a)(2) may
3-54 refer the child to the law enforcement officer or agency designated
3-55 under Subsection (b) for disposition under the first offender
3-56 program and not refer the child to juvenile court or a court of
3-57 competent criminal jurisdiction only if:

3-58 (1) the child has not previously been adjudicated as
3-59 having engaged in delinquent conduct;

3-60 (2) the referral complies with guidelines for
3-61 disposition under Subsection (c); and

3-62 (3) the officer reports in writing the referral to the
3-63 agency, identifying the child and specifying the grounds for taking
3-64 the child into custody or accusing the child of an offense described
3-65 in Subsection (a)(2).

3-66 (f) The parent, guardian, or other custodian of the child
3-67 must receive notice that the child has been referred for
3-68 disposition under the first offender program. The notice must:

3-69 (1) state the grounds for taking the child into

4-1 custody or accusing the child of an offense described in Subsection
4-2 (a)(2);

4-3 (2) identify the law enforcement officer or agency to
4-4 which the child was referred;

4-5 (3) briefly describe the nature of the program; and

4-6 (4) state that the child's failure to complete the
4-7 program will result in the child being referred to the juvenile
4-8 court or a court of competent criminal jurisdiction.

4-9 (i) The case of a child who successfully completes the first
4-10 offender program is closed and may not be referred to juvenile court
4-11 or a court of competent criminal jurisdiction, unless the child is
4-12 taken into custody under circumstances described by Subsection
4-13 (j)(3).

4-14 (j) The case of a child referred for disposition under the
4-15 first offender program shall be referred to juvenile court or a
4-16 court of competent criminal jurisdiction if:

4-17 (1) the child fails to complete the program;

4-18 (2) the child or the parent, guardian, or other
4-19 custodian of the child terminates the child's participation in the
4-20 program before the child completes it; or

4-21 (3) the child completes the program but is taken into
4-22 custody under Section 52.01 before the 90th day after the date the
4-23 child completes the program for conduct other than the conduct for
4-24 which the child was referred to the first offender program.

4-25 SECTION 8. The changes in law made by this Act apply only to
4-26 an offense committed on or after the effective date of this Act. An
4-27 offense committed before the effective date of this Act is covered
4-28 by the law in effect at the time the offense was committed, and the
4-29 former law is continued in effect for that purpose. For the
4-30 purposes of this section, an offense is committed before the
4-31 effective date of this Act if any element of the offense was
4-32 committed before that date.

4-33 SECTION 9. This Act takes effect September 1, 2013.

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