

By: Whitmire, et al.
(Herrero)

S.B. No. 1114

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. Article 45.058, Code of Criminal Procedure, is
amended by adding Subsections (i) and (j) to read as follows:

(i) If a law enforcement officer issues a citation or files
a complaint in the manner provided by Article 45.018 for conduct by
a child 12 years of age or older that is alleged to have occurred on
school property or on a vehicle owned or operated by a county or
independent school district, the officer shall submit to the court
the offense report, a statement by a witness to the alleged conduct,
and a statement by a victim of the alleged conduct, if any. An
attorney representing the state may not proceed in a trial of an
offense unless the law enforcement officer complied with the
requirements of this subsection.

(j) Notwithstanding Subsection (g) or (g-1), a law
enforcement officer may not issue a citation or file a complaint in
the manner provided by Article 45.018 for conduct by a child younger
than 12 years of age that is alleged to have occurred on school
property or on a vehicle owned or operated by a county or
independent school district.

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

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

4 SECTION 3. Subsection (a), Section 37.001, Education Code,
5 is amended to read as follows:

6 (a) The board of trustees of an independent school district
7 shall, with the advice of its district-level committee established
8 under Subchapter F, Chapter 11, adopt a student code of conduct for
9 the district. The student code of conduct must be posted and
10 prominently displayed at each school campus or made available for
11 review at the office of the campus principal. In addition to
12 establishing standards for student conduct, the student code of
13 conduct must:

14 (1) specify the circumstances, in accordance with this
15 subchapter, under which a student may be removed from a classroom,
16 campus, ~~or~~ disciplinary alternative education program, or
17 vehicle owned or operated by the district;

18 (2) specify conditions that authorize or require a
19 principal or other appropriate administrator to transfer a student
20 to a disciplinary alternative education program;

21 (3) outline conditions under which a student may be
22 suspended as provided by Section 37.005 or expelled as provided by
23 Section 37.007;

24 (4) specify that consideration will be given, as a
25 factor in each decision concerning suspension, removal to a
26 disciplinary alternative education program, expulsion, or
27 placement in a juvenile justice alternative education program,

1 regardless of whether the decision concerns a mandatory or
2 discretionary action, to:

3 (A) self-defense;

4 (B) intent or lack of intent at the time the
5 student engaged in the conduct;

6 (C) a student's disciplinary history; or

7 (D) a disability that substantially impairs the
8 student's capacity to appreciate the wrongfulness of the student's
9 conduct;

10 (5) provide guidelines for setting the length of a
11 term of:

12 (A) a removal under Section 37.006; and

13 (B) an expulsion under Section 37.007;

14 (6) address the notification of a student's parent or
15 guardian of a violation of the student code of conduct committed by
16 the student that results in suspension, removal to a disciplinary
17 alternative education program, or expulsion;

18 (7) prohibit bullying, harassment, and making hit
19 lists and ensure that district employees enforce those
20 prohibitions; and

21 (8) provide, as appropriate for students at each grade
22 level, methods, including options, for:

23 (A) managing students in the classroom, ~~and~~ on
24 school grounds, and on a vehicle owned or operated by the district;

25 (B) disciplining students; and

26 (C) preventing and intervening in student
27 discipline problems, including bullying, harassment, and making

1 hit lists.

2 SECTION 4. Subsections (b), (d), and (f), Section 37.081,
3 Education Code, are amended 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 or Article 45.058, Code of Criminal Procedure, take a child
12 [~~juvenile~~] into custody.

13 (d) A school district peace officer shall perform
14 [~~administrative and~~] law enforcement duties for the school district
15 as determined by the board of trustees of the school district.
16 Those duties must include protecting:

17 (1) the safety and welfare of any person in the
18 jurisdiction of the peace officer; and

19 (2) the property of the school district.

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

27 SECTION 5. Subchapter C, Chapter 37, Education Code, is

1 amended by adding Section 37.085 to read as follows:

2 Sec. 37.085. ARRESTS PROHIBITED FOR CERTAIN CLASS C
3 MISDEMEANORS. Notwithstanding any other provision of law, a
4 warrant may not be issued for the arrest of a person for a Class C
5 misdemeanor under this code committed when the person was younger
6 than 17 years of age.

7 SECTION 6. Subsection (a), Section 37.124, Education Code,
8 is amended to read as follows:

9 (a) A person other than a primary or secondary grade student
10 enrolled in the school commits an offense if the person, on school
11 property or on public property within 500 feet of school property,
12 alone or in concert with others, intentionally disrupts the conduct
13 of classes or other school activities.

14 SECTION 7. Subsection (a), Section 37.126, Education Code,
15 is amended to read as follows:

16 (a) Except as provided by Section 37.125, a person other
17 than a primary or secondary grade student commits an offense if the
18 person intentionally disrupts, prevents, or interferes with the
19 lawful transportation of children:

20 (1) to or from school on a vehicle owned or operated by
21 a county or independent school district; or

22 (2) to or from an activity sponsored by a school on a
23 vehicle owned or operated by a county or independent school
24 district.

25 SECTION 8. Section 52.031, Family Code, is amended by
26 adding Subsection (a-1) and amending Subsections (d), (f), (i), and
27 (j) to read as follows:

1 (a-1) A child accused of a Class C misdemeanor, other than a
2 traffic offense, may be referred to a first offender program
3 established under this section prior to the filing of a complaint
4 with a criminal court.

5 (d) A law enforcement officer taking a child into custody
6 for conduct described by Subsection (a) or before issuing a
7 citation to a child for an offense described by Subsection (a-1) may
8 refer the child to the law enforcement officer or agency designated
9 under Subsection (b) for disposition under the first offender
10 program and not refer the child to juvenile court for the conduct or
11 file a complaint with a criminal court for the offense only if:

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

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

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

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 for conduct described by Subsection (a), or for accusing
24 the child of an offense described by Subsection (a-1);

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 for the conduct or a complaint being filed with a criminal
4 court for the offense.

5 (i) The case of a child who successfully completes the first
6 offender program is closed and may not be referred to juvenile court
7 or filed with a criminal court, unless the child is taken into
8 custody under circumstances described by Subsection (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, if
11 the child is accused of an offense described by Subsection (a-1),
12 filed with a criminal court if:

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

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

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

21 SECTION 9. Section 42.01, Penal Code, is amended by adding
22 Subsection (a-1) to read as follows:

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

26 SECTION 10. (a) Except as provided by Subsection (b) of
27 this section, the changes in law made by this Act apply only to an

1 offense committed on or after the effective date of this Act. An
2 offense committed before the effective date of this Act is covered
3 by the law in effect at the time the offense was committed, and the
4 former law is continued in effect for that purpose. For the
5 purposes of this section, an offense is committed before the
6 effective date of this Act if any element of the offense was
7 committed before that date.

8 (b) Section 37.085, Education Code, as added by this Act,
9 applies to an offense committed before, on, or after the effective
10 date of this Act.

11 SECTION 11. This Act takes effect September 1, 2013.