

By: West

S.B. No. 393

A BILL TO BE ENTITLED

AN ACT

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

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[+]

~~[(1)]~~ 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

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

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

(2) provide prevention and early intervention services, with the consent of the juveniles and the juveniles' parents or guardians, to juveniles considered at-risk of dropping out of school and referred to the case manager by school administrators before cases are filed with the court for alleged Class C misdemeanors, other than traffic offenses.

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

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

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

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

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

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

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

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

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

5 SUBCHAPTER E-1. PROGRESSIVE SANCTIONS FOR CERTAIN
6 MISDEMEANOR OFFENSES

7 Sec. 37.141. DEFINITIONS. In this subchapter:

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

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

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

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

13 (A) a Class C misdemeanor under Section 42.01,
14 Penal Code, and is committed on property under the control and
15 jurisdiction of a school district; or

16 (B) an offense under Section 37.124 or 37.126.

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

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

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

25 Sec. 37.144. PROGRESSIVE SANCTIONS. (a) Before filing a
26 complaint under Section 37.145 against a child alleging the
27 commission of a school offense, a school district employee shall

impose progressive sanctions on the child. Under the progressive sanctions, the employee may:

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

(2) impose:

(A) a behavior contract on the child that must be signed by the child, the child's parent or guardian, and an employee of the school and that includes:

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

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

(iii) the penalties for additional alleged school offenses, including additional disciplinary action or the filing of a complaint in a criminal court; and

(B) school-based community service; or

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

(b) A referral made under Subsection (a)(3) may include participation by the child's parent or guardian if necessary.

Sec. 37.145. COMPLAINT. If a child fails to comply with or complete progressive sanctions under Section 37.144, the school may file a complaint against the child with a criminal court in

1 accordance with Section 37.146.

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

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

8 (2) be accompanied by a statement from a school
9 employee stating:

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

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

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

17 SECTION 5. The heading to Chapter 52, Family Code, is
18 amended to read as follows:

19 CHAPTER 52. PROCEEDINGS BEFORE AND INCLUDING REFERRAL TO

20 ~~[JUVENILE]~~ COURT

21 SECTION 6. Section 52.03(a), Family Code, is amended to
22 read as follows:

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

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

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

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

11 SECTION 7. Section 52.031, Family Code, is amended by
12 adding Subsection (a-1) and amending Subsections (d), (f), (i), and
13 (j) to read as follows:

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

18 (d) A law enforcement officer taking a child into custody
19 for conduct described by Subsection (a) or before issuing a
20 citation to a child for an offense described by Subsection (a-1)
21 may refer the child to the law enforcement officer or agency
22 designated under Subsection (b) for disposition under the first
23 offender program and not refer the child to juvenile court for the
24 conduct or file a complaint with a criminal court for the offense
25 only if:

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

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

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

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

(1) state the grounds for taking the child into custody for conduct described by Subsection (a), or for accusing the child of an offense described by Subsection (a-1);

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

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

(4) state that the child's failure to complete the program will result in the child being referred to the juvenile court for the conduct or a complaint being filed with a criminal court for the offense.

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

(j) The case of a child referred for disposition under the first offender program shall be referred to juvenile court or, if the child is accused of an offense described by Subsection (a-1), filed with a criminal court if:

(1) the child fails to complete the program;

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

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

8 SECTION 8. The changes in law made by this Act apply only to
9 an offense committed on or after the effective date of this Act. An
10 offense committed before the effective date of this Act is covered
11 by the law in effect at the time the offense was committed, and the
12 former law is continued in effect for that purpose. For the
13 purposes of this section, an offense is committed before the
14 effective date of this Act if any element of the offense was
15 committed before that date.

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