

BILL ANALYSIS

Senate Research Center
83R7198 ADM-F

S.B. 393
By: West
Jurisprudence
3/4/2013
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Too many juveniles are entering the criminal justice system due to the fact that there are no other alternatives. It is often the case that minors who commit minor fine-only misdemeanors face more stringent fines and court costs than those minors who commit more heinous or felonious offenses. Additional diversionary measures are needed in order to provide early interventions for minors who commit certain minor offenses. This will allow more resources to be focused on those minors with the potential to commit more serious acts of violence.

S.B. 393 seeks to put in place statutory suggestions of the Texas Judicial Council, the policy-making body of the judiciary in this state, that provide for diversionary programs prior to the referral to municipal and justice courts. Specifically, the bill proposes to remove ticketing as a means to address certain behaviors on school district property and puts in place a complaint-based system, similar to what is currently done for truancy. It establishes progressive sanctions, such as warning letters, school-based community service, or referral to counseling, for juveniles who committed certain fine-only misdemeanors prior to referral to court. It expands the use of juvenile case managers by allowing for their use without a formal court order and prior to cases being filed. Finally, it authorizes local juvenile boards to authorize law enforcement to dispose of certain fine-only offenses without referral to a court, and adds Class C misdemeanors, other than traffic offenses, to the list of offenses that can be disposed of through the use of first offender programs.

As proposed, S.B. 393 amends current law relating to the deferral of prosecution of children accused of certain Class C misdemeanors.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Articles 45.056(a) and (c), Code of Criminal Procedure, as follows:

(a) Authorizes a county court, justice court, municipal court, school district, juvenile probation department, or other appropriate governmental entity, on approval of the commissioners court, city council, school district board of trustees, juvenile board, or other appropriate authority, to employ a case manager or agree, in accordance with Chapter 791 (Interlocal Cooperation Contracts), 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 consents to the referral to the case manager. Deletes existing text authorizing certain

governmental entities, on approval of certain authorities, to agree in accordance with Chapter 791, Government Code, to jointly employ a case manager.

(c) Authorizes a county or justice court on approval of the commissioners court or a municipality or municipal court on approval of the city council to 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. Amends Section 25.0915, Education Code, by adding Subsection (c), to require a court to dismiss a complaint or referral made by a school district under this section that is not made in compliance with Subsection (b) (relating to requirements for referrals to juvenile court or complaints alleging a violation filed in county, justice, or municipal court).

SECTION 3. Amends Section 37.081(b), Education Code, to provide that in the peace officer's jurisdiction, a peace officer commissioned under this section, among other powers, privileges, and authority, is authorized to dispose of cases in accordance with Section 52.03 (Disposition Without Referral to Court) or 52.031 (First Offender Program), Family Code.

SECTION 4. Amends Chapter 37, Education Code, by adding Subchapter E-1, as follows:

SUBCHAPTER E-1. PROGRESSIVE SANCTIONS FOR CERTAIN MISDEMEANOR OFFENSES

Sec. 37.141. DEFINITIONS. Defines "child" and "school offense" in this subchapter.

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

Sec. 37.143. CITATION PROHIBITED; CUSTODY OF CHILD. (a) Prohibits a peace officer from issuing a citation to a child who is alleged to have committed a school offense.

(b) Provides that this subchapter does not prohibit a child from being taken into custody under Section 52.01 (Taking into Custody; Issuance of Warning Notice), Family Code.

Sec. 37.144. PROGRESSIVE SANCTIONS. (a) Requires a school district employee, before filing a complaint under Section 37.145 against a child alleging the commission of a school offense, to impose progressive sanctions on the child. Authorizes the employee, under the progressive sanctions, to:

(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 a specific description of the behavior that is required or prohibited for the child; the period for which the

contract will be effective, not to exceed 45 school days after the date the contract becomes effective; and 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) Authorizes a referral made under Subsection (a)(3) to include participation by the child's parent or guardian if necessary.

Sec. 37.145. COMPLAINT. Authorizes a school, if a child fails to comply with or complete progressive sanctions under Section 37.144, to file a complaint against the child with a criminal court in accordance with Section 37.146.

Sec. 37.146. REQUISITES OF COMPLAINT. (a) Requires that a complaint alleging the commission of a school offense, in addition to the requirements imposed by Article 45.019 (Requisites of Complaint), Code of Criminal Procedure:

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

(2) be accompanied by a statement from a school employee stating whether the child is eligible for or receives special services under Subchapter A (Special Education Program), Chapter 29 (Educational Programs) and the progressive sanctions that were imposed on the child before the complaint was filed.

(b) Provides that after a complaint has been filed under this subchapter, a summons may be issued under Articles 23.04 (In Misdemeanor Case) and 45.057(e) (requiring a parent to personally appear at the hearing with the child), Code of Criminal Procedure.

SECTION 5. Amends the heading to Chapter 52, Family Code, to read as follows:

CHAPTER 52. PROCEEDINGS BEFORE AND INCLUDING REFERRAL TO COURT

SECTION 6. Amends Section 52.03(a), Family Code, to authorize a law-enforcement officer authorized by this title to take a child into custody to dispose of the case of a child taken into custody without referral to juvenile court or the case of a child accused of a Class C misdemeanor other than a traffic offense without filing a complaint with a criminal court, if guidelines for such disposition have been adopted by the juvenile board of the county in which the disposition is made as required by Section 52.032 (Informal Disposition Guidelines), the disposition is authorized by the guidelines, and the officer makes a written report of the officer's disposition to the law-enforcement agency, identifying the child and specifying the grounds for believing that the taking into custody was authorized or the accusation of criminal conduct was legitimate.

SECTION 7. Amends Section 52.031, Family Code, by adding Subsection (a-1) and amending Subsections (d), (f), (i), and (j), as follows:

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

(d) Authorizes a law enforcement officer taking a child into custody for conduct described by Subsection (a) (relating to authorizing a juvenile board to establish a first offender program under this section for the referral and disposition of children taken into custody for certain conduct) or before issuing a citation to a child for an offense described by Subsection (a-1) to refer the child to the law enforcement officer or agency designated under Subsection (b) (relating to requiring each juvenile board in the county in which a first offender program is established to designate one or more law enforcement officers and agencies to process a child under the first offender program) for disposition under the first offender program and not refer the child to juvenile court for the conduct or file a complaint with a criminal court for the offense only if the child has not previously been adjudicated as having engaged in delinquent conduct, the referral complies with guidelines for disposition under Subsection (c) (relating to prohibiting the disposition of a child under the first offender program from taking place until guidelines for the disposition have been adopted by the juvenile board of the county in which the disposition is made as required by Section 52.032), and 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) Requires that a notice notifying the parent, guardian, or other custodian of the child of the child's referral for disposition under the first offender program contain certain information, including that it 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) and 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) Provides that the case of a child who successfully completes the first offender program is closed and prohibits it from being 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) Requires that the case of a child referred for disposition under the first offender program be referred to juvenile court or, if the child is accused of an offense described by Subsection (a-1), be filed with a criminal court if:

(1) the child fails to complete the program;

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

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

SECTION 8. Makes application of this Act prospective.

SECTION 9. Effective date: September 1, 2013.