

AN ACT

relating to the criminal procedures related to children who commit certain Class C misdemeanors.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Article 42.15, Code of Criminal Procedure, is amended by amending Subsection (b) and adding Subsections (d), (e), and (f) to read as follows:

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

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

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

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

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

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

(2) paying the fine and costs in a manner described by 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. Subsections (a) and (c), Article 45.056, Code of  
11 Criminal 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. Subsection (b), Section 37.081, Education Code,  
18 is amended to 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. Subsection (d), Section 37.124, Education Code,  
3 is amended 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. Subsection (c), Section 37.126, Education Code,  
9 is amended 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 may develop a system of graduated sanctions  
9 that the school district may require to be imposed on a child before  
10 a complaint is filed under Section 37.145 against the child for a  
11 school offense that is an offense under Section 37.124 or 37.126 or  
12 under Section 42.01(a)(1), (2), (3), (4), or (5), Penal Code. A  
13 system adopted under this section must include multiple graduated  
14 sanctions. The system may 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, or if the school  
8 district has not elected to adopt a system of graduated sanctions  
9 under that section, the school may file a complaint against the  
10 child with a criminal court in accordance with Section 37.146.

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

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

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

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

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

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

27           Sec. 37.147. PROSECUTING ATTORNEYS. An attorney

1 representing the state in a court with jurisdiction may adopt rules  
2 pertaining to the filing of a complaint under this subchapter that  
3 the state considers necessary in order to:

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

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

8 (3) see that justice is done.

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

11 (f) A court shall waive original jurisdiction for a  
12 complaint against a child alleging a violation of a misdemeanor  
13 offense punishable by fine only, other than a traffic offense, and  
14 refer the child to juvenile court if the court or another court has  
15 previously dismissed a complaint against the child under Section  
16 8.08, Penal Code.

17 SECTION 14. 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 15. Subsection (a), Section 52.03, Family Code, is  
22 amended to 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 or accused of a Class C misdemeanor, other than a  
26 traffic offense, without referral to juvenile court or charging a  
27 child in a court of competent criminal jurisdiction, 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 or accusation of criminal conduct was authorized.

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

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

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

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

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

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

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

1 Code.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 SECTION 19. Subsection (f), Section 42.01, Penal Code, is  
2 amended to read as follows:

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

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

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

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

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



1 committed before, on, or after the effective date of this Act.

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

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Speaker of the House

I hereby certify that S.B. No. 393 passed the Senate on April 4, 2013, by the following vote: Yeas 30, Nays 0; and that the Senate concurred in House amendments on May 23, 2013, by the following vote: Yeas 30, Nays 1.

\_\_\_\_\_  
Secretary of the Senate

I hereby certify that S.B. No. 393 passed the House, with amendments, on May 20, 2013, by the following vote: Yeas 144, Nays 3, two present not voting.

\_\_\_\_\_  
Chief Clerk of the House

Approved:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Governor