

Comparison of Current Law to S.B. 393 and Other Bills Passed During the 83rd Regular Legislative Session

Under Current Law	S.B. 393 Section	Under Amended Law	Notes
<p>1. Fines are not imposed in juvenile courts. Yet, they are a staple in criminal courts with jurisdiction of fine-only offenses. While there is reason to believe that most municipal judges, justices of the peace, and county judges find children to be indigent and allow alternative means of discharging the judgment, there is no law expressly governing the imposition of fines on children. Under current law, a judge could impose a fine and costs on someone as young as age 10 and order it paid immediately. Current law allows criminal courts to waive fines and costs if performing community service would be an undue hardship on a defendant. However, statutory law does not necessarily afford such latitude for courts to waive fines and costs imposed on children although most, ostensibly, are indigent and the performance of community service may pose an undue hardship.</p>	<p>SECTIONS 1,2,5,6</p>	<p>The amendments to Art. 42.15, CCP (applicable in county courts) and Art. 45.041, CCP (applicable in municipal and justice courts) reflect the belief that fines and costs should not be procedurally imposed on children in the same manner as adults. The best way to balance youth accountability with fairness to children is by requiring the child to have a say in how the judgment will be discharged (via election of either community service, payment, or as otherwise allowed by law) and to have parents and guardians involved in documenting the decision. Amendments to Art. 43.091, CCP (applicable in county courts) and Art. 45.0491, CCP (applicable in municipal and justice courts) provide more leeway to criminal judges in dealing with fines imposed on children. If the facts and circumstances warrant it, criminal judges should also have the discretion to waive fines and court costs accrued by defendants during childhood especially if the performance of community service would be an undue hardship.</p>	<p>Identical to S.B. 394 and S.B. 395</p>
<p>2. Under current law, children’s records in the civil juvenile justice system are confidential. Historically, this has not been true in the criminal juvenile justice system. In 2011, “conditional confidentiality” (which balances the public’s right to inspect criminal case records with the interest of children) was extended to non-traffic Class C misdemeanor convictions. However, such confidentiality was not extended to children who successfully complete the terms of probation.</p>	<p>SECTIONS 3 & 4</p>	<p>Articles 44.2811 and 45.0217, CCP reflect the belief that if the Legislature is willing to extend confidentiality to children who are found guilty of certain fine-only offenses, it should be willing in a similar manner to extend confidentiality to the greater number of children who have avoided being found guilty by successfully completing some form of probation.</p>	<p>S.B. 394 (passed on 5/16/13) also extends “conditional confidentiality” to successfully completed deferral of disposition. H.B. 528 (passed on 5/20/13) closes public right of inspection upon charging. S.B. 393 received the last record vote and was passed on 5/23/13. If H.B. 528 is deemed in irreconcilable conflict with S.B. 393 and the bills cannot be harmonized, the bill that passed last in time prevails (i.e., S.B.393). The conflict between these bills will be decided by an Attorney General Opinion. An opinion is requested by the Office of Court Administration. S.B. 393 and S.B. 394 are effective 9/1/13. H.B. 528 is not effective until 1/1/14.</p>
<p>3. Juvenile case managers are currently allowed and have promising utility in assisting criminal courts in the disposition of juvenile cases via screening of cases, obtaining background information, and assisting children with access to social services and programs. However, current law can be construed to require a court appearance and order.</p>	<p>SECTION 7</p>	<p>Article 45.056, CCP will expressly allow juvenile case managers to provide prevention/intervention services without a court appearance or a court order. This will assist in diverting cases in localities that employ juvenile case managers.</p>	<p>This amendment slightly varies from one contained in S.B. 1419 (passed on 5/25/13) but can be reconciled.</p>
<p>4. Under current law, schools are required to utilize truancy measures before resorting to legal action in either juvenile or criminal court. The law does not, however, expressly state what occurs if such requirements are not met.</p>	<p>SECTION 8</p>	<p>As amended, Sec. 25.0915, Education Code, expressly states that referrals and complaints are to be dismissed by a court if not filed in compliance with the filing requirements.</p>	<p>An identical provision is contained in S.B. 1114.</p>

<p>5. Under current law, school law enforcement are authorized to arrest a child in the same manner as other peace officers, but unlike other peace officers, they are not expressly authorized to dispose of a case without referral to a court or by means of a First Offender Program. This limits school law enforcement's options.</p>	<p>SECTION 9</p>	<p>As amended, Sec. 37.081, Education Code, would authorize, but not require, school law enforcement to dispose of such cases without referral to a court or by means of a First Offender Program. This potentially increases school law enforcement's options and diverts more cases from court.</p>	
<p>6. In 2011, the Education Code and Penal Code were amended to make it an exception to the offenses of Disruption of Class, Disruption of Transportation, and Disorderly Conduct that the accused, at the time of the offense, was a student in the 6th grade or lower. This was done to reduce the number of children being criminally adjudicated. However, under current law, some 7th graders regardless of their age may still be prosecuted.</p>	<p>SECTIONS 10, 11 & 19</p>	<p>The amendments to Disruption of Class (Section 37.124, Education Code) and Disruption of Transportation (Sec. 37.126, Education Code), and Disorderly Conduct (Sec. 42.01, Penal Code) are clarifications of the changes to the respective laws made in 2011 to give full effect to the Legislature's intent. The exceptions to such offenses now apply to persons younger than 12 years of age. Law enforcement and prosecutors agree that it is easier to prove age than grade level.</p>	<p>While, S.B. 393 creates new exceptions for children younger than 12 years of age, S.B. 1114 (Section 6) fundamentally realigns the focus of the offenses of Disruption of Class and Disruption of Transportation. Such offenses cannot be committed by primary or secondary school students. S.B. 1114 (Section 9), however, expands the scope of Disorderly Conduct, clarifying that "public place" includes a public school campus or the school grounds on which a public school is located.</p>
<p>7. While Chapter 37 of the Education Code contains subchapters governing "Law and Order" (Subchapter C allows schools to have their own police departments), "Protection of Buildings and School Grounds" (Subchapter D which tasks justice and municipal courts with jurisdiction for certain school offenses), and "Penal Provisions" (Subchapter E contains certain offenses specific to school settings), yet no subchapter in the Education Code governs criminal procedure. This omission has contributed to existing disparities in the legal system and has resulted in greater consumption of limited local judicial resources.</p>	<p>SECTION 12</p>	<p>The creation of a new subchapter in the Education Code (Subchapter E-1, Criminal Procedure) will balance the interest of the other subchapters with due process and procedural protections for children accused of criminal violations. In conjunction with other proposed amendments, Subchapter E-1 will help reduce referrals to court without having a negative impact on school safety. Subchapter E-1 is limited in scope. Under Sec. 37.141, Subchapter E-1 would only govern criminal procedures to be utilized when a child is alleged to have committed an offense on property under the control and jurisdiction of a school district which is a Class C misdemeanor, excluding traffic offenses. It aims to preserve judicial resources for students who are most in need of formal adjudication. Section 37.142 (Conflict of Laws) provides that to the extent of any conflict, Subchapter E-1 controls over any other law applied to a school offense alleged to have been committed by a child. This is important because until now such cases were exclusively controlled by the Code of Criminal Procedure.</p>	<p>If any provision of another bill conflicts, Section 37.142 (Conflict of Laws) provides that to the extent of any conflict, Subchapter E-1 controls over any other law applied to a school offense alleged to have been committed by a child.</p>
<p>8. Under current law, peace officers routinely instigate criminal cases against children by using citations on school grounds.</p>	<p>SECTION 12</p>	<p>Under Sec. 37.143, Education Code (with the exception of traffic offenses), peace officers are no longer allowed to initiate school-based cases by citation. Rather, cases may be instigated by complaint. Taking a child into custody is expressly authorized.</p>	<p>See, line 7, above.</p>
<p>9. Under current law, nothing prohibits a school district from instigating criminal allegations against a child as a first response to any misconduct which is illegal. Criminal courts with jurisdiction over school grounds in school districts that employ police officers report that their juvenile dockets are ballooning with cases involving disruptive behaviors and that such cases consume significant amounts of judicial resources.</p>	<p>SECTION 12</p>	<p>Under Sections 37.144 - 37.145, Education Code, school districts that employ law enforcement may choose to adopt a program requiring that progressive sanctions be utilized before filing a complaint for three specific offenses: (1) disruption of class; (2) disruption of transportation; and (3) disorderly conduct.</p>	<p>See, line 7, above.</p>

<p>10. Under current law, there is no requirement that a school-based complaint be attested to by a person with personal knowledge giving rise to probable cause. There is also no way for a prosecutor, defense attorney, or judge to determine if probable cause exists or if the child is a student who is either eligible for or receiving special education services.</p>	<p>SECTION 12</p>	<p>Section 37.146, Education Code, requires that a complaint alleging the commission of a school offense, in addition to the requirements imposed by Article 45.019 (Requisites of Complaint), CCP: (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 whether the graduated sanctions, if required under Section 37.144, were imposed on the child before the complaint was filed. Section 37.146 authorizes the issuance of a summons under Articles 23.04 (In Misdemeanor Case) and 45.057(e) (requiring a parent to personally appear at the hearing with the child), CCP, after a complaint has been filed under Subchapter E-1. Under Article 23.04, a summons may only be issued upon request of the attorney representing the state. In other words, unless a prosecutor requests a summons, none shall be issued by a court.</p>	<p>See, line 7, above.</p>
<p>11. Because most people accused of Class C misdemeanors do not retain counsel, attorneys representing the State of Texas have the unique task of ensuring that justice is done. This is particularly true in cases involving children. While current law expressly allows prosecutors in juvenile court to assess factual and legal sufficiency before commencing formal legal proceedings, no comparable provision exists for criminal courts that adjudicates children of Class C misdemeanors. Some prosecutors have experienced opposition from schools when attempting to procure additional information before allowing a school-initiated complaint against a child to proceed.</p>	<p>SECTION 12</p>	<p>Section 37.147, Education Code, gives prosecutors the discretion to implement filing guidelines and obtain information from schools. Expressly authorizing such guidelines and allowing prosecutors to obtain such information is necessary to ensure that only morally blameworthy children are required to appear in court and enter a plea to criminal charges. Federal law precludes punishing special education students when the student's misbehavior is a manifestation of a disability. Prosecutors should be able to ascertain if a child is eligible for or is receiving special education services, has a behavioral intervention plan (BIP), or has a disorder or disability relating to culpability prior to the filing of charges. Prosecutors should also be able to easily ascertain from schools what disciplinary measures, if any, have already been taken against a child to ensure proportional and fair punishment.</p> <p>Section 37.147 authorizes an attorney representing the state in a court with jurisdiction to adopt rules pertaining to the filing of a complaint under Subchapter E-1 that the state considers necessary in order to (1) determine whether there is probable cause to believe that the child committed the alleged offense, (2) review the circumstances and allegations in the complaint for legal sufficiency, and (3) see that justice is done.</p>	<p>See, line 7, above.</p>

<p>12. Current law does not provide direction to criminal court judges who encounter children accused of fine-only misdemeanors suspected of having mental illness or developmental disabilities, lack the capacity to understand the proceedings in criminal court or assist in their own defense, or are otherwise unfit to proceed.</p>	<p>SECTIONS 13, 17 & 18</p>	<p>Under Sec. 8.08, Penal Code, on motion by the state, the defendant, a person standing in parental relation to the defendant, or on the court's own motion, a court with jurisdiction of misdemeanors punishable by fine only or violations of a penal ordinance of a political subdivision shall determine if there is probable cause to believe that a child, including a child with mental illness or developmental disability, (1) lacks the capacity to understand the proceedings or to assist in their own defense and is unfit to proceed or (2) lacks substantial capacity either to appreciate the wrongfulness of the child's own conduct or to conform their conduct to the requirements of the law. If the court determines that probable cause exists, after giving notice to the prosecution, the court may dismiss the complaint. The prosecution has the right to appeal such determinations per Article 44.01, CCP. The scope of Section 8.08 is limited to Class C misdemeanors (other than traffic offenses). Once a court with jurisdiction of fine-only misdemeanors has concluded that a child has a mental illness, disability, lack of capacity, or is otherwise unfit to proceed, similar subsequent cases should not continue to be adjudicated in that criminal court. Section 51.08, Family Code, is amended to mandate that after a criminal court has dismissed a complaint per Section 8.08 of the Penal Code, the court would be required to waive its jurisdiction and transfer subsequent eligible cases to the civil juvenile justice system where they can be addressed as conduct indicating a need for supervision (CINS).</p>	<p>Transfer under Sec. 51.08, Family Code, is mandatory even if the court employs a juvenile case manager.</p>
<p>13. Currently, laws governing disposition without referral to court and First Offender Programs only apply to conduct within the jurisdiction of a juvenile court. Such laws help divert a great number of relatively minor cases that otherwise would consume juvenile court resources.</p>	<p>SECTIONS 14 & 16</p>	<p>Sections 52.03 and 52.031, Family Code, are expanded to include non-traffic Class C misdemeanors. This would allow, but not require, juvenile boards to utilize existing laws governing disposition without referral to court and First Offender Programs and divert cases that otherwise would require formal adjudication by a criminal court and consume limited local criminal court resources.</p>	<p>A similar provision is contained in Section 8 of S.B. 1114.</p>
<p>14. Under current law, the classification of an offense as a Class C misdemeanor singularly determines whether a child is to be held criminally responsible for his or her conduct. Section 8.07, Penal Code, expressly prohibits prosecution of the relatively small number of children in Texas who commit "more serious" jailable offenses, while providing no similar prohibition against prosecuting the large number of children who commit "less serious" fine-only criminal offenses. An unintended consequence of existing law is that more children in Texas are being adjudicated in criminal court for fine-only offenses than in juvenile courts. Adjudicating such a large number of children as criminals consumes limited judicial resources.</p>	<p>SECTION 17</p>	<p>The amendment to Sec. 8.07, Penal Code (Age Affecting Criminal Responsibility), clarifies current law: children under age 10 are not to be prosecuted or convicted of fine-only offenses. Section 8.07 is a defense. It creates a presumption that children between ages 10-14 are not criminally responsible for misdemeanors punishable by fine only or violations of a penal ordinance of a political subdivision. This presumption can be refuted by a preponderance of evidence showing that the child is morally blameworthy. The presumption would have no application to fine-only traffic offenses under state law or local enactment, and the prosecution would neither be required to prove that the child knew that such acts were illegal at the time they occurred nor that the child understood the legal consequences of such offenses. This amendment would increase parity between the civil and criminal juvenile justice systems and potentially decrease the number of formal adjudications of children in criminal court.</p>	<p>Chapter 8 of the Penal Code contains defenses. Sec. 8.07, Penal Code, is derived from the common law defense of infancy.</p>