

**Texas Judicial Council
Juvenile Justice Committee
Subcommittee on Legislation
August 31, 2012**

In recent years, the adjudication of children for fine-only misdemeanors has piqued the attention of critics and, in turn, the media. Laws passed more recently suggest the Texas Legislature and Governor Perry realize that the criminalization of misbehavior by children should be subject to restraints and that the unbridled outsourcing of school discipline from the school house to the court house is bad public policy. Yet, at the same time, efforts to decriminalize truancy in 2009 and 2011 failed to gain traction at the Capitol. While critics assert that such cases should be returned to the civil juvenile justice system, neither juvenile courts nor juvenile probation services are prepared to shoulder the caseload of conduct indicating a need for supervision (CINS) petitions which have been shifted to municipal and justice courts in the form of Class C misdemeanors.

From the government's perspective, municipal and justice courts provide a rapid, cost-effective means of adjudicating cases. When it comes to the ability to manage extremely large caseloads, such courts have no equal in the Texas judicial system. These attributes alone, however, hardly make these courts ideal venues for cases involving children. With this said, numerous legislative changes in the last decade have made municipal and justice courts better venues for cases involving children (*e.g.*, mandatory IDEA training for municipal judges and justices of the peace, the advent of juvenile case manager programs). There is scant evidence that the Legislature is ready, willing, or even contemplating an overhaul of which courts should have jurisdiction of children who violate the law but are not necessarily engaging in delinquent conduct. Proposals that are viewed as "soft on crime" or that are perceived as making public schools "safe harbors" for criminality are unlikely to be passed into law. Accordingly, the greatest likelihood for effecting meaningful change lies in implementing common sense solutions that substantially curtail the "classroom-to-courtroom pipeline" and ensure equitable treatment for children who are adjudicated in municipal and justice courts.

Texas Judicial Council Juvenile Justice Committee Charge:

With the preceding in mind, Chief Justice Wallace B. Jefferson formed a Juvenile Justice Committee of the Texas Judicial Council to:

"Assess the impact of school discipline and school-based policing on referrals to the municipal, justice, and juvenile courts and identify judicial policies or initiatives that: work to reduce referrals without having a negative impact on school safety; limit recidivism; and preserve judicial resources for students who are in need of this type of intervention."

Juvenile Justice Legislative Subcommittee Recommendations:

The Juvenile Justice Committee met on February 2, 2012 and March 29, 2012 to discuss potential recommendations to address the committee's charge. Based upon those meetings, the Legislative Subcommittee recommends the following:

1. The Legislature should expressly authorize local governments to implement "deferred prosecution" measures in Class C misdemeanors to decrease the number of local filings from schools. (See, I. DIVERSIONS, Page 2)
2. The Legislature should amend applicable criminal laws to ensure that local courts are the last and not the first step in school discipline (*i.e.*, Amend Section 8.07 of the Penal Code to create a rebuttable presumption that a child younger than age 15 is presumed to not have criminal intent to commit a Class C Misdemeanors - with exception for traffic offenses). This could be limited to Chapter 37, Education Code offenses but would make more sense to apply to all children. (See, II. CAPACITY, Page 11)
3. The Legislature should amend offenses relating to Disruption of Class, Disruption of Transportation, and Disorderly Conduct so that age (not grade level) is a prima facie element of the offense. (See, II. CAPACITY, Page 11)
4. The Legislature should amend existing criminal law and procedures to increase parity between "criminal juvenile justice in local trial courts" and "civil juvenile justice in juvenile court and juvenile probation." (See, III. PARITY, Page 16)

The Data Collection and Best Practices Subcommittee recommendations are found on another report.

I. DIVERSIONS

Recommendation: *The Legislature should expressly authorize local governments to implement "deferred prosecution" measures in Class C misdemeanors to decrease the number of local filings from schools.*

Suggested Statutory Changes:

CODE OF CRIMINAL PROCEDURE
TITLE 1. CODE OF CRIMINAL PROCEDURE
CHAPTER 45. JUSTICE AND MUNICIPAL COURTS

Art. 45.056. JUVENILE CASE MANAGERS.

(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 to provide services in cases involving juvenile offenders who are before a court consistent with the court's statutory powers or referred to a court by a school administrator or designee for misconduct that would otherwise be within the court's statutory powers prior to a case being filed; or

(2) agree in accordance with Chapter 791, Government Code, to jointly employ a case manager.

(b) A local entity may apply or more than one local entity may jointly apply to the criminal justice division of the governor's office for reimbursement of all or part of the costs of employing one or more juvenile case managers from funds appropriated to the governor's office or otherwise available for that purpose. To be eligible for reimbursement, the entity applying must present to the governor's office a comprehensive plan to reduce juvenile crimes in the entity's jurisdiction that addresses the role of the case manager in that effort.

(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 assist the court in administering the court's juvenile docket, ~~and~~ in supervising its court orders in juvenile cases, and to provide prevention services to juveniles considered at-risk and intervention services to juveniles engaged in misconduct prior to cases being filed.

Commentary: One of the ways that the juvenile courts differ from criminal courts is that informal diversion is preferred to formal adjudication. One of the reasons that the number of CINS petitions adjudicated in juvenile courts has declined to fewer than 1,000 per year is that Title 3, Chapter 52 of the Family Code contains ways to dispose of such cases without referral to juvenile court. Comparable provisions governing Class C misdemeanors do not exist.

Conceptualized and advocated by University of Texas Professor Robert O. Dawson until his death in 2005, juvenile case manager programs are still a relatively new and emerging addition to the municipal and justice court. In places like the City of Houston, where juvenile case managers have become integral to informal “deferred prosecution” measures of Class C misdemeanors, case filings have decreased and prosecutorial and judicial resources have been conserved. Efforts to decrease the number of cases adjudicated by municipal and justice courts through diversion efforts at the local government level should be encouraged. Accordingly, Article 45.056 of the Code of Criminal Procedure should be revised to allow juvenile case managers to be involved in diversion measures without the entry of any formal court order and to expressly allow juvenile case managers to provide prevention services to juveniles considered at-risk and intervention services to juveniles engaged in misconduct prior to cases being filed.

EDUCATION CODE
TITLE 2. PUBLIC EDUCATION
SUBTITLE E. STUDENTS AND PARENTS
CHAPTER 25. ADMISSION, TRANSFER, AND ATTENDANCE

Sec. 25.0915. TRUANCY PREVENTION MEASURES; REFERRAL AND FILING REQUIREMENT.

- (a) A school district shall adopt truancy prevention measures designed to:
- (1) address student conduct related to truancy in the school setting;
 - (2) minimize the need for referrals to juvenile court for conduct described by Section 51.03(b)(2), Family Code; and
 - (3) minimize the filing of complaints in county, justice, and municipal courts alleging a violation of Section 25.094.

(b) Each referral to juvenile court for conduct described by Section 51.03(b)(2), Family Code, or complaint filed in county, justice, or municipal court alleging a violation by a student of Section 25.094 must:

(1) be accompanied by a statement from the student's school certifying that:

(A) the school applied the truancy prevention measures adopted under Subsection (a) to the student; and

(B) the truancy prevention measures failed to meaningfully address the student's school attendance; and

(2) specify whether the student is eligible for or receives special education services under Subchapter A, Chapter 29.

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

Commentary: In 2011, Section 25.0915 of the Education Code was added to ensure that schools first attempt truancy prevention measures to address non-attendance of before referring a child to juvenile court or pursuing criminal charges against the child in county, justice, or municipal court. Anecdotal evidence from some courts suggests that such measures help reduce the number of school attendance cases being filed and conserve limited local judicial resources. This amendment clarifies legislative intent from 2011. Specifically, if a complaint or referral is not made in compliance with Section 25.0915, a court shall dismiss the allegation. This is identical to the legal requirement governing what is to occur when a school does not timely file a school attendance complaint (Sec. 25.0951(d), Education Code). Because most children accused of not attending school do not have the assistance of counsel, such provisions are necessary to ensure the execution of the Legislature's intent.

EDUCATION CODE
TITLE 2. PUBLIC EDUCATION
SUBTITLE G. SAFE SCHOOLS
CHAPTER 37. DISCIPLINE; LAW AND ORDER

SUBCHAPTER C. LAW AND ORDER

Sec. 37.081. SCHOOL DISTRICT PEACE OFFICERS AND SECURITY PERSONNEL.

(a) The board of trustees of any school district may employ security personnel and may commission peace officers to carry out this subchapter. If a board of trustees authorizes a person employed as security personnel to carry a weapon, the person must be a commissioned peace officer. The jurisdiction of a peace officer or security personnel under this section shall be determined by the board of trustees and may include all territory in the boundaries of the school district and all property outside the boundaries of the district that is owned, leased, or rented by or otherwise under the control of the school district and the board of trustees that employ the peace officer or security personnel.

(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~~

and

(4) may dispose of cases in accordance with Sections 52.03 and 52.031, Family Code.

(c) A school district peace officer may provide assistance to another law enforcement agency. A school district may contract with a political subdivision for the jurisdiction of a school district peace officer to include all territory in the jurisdiction of the political subdivision.

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

- (1) the safety and welfare of any person in the jurisdiction of the peace officer; and
- (2) the property of the school district.

(e) The board of trustees of the district shall determine the scope of the on-duty and off-duty law enforcement activities of school district peace officers. A school district must authorize in writing any off-duty law enforcement activities performed by a school district peace officer.

(f) The chief of police of the school district police department shall be accountable to the superintendent and shall report to the superintendent or the superintendent's designee. School district police officers shall be supervised by the chief of police of the school district or the chief of police's designee and shall be licensed by the Commission on Law Enforcement Officer Standards and Education.

(g) A school district police department and the law enforcement agencies with which it has overlapping jurisdiction shall enter into a memorandum of understanding that outlines reasonable communication and coordination efforts between the department and the agencies.

(h) A peace officer assigned to duty and commissioned under this section shall take and file the oath required of peace officers and shall execute and file a bond in the sum of \$1,000, payable to the board of trustees, with two or more sureties, conditioned that the peace officer will fairly, impartially, and faithfully perform all the duties that may be required of the peace officer by law. The bond may be sued on in the name of any person injured until the whole amount of the bond is recovered. Any peace officer commissioned under this section must meet all minimum standards for peace officers established by the Commission on Law Enforcement Officer Standards and Education.

Commentary: Currently, school law enforcement officers are authorized to take a child into custody pursuant to Chapter 52 of the Family Code but are not expressly authorized to initiate informal disposal of cases under Chapter 52. This is a conforming change that accompanies amendments to Chapter 52 of the Family Code (detailed below) that allows for the expansion of informal diversions to include non-traffic Class C misdemeanors.

SUBCHAPTER E-1. CRIMINAL PROCEDURE

Sec. 37.127. APPLICATION.

(a) This subchapter governs 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.

(b) For purposes of this subchapter, "child" has the meaning assigned by Article 45.058(h), Code of Criminal Procedure, who is also a student.

Sec. 37.128. INITIATION BY COMPLAINT.

(a) Notwithstanding, Article 14.06(b), Code of Criminal Procedure, a citation may not be issued to a child who is alleged to have committed an offense on property under the control and jurisdiction of a school district.

(b) In lieu of charging a child by issuing a citation, a complaint must be filed per Article 45.018 and Article 45.019, Code of Criminal Procedure and in accordance with the requirements of this subchapter.

(c) A court shall dismiss a complaint alleging an offense by a child that is not filed in compliance with this subchapter.

(d) Nothing in this subchapter prohibits a child from being taken into custody under Section 52.01, Family Code or from issuing a citation to a student who is not a child.

Sec. 37.129. PROGRESSIVE SANCTIONS.

(a) Prior to the filing of a complaint alleging an offense under Section 37.124, Section 37.126, or Section 42.01, Penal Code, progressive sanctions shall be imposed by a school district employee in a school district that commissions peace officers under Section 37.081. Progressive sanctions, under this subchapter shall entail, but are not limited to:

(1) a warning letter issued by the school to the child and the child's parent or guardian or a behavior contract signed by the student. A warning letter shall specifically state the problem behavior and the consequences if the child continues to engage in such behavior. If a school district employee opts to have the child sign a behavior contract rather than issuing a warning letter, the contract will be signed by the child, the child's parent or guardian, and an employee of the school where the child attends. The contract will include:

(a) a specific description of the problem behavior to be avoided;

(b) a period of time for which the contract will be in place, not to exceed 45 school days from the date the agreement is signed; and

(c) the penalties for further alleged offenses governed by this section, including additional disciplinary action or the filing of a complaint;

(2) school-based community service; and

(3) referral to counseling or community-based services aimed at addressing the child's behavioral problems;

(b) A referral under (a)(3) may include participation of a parent or guardian if necessary to address the child's behavioral problems.

(c) After proceeding under subsection (a), a complaint may be filed pursuant to Section 37.130.

Sec. 37.130. REQUISITIES OF A COMPLAINT.

(a) A complaint charging a child with the commission of an offense that is a Class C misdemeanor under this subchapter shall, in addition to Article 45.019, Code of Criminal Procedure, satisfy the following requisites:

(1) it must 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) it must be accompanied by a statement from a school employee stating:

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

(B) what progressive sanctions, if required under Section, 37.129 were imposed before the complaint was filed.

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

Sec. 37.131. PROSECUTING ATTORNEYS.

An attorney representing the State in a court with jurisdiction may adopt rules pertaining to the filing of a complaint under this subchapter 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.

Commentary: By imposing additional requirements to filing complaints for Class C misdemeanors alleged to have been committed on public school property by a child, Subchapter E-1 aims to balance the interests of school discipline with the interests of children (some of whom may be accused of misbehavior because of behavioral disorders). Subchapter E-1 would also curtail haphazard resort to judicial-imposed discipline and conserve limited judicial resources.

Ensuring that justice is done in cases involving children should take precedence over the utility and convenience that accompanies issuing citations to children who are students at Texas public schools.

There is precedent for limiting the use of citations. Texas law does not allow citations to be issued to corporations, associations, or people who are publicly intoxicated. Because public schools are authorized and expected by the public to handle misbehavior without immediately resorting to the criminal justice system, special rules governing the use of citations for fine-only offenses on school property are warranted.

The proposed Subchapter E-1 would prohibit the issuance of citations at public schools for non-traffic offenses. It would not preclude law enforcement from issuing a citation to a student who is not a child (i.e., a person legally an adult, 17 years of age or older). The proposal would neither affect a peace officer's authority to arrest a child nor preclude school officials or employees from filing charges in court.

In lieu of using citations, a system of enhanced complaints would be utilized. Under current law, some school-based offenses are already instigated by complaint (e.g. Failure to Attend School). However, the information in the complaint rarely provides ample information to assess the merit of the allegation. Enhanced complaints provide greater information to prosecutors, defense lawyers, and judges. As proposed, the complaint for all non-traffic, school based offenses would be accompanied by additional information that prosecutors and judges need to know in order to ensure fair and proper administration of justice for children.

Akin to provisions governing prosecutions in juvenile court, the proposed Subchapter E-1 would also give local prosecutors the discretion to implement filing guidelines and obtain information from schools. Some prosecutors have experienced opposition from schools when attempting to procure additional information before allowing a school-initiated complaint against a child to proceed. 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.

The greatest consumption of limited local judicial resources occurs in school districts where issuance of citations is common practice for the resolution of school discipline issues. Under this proposal, rather than immediately referring children to court, school districts who accuse a child of disrupting class, disrupting transportation, or engaging in disorderly conduct, would first attempt to address such misconduct attempt through progressive sanctions administered by the school.

FAMILY CODE

TITLE 3. JUVENILE JUSTICE CODE

CHAPTER 52. PROCEEDINGS BEFORE AND INCLUDING REFERRAL TO ~~JUVENILE~~ COURT

Sec. 52.03. DISPOSITION WITHOUT REFERRAL TO COURT.

(a) A law-enforcement officer authorized by this title to take a child into custody may dispose of the case of a child taken into custody or accused of a Class C misdemeanor, other than a traffic

offense, without referral to juvenile court or charging a child in a court of competent criminal jurisdiction, if:

(1) 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;

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

(3) 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 or accusation of criminal conduct was authorized.

(b) No disposition authorized by this section may involve:

(1) keeping the child in law-enforcement custody; or

(2) requiring periodic reporting of the child to a law-enforcement officer, law-enforcement agency, or other agency.

(c) A disposition authorized by this section may involve:

(1) referral of the child to an agency other than the juvenile court;

(2) a brief conference with the child and his parent, guardian, or custodian; or

(3) referral of the child and the child's parent, guardian, or custodian for services under Section 264.302.

(d) Statistics indicating the number and kind of dispositions made by a law-enforcement agency under the authority of this section shall be reported at least annually to the office or official designated by the juvenile board, as ordered by the board.

Sec. 52.031. FIRST OFFENDER PROGRAM.

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

- (1) conduct indicating a need for supervision; or
- (2) a Class C misdemeanor, other than a traffic offense; or
- ~~(2)~~ (3) delinquent conduct other than conduct that constitutes:

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

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

(b) Each juvenile board in the county in which a first offender program is established shall designate one or more law enforcement officers and agencies, which may be law enforcement agencies, to process a child under the first offender program.

(c) The disposition of a child under the first offender program may not take 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.

(d) A law enforcement officer taking a child into custody or accusing a child of an offense described in subsection (a)(2) may refer the child to the law enforcement officer or agency designated

under Subsection (b) for disposition under the first offender program and not refer the child to juvenile court or a court of competent criminal jurisdiction only if:

(1) the child has not previously been adjudicated as 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 accusing a child of an offense described in subsection (a)(2).

(e) A child referred for disposition under the first offender program may not be detained in law enforcement custody.

(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 or accusing a child of an offense described in subsection (a)(2);

(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 or a court of competent criminal jurisdiction.

(g) The child and the parent, guardian, or other custodian of the child must consent to participation by the child in the first offender program.

(h) Disposition under a first offender program may include:

(1) voluntary restitution by the child or the parent, guardian, or other custodian of the child to the victim of the conduct of the child;

(2) voluntary community service restitution by the child;

(3) educational, vocational training, counseling, or other rehabilitative services; and

(4) periodic reporting by the child to the law enforcement officer or agency to which the child has been referred.

(i) The case of a child who successfully completes the first offender program is closed and may not be referred to juvenile court or a court of competent criminal jurisdiction, 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 a court of competent criminal jurisdiction 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.

(k) A statement made by a child to a person giving advice or supervision or participating in the first offender program may not be used against the child in any proceeding under this title or any criminal proceeding.

(l) The law enforcement agency must report to the juvenile board in December of each year the following:

- (1) the last known address of the child, including the census tract;
- (2) the gender and ethnicity of the child referred to the program; and
- (3) the offense committed by the child.

Commentary: The existing language in Sections 52.03 and 52.031, Family Code, gives juvenile boards the discretion to create informal disposition guidelines that do not entail referral to court and the authority to implement First Offender Programs (i.e. diversions). When identical misconduct is alleged as conduct indicating a need for supervision (CINS), rather than a Class C misdemeanor, such diversions may be utilized. However, under current law there is no authorization for children accused of Class C misdemeanors to have their cases disposed in the same manner as a CINS case. This is unfair to children accused of non-traffic Class C misdemeanors that could have instead been alleged to have engaged in CINS. It limits the options of law enforcement and has created criminal dockets in municipal and justice courts involving children that are five times the size of those in juvenile court.

In conjunction with the previously described conforming change made to Section 37.081, Education Code, this language would simply give juvenile boards the authority, if they so choose, to include Class C offenses in local law enforcement efforts to dispose of cases without referral to courts and by use of First Offender programs. It would in no way mandate inclusion of non-traffic Class C misdemeanors for counties that have inadequate resources to expand existing initiatives and programs; it would authorize the expansion of existing efforts in a manner that can help conserve local judicial resources and increase parity in how children are treated by the legal system.

II. CAPACITY

Recommendations: The Legislature should amend applicable criminal laws to ensure that local courts are the last and not the first step in school discipline (i.e., Amend Section 8.07 of the Penal Code to create a rebuttable presumption that a child younger than age 15 is presumed to not have criminal intent to commit a Class C Misdemeanors - with exception for traffic offenses). This could be limited to Chapter 37, Education Code offenses but would make more sense to apply to all children.

The Legislature should amend offenses relating to Disruption of Class, Disruption of Transportation, and Disorderly Conduct so that age (not grade level) is a prima facie element of the offense.

Suggested Statutory Changes:

PENAL CODE

TITLE 2. GENERAL PRINCIPLES OF CRIMINAL RESPONSIBILITY CHAPTER 8. GENERAL DEFENSES TO CRIMINAL RESPONSIBILITY

Sec. 8.07. AGE AFFECTING CRIMINAL RESPONSIBILITY.

(a) A person may not be prosecuted for or convicted of any offense that the person committed when younger than 15 years of age except:

(1) perjury and aggravated perjury when it appears by proof that the person had sufficient discretion to understand the nature and obligation of an oath;

(2) a violation of a penal statute cognizable under Chapter 729, Transportation Code, except for conduct for which the person convicted may be sentenced to imprisonment or confinement in jail;

(3) a violation of a motor vehicle traffic ordinance of an incorporated city or town in this state;

(4) a misdemeanor punishable by fine only;

(5) a violation of a penal ordinance of a political subdivision;

(6) a violation of a penal statute that is, or is a lesser included offense of, a capital felony, an aggravated controlled substance felony, or a felony of the first degree for which the person is transferred to the court under Section 54.02, Family Code, for prosecution if the person committed the offense when 14 years of age or older; or

(7) a capital felony or an offense under Section 19.02 for which the person is transferred to the court under Section 54.02(j)(2)(A), Family Code.

(b) Unless the juvenile court waives jurisdiction under Section 54.02, Family Code, and certifies the individual for criminal prosecution or the juvenile court has previously waived jurisdiction under that section and certified the individual for criminal prosecution, a person may not be prosecuted for or convicted of any offense committed before reaching 17 years of age except an offense described by Subsections (a)(1)-(5).

(c) No person may, in any case, be punished by death for an offense committed while the person was younger than 18 years.

(d) Notwithstanding subsection (a), a person may not be prosecuted or convicted of any offense described by Subsections (a)(4)-(5) that the person committed when younger than 10 years of age.

(e) A person who is at least 10 years of age and younger than 15 years of age is presumed incapable of committing an offense described by Subsections (a)(4)-(5).

(1) The presumption under this Subsection may be refuted by proof of preponderance of the evidence presented by the prosecution to the court establishing that the child has sufficient capacity to understand the offense and to know that the conduct was wrong at the time it occurred.

(2) In order to refute the presumption under this Subsection, the prosecution is not required to prove that the child knew at the time of the offense:

(A) that the act was illegal, or

(B) the legal consequences of the offense.

Commentary: Under current law, the Legislature's classification of an offense as a Class C misdemeanor singularly determines whether a child is to be held criminally responsible for the his or her conduct. The penalty classification for an offense may be altogether irrelevant to whether a defendant is morally blameworthy. Currently, Section 8.07 of the Penal Code, a statutory formulation of the common law defense of infancy, expressly prohibits the 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 at the expense of local government and defies Texas' long-standing commitment to juvenile justice being distinct from criminal justice.

This amendment expressly clarifies part of current law: children under age 10 are not to be prosecuted or convicted of fine-only offenses. It also creates a presumption that children between ages 10-14 are presumed not criminally responsible for misdemeanors punishable by fine only or a violation 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. Notably, 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 the act was illegal at the time it occurred or understood the legal consequences of the offense.

Sec. 8.071 CHILD WITH MENTAL ILLNESS, DISABILITY, LACK OF CAPACITY

(a) Upon its own motion, or a motion by the State, the defendant, or a person standing in parental relation, a court with jurisdiction of an offense described by Section 8.07 (a)(4)-(5) shall determine whether probable cause exists to believe that a child:

(1) has a mental illness or developmental disability;

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

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

(b) If the court determines that probable cause exists under Subsection (a), after providing notice to the State, the court shall dismiss the complaint;

(c) A dismissal of a complaint under Subsection (b) may be appealed per Article 44.01, Code of Criminal Procedure;

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

Commentary: Under current law, no procedure exists for criminal courts that adjudicate children of fine-only offenses that address mental illness, disability, or lack of capacity. In the event a judge of a criminal court has probable cause to believe that a child has a mental illness, disability, or lack of capacity, the court, after giving notice to the State, would have the discretion to dismiss the complaint. The prosecution would have the right to appeal such determinations. This scope of this proposed amendment is limited to Class C misdemeanors (other than traffic offenses).

FAMILY CODE
TITLE 3. JUVENILE JUSTICE CODE
CHAPTER 51. GENERAL PROVISIONS

Sec. 51.08. TRANSFER FROM CRIMINAL COURT.

(a) If the defendant in a criminal proceeding is a child who is charged with an offense other than perjury, a traffic offense, a misdemeanor punishable by fine only, or a violation of a penal ordinance of a political subdivision, unless the child has been transferred to criminal court under Section 54.02, the court exercising criminal jurisdiction shall transfer the case to the juvenile court,

together with a copy of the accusatory pleading and other papers, documents, and transcripts of testimony relating to the case, and shall order that the child be taken to the place of detention designated by the juvenile court, or shall release the child to the custody of the child's parent, guardian, or custodian, to be brought before the juvenile court at a time designated by that court.

(b) A court in which there is pending a complaint against a child alleging a violation of a misdemeanor offense punishable by fine only other than a traffic offense or a violation of a penal ordinance of a political subdivision other than a traffic offense:

(1) except as provided by Subsection (d), shall waive its original jurisdiction and refer the child to juvenile court if:

(A) the complaint pending against the child alleges a violation of a misdemeanor offense under Section 43.261, Penal Code, that is punishable by fine only; or

(B) the child has previously been convicted of:

(i) two or more misdemeanors punishable by fine only other than a traffic offense;

(ii) two or more violations of a penal ordinance of a political subdivision other than a traffic offense; or

(iii) one or more of each of the types of misdemeanors described in Subparagraph (i) or (ii); and

(2) may waive its original jurisdiction and refer the child to juvenile court if the child:

(A) has not previously been convicted of a misdemeanor punishable by fine only other than a traffic offense or a violation of a penal ordinance of a political subdivision other than a traffic offense; or

(B) has previously been convicted of fewer than two misdemeanors punishable by fine only other than a traffic offense or two violations of a penal ordinance of a political subdivision other than a traffic offense.

(c) A court in which there is pending a complaint against a child alleging a violation of a misdemeanor offense punishable by fine only other than a traffic offense or a violation of a penal ordinance of a political subdivision other than a traffic offense shall notify the juvenile court of the county in which the court is located of the pending complaint and shall furnish to the juvenile court a copy of the final disposition of any matter for which the court does not waive its original jurisdiction under Subsection (b).

(d) A court that has implemented a juvenile case manager program under Article 45.056, Code of Criminal Procedure, may, but is not required to, waive its original jurisdiction under Subsection (b)(1)(B).

(e) A juvenile court may not refuse to accept the transfer of a case brought under Section 25.094, Education Code, for a child described by Subsection (b)(1) if a prosecuting attorney for the court determines under Section 53.012 that the case is legally sufficient under Section 53.01 for adjudication in juvenile court.

(f) A court in which there is a pending complaint against a child alleging a violation of a misdemeanor offense punishable by fine only other than a traffic offense shall waive its original jurisdiction and refer the child to juvenile court if the court has previously dismissed a complaint against the child under Section 8.071, Penal Code.

Commentary: When a court with jurisdiction of fine-only misdemeanor has previously concluded that a child has a mental illness, disability, lack of capacity, or is otherwise unfit to proceed (per proposed Section 8.071, Penal Code) similar subsequent cases should not continue to be adjudicated in criminal court. This amendment to Section 51.08, Family Code would mandate that after a court has dismissed a complaint per Section 8.071 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).

EDUCATION CODE
TITLE 2. PUBLIC EDUCATION
SUBTITLE G. SAFE SCHOOLS
CHAPTER 37. DISCIPLINE; LAW AND ORDER

Sec. 37.124. DISRUPTION OF CLASSES.

(a) A person commits an offense if the person, on school property or on public property within 500 feet of school property, alone or in concert with others, intentionally disrupts the conduct of classes or other school activities.

(b) An offense under this section is a Class C misdemeanor.

(c) In this section:

(1) "Disrupting the conduct of classes or other school activities" includes:

(A) emitting noise of an intensity that prevents or hinders classroom instruction;

(B) enticing or attempting to entice a student away from a class or other school activity that the student is required to attend;

(C) preventing or attempting to prevent a student from attending a class or other school activity that the student is required to attend; and

(D) entering a classroom without the consent of either the principal or the teacher and, through either acts of misconduct or the use of loud or profane language, disrupting class activities.

(2) "Public property" includes a street, highway, alley, public park, or sidewalk.

(3) "School property" includes a public school campus or school grounds on which a public school is located and any grounds or buildings used by a school for an assembly or other school-sponsored activity.

(d) It is an exception to the application of Subsection (a) that, at the time the person engaged in conduct prohibited under that subsection, the person was a student ~~in the sixth grade or a lower grade level~~ younger than 12 years of age.

Sec. 37.126. DISRUPTION OF TRANSPORTATION.

(a) Except as provided by Section 37.125, a person commits an offense if the person intentionally disrupts, prevents, or interferes with the lawful transportation of children:

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

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

(b) An offense under this section is a Class C misdemeanor.

(c) It is an exception to the application of Subsection (a)(1) that, at the time the person engaged in conduct prohibited under that subdivision, the person was a student ~~in the sixth grade or a lower grade level~~ younger than 12 years of age.

PENAL CODE

TITLE 9. OFFENSES AGAINST PUBLIC ORDER AND DECENCY CHAPTER 42. DISORDERLY CONDUCT AND RELATED OFFENSES

Sec. 42.01. DISORDERLY CONDUCT.

(a) A person commits an offense if he intentionally or knowingly:

(1) uses abusive, indecent, profane, or vulgar language in a public place, and the language by its very utterance tends to incite an immediate breach of the peace;

(2) makes an offensive gesture or display in a public place, and the gesture or display tends to incite an immediate breach of the peace;

(3) creates, by chemical means, a noxious and unreasonable odor in a public place;

(4) abuses or threatens a person in a public place in an obviously offensive manner;

(5) makes unreasonable noise in a public place other than a sport shooting range, as defined by Section 250.001, Local Government Code, or in or near a private residence that he has no right to occupy;

(6) fights with another in a public place;

(7) discharges a firearm in a public place other than a public road or a sport shooting range, as defined by Section 250.001, Local Government Code;

(8) displays a firearm or other deadly weapon in a public place in a manner calculated to alarm;

(9) discharges a firearm on or across a public road;

(10) exposes his anus or genitals in a public place and is reckless about whether another may be present who will be offended or alarmed by his act; or

(11) for a lewd or unlawful purpose:

(A) enters on the property of another and looks into a dwelling on the property through any window or other opening in the dwelling;

(B) while on the premises of a hotel or comparable establishment, looks into a guest room not the person's own through a window or other opening in the room; or

(C) while on the premises of a public place, looks into an area such as a restroom or shower stall or changing or dressing room that is designed to provide privacy to a person using the area.

(b) It is a defense to prosecution under Subsection (a)(4) that the actor had significant provocation for his abusive or threatening conduct.

(c) For purposes of this section:

(1) an act is deemed to occur in a public place or near a private residence if it produces its offensive or proscribed consequences in the public place or near a private residence; and

(2) a noise is presumed to be unreasonable if the noise exceeds a decibel level of 85 after the person making the noise receives notice from a magistrate or peace officer that the noise is a public nuisance.

(d) An offense under this section is a Class C misdemeanor unless committed under Subsection (a)(7) or (a)(8), in which event it is a Class B misdemeanor.

(e) It is a defense to prosecution for an offense under Subsection (a)(7) or (9) that the person who discharged the firearm had a reasonable fear of bodily injury to the person or to another by a dangerous wild animal as defined by Section 822.101, Health and Safety Code.

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

Commentary: 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 sixth grade or a lower grade. Under Section 2.02 of the Penal Code, when an exception to a criminal offense is created, the prosecuting attorney must negate the existence of an exception in the accusation charging a commission of the offense and prove beyond a reasonable doubt that the defendant or defendant's conduct does not fall within the exception. The purpose of the amendment in 2011 was to prevent young children from being subjected to criminal prosecution for disruptive and disorderly behavior. However, under current law, some sixth graders as young as ten years of age may still be prosecuted. Furthermore, there appears to be consensus among law enforcement and prosecutors that it is easier to prove age than grade level. This amendment is a clarification of the changes to the respective laws made in 2011.

III. PARITY

Recommendation: *The Legislature should amend existing criminal law and procedures to increase parity between “criminal juvenile justice in local trial courts” and “civil juvenile justice in juvenile court and juvenile probation.”*

Suggested Statutory Changes:

A. CONFIDENTIALITY

Code of Criminal Procedure, Art. 44.2811. RECORDS RELATING TO CHILDREN ~~CONVICTED~~ ACCUSED OF FINE-ONLY MISDEMEANORS. All records and files and information stored by electronic means or otherwise, from which a record or file could be generated, relating to a child ~~who is convicted of and has satisfied the judgment for a fine only misdemeanor offense other than a traffic offense are confidential and~~ may not be disclosed to the public except as provided under Article 45.0217(b). ~~All records and files and information stored by electronic means or otherwise, from which a record or file could be generated, relating to a child whose conviction for a fine only~~

~~misdemeanor other than a traffic offense is affirmed are confidential upon satisfaction of the judgment and may not be disclosed to the public except as provided under Article 45.0217(b).~~

Code of Criminal Procedure, Art. 45.0217. CONFIDENTIAL RECORDS RELATED TO THE CONVICTION OF A CHILD.

(a) Except as provided by Article 15.27 and Subsection (b), all records and files, including those held by law enforcement, and information stored by electronic means or otherwise, from which a record or file could be generated, relating to a child whose complaint has been dismissed by a court upon deferral of final disposition or who is convicted of and has satisfied the judgment for a fine-only misdemeanor offense, other than a traffic offense, are confidential and may not be disclosed to the public.

(b) Information subject to Subsection (a) may be open to inspection only by:

- (1) judges or court staff;
- (2) a criminal justice agency for a criminal justice purpose, as those terms are defined by Section 411.082, Government Code;
- (3) the Department of Public Safety;
- (4) an attorney for a party to the proceeding;
- (5) the child defendant; or
- (5) the child defendant; or
- (6) the defendant's parent, guardian, or managing conservator.

Family Code, Sec. 58.00711. RECORDS RELATING TO CHILDREN CONVICTED OF FINE-ONLY MISDEMEANORS. Except as provided by Article 45.0217(b), Code of Criminal Procedure, all records and files and information stored by electronic means or otherwise, from which a record or file could be generated, relating to a child whose complaint has been dismissed by a court upon deferral of final disposition or who is convicted of and has satisfied the judgment for a fine-only misdemeanor offense, other than a traffic offense, are confidential and may not be disclosed to the public.

Commentary: Children accused of non-traffic, Class C misdemeanors (e.g., assault, theft, disorderly conduct, drug paraphernalia, etc.) and adjudicated in criminal courts potentially face long term consequences as a result of immature adolescent decision-making. Meanwhile, children referred to juvenile court for the exact same behavior are protected by confidentiality laws.

In 2009, in an effort to provide some semblance of parity between the civil and criminal juvenile justice systems, the Legislature passed S.B. 1056. The bill added Subsection (f-1) to Section 411.081 of the Government Code, requiring criminal courts to automatically issue a non-disclosure order upon the conviction of a child for a fine-only misdemeanor offense. While the intentions of the new law were applauded, non-disclosure was plagued with deficiencies that rendered it ineffective. By 2011, it was clear that the system for processing non-disclosure orders (via the Texas Department of Public

Safety) was ill-equipped to handle the large volume of convictions involving children that occur in municipal and justice courts.

In 2011, non-disclosure laws pertaining to children convicted of Class C misdemeanors were repealed and replaced with laws providing children with conditional confidentiality (except for traffic offense convictions). The 2011 shift from non-disclosure to confidentiality struck the correct balance between “the public’s right to know” in criminal cases and privacy for children convicted of certain Class C misdemeanors. The 2011 amendments, with slight modification, can provide confidentiality to a greater number of children adjudicated in municipal and justice courts without running afoul of the First Amendment or the public’s expectation of transparency in all criminal cases. Currently, the law only allows confidentiality in instances where children are “convicted” of certain Class C misdemeanor offenses and satisfy the judgment. There are no similar provisions for children placed on deferred disposition, other types of deferred in Chapter 45, or deferred adjudication upon the dismissal of a complaint following completion of probation.

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. Note: If Articles 44.2811 and 45.0217, Code of Criminal Procedure, and Section 58.00711, Family Code, are amended it is critically important that the enactment clause specify that the amendments apply to a complaint dismissed by a court upon deferral or suspension of final disposition *before*, on, or after the effective date of this enactment.

B. FINES

CODE OF CRIMINAL PROCEDURE TITLE 1. CODE OF CRIMINAL PROCEDURE CHAPTER 42. JUDGMENT AND SENTENCE

Art. 42.15. FINES AND COSTS. (a) When the defendant is fined, the judgment shall be that the defendant pay the amount of the fine and all costs to the state.

(b) Subject to Subsection (c), 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.

(c) When imposing a fine and costs in a misdemeanor case, if the court determines that the defendant is unable to immediately pay the fine and costs, the court shall allow the defendant to pay the fine and costs in specified portions at designated intervals.

(d) A defendant who is a child shall elect at the time of conviction to either discharge the fine and courts costs:

- (1) by performing community service pursuant to Article 43.09(h); or
- (2) by making payments pursuant to Subsection (b).

(d-1) For purposes of this article, “conviction” has the meaning provided by Section 133.101, Local Government Code. “Child” has the meaning assigned by Article 45.058(h).

(d-2) The election made under Subsection (d) shall be made in writing and signed by the defendant and, if present, the defendant's parent, guardian, or managing conservator. The election shall be maintained as a record of the court and a copy shall be provided to the defendant.

TITLE 1. CODE OF CRIMINAL PROCEDURE
CHAPTER 43. EXECUTION OF JUDGMENT

Code of Criminal Procedure, Art. 43.091. WAIVER OF PAYMENT OF FINES AND COSTS FOR INDIGENT DEFENDANTS AND CHILDREN.

(a) A court may waive payment of a fine or cost imposed on a defendant who defaults in payment if the court determines that:

(1) the defendant is indigent; or a child at the time of the offense; and

(2) each alternative method of discharging the fine or cost under Article 43.09, or as otherwise authorized by this chapter, would impose an undue hardship on the defendant.

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

TITLE 1. CODE OF CRIMINAL PROCEDURE
CHAPTER 45. JUSTICE AND MUNICIPAL COURTS
SUBCHAPTER B. PROCEDURES IN JUSTICE AND MUNICIPAL COURTS

Art. 45.041. JUDGMENT.

(a) The judgment and sentence, in case of conviction in a criminal action before a justice of the peace or municipal court judge, shall be that the defendant pays the amount of the fine and costs to the state.

(b) Subject to Subsections (b-2) and (b-3), the justice or judge may direct the defendant:

(1) to pay:

(A) the entire fine and costs when sentence is pronounced;

(B) the entire fine and costs at some later date; or

(C) a specified portion of the fine and costs at designated intervals;

(2) if applicable, to make restitution to any victim of the offense; and

(3) to satisfy any other sanction authorized by law.

(b-1) Restitution made under Subsection (b)(2) may not exceed \$5,000 for an offense under Section 32.41, Penal Code.

(b-2) When imposing a fine and costs, if the justice or judge determines that the defendant is unable to immediately pay the fine and costs, the justice or judge shall allow the defendant to pay the fine and costs in specified portions at designated intervals.

(b-3) A defendant who is a child shall elect at the time of conviction to either discharge the fine and costs:

(1) by performing community service as authorized under this chapter; or

(2) by making payments pursuant to Subsection (b).

(b-4) The election made under Subsection (b-3) shall be made in writing and signed by the defendant and, if present, the defendant’s parent, guardian, or managing conservator. The election shall be maintained as a record of the court and a copy shall be provided to the defendant.

(c) The justice or judge shall credit the defendant for time served in jail as provided by Article 42.03. The credit shall be applied to the amount of the fine and costs at the rate provided by Article 45.048.

(d) All judgments, sentences, and final orders of the justice or judge shall be rendered in open court.

(e) For purposes of this article, “conviction” has the meaning provided by Section 133.101, Local Government Code. “Child” has the meaning assigned by Article 45.058(h).

Code of Criminal Procedure, Art. 45.0491. **WAIVER OF PAYMENT OF FINES AND COSTS FOR INDIGENT DEFENDANTS AND CHILDREN.**

(a) A municipal court, regardless of whether the court is a court of record, or a justice court may waive payment of a fine or costs imposed on a defendant who defaults in payment if the court determines that:

(1) the defendant is indigent, or a child at the time of the offense; and

(2) discharging the fine and costs under Article 45.049, or as otherwise authorized by this chapter, would impose an undue hardship on the defendant.

(b) In this article, “child” has the meaning assigned by Article 45.058(h).

Commentary: It is a fundamental tenet of criminal law: imposed fines and costs in a criminal case are solely the burden of the defendant. Thus, when a child is a defendant, and ordered to pay fines and costs, the child (not their parents or legal guardians) is obligated to satisfy the judgment.

Fines are not imposed in Texas 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, there is no law expressly governing the imposition of fines on children.

The best way to balance youth accountability with fairness to children is by expressly granting criminal courts more latitude in how fines and costs can be discharged. In 2011, the Legislature made substantial improvements by passing legislation authorizing judges to allow children to discharge fines and costs by community service and tutoring and mandating that installment payments be afforded to all defendants who cannot pay the fines and costs when sentence is pronounced. During the latter part of the 2011 Legislative Session, the Texas Municipal Courts Association (TMCA) suggested that S.B. 1489 be amended to give youthful defendants the choice to elect between paying the fines and costs and discharging them by means of community service. If the facts and circumstances warrant it, Texas judges should also have the discretion to waive fines and court costs accrued by defendants during childhood. In 2011, TMCA proposed amendments to Articles 43.091 and 45.0491 of the Code of Criminal Procedure (Waiver of Payment of Fines and Costs for Indigent Defendants) that would have given courts that hear Class C misdemeanors the express authority to waive the payment of fines and costs in cases where the defendant was a child at the time of conviction and discharging the judgment through community service would impose an undue hardship. There were concerns at the time that such broad reaching changes exceeded the limited scope of S.B. 1489. In 2013, the Legislature should consider passing these proposals into law.