

Texas Judicial Council
 Juvenile Justice Committee
 Comparison of Current and Proposed Statutory Laws

Under Current Law	Under Proposed Law
1. Juvenile case managers <u>are currently allowed and</u> 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. 1) As amended, Art. 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.
2. 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. 3-4) 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.
3. 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. 4) 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.
4. 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. 5) 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 the proposed Sec. 37.127, 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.
5. Under current law, peace officers routinely instigate criminal cases against children by using citations on school grounds.	(p. 6) Under the proposed Section 37.128, Education Code, peace officers would no longer be allowed to initiate school-based cases by citation. Rather, cases may be instigated by complaint.
6. 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	(p. 6) Under the proposed Section 37.129, Education Code, school districts that employ law enforcement would be required to first utilize progressive sanctions before filing a complaint for three specific offenses: (1)

<p>grounds in school districts that employ police officers report that their juvenile dockets are ballooning <u>with most of those cases involving disruption of class, and transportation and disorderly conduct</u> and that such cases consume significant amounts of judicial resources.</p>	<p>disruption of class; (2) disruption of transportation; and (3) disorderly conduct.</p>
<p>7. 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>(p.7) The proposed Section 37.130, Education Code, addresses the deficiencies in current law to ensure that prosecutors, defense attorneys, and judges have information necessary to ensure the interests of justice.</p>
<p>8. 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 adjudicate children of Class C misdemeanors.</p>	<p>(p. 7) The proposed Section 37.131, Education Code, expressly gives criminal prosecutors the discretion 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>9. 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>(pp. 8-11) As amended, Sections 52.03 and 52.031, Family Code, would be 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 while diverting cases that otherwise would require formal adjudication by a criminal court and consume limited local criminal court resources.</p>
<p>10. 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>(p. 11) The proposed amendment to Section 8.07, Penal Code, clarifies 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 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 the act was illegal at the time it occurred nor that the child understood the legal consequences of the offense. 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>11. Current law does not provide direction to criminal court judges who encounter children accused of Class C misdemeanors who are suspected of having mental illness or developmental disabilities, who lack the capacity to understand the proceedings in criminal court or assist in their own defense, or who are otherwise unfit to proceed.</p>	<p>(p. 13) This amendment, creating Section 8.071, Penal Code, dovetails with existing provisions in the Juvenile Justice Code to assure that children accused of illegal behavior in criminal courts (i.e., Class C misdemeanors, excluding traffic offenses) are afforded protection equal to children accused of the same conduct in juvenile court (i.e., conduct indicating a need for supervision). 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 would be required to waive jurisdiction so that the matter may be determined by a juvenile court per Chapter 55 of the Family Code.</p>
<p>12. 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 lower. This was done to reduce the number of children being criminally adjudicated. However, under current law, some sixth graders as young as ten years of age may still be prosecuted.</p>	<p>(pp. 13-16) The amendments to Disruption of Class, Disruption of Transportation, and Disorderly Conduct are clarifications of the changes to the respective laws made in 2011 to give full effect to the Legislature's intent. Law enforcement and prosecutors agree that it is easier to prove age than grade level.</p>
<p>13. Under current law, children's records in the juvenile justice system are confidential. In 2011, conditional confidentiality 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>(pp. 16-17) The proposed amendments to Articles 44.2811 and 45.0217, CCP, and Section 58.00711, Family Code, 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>14. 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.</p> <p>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>(pp. 18-20) The amendments to Art. 42.15, CCP (applicable in county courts) and Art. 45.041, CCP (applicable in municipal and j.p. 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.</p> <p>Amendments to Art. 43.091, CCP (applicable in county courts) and Art. 45.0491, CCP (applicable in municipal and j.p. courts) provide more leeway to criminal judges in dealing with fines imposed on children. 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>