



TEXAS CRIMINAL
JUSTICE COALITION

83rd Legislative Session

School Ticketing Implementation Guide



Texas
APPLESEED

Recent Changes in Law Require Texas Public Schools to Reform and Reevaluate School Discipline

State laws passed in the mid-1990s have required administrators to adopt a “zero-tolerance” approach to school discipline, resulting in ineffective, punitive practices and criminal responses to relatively minor student misbehavior. In fact, over the past two decades, millions of Texas students have been negatively impacted by school discipline policies that emphasize the use of citations, suspensions, alternative placements, and expulsions.¹ This approach has caused a massive influx of youth into the state’s juvenile justice system and criminal courts, especially among minority students and students with special education needs.²

Fortunately for Texas children, lawmakers have begun to amend these “zero tolerance” policies. Recent legislation passed during the 83rd (R) Legislative Session addresses this phenomenon, more commonly known as Texas’ “school-to-prison pipeline.”

“Even though I felt the reason I got written up was nothing big, maybe I interrupted a teacher or got up without permission, it just made things worse...it gets hard to keep things good at home and at school, and it felt like I had no way out.”

~ Kayla Quintanilla,
Youth Advocate – Del Valle High School

What bills were passed?

S.B. 393 (West, Hinojosa, and Whitmire) [SP: Lewis and Thompson, S.]: *Relating to the criminal procedures related to children who commit certain Class C misdemeanors.*

S.B. 1114 (Whitmire and West) [SP: Herrero]: *Relating to the prosecution of certain misdemeanor offenses committed by children and to school district law enforcement.*

What do these bills intend to do?

Together, these bills intend to dismantle the school-to-prison pipeline by changing the way schools and law enforcement handle student misbehavior that could be considered a low-level misdemeanor. Specifically, the bills amend the state’s Code of Criminal Procedure, Education Code, Family Code, and Penal Code to prohibit the issuance of tickets for Class C misdemeanors committed by students on school property (e.g., using foul language, making unreasonable noises, or chewing gum in school). Hopefully, they will diminish the negative consequences associated with current school disciplinary practices.

What can you do to help implement these bills?

School Law Enforcement

As gatekeepers of the justice system, the role you play in the implementation of these bills is crucial. Changes have been made to existing law that impact how you should respond to certain behaviors of students while in school, during school transport, and at school events. These changes focus primarily on non-traffic Class C misdemeanors, the least serious class of criminal offenses; law enforcement’s ability to address more serious crimes remains unchanged by the legislation. Remember, it is your responsibility to address student criminal

behavior only AFTER school officials have exhausted all other student discipline options.

Responses No Longer Permitted

The following types of responses are no longer permitted pursuant to these new laws:

- Issuing a citation for a non-traffic Class C misdemeanor committed by a student who is under the age of 17 on school property.
- Criminally charging a student for disruption of class and disruption of transportation on the student's own campus.
- Issuing an arrest warrant for a student who has committed a Class C misdemeanor listed in the Education Code, prior to his or her 17th birthday.
- Charging a student, who is under the age of 12, with certain acts of disorderly conduct committed on school grounds.³

New Procedures to Follow

To send a student to court for a Class C misdemeanor now requires the filing of a criminal complaint, rather than a citation. The complaint filed with the criminal or juvenile court for a student's misconduct must be supplemented with the following documents:

- The offense report;
- A statement by the witness to the conduct;
- A statement by the victim, if any; and
- A statement from a school employee stating:
 - a) whether the child is eligible to receive special education services; and
 - b) the graduated sanctions imposed on the student prior to the filing of the complaint, if the school district has adopted such a system (*see below*).

The complaint must also be sworn to by a person with knowledge of the underlying facts of the alleged offense. Finally, the complaint must comply with all the traditional requirements of a criminal complaint found in the Code of Criminal Procedure. (**Note:** Under S.B. 393, prosecutors have been given the discretion to set additional rules as to how a complaint should be filed, so the requirements above may be supplemented by requirements from a particular prosecutor's office in the future.)

Please also note, the new legislation provides that students subject to a complaint for a Class C misdemeanor (other than a traffic offense) may now also be referred to a first-offender's program prior to a complaint being filed with a criminal or juvenile court, if such a program exists. Alternatively, the alleged offense can be disposed of through other non-court options provided in the Family Code, such as a conference with parents or a referral to another agency.

Courts

The new law requires dismissal of a complaint for the offense of failure to attend school if the complaint does not comply with existing procedural requirements for such complaints, i.e., the complaint must (1) specify whether the student is eligible for or currently receiving special education services, and (2) be accompanied by a statement certifying that the school has taken preventive measures and failed to address the student's truancy.

Courts must also dismiss a complaint for a fine-only misdemeanor, if — on the motion of the defendant, his or her parent or guardian, the school, or the court on its own motion — the court determines that the child (including a child with a mental illness or developmental disability) lacks the capacity to understand the proceeding or appreciate the wrongfulness of his or her acts. If a court has previously dismissed a complaint on these grounds, a court considering a subsequent fine-only misdemeanor is required to refer the child to juvenile court.

A child under the age of 12 can no longer be prosecuted for certain acts of disorderly conduct (e.g., use of profanity, making offensive gestures, or making unreasonable noises), if the conduct occurred on school grounds. Further, a child between the ages of 10 and 15 is presumed to be incapable of committing a fine-only misdemeanor (other than a juvenile curfew order) unless the prosecutor affirmatively proves by a preponderance of the evidence that the child had sufficient capacity to understand that the conduct engaged in was wrong at the time.

The new law also clarifies that a court may discharge a fine and costs accrued by a child for a Class C misdemeanor in exchange for the child performing community service, or if the child receives tutoring. Fines or costs may also be dismissed if a judge finds they would impose a financial hardship on the child. Further, case managers employed by the court may now provide prevention and intervention services for children prior to a case being filed. Lastly, courts are now responsible for ensuring the confidentiality of a juvenile's record, if he or she has received a dismissal after deferred disposition for a fine-only, non-traffic misdemeanor.

School District Administrators

One of the main objectives of these bills is to begin decriminalizing adolescent behavior and keep the response to student misconduct in schools and out of courts. Toward that goal, the new laws suggest that school districts implement a system of graduated sanctions to address student misbehavior.

Graduated Sanctions

We strongly encourage you to adopt a graduated-sanctions system in your school district. By doing so, you can ensure that the schools within your district have made an effort to address misconduct in the school setting prior to filing a complaint with a criminal or juvenile court for a student's misconduct.

The graduated sanctions that a system might include are:

- A warning letter;
- A behavioral contract;
- School-based community service; and
- A referral to counseling, community-based service, or other in-school or out-of-school services that are appropriate for addressing the student's misbehavior.

Principals, Vice Principals, and Other School Administrators

As an administrator, it is your responsibility to inform your staff about the changes made by S.B. 393 and S.B. 1114. The legislation does not limit in-school disciplinary procedures, so you still have those tools at your disposal. The legislation does attempt to curb the number of students being sent to court for minor misbehavior by eliminating ticketing for Class C misdemeanor offenses. If you still choose to send a student to court for misconduct or failing to attend school, you must file a complaint and be certain that the requirements stated above have been met before moving forward with the complaint.

Remember, it is your responsibility to carry out discipline for student misconduct, and school law enforcement should only be used to address criminal behavior when all other student discipline options have been exhausted. Also, we ask that you encourage your school district administrators to adopt a graduated-sanctions system for your district or request permission to implement your own.

Teachers

Students can no longer receive citations for their misbehavior, and they cannot be referred to a criminal or juvenile court for disruption of class or disruption of transportation. If you view these conditions as a hindrance to managing your classroom, we strongly encourage you to speak to your principal about implementing a graduated-sanctions system on your campus.

Parents, Families, and Legal Guardians

In the event that a complaint is filed against your child for his or her misbehavior, be aware that there is a formal process whereby supplemental documentation (e.g., an offense report and witness statement) must be submitted for your child's case to move forward in court. If you have cause to believe that the documentation outlined above has not been submitted to the court, please let the court know and ask that the case be delayed until the requirements are met. Additionally, if your child is referred to court for failing to attend school, make certain that the referral in question indicates whether or not your child qualifies for or is receiving special education services, and ensure it includes the school's documented efforts in addressing your child's truancy. Parents can also ask for a court hearing in a Class C misdemeanor case involving their child to make a ruling on whether the child has a mental illness or developmental disability that affects the child's culpability.

It is also important to remain open to ongoing conversations about your child's school disciplinary practices. By becoming familiar with the system in place at your child's school, you will be better prepared to respond to any complaints filed against your child. If there is not a graduated-sanctions system in place at your child's school, talk to your child's principal about implementing such a system.

Students

Although you can no longer be issued a complaint for disruption of class or disruption of transportation, be aware that a complaint can still be filed against you if you are over the age of 12 and engage in behavior that rises to the level of a Class C misdemeanor. This means that behaviors such as theft, disorderly conduct, and fighting can still land you in court. If a judge makes a determination that you are guilty of any of the above, you are subject to conviction; this conviction can cost up to \$500 in fines, plus court costs, and will remain on your adult criminal record until you are able to get it removed.

We also encourage you to speak to your parents about your school's current disciplinary system. If your school does not use a graduated-sanctions system, talk to your parents and school administrators about what it would look like to implement such a system at your school.

¹Texas Appleseed, *Texas' School-to-Prison Pipeline: School Expulsion, The Path from Lockout to Dropout*, April 2010.

²The Council of State Governments, *Breaking Schools' Rules: A Statewide Study of How School Discipline Relates to Students' Success and Juvenile Involvement*, July 2011.

³Children who are under the age of 12 can no longer be charged with certain acts of disorderly conduct, if that conduct was committed on school grounds. These acts are delineated in the Texas Penal Code § 42.01 (a), (1), (2), (3), (4), (5) and (6).