

Putting the Pieces Together

Police in your town observe a vehicle run through a stop sign before making a right hand turn. Officers turn on their lights and siren and turn to follow the car. They catch up as the driver is exiting the vehicle and approaching her front door.

When the woman opens her front door, more than a dozen cats run out the door to greet her. The officers step out of the car and call out to the woman. When she sees them, she becomes noticeably alarmed. They ask to speak to her about her driving. As they speak with her about running the red light, they inform her that they will be ticketing her for running the stop sign.

They can't help but notice all of the cats in and around her house. They talk to her and find out she has more than 50 cats. They also decide to cite her for violating a city ordinance prohibiting more than 3 animals in one residence.

Question 1

Upon hearing of the charges regarding her animals, the woman becomes distraught. She refuses to sign her citation. The police, in light of this fact, decide to arrest her and take her to the city jail. Arresting her in this fashion is allowable under the law.

1. True
2. False

Question 2

The officers take her to jail and then file formal complaints for both charges, swearing to them before the municipal court clerk.

May the court clerk administer the oath the affiant officers?

1. Yes
2. No

You, as a magistrate, are called to magistrate the woman, Martha Manycats. You arrive at the jail, determine that there was probable cause. You must now give her the necessary 15.17 warnings.

**Find a partner and practice giving the 15.17 warning.
Fill out the Magistrate's Warning form that is provided.**

Question 3

You decide to release her without bail and you order her to appear at a later date for arraignment in municipal court.

Releasing her without bond is appropriate under the law in this case.

1. True
2. False

What else could you have done here?

-

Locate the Release with order to appear form and fill it out.

Martha appears at the appropriate time according to your release. She enters pleas of guilty and requests to take DSC for running the stop sign and deferred disposition for the animal ordinances charge. She is eligible for DSC, and you grant it.

You decide to grant her deferred disposition on the ordinance, you set the fine at \$200, and you place 2 conditions on her.

What are some conditions you might consider?

You settle on the following conditions for a 90 day deferred:

1. She must _____.
2. She must _____.

Question 4

Are these conditions permissible under the law?

1. Yes
2. No

Question 5

After 90 days, Martha has satisfactorily completed her DSC and has submitted all necessary documents. You dismiss the charge for running stop sign.

However, she has not submitted any proof that she has completed the terms of her deferred disposition. What should be your next step?

1. Martha has defaulted, and you should enter a conviction against her.
2. The matter should be set for a show cause hearing.

Locate the Notice to Show Cause form. Take a moment to fill it out.

What should be done if Martha shows good cause why her deferred disposition should not be revoked?

If Martha does not show good cause why she has not satisfied the terms of her deferred, what are your options?

Question 6

What is the proper instrument to Procure Custody PRIOR TO formal charging?

- 1. Arrest Warrant
- 2. Capias
- 3. Capias Pro Fine

Question 7

What is the proper instrument To Procure Custody AFTER TO Formal Charging BUT PRIOR TO Judgment?

- 1. Arrest Warrant
- 2. Capias
- 3. Capias Pro Fine

Question 8

What is the proper instrument to Enforce Judgment for UNPAID Fines and/or Costs?

- 1. Arrest Warrant
- 2. Capias
- 3. Capias Pro Fine

Question 9

Johnny Teenager (16) is cited for violating the city curfew ordinance. You schedule him for an initial appearance, and the court summons the parent to be present for the appearance. Johnny shows, but the parent does not. You set him for another appearance date 3 days later, send another summons, and attempt to locate the parent without luck. Johnny shows up again. May you proceed without the parent?

- 1. Yes
- 2. No

Question 10

Pre-Trial

In a pre-trial hearing, Johnny (pro se) alleges in a motion that the ordinance denies him equal protection in violation of the Constitution. You agree, and therefore dismissal at this pre-trial hearing is the appropriate remedy.

1. True
2. False

Question 11

Evidence

Later, at trial, an officer is testifying that he has seen Johnny out past curfew on several occasions and he even has been convicted of this before. The prosecution argues that his behavior in the current case is consistent and conforms to prior behavior. Johnny objects saying that his past crimes shouldn't matter when we're talking about this current case. How do you rule?

1. Sustained
2. Overruled

Magistrate's Warning

NO: _____

STATE OF TEXAS

§

MAGISTRATE FOR

VS.

§

§

COUNTY, TEXAS

Before me, the undersigned Magistrate in the State of Texas, on this day _____, 20____, _____ personally appeared in the custody of _____, a peace officer, not later than 48 hours after said person was arrested, and said person was given the following warning by me:

- _____ 1. You are charged with the offense of _____ a misdemeanor a felony.
An affidavit charging you with this offense (has)(has not) been filed in this court.
- _____ 2. You have a right to hire an attorney to represent you.
- _____ 3. You have the right to have an attorney present prior to and during any interview and questioning by peace officers or attorneys representing the State.
- _____ 4. You have the right to remain silent.
- _____ 5. You are not required to make a statement, and any statement you make can and may be used against you in Court.
- _____ 6. You have the right to stop any interview or questioning at any time.
- _____ 7. You have the right to have an examining trial (felonies only).
- _____ 8. You have the right to request appointment of counsel if you cannot afford counsel.

Pursuant to Number 8 above, I explained the local procedures for requesting appointment of counsel in a manner the Defendant could understand. I provided any necessary paperwork and reasonably assisted in its completion. I forwarded the paperwork, if any, to the appropriate authority, without unnecessary delay, in no event more than 24 hours.

The person warned reports to be a citizen of a foreign country: Yes No

I have determined that the said person is is not currently on bond in another cause or causes.

Bail is set at \$ _____ **Bail not determined** **Bail denied**

I acknowledge that I was given the above warning and that I understand my rights as explained to me in the warning.

_____ Magistrate

Municipal Judge, City of _____

Place of warning: _____

Time: _____ Date: _____

_____ Person warned

Accused refused to sign acknowledgement of warning.

_____ Magistrate
Remarks:

Witnesses (if any):

Name: _____

Address: _____

Name: _____

Address: _____

Editor's Note: If the person warned is a non-U.S. citizen, magistrates should consult the *Magistrate's Guide to the Vienna Convention on Consular Relations*, available online at www.oag.state.tx.us/newspubs/publications.shtml.
For a complete listing of instances in which bail can be denied, see *TMCEC Bench Book*, Chapter 1.

RELEASE: WITH ORDER TO APPEAR (Under Art. 15.17(b), C.C.P.)

Report #: _____

Agency: _____

Charge: _____, a fine-only misdemeanor.

The Defendant is released without bond and ordered to appear in person at the _____ (Municipal)(Justice) Court, on or before the ____ day of _____, 20__ at _____ o'clock ____m., located at _____.

A copy of this *Release With Order to Appear* shall be given to the accused upon (his)(her) release. If the accused fails to appear as required by this Order, the judge of the _____ (Municipal)(Justice) Court shall issue a warrant for the arrest of the accused.

SIGNED THIS ____ day of _____, 20__ at _____ o'clock ____m.

Magistrate
Municipal Judge, City of _____
_____ County, Texas

If Interpreter necessary:

Name of Interpreter

ORDER DEFERRING FURTHER PROCEEDINGS (Art. 45.051, C.C.P.)

CAUSE NUMBER: _____

STATE OF TEXAS
VS.

§
§
§

IN THE MUNICIPAL COURT
CITY OF _____
_____ COUNTY, TEXAS

ORDER DEFERRING FURTHER PROCEEDINGS

The Court finds that _____, Defendant, [was found guilty (before the Court)(by a jury) of] [pled (guilty)(no contest) to] the offense of _____ on the ____ day of _____, 20__, and that the punishment has been set at a fine of \$_____ and court costs. Court costs in the amount of \$_____ are hereby ordered to be (paid immediately) (paid through installments of \$_____ per _____ [time period]) or (discharged through community service of _____ hours to be performed at _____), or a combination thereof.

Under the authority of Article 45.051, Code of Criminal Procedure, the Court defers further proceedings without entering an adjudication of guilt until the ____ day of _____, 20__.

DEFERRAL PERIOD: _____, 20__ until _____, 20__ (not to exceed 180 days).

CONDITIONS OF DEFERRED DISPOSITION

DEFENDANT SHALL:

- 1. Pay a special expense fee in the amount of \$_____ (not to exceed the amount of the fine that could be imposed). The special expense fee shall be collected by _____ (any date before the date on which the period of probation ends).
- 2. Post bond in the amount of \$_____ to secure payment of the fine;
- 3. Submit proof of financial responsibility as required by law to the Court at the termination of the deferral period; said proof showing that Defendant kept in force financial responsibility during the entire deferral period;
- 4. Pay restitution to _____ in the amount of \$_____ within the deferral period;
- 5. Submit to professional counseling as follows: _____;
- 6. Submit to diagnostic testing for alcohol or a controlled substance or drug as follows: _____;
- 7. Submit to a psychosocial assessment as follows: _____;
- 8. Participate in an alcohol or drug abuse treatment or education program, as follows: _____;
- 9. Pay the costs of diagnostic testing, psychosocial assessment, or participation in a treatment or education program, as follows: _____;
- 10. Perform _____ hours community service at: _____;
- 11. Complete an alcohol awareness program approved by the Texas Commission on Alcohol and Drug Abuse;
- 12. Complete a driving safety course approved by the Texas Education Agency;
- 13. Complete the following course: _____;
- 14. Other: _____.
- 15. Present to the Court satisfactory evidence of complying with each requirement imposed by the Judge.

Violation of any of the above noted conditions shall constitute a violation of this agreement.

If Defendant successfully complies with the conditions of the agreement, then this case shall be **DISMISSED** by the Court and shall **NOT** be reported as a conviction. Failure to comply shall cause this case to result in a **CONVICTION**, payment of a **FINE** of \$_____ owed, and the conviction will be reported as required by law.

A copy of this Order was delivered to the Defendant on this date.

Received, agreed to, and signed this the ____ day of _____, 20__.

Defendant's Signature
(municipal court seal)

Municipal Judge
City of _____
_____ County, Texas

Editor's Note: A person who was under age 17 at the date of the offense may request the court expunge the records in the above noted cause after successful completion of deferred disposition if the cause is a violation of a Penal Code offense or a violation of a city penal ordinance. Art. 45.0216(h), C.C.P. This order is inapplicable to defendants younger than age 25 accused of a traffic offense classified as a moving violation.

DEFERRED DISPOSITION: NOTICE TO DEFENDANT TO SHOW CAUSE (Art. 45.051, C.C.P.)

CAUSE NUMBER: _____

STATE OF TEXAS

§

IN THE MUNICIPAL COURT

VS.

§

CITY OF _____

§

_____ **COUNTY, TEXAS**

ORDER TO SHOW CAUSE

Name: _____ Offense: _____

Address: _____

You are hereby ordered to appear before the _____ Municipal Court at _____ o'clock ____m., on the ____ day of _____, 20__, to show cause why you failed to comply with the Court's order in this case.

Failure to appear on this date and time will result in a judgment of \$ _____ being entered against you based on the punishment set when you submitted your plea and were granted deferred disposition, and a capias pro fine will be issued for your arrest.

(municipal court seal)

Judge, Municipal Court

City of _____

_____ County, Texas

Date: _____

Putting the Pieces Together

Mark Goodner
Program Attorney & Deputy Counsel

Hypothetical

- **Police in your town observe a vehicle run through a stop sign before making a right hand turn. Officers turn on their lights and siren and turn to follow the car. They catch up as the driver is exiting the vehicle and approaching her front door.**

- **When the woman opens her front door, more than a dozen cats run out the door to greet her. The officers step out of the car and call out to the woman. When she sees them she becomes noticeably alarmed. They ask to speak to her about her driving. As they speak with her about running the stop sign, they inform her that they will be ticketing her for running the stop sign. They can't help but notice all of the cats in and around her house. They talk to her and find out she has more than 50 cats. They also decide to cite her for violating a city ordinance prohibiting more than 3 animals in one residence.**

Question 1.
Upon hearing of the charges regarding her animals, the woman becomes distraught. She refuses to sign her citation. The police, in light of this fact, decide to arrest her and take her to the city jail. Arresting her in this fashion is allowable under the law.

1. True
 2. False

Question 2
The officers take her to jail and then file formal complaints for both charges, swearing to them before the municipal court clerk. May the court clerk administer the oath to the affiant officers?

1. Yes
 2. No

Administering Oaths

- Section 602.002, G.C. provides authority for a
 - municipal judge,
 - retired municipal judge, or
 - clerkto administer any oath.

- You, as a magistrate, are called to magistrate the woman, Martha Manycats. You arrive at the jail, determine that there was probable cause.
- You must now give her the necessary 15.17 warnings.
- Find a partner and practice giving the 15.17 warning, fill out the Magistrate's Warning form that is provided.

Question 3
You decide to release her without bail and you order her to appear at a later date for arraignment in municipal court. Releasing her without bond is appropriate under the law in this case.

✓ 1. True
2. False

Art. 15.17, CCP(b)

- For an accused charged with a fine only misdemeanor, the magistrate may release the accused without bond and order the accused to appear at a later date for arraignment in the applicable justice or municipal court.

Discussion

- What else could you have done here?
- Locate the Release with order to appear form and fill it out.

- Martha appears at the appropriate time according to your release. She enters pleas of guilty and requests to take DSC for running the stop sign and deferred disposition for the animal ordinances charge.
- She is eligible for DSC, and you grant it.
- You decide to grant her deferred disposition on the ordinance, you set the fine at \$200, and you place 2 conditions on her.
- What are some conditions you might consider?

Question 4

You settle on the following conditions for a 90 day deferred:

1. She must submit to professional counseling.
2. She must find homes (other than hers) for all of the cats but three.

Are these conditions permissible under the law?

- 1. Yes
- 2. No

Art. 45.051(b), CCP

- During the deferral period, the judge may require the defendant to:
- (3) submit to professional counseling
- (5) submit to a psychosocial assessment
- (10) comply with any other reasonable condition

Question 5

After 90 days, Martha has satisfactorily completed her DSC and has submitted all necessary documents. You dismiss the charge for running stop sign.

However, she has not submitted any proof that she has completed the terms of her deferred disposition. What should be your next step?

1. Martha has defaulted, and you should enter a conviction against her.
2. The matter should be set for a show cause hearing.

Art. 45.051(c-1), CCP

- If the defendant fails to present satisfactory evidence of compliance with the requirements, the court *shall*:
 - (1) notify the defendant in writing of the failure; and
 - (2) require the defendant to appear and show cause why the order of deferral should not be revoked

- **Locate the Notice to Show Cause form. Take a moment to fill it out.**
- What should be done if Martha shows good cause why her deferred disposition should not be revoked?
- If Martha does not show good cause why she has not satisfied the terms of her deferred, what are your options?

Fixing the Amount of Bail (17.15)

1. Sufficiently high to give reasonable assurance
2. Not to be an instrument of oppression
3. Nature and circumstances of the offense
4. Ability to make bail
5. Future safety of victim and community

Ethics

- **Commission**
 - **Protect the public**
 - **Promote public confidence in the three I's**
 - **Integrity**
 - **Independence**
 - **Impartiality**
 - **Encourage Judges to maintain high standards of conduct on and off the bench**

The Challenges of Technology

Online Trouble for Judges

- North Carolina child custody case
- Judge "friended" lawyer on **Facebook**
- Judge and the lawyer commented about the proceedings through **Facebook**
- Lawyer: "I have a wise Judge."
- Opposing lawyer discovered the "friendship"
- Asked for a new trial and for the judge's disqualification
- The judge recused himself and the wife got a new trial.
- The judge was also publicly reprimanded by the State for the improper *ex parte* communications.

More Online Trouble for Judges

- Criminal Court Judge in Brooklyn provided details of his location and schedule on **Facebook**
- Updated his profile and "status" while on the bench
- Posted photos of his crowded courtroom on his account
- The judge also invited several lawyers to be his "friend."
- Was transferred to another court after supervisors learned of his online social networking activities

NY Judge's Troubles Continue

- Judge also had a **MySpace** account
- when accessed in August 2009 listed his mood as **"amorous."**
- MySpace page also listed at least one lawyer among his "friends."
- lawyer was a candidate for the State Assembly
- Judge's MySpace account provided a link to the attorney's campaign website
- had several postings promoting his candidacy

When Magistrates Tweet

- Magistrate in England was turned in by a fellow magistrate for tweeting about his cases.
- the judge tweeted on a Saturday before magistrating those arrested the night before:
- "Called into Court today to deal with those arrested last night and held in custody. I guess they will be mostly drunks but you never know."

Complaints

- Purpose # 1 - Notify defendant of charges filed against him so he may prepare a defense
- Must be given the complaint 1 day before the proceeding (trial)
- Defendant may waive that notice (45.018)

Complaint

- Purpose #2 – To initiate the proceeding
 - Can be initiated by citation or complaint
 - Complaint required for arrest
 - Citations by Peace Officers or authorized by ordinance
 - Citizen Complaint

Citation in place of Complaint

- 27.14(d)
 - Legible duplicate copy of the citation has been given to defendant as written notice
 - Defendant may plead to citation
 - Complaints need not be filed on every citation upon receiving the charge.

Citation not allowed

- Public Intoxication – 14.06
- Not Guilty Plea – 27.14(d)
 - Defendant may waive the filing of a complaint in a written agreement with the prosecutor
- Arrest Warrant
 - 2 year statute of limitation for complaint to be filed

FTA v. VPTA

- VPTA may be charged for Rules of the Road offenses, 543.009 T.C.
 - Rules of the Road TC Chapters 541-600
 - Max Fine of \$200
- FTA may be charged for other traffic offenses, 38.10 P.C.
 - And all other offenses
 - Requires custody and release
 - Max fine of \$500

Juveniles

81st Legislative Session

- New laws attempting to bring parity between municipal and justice courts with juvenile courts
- Non-disclosure law
 - Protecting juvenile records
- House Bill 1793

H.B. 1793

- Shall complete a two-hour course of instruction related to understanding the relevant issues of child welfare and the Individuals with Disabilities Education Act (IDEA)
- Every judicial academic year ending in 0 or 5
- Effective September 1, 2009

What is the IDEA?

- Federal law governing all special education programs in the U.S.
- How IDEA relates to Child Welfare
- Child Welfare
 - Program
 - Very broad
 - For IDEA purposes → welfare of the child

IDEA General

- What is a qualifying disability?
- What services will we provide?
- Referral Process
 - How
 - Who
 - Parent's Rights
- Individual Evaluation
 - Does student have a disability?
- ARD (Admission Review and Dismissal)
 - Within 90 days

IDEA General

- Specific criteria for defining disabilities
- IEP (Individualized Education Plan)
 - Classes the student will take
 - Defines the discipline the student can handle
- Behavioral Intervention Plans (BIP)
 - Outlines the appropriate discipline techniques for the specific disability

IDEA General

- Services available to special education students
 - Counseling services
 - Occupational therapy
 - Physical therapy
 - Speech therapy
 - Specialized transportation
 - Assistive technology devices
- Continuous Evaluation to determine need for services

IDEA General

How could the IDEA help Municipal Courts?
What Basics do we need to know?
Why do we need to know about disabilities?

Qualifying Disabilities

- 13 categories of disabilities
- Autism
 - Broad spectrum
 - Most have sensory issues
- Emotionally Disturbed
 - Depression
 - Bipolar disorder
 - Anxiety disorder

Qualifying Disabilities

- Mental retardation
- Multiple disabilities
- Other Health Impaired (OHI)
 - ADHD
- Learning Disability
 - 11 different learning disabilities
- Speech Impaired
- Visually Impaired
- Non-categorical

Recap

- IDEA guarantees all school children up through age 21 a free appropriate public education in the least restrictive environment.
- Related services provided through public schools
- Special Education Standard
 - Not maximum potential
 - Minimum educational benefit
 - Making education progress

Common Ground

- What do the Capias, the Arrest Warrant, and the Capias Pro Fine have in common?
 - All are “writs.”
 - All result in arrest
 - Which triggers 4th Amendment Protections
 - ALL Require Probable Cause

Important Differences

- How are the Capias, the Arrest Warrant, and the Capias Pro Fine Different?
 - They are triggered by different events
 - They are issued at different stages of a criminal proceeding
 - Depending on the Writ, they are issued either by a “Magistrate” OR a “Judge”

Arrest Warrants

- Proper when:
 - Verbal order of arrest is proper.
 - Person swears under oath that another has committed an offense.
 - CCP authorized arrest.

What is a Capias?

- A written order commanding any peace officer to arrest a person accused of an offense and to bring that person before the court immediately or on a date stated in the capias.
- CCP 23.01

Capias Pro Fine

- Is a writ issued when a judgment has been entered against an adult defendant who is not in custody or when an adult defendant fails to satisfy a judgment.
- CCP 45.045

Fails to Satisfy a Judgment

- Makes arrangements to pay and fails to pay;
- Fails to perform community service;
- Pays with a check that has insufficient funds in the bank.

What Does it Do?

- Shall state the amount of the judgment and sentence and command a peace officer to bring the defendant before the court or place the defendant in jail until the defendant can be brought before the court.

What is the proper instrument to Procure Custody PRIOR TO formal charging?

- 1. Arrest Warrant
- 2. Capias
- 3. Capias Pro Fine

What is the proper instrument To Procure Custody AFTER Formal Charging BUT PRIOR TO Judgment?

- 1. Arrest Warrant
- 2. Capias
- 3. Capias Pro Fine

What is the proper instrument to Enforce Judgment for UNPAID Fines and/or Costs?

- 1. Arrest Warrant
- 2. Capias
- ☺ 3. Capias Pro Fine

Johnny Teenager (16) is cited for violating the city curfew ordinance. You schedule him for an initial appearance, and the court summons the parent to be present for the appearance. Johnny shows, but the parent does not. You set him for another appearance date 3 days later, send another summons, and attempt to locate the parent without luck. Johnny shows up again. May you proceed without the parent?

- ☺ 1. Yes
- 2. No

Juvenile Appearance

- **45.0215 CCP, under 17:**
 - **Must be in open court**
 - **Parent required to appear with child**
 - **Court must summon parent**
 - **Court may waive presence if unable to locate or compel parent's presence**

Pre-Trial

In a pre-trial hearing, Johnny (pro se) alleges in a motion that the ordinance denies him equal protection in violation of the Constitution. You agree, and therefore dismissal at this pre-trial hearing is the appropriate remedy.

- 1. True
- ☺ 2. False

- Dismissal is not an appropriate remedy for motions alleging:
 - Law is void for vagueness in violation of due process
 - Law denies defendant equal protection
- Relief for defendants making such constitutional attacks when deemed valid is acquittal (judgment of not guilty) at trial.
- See Bench Book Checklist 11-1
- State v. Morales

Evidence (HINT: look at Rule 404(b))

Later, at trial, an officer is testifying that he has seen Johnny out past curfew on several occasions and he even has been convicted of this before. The prosecution argues that his behavior in the current case is consistent and conforms to prior behavior. Johnny objects saying that his past crimes shouldn't matter when we're talking about this current case. How should you rule?

- ☺ 1. Sustained
- 2. Overruled

Thank you!

- Travel Safely.

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

Ryan Kellus Turner, General Counsel and Director of Education, TMCEC (email: rturner@tmceec.com) (Twitter: [@rkellusturner](https://twitter.com/rkellusturner)) ^{5.28.14}

Under Former 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. Former law allowed criminal courts to waive fines and costs if performing community service would be an undue hardship on a defendant. However, statutory law did 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. 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 was the subject of an Attorney General Opinion (GA-1035). See, the January 2014 issue of <i>The Recorder</i>. 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 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, former law could be construed to require a court appearance and order.</p>	<p>SECTION 7</p>	<p>Article 45.056, CCP expressly allows 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. Schools are required to utilize truancy measures before resorting to legal action in either juvenile or criminal court. Former law did 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. 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 limited school law enforcement's options.</p>	<p>SECTION 9</p>	<p>As amended, Sec. 37.081, Education Code, authorizes, but does 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, some 7th graders regardless of their age could 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 created new exceptions for children younger than 12 years of age, S.B. 1114 (Section 6) fundamentally realigned 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, expanded 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 contained 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 governed criminal procedure. This omission 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) has balanced the interest of the other subchapters with due process and procedural protections for children accused of criminal violations. In conjunction with other S.B. 393 amendments, Subchapter E-1 helps 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 only 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. 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 former law, peace officers routinely instigated 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>To the degree, S.B. 1114 (Section 1) conflicts with this Section in S.B. 393, ostensibly this Section controls. See, note line 7, above.</p>
<p>9. Nothing prohibits a school district from instigating criminal allegations against a child as a first response to any misconduct which is illegal. However, under former law there were no quality controls. Criminal courts with jurisdiction over school grounds in school districts that employ police officers reported that their juvenile dockets were 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 former law, there was no requirement that a school-based complaint be attested to by a person with personal knowledge giving rise to probable cause. There was 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 former law expressly allows prosecutors in juvenile court to assess factual and legal sufficiency before commencing formal legal proceedings, no comparable provision existed for criminal courts that adjudicate children accused of Class C misdemeanors. Some prosecutors 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. Former law did 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. Previously, 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 former 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>