



Class C Misdemeanor Citations and Complaints

Published online in [TASB School Law eSource](#)

In recent years, the Texas Legislature has prioritized limiting the use of Class C misdemeanor citations as a response to student misbehavior that could also be considered low-level criminal activity. In 2013, two different bills passed that addressed issues related to student discipline, the issuance of citations to students for school misconduct, and the process for sending students to the justice of the peace or municipal court system for the prosecution of certain misdemeanor offenses. The 2013 legislation, Senate Bill 393 by Senator Royce West and Senate Bill 1114 by Senator John Whitmire, addressed criminal citations for student misconduct. Additional legislation passed in 2015 addresses the treatment of truancy by schools and by the court system. An explanation of the 2015 legislation, House Bill 2398, can be found [here](#).

I. Class C Misdemeanors, Citations, and Complaints

- **Class C Misdemeanor Offenses at School:** Class C misdemeanors are offenses, other than traffic offenses, that are punishable by a fine not to exceed \$500 and no jail time. These offenses are the lowest level of misconduct punishable as a crime in Texas. Common Class C misdemeanors on school grounds include the offenses of disorderly conduct (which includes fighting, profanity, offensive gestures or noises, threats, indecent exposure, and more), disruption of class, disruption of transportation, trespass, and minor in possession of alcohol. Although these offenses are not categorized as serious crimes by the Texas Penal Code, the offenses may constitute serious disruptions for schools. For example, at the Texas Senate Committee on Jurisprudence Interim Hearing on June 3, 2014, a school administrator shared an example of approximately 15 students who agreed to meet at a school bus stop for a planned fight in the presence of hundreds of other students. The conduct was categorized as a Class C misdemeanor, but it constituted a serious disruption to the educational environment.
- **Class C Misdemeanor Citations:** Until recently, a school-based police officer who became aware that a student had committed a Class C misdemeanor at school or on school transportation had an option to write the student a citation for the offense. The citation was like a traffic ticket; it was issued by the officer at the time of the offense, and it required the student (and the student's parent) to appear in court at a later time and pay a fine of up to \$500. If the student failed to appear, that would constitute an additional offense.
- **Sworn Complaints:** Passed in 2013, SB 393 and SB 1114 restricted the issuance of citations, as described below. However, both bills anticipated that, in some instances, school officials may file a complaint with an appropriate court about a student's criminal activity at school. Depending on factors including the age of the student and the location and nature of the criminal activity, school officials may be able to seek prosecution or other court involvement for certain Class C misdemeanors by

submitting a complaint, which requires a sworn statement by an individual with personal knowledge of the facts underlying the offense, statements from witnesses or victims, if any, and additional information required by the court. Tex. Educ. Code §§ 37.145-.146; Tex. Code Crim. Pro. Art. 45.058; Tex. Fam. Code § 52.031. Since the law changed, some school officials have expressed concern that the complaint process is more time consuming than issuing a citation. However, at the Texas Senate Committee on Jurisprudence Interim Hearing on June 3, 2014, court officials indicated that the additional information provided in complaints significantly improves the courts' administration of offenses committed at school.

II. 2013 Bill Highlights

A. Senate Bill 393

- **Remedies of a Court:** This bill provides additional options, for juvenile, municipal or justice courts, to grant a defendant who is a child (at least 10 and younger than 17) in lieu of paying a fine and court costs. The additional options include performing community service or obtaining tutoring under Texas Code of Criminal Procedure article 45.0492. Additionally, a court may waive the fee or cost imposed on a defendant if a court determines that: the defendant is a child at the time the offense was committed, and discharging the fine or cost through payment, community service, or tutoring would impose an undue hardship on the defendant. (SECTIONS 1-2, 5-6)
- **Records of a Child:** This bill requires the confidentiality of all records, files, and information stored by electronic means or otherwise, from which a file or record could be generated, including those held by law enforcement, relating to a child who has been convicted or has received a dismissal after deferral of disposition for a fine-only misdemeanor, except a traffic violation. Previously, only records relating to a child's conviction for such offenses were confidential. (SECTION 4)
- **Juvenile Case Managers:** This bill increases the duties of a case manager employed by a governmental entity to assist with juvenile cases. This bill allows a school district board of trustees to approve the employment of a case manager in cases involving juvenile offenders who are before the court or referred to the court by a school administrator or designee for misconduct with the consent of the juvenile and the juvenile's parents. Additionally, a case manager may be employed, upon approval of a school board of trustees to assist the court in administering the court's juvenile docket and supervising the court's orders in juvenile cases and to provide prevention and intervention services to a child considered at risk of entering the juvenile justice system. (SECTION 7)
- **School Peace Officers:** In a peace officer's jurisdiction, a peace officer commissioned under Texas Education Code section 37.081 may dispose of cases in accordance with Texas Family Code sections 52.03 or 52.031. (SECTION 9)

- **Children Younger Than 12 Years of Age:** This bill provides an exception for children younger than 12 to the offenses of intentionally disrupting the conduct of classes or other school activities and intentionally disrupting or preventing the lawful transportation of children in a vehicle owned or operated by a school district. (SECTIONS 10-11) Certain disorderly conduct offenses (i.e., profanity, obscenity, loud noises, noxious odors, and fighting) do not apply to a student younger than 12 if the conduct occurs at a public school campus during regular school hours. (SECTION 19)
- **Mental Capacity:** This bill also provides that a person may not be prosecuted for fine-only misdemeanors or violation of a penal ordinance of a political subdivision that the person committed when younger than 10 years of age. Additionally, a person who is at least 10 years of age but younger than 15 is presumed incapable of committing the offenses described; however, the presumption may be refuted if the prosecution proves sufficient capacity to understand the wrongdoing at the time the conduct occurred. (SECTIONS 17-18)
- **School Offenses:** This bill adds a new subchapter to Chapter 37 related to criminal procedures related to issuing citations, sanctions, and prosecuting students for certain offenses. A “school offense” is defined as an offense committed by a child enrolled in a public school that is a class C misdemeanor, other than a traffic offense, and committed on property under the control and jurisdiction of a school district. This bill prohibits a peace officer from issuing a citation to a child who is alleged to have committed a school offense; however, a peace officer is not prohibited from taking a child into custody under applicable law. A school district that commissions peace officers may develop a system of graduated sanctions that may be required to be imposed on a child before a complaint is filed in criminal court for the offenses of disruption of class, disruption of the transportation of children on a school owned vehicle, or disorderly conduct. A complaint alleging the commission of a school offense must include a sworn statement by a person who has personal knowledge of the underlying facts giving rise to probable cause to believe that an offense has been committed, as well as a statement from a school employee stating whether the child is eligible for or receives special services due to a disability and whether graduated sanctions were required and completed before the complaint was filed. (SECTION 12)
- **Criminal Procedures:** This bill also requires a court to waive original jurisdiction for a complaint against a child alleging a violation of a misdemeanor offense punishable by fine only, other than a traffic offense, and refer the child to juvenile court if the court or another court has previously dismissed a complaint against the child due to mental illness, disability, or lack of capacity. (SECTION 13) This bill allows a law enforcement officer to dispose of a case of a child taken into custody or, as amended, accused of a class C misdemeanor without referral to juvenile court if certain guidelines are met. (SECTION 15) This bill also amends the first offender program provision to allow a child to be referred to the program if accused of a class C misdemeanor offense, other than a traffic violation. (SECTION 16)

B. Senate Bill 1114

- **Prosecution of Children in Municipal or Justice Courts:** This bill requires law enforcement officers to include additional documents in cases of children 12 years of age or older alleged to have committed an offense on school property or on a vehicle owned or operated by a school district. The law enforcement officer is required to submit to the court an offense report, a statement by a witness to the alleged conduct, and a statement by a victim of the alleged conduct, if any. The state may not move forward with prosecution of a child unless the law enforcement officer has complied with the required elements in addition to issuing a citation or filing a complaint in municipal or justice court against the child. (SECTION 1)
- **Children under 12:** Additionally, this bill prohibits a law enforcement officer from issuing a citation or filing a complaint against a child younger than the age of 12 for misconduct alleged to have occurred on school property or on a vehicle owned by a school district. (SECTION 1)
- **School Peace Officer Duties:** This bill removes the requirement for the chief of police of a school district police department to be held accountable and report to the superintendent or superintendent's designee. As amended, the requirement is for the chief of police to be held accountable and report only to the superintendent. This bill also removes administrative functions from the duties a school peace officer must perform and expands the ability for a peace officer to arrest a student in accordance with Texas Code of Criminal Procedure, article 45.058, which allows arrest of a child under non-secure custody, i.e., an unlocked, multipurpose area. (SECTION 4)
- **Student Discipline and Class C Misdemeanors:** This bill includes a vehicle owned or operated by the school district in the list of places from which a student may be removed from as provided by the school's SCOC. Currently, a student may be removed from a classroom, campus, or DAEP. Pursuant to this bill, a school district's SCOC must include options for managing students not only in classrooms, and school grounds, but now on vehicles owned or operated by the district. (SECTION 3) This bill prohibits the issuance of a warrant for the arrest of a student alleged to have committed a class C misdemeanor when the student was younger than 17 years of age. (SECTION 5)
- **On Campus Offenses by Nonstudents:** This bill provides that a person, other than a primary or secondary grade student enrolled in the school, commits an offense if the person: (1) 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; or (2) intentionally disrupts or prevents the lawful transportation of children on a vehicle owned or operated by a school district. (SECTIONS 6-7)
- **First Offender Program:** This bill adds the category of class C misdemeanors, except traffic offenses, to the provision allowing the referral of a student to a first offender program after the child has been accused of such conduct or in lieu of issuing a citation or referring the child to juvenile or criminal court. (SECTION 8)

- **Disorderly Conduct:** This bill includes a public school campus or the school grounds on which a public school is located in the definition of *public place* for the offense of disorderly conduct in the Texas Penal Code. (SECTION 9)

III. Effect of Passage of Both Bills in 2013

A. Overlap Between SB 393 and SB 1114

- **Not Incompatible:** Because both of the Senate bills had similar purposes, after the 83rd Legislative Session, some speculated that perhaps the bills were incompatible and therefore only the later-passed bill (SB 393) should be in effect. The bills, however, amended different statutory provisions; consequently, it seems unlikely that the bills could be considered irreconcilable in the technical legal sense. Assuming no legal authority, such as the Texas attorney general, determines that the new statutory provisions are in direct conflict, the bills must be harmonized.
- **Both Bills Equally Effective:** The effect of reading both bills together is that the use of citations in schools is restricted more than by either bill standing alone. In other words, one statutory provision might suggest that a citation is an available option in response to certain misconduct, but another provision may eliminate the option of issuing a citation for the same misconduct. For example, Sections 6 and 7 of SB 1114 eliminated the offenses of disruption of class and disruption of transportation for all ages of students. Sections 10-12 of SB 393, on the other hand, would have recognized both offenses for students 12 and over, following graduated sanctions, if applicable, and a sworn complaint. By further example, Section 9 of SB 1114 left the offense of disorderly conduct intact for students over 7th grade and clarified that a public school campus is a “public place” for purposes of disorderly conduct. Under SB 393, however, only certain types of disorderly conduct (including abuse or threats, lewd exposure, and display or discharge of a firearm) remain offenses when committed by a student of any age on a school campus during the regular school day.
- **Cumulative Effect:** School personnel tasked with administering student discipline must consider the full impact of both bills before pursuing a criminal sanction for Class C misdemeanor misconduct by a student at school. If any provision of either bill would prevent the issuance of a citation, the citation may be invalid. In most instances, school misconduct may not result in the issuance of a Class C misdemeanor citation to a student. For elementary students, criminal liability for school misconduct has been eliminated. For secondary school students, certain misconduct may result in a criminal complaint, but not a citation.

B. Aspects of School Operations Not Affected by the Bills

- **Traffic Offenses:** Neither SB 393 nor SB 1114 affected the issuance of traffic citations on or around school property.

- **Offenses Committed by Students 17 and Older:** In Sections 6 and 7, SB 1114 eliminates the offenses of disruption of class and disruption of transportation for students of any age. However, for all other purposes, including disorderly conduct, students 17 and older are still subject to citations for Class C misdemeanors.
- **Offenses Other Than Class C Misdemeanors:** The bills focused primarily on school misconduct that could be characterized as Class C misdemeanors, with the exception of traffic violations. Neither bill addressed conduct with a higher severity of punishment, such as Class B or Class A misdemeanors. As a result, school-based policing procedures related to more serious misconduct were not affected by this legislation.
- **Student Discipline:** Also unaffected by the two bills is the authority of a school district to exercise disciplinary management techniques in accordance with the district's Student Code of Conduct (SCOC) and campus procedures in response to student misconduct that might otherwise be characterized as a Class C misdemeanor. Misconduct may lead to interventions such as counseling and behavior management techniques or punishments such as in-school suspension, suspension, removal to a Disciplinary Alternative Education Program (DAEP), or expulsion, in accordance with the circumstances and the district's SCOC.

C. Implications for Student Offenses

- **Students Age 9 and Younger – No Capacity:** By law, students 9 and younger do not possess the mental capacity to commit a Class C misdemeanor offense.
- **Students Ages 10–14 – Rebuttable Presumption of No Capacity:** Students ages 10 to 14 are presumed to lack the mental capacity to commit a Class C misdemeanor offense, but the prosecution may rebut this presumption.
- **Students Ages 10-16 – No Citations at School:** Students ages 10 to 16 may not be issued citations for Class C misdemeanor offenses on school grounds.
- **Students of Any Age – No Disruption of Class or Transportation:** A student cannot commit the offense of disruption of class at the school at which the student is enrolled. A student cannot commit the offense of disruption of transportation.
- **Sworn Complaint for Ages 10-16:** A police officer or school official may swear out a complaint against a non-student for disruption of class or disruption of transportation. A police officer or school official may swear out a complaint against a student for disorderly conduct. If a district with its own police department has adopted graduated sanctions, graduated sanctions must have been tried and failed before an official may swear out a complaint.
- **Students Ages 17 and Older:** A non-student may receive a citation (or complaint) for disruption of class or transportation. A student may receive a citation for disorderly conduct.

D. School District Responses to 2013 Legislation

- **Emphasis on Classroom Intervention:** With the elimination of the option to issue citations for low-level criminal misconduct at school, school-based police officers and school personnel have renewed their commitment to using productive behavior management techniques, including positive behavior support, in the classroom. School police officials and school administrators alike have embraced the idea that behavioral issues should be resolved through classroom intervention whenever possible. Students should be referred to the criminal justice system only when student discipline options have been tried and failed.
- **Reserve Police Intervention for More Serious Conduct:** Likewise, school-based police officers have welcomed greater clarity in the separation of roles between school officials imposing student discipline and school-based police officers enforcing criminal statutes. School-based police officers are fully trained and commissioned peace officers, serving as part of the criminal justice system. They are not, and do not wish to be, an extension of the school principal's office, handing out discipline for low-level classroom misbehavior.
- **Concerns:** Since the passage of these bills, school officials have expressed disappointment that criminal citations have been eliminated as an additional option for dealing with chronic misbehavers who have not responded to traditional school discipline. In testimony at the Texas Senate Committee on Jurisprudence Interim Hearing on June 3, 2014, school officials stated that, in some instances, students who had not responded to disciplinary measures at school responded well after having to appear in court. On the other hand, the legislative intent behind both bills shows a clear determination by the Texas Legislature that sending students to court for Class C misdemeanor citations was a misuse of judicial resources and could be needlessly exposing students to the criminal justice system.

This document is continually updated, and references to online resources are hyperlinked, at tasb.org/Services/Legal-Services/TASB-School-Law-eSource/Students/documents/class_c_misd_citations_and_complaints_sept15.pdf. For more information on this and other school law topics, visit TASB School Law eSource at schoolawesource.tasb.org.

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Updated September 2015