

By: Goodman

H.B. No. 2087

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to the jurisdiction of constitutional county courts over  
3 truancy cases and the appointment of magistrates to hear truancy  
4 cases in certain counties.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Section 26.045, Government Code, is amended by  
7 amending Subsection (c) and adding Subsections (d) and (e) to read  
8 as follows:

9 (c) Except as provided by Subsection (d), a [A] county court  
10 that is in a county with a criminal district court does not have any  
11 criminal jurisdiction.

12 (d) A county court in a county with a population of two  
13 million or more has original jurisdiction over cases alleging a  
14 violation of Section 25.093 or 25.094, Education Code.

15 (e) Subsections (c) and (d) do [~~This subsection does~~] not  
16 affect the jurisdiction of a statutory county court.

17 SECTION 2. Chapter 54, Government Code, is amended by  
18 adding Subchapter V to read as follows:

19 SUBCHAPTER V. MAGISTRATES IN CERTAIN COUNTY COURTS

20 Sec. 54.1151. APPLICATION OF SUBCHAPTER. This subchapter  
21 applies to a constitutional county court in a county with a  
22 population of two million or more.

23 Sec. 54.1152. APPOINTMENT. (a) The county judge may  
24 appoint one or more full-time magistrates to hear a matter alleging

1 a violation of Section 25.093 or 25.094, Education Code.

2 (b) An appointment under Subsection (a) is subject to the  
3 approval of the commissioners court.

4 (c) A magistrate serves at the pleasure of the county judge.

5 Sec. 54.1153. QUALIFICATIONS. A magistrate must:

6 (1) be a citizen of this state;

7 (2) be at least 25 years of age; and

8 (3) have been licensed to practice law in this state  
9 for at least four years preceding the date of appointment.

10 Sec. 54.1154. COMPENSATION. A magistrate is entitled to  
11 the compensation set by the commissioners court. The compensation  
12 shall be paid from the general fund of the county.

13 Sec. 54.1155. POWERS. Except as limited by an order of the  
14 county judge, a magistrate may:

15 (1) conduct hearings and trials, including jury  
16 trials;

17 (2) hear evidence;

18 (3) compel production of relevant evidence, including  
19 books, papers, vouchers, documents, and other writings;

20 (4) rule on admissibility of evidence;

21 (5) issue summons and attachments for the appearance  
22 of witnesses;

23 (6) examine witnesses;

24 (7) swear witnesses for hearings and trials; and

25 (8) perform any act and take any measure necessary and  
26 proper for the efficient performance of the duties assigned by the  
27 county judge.

1       Sec. 54.1156. PAPERS TRANSMITTED TO JUDGE. (a) At the  
2 conclusion of a hearing, the magistrate shall transmit to the judge  
3 any papers relating to the case, including:

4           (1) the magistrate's findings and recommendations; and  
5           (2) a statement that notice of the findings and  
6 recommendations and of the right to a hearing before the judge has  
7 been given to all parties.

8       (b) The judge shall adopt, modify, or reject the  
9 magistrate's recommendations not later than the third working day  
10 after the date the judge receives the recommendations.

11       (c) The judge shall send written notice of any modification  
12 or rejection of the magistrate's recommendations to each party to  
13 the case.

14       SECTION 3. Sections 25.091(a) and (b), Education Code, are  
15 amended to read as follows:

16       (a) A peace officer serving as an attendance officer has the  
17 following powers and duties concerning enforcement of compulsory  
18 school attendance requirements:

19           (1) to investigate each case of a violation of  
20 compulsory school attendance requirements referred to the peace  
21 officer;

22           (2) to enforce compulsory school attendance  
23 requirements by:

24               (A) referring a student to a juvenile court or  
25 filing a complaint against a student in a county, justice, or  
26 municipal court if the student has unexcused absences for the  
27 amount of time specified under Section 25.094 or under Section

1 51.03(b)(2), Family Code; and

2 (B) filing a complaint in a county, justice, or  
3 municipal court against a parent who violates Section 25.093;

4 (3) to serve court-ordered legal process;

5 (4) to review school attendance records for compliance  
6 by each student investigated by the officer;

7 (5) to maintain an investigative record on each  
8 compulsory school attendance requirement violation and related  
9 court action and, at the request of a court, the board of trustees  
10 of a school district, or the commissioner, to provide a record to  
11 the individual or entity requesting the record;

12 (6) to make a home visit or otherwise contact the  
13 parent of a student who is in violation of compulsory school  
14 attendance requirements, except that a peace officer may not enter  
15 a residence without the permission of the parent of a student  
16 required under this subchapter to attend school or of the tenant or  
17 owner of the residence except to lawfully serve court-ordered legal  
18 process on the parent; and

19 (7) to take a student into custody with the permission  
20 of the student's parent or in obedience to a court-ordered legal  
21 process.

22 (b) An attendance officer employed by a school district who  
23 is not commissioned as a peace officer has the following powers and  
24 duties with respect to enforcement of compulsory school attendance  
25 requirements:

26 (1) to investigate each case of a violation of the  
27 compulsory school attendance requirements referred to the

1 attendance officer;

2 (2) to enforce compulsory school attendance  
3 requirements by:

4 (A) referring a student to a juvenile court or  
5 filing a complaint against a student in a county, justice, or  
6 municipal court if the student has unexcused absences for the  
7 amount of time specified under Section 25.094 or under Section  
8 51.03(b)(2), Family Code; and

9 (B) filing a complaint in a county, justice, or  
10 municipal court against a parent who violates Section 25.093;

11 (3) to monitor school attendance compliance by each  
12 student investigated by the officer;

13 (4) to maintain an investigative record on each  
14 compulsory school attendance requirement violation and related  
15 court action and, at the request of a court, the board of trustees  
16 of a school district, or the commissioner, to provide a record to  
17 the individual or entity requesting the record;

18 (5) to make a home visit or otherwise contact the  
19 parent of a student who is in violation of compulsory school  
20 attendance requirements, except that the attendance officer may not  
21 enter a residence without permission of the parent or of the owner  
22 or tenant of the residence;

23 (6) at the request of a parent, to escort a student  
24 from any location to a school campus to ensure the student's  
25 compliance with compulsory school attendance requirements; and

26 (7) if the attendance officer has or is informed of a  
27 court-ordered legal process directing that a student be taken into

1 custody and the school district employing the officer does not  
2 employ its own police department, to contact the sheriff,  
3 constable, or any peace officer to request that the student be taken  
4 into custody and processed according to the legal process.

5 SECTION 4. Section 25.093(b), Education Code, is amended to  
6 read as follows:

7 (b) The attendance officer or other appropriate school  
8 official shall file a complaint against the parent in:

9 (1) the constitutional county court of the county in  
10 which the parent resides or in which the school is located, if the  
11 county has a population of two million or more;

12 (2) a justice court of any precinct in the county in  
13 which the parent resides or in which the school is located; or

14 (3) [~~in~~] a municipal court of the municipality in  
15 which the parent resides or in which the school is located.

16 SECTION 5. Section 25.093(d), Education Code, as amended by  
17 Chapter 1514, Acts of the 77th Legislature, Regular Session, 2001,  
18 and as amended and relettered by Chapter 1504, Acts of the 77th  
19 Legislature, Regular Session, 2001, is reenacted and amended to  
20 read as follows:

21 (d) A fine collected under this section shall be deposited  
22 as follows:

23 (1) one-half shall be deposited to the credit of the  
24 operating fund of, as applicable:

25 (A) the school district in which the child  
26 attends school;

27 (B) the open-enrollment charter school the child

1 attends; or

2 (C) the juvenile justice alternative education  
3 program that the child has been ordered to attend; and

4 (2) one-half shall be deposited to the credit of:

5 (A) the general fund of the county, if the  
6 complaint is filed in the justice court or the constitutional  
7 county court; or

8 (B) the general fund of the municipality, if the  
9 complaint is filed in municipal court.

10 SECTION 6. Sections 25.094(b) and (c), Education Code, are  
11 amended to read as follows:

12 (b) An offense under this section may be prosecuted in:

13 (1) the constitutional county court of the county in  
14 which the individual resides or in which the school is located, if  
15 the county has a population of two million or more;

16 (2) a justice court of any precinct in the county in  
17 which the individual resides or in which the school is located; or

18 (3) [~~in~~] a municipal court in the municipality in  
19 which the individual resides or in which the school is located.

20 (c) On a finding by the county, justice, or municipal court  
21 that the individual has committed an offense under Subsection (a)  
22 or on a finding by a juvenile court in a county with a population of  
23 less than 100,000 that the individual has engaged in conduct that  
24 violates Subsection (a), the court may enter an order that includes  
25 one or more of the requirements listed in Article 45.054, Code of  
26 Criminal Procedure, as added by Chapter 1514, Acts of the 77th  
27 Legislature, Regular Session, 2001.

1 SECTION 7. Section 25.094(d), Education Code, as amended by  
2 Chapter 1297, Acts of the 77th Legislature, Regular Session, 2001,  
3 is amended to read as follows:

4 (d) If the county, justice, or municipal court believes that  
5 a child has violated an order issued under Subsection (c), the court  
6 may proceed as authorized by Section 54.023, Family Code, by  
7 holding the child in contempt and imposing a fine not to exceed \$500  
8 or by referring the child to juvenile court for delinquent conduct.

9 SECTION 8. Section 25.094(d), Education Code, as amended by  
10 Chapter 1514, Acts of the 77th Legislature, Regular Session, 2001,  
11 is relettered as Subsection (d-1) and is amended to read as follows:

12 (d-1) [~~(d)~~] Pursuant to an order of the county, justice, or  
13 municipal court based on an affidavit showing probable cause to  
14 believe that an individual has committed an offense under this  
15 section, a peace officer may take the individual into custody. A  
16 peace officer taking an individual into custody under this  
17 subsection shall:

18 (1) promptly notify the individual's parent, guardian,  
19 or custodian of the officer's action and the reason for that action;  
20 and

21 (2) without unnecessary delay:

22 (A) release the individual to the individual's  
23 parent, guardian, or custodian or to another responsible adult, if  
24 the person promises to bring the individual to the county, justice,  
25 or municipal court as requested by the court; or

26 (B) bring the individual to a county, justice, or  
27 municipal court with venue over the offense.



1 SECTION 9. Sections 25.0951(a) and (b), Education Code, are  
2 amended to read as follows:

3 (a) If a student fails to attend school without excuse on 10  
4 or more days or parts of days within a six-month period in the same  
5 school year, a school district shall:

6 (1) file a complaint against the student or the  
7 student's parent or both in a county, justice, or municipal court  
8 for an offense under Section 25.093 or 25.094, as appropriate, or  
9 refer the student to a juvenile court in a county with a population  
10 of less than 100,000 for conduct that violates Section 25.094; or

11 (2) refer the student to a juvenile court for conduct  
12 indicating a need for supervision under Section 51.03(b)(2), Family  
13 Code.

14 (b) If a student fails to attend school without excuse on  
15 three or more days or parts of days within a four-week period but  
16 does not fail to attend school for the time described by Subsection  
17 (a), the school district may:

18 (1) file a complaint against the student or the  
19 student's parent or both in a county, justice, or municipal court  
20 for an offense under Section 25.093 or 25.094, as appropriate, or  
21 refer the student to a juvenile court in a county with a population  
22 of less than 100,000 for conduct that violates Section 25.094; or

23 (2) refer the student to a juvenile court for conduct  
24 indicating a need for supervision under Section 51.03(b)(2), Family  
25 Code.

26 SECTION 10. Section 25.0952, Education Code, is amended to  
27 read as follows:

1           Sec. 25.0952. PROCEDURES APPLICABLE TO TRUANCY-RELATED  
2 OFFENSES. In a proceeding [~~in a justice or municipal court~~] based  
3 on a complaint under Section 25.093 or 25.094, the court shall,  
4 except as otherwise provided by this chapter, use the procedures  
5 and exercise the powers authorized by Chapter 45, Code of Criminal  
6 Procedure.

7           SECTION 11. Section 51.03(a), Family Code, is amended to  
8 read as follows:

9           (a) Delinquent conduct is:

10           (1) conduct, other than a traffic offense, that  
11 violates a penal law of this state or of the United States  
12 punishable by imprisonment or by confinement in jail;

13           (2) conduct that violates a lawful order of a  
14 [~~municipal~~] court [~~or justice court~~] under circumstances that would  
15 constitute contempt of that court in:

16                           (A) a justice or municipal court; or

17                           (B) a county court for conduct punishable only by  
18 a fine;

19           (3) conduct that violates Section 49.04, 49.05, 49.06,  
20 49.07, or 49.08, Penal Code; or

21           (4) conduct that violates Section 106.041, Alcoholic  
22 Beverage Code, relating to driving under the influence of alcohol  
23 by a minor (third or subsequent offense).

24           SECTION 12. Section 54.021, Family Code, is amended to read  
25 as follows:

26           Sec. 54.021. COUNTY, JUSTICE, OR MUNICIPAL COURT: TRUANCY.

27 (a) The juvenile court may waive its exclusive original

1 jurisdiction and transfer a child to the constitutional county  
2 court, if the county has a population of two million or more, or to  
3 an appropriate justice or municipal court, with the permission of  
4 the county, justice, or municipal court, for disposition in the  
5 manner provided by Subsection (b) [~~of this section~~] if the child is  
6 alleged to have engaged in conduct described in Section 51.03(b)(2)  
7 [~~of this code~~]. A waiver of jurisdiction under this subsection may  
8 be for an individual case or for all cases in which a child is  
9 alleged to have engaged in conduct described in Section 51.03(b)(2)  
10 [~~of this code~~]. The waiver of a juvenile court's exclusive original  
11 jurisdiction for all cases in which a child is alleged to have  
12 engaged in conduct described in Section 51.03(b)(2) [~~of this code~~]  
13 is effective for a period of one year.

14 (b) A county, justice, or municipal court may exercise  
15 jurisdiction over a person alleged to have engaged in conduct  
16 indicating a need for supervision by engaging in conduct described  
17 in Section 51.03(b)(2) in a case where:

18 (1) the juvenile court has waived its original  
19 jurisdiction under this section; and

20 (2) a complaint is filed by the appropriate authority  
21 in the county, justice, or municipal court charging an offense  
22 under Section 25.094, Education Code.

23 (c) A proceeding in a county, justice, or municipal court on  
24 a complaint charging an offense under Section 25.094, Education  
25 Code, is governed by Chapter 45, Code of Criminal Procedure.

26 (d) Notwithstanding any other law, the costs assessed in a  
27 case filed in or transferred to a constitutional county court for an

1 offense under Section 25.093 or 25.094, Education Code, must be the  
2 same as the costs assessed for a case filed in a justice court for an  
3 offense under Section 25.093 or 25.094, Education Code.

4 (e) The proceedings before a constitutional county court  
5 related to an offense under Section 25.093 or 25.094, Education  
6 Code, may be recorded in any manner provided by Section 30.00010,  
7 Government Code, for recording proceedings in a municipal court of  
8 record.

9 SECTION 13. Sections 54.04(o) and (u), Family Code, are  
10 amended to read as follows:

11 (o) In a disposition under this title:

12 (1) a status offender may not, under any  
13 circumstances, be committed to the Texas Youth Commission for  
14 engaging in conduct that would not, under state or local law, be a  
15 crime if committed by an adult;

16 (2) a status offender may not, under any circumstances  
17 other than as provided under Subsection (n), be placed in a  
18 post-adjudication secure correctional facility; and

19 (3) a child adjudicated for contempt of a county,  
20 justice, or municipal court order may not, under any circumstances,  
21 be placed in a post-adjudication secure correctional facility or  
22 committed to the Texas Youth Commission for that conduct.

23 (u) For the purposes of disposition under Subsection  
24 (d)(2), delinquent conduct that violates a penal law of this state  
25 of the grade of felony or misdemeanor does not include conduct that  
26 violates a lawful order of a county, municipal, justice, or  
27 juvenile court under circumstances that would constitute contempt

1 of that court.

2 SECTION 14. Article 45.054(a), Code of Criminal Procedure,  
3 as added by Chapter 1514, Acts of the 77th Legislature, Regular  
4 Session, 2001, is amended to read as follows:

5 (a) On a finding by a county, justice, or municipal court  
6 that an individual has committed an offense under Section 25.094,  
7 Education Code, the court has jurisdiction to enter an order that  
8 includes one or more of the following provisions requiring that:

9 (1) the individual:

10 (A) attend school without unexcused absences;

11 (B) attend a preparatory class for the high  
12 school equivalency examination administered under Section 7.111,  
13 Education Code, if the court determines that the individual is too  
14 old to do well in a formal classroom environment; or

15 (C) if the individual is at least 16 years of age,  
16 take the high school equivalency examination administered under  
17 Section 7.111, Education Code;

18 (2) the individual attend a special program that the  
19 court determines to be in the best interest of the individual,  
20 including:

21 (A) an alcohol and drug abuse program;

22 (B) a rehabilitation program;

23 (C) a counseling program, including  
24 self-improvement counseling;

25 (D) a program that provides training in  
26 self-esteem and leadership;

27 (E) a work and job skills training program;

1 (F) a program that provides training in  
2 parenting, including parental responsibility;

3 (G) a program that provides training in manners;

4 (H) a program that provides training in violence  
5 avoidance;

6 (I) a program that provides sensitivity  
7 training; and

8 (J) a program that provides training in advocacy  
9 and mentoring;

10 (3) the individual and the individual's parent attend  
11 a class for students at risk of dropping out of school designed for  
12 both the individual and the individual's parent;

13 (4) the individual complete reasonable community  
14 service requirements; or

15 (5) for the total number of hours ordered by the court,  
16 the individual participate in a tutorial program covering the  
17 academic subjects in which the student is enrolled provided by the  
18 school the individual attends.

19 SECTION 15. Article 45.055(d), Code of Criminal Procedure,  
20 is amended to read as follows:

21 (d) The [~~justice or municipal~~] court may not require an  
22 individual who files an application under this article to pay any  
23 fee or court costs for seeking expunction.

24 SECTION 16. (a) The change in law made by this Act applies  
25 only to an offense committed on or after the effective date of this  
26 Act. For purposes of this section, an offense is committed before  
27 the effective date of this Act if any element of the offense occurs

1 before that date.

2 (b) An offense committed before the effective date of this  
3 Act is covered by the law in effect when the offense was committed,  
4 and the former law is continued in effect for that purpose.

5 SECTION 17. This Act takes effect September 1, 2003.