

By: Shapiro

S.B. No. 358

A BILL TO BE ENTITLED

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AN ACT

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

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

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

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

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

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

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

SUBCHAPTER V. MAGISTRATES IN CERTAIN COUNTY COURTS

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

Sec. 54.1152. APPOINTMENT. (a) The county judge may 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 appointed under this subchapter 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. Subsections (a) and (b), Section 25.091,
15 Education Code, are 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. Subsection (b), Section 25.093, Education Code,
6 is amended to 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. Subsection (d), Section 25.093, Education Code,
17 as amended by Chapter 1504, Acts of the 77th Legislature, Regular
18 Session, 2001, and as amended and relettered by Chapter 1514, Acts
19 of the 77th Legislature, Regular Session, 2001, is reenacted and
20 amended to 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. Subsections (b) and (c), Section 25.094,
11 Education Code, are 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. Subsection (d), Section 25.094, Education Code,
2 as amended by Chapter 1297, Acts of the 77th Legislature, Regular
3 Session, 2001, 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. Subsection (d), Section 25.094, Education Code,
10 as amended by Chapter 1514, Acts of the 77th Legislature, Regular
11 Session, 2001, is relettered as Subsection (d-1) and is amended to
12 read as follows:

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

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

22 (2) without unnecessary delay:

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

27 (B) bring the individual to a county, justice, or

1 municipal court with venue over the offense.

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

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

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

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

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

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

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

27 SECTION 10. Section 25.0952, Education Code, is amended to

1 read as follows:

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

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

10 (a) Delinquent conduct is:

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

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

17 (A) a justice or municipal court; or

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

20 (3) conduct that violates Section 49.04, 49.05, 49.06,
21 49.07, or 49.08, Penal Code; or

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

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

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

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

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

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

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

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

27 (d) Notwithstanding any other law, the costs assessed in a

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

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

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

12 (o) In a disposition under this title:

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

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

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

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

1 juvenile court under circumstances that would constitute contempt
2 of that court.

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

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

10 (1) the individual:

11 (A) attend school without unexcused absences;

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

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

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

22 (A) an alcohol and drug abuse program;

23 (B) a rehabilitation program;

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

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

- 1 (E) a work and job skills training program;
- 2 (F) a program that provides training in
- 3 parenting, including parental responsibility;
- 4 (G) a program that provides training in manners;
- 5 (H) a program that provides training in violence
- 6 avoidance;
- 7 (I) a program that provides sensitivity
- 8 training; and
- 9 (J) a program that provides training in advocacy
- 10 and mentoring;

11 (3) the individual and the individual's parent attend

12 a class for students at risk of dropping out of school designed for

13 both the individual and the individual's parent;

14 (4) the individual complete reasonable community

15 service requirements; or

16 (5) for the total number of hours ordered by the court,

17 the individual participate in a tutorial program covering the

18 academic subjects in which the student is enrolled provided by the

19 school the individual attends.

20 SECTION 15. Subsection (d), Article 45.055, Code of

21 Criminal Procedure, is amended to read as follows:

22 (d) The [~~justice or municipal~~] court may not require an

23 individual who files an application under this article to pay any

24 fee or court costs for seeking expunction.

25 SECTION 16. (a) The change in law made by this Act applies

26 only to an offense committed on or after the effective date of this

27 Act. For purposes of this section, an offense is committed before

1 the effective date of this Act if any element of the offense occurs
2 before that date.

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

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