

By: Shapiro

S.B. No. 358

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 may accept original jurisdiction over cases
14 alleging a 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;

16 (2) hear evidence;

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

19 (4) rule on admissibility of evidence;

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

22 (6) examine witnesses;

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

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

27 SECTION 3. Sections 25.091(a) and (b), Education Code, are

1 amended to read as follows:

2 (a) A peace officer serving as an attendance officer has the
3 following powers and duties concerning enforcement of compulsory
4 school attendance requirements:

5 (1) to investigate each case of a violation of
6 compulsory school attendance requirements referred to the peace
7 officer;

8 (2) to enforce compulsory school attendance
9 requirements by:

10 (A) referring a student to a juvenile court or
11 filing a complaint against a student in an appropriate [~~a justice or~~
12 ~~municipal~~] court if the student has unexcused absences for the
13 amount of time specified under Section 25.094 or under Section
14 51.03(b)(2), Family Code; and

15 (B) filing a complaint in an appropriate [~~a~~
16 ~~justice or municipal~~] court against a parent who violates Section
17 25.093;

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

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

21 (5) to maintain an investigative record on each
22 compulsory school attendance requirement violation and related
23 court action and, at the request of a court, the board of trustees
24 of a school district, or the commissioner, to provide a record to
25 the individual or entity requesting the record;

26 (6) to make a home visit or otherwise contact the
27 parent of a student who is in violation of compulsory school

1 attendance requirements, except that a peace officer may not enter
2 a residence without the permission of the parent of a student
3 required under this subchapter to attend school or of the tenant or
4 owner of the residence except to lawfully serve court-ordered legal
5 process on the parent; and

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

9 (b) An attendance officer employed by a school district who
10 is not commissioned as a peace officer has the following powers and
11 duties with respect to enforcement of compulsory school attendance
12 requirements:

13 (1) to investigate each case of a violation of the
14 compulsory school attendance requirements referred to the
15 attendance officer;

16 (2) to enforce compulsory school attendance
17 requirements by:

18 (A) referring a student to a juvenile court or
19 filing a complaint against a student in an appropriate [~~a justice or~~
20 ~~municipal~~] court if the student has unexcused absences for the
21 amount of time specified under Section 25.094 or under Section
22 51.03(b)(2), Family Code; and

23 (B) filing a complaint in an appropriate [~~a~~
24 ~~justice or municipal~~] court against a parent who violates Section
25 25.093;

26 (3) to monitor school attendance compliance by each
27 student investigated by the officer;

1 (4) to maintain an investigative record on each
2 compulsory school attendance requirement violation and related
3 court action and, at the request of a court, the board of trustees
4 of a school district, or the commissioner, to provide a record to
5 the individual or entity requesting the record;

6 (5) to make a home visit or otherwise contact the
7 parent of a student who is in violation of compulsory school
8 attendance requirements, except that the attendance officer may not
9 enter a residence without permission of the parent or of the owner
10 or tenant of the residence;

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

14 (7) if the attendance officer has or is informed of a
15 court-ordered legal process directing that a student be taken into
16 custody and the school district employing the officer does not
17 employ its own police department, to contact the sheriff,
18 constable, or any peace officer to request that the student be taken
19 into custody and processed according to the legal process.

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

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

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

27 (2) a justice court of any precinct in the county in

1 which the parent resides or in which the school is located; or

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

4 SECTION 5. Section 25.093(d), Education Code, as amended by
5 Chapter 1514, Acts of the 77th Legislature, Regular Session, 2001,
6 and as amended and relettered by Chapter 1504, Acts of the 77th
7 Legislature, Regular Session, 2001, is reenacted and amended to
8 read as follows:

9 (d) A fine collected under this section shall be deposited
10 as follows:

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

13 (A) the school district in which the child
14 attends school;

15 (B) the open-enrollment charter school the child
16 attends; or

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

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

20 (A) the general fund of the county, if the
21 complaint is filed in the justice court or the constitutional
22 county court; or

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

25 SECTION 6. Sections 25.094(b) and (c), Education Code, are
26 amended as follows:

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

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

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

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

8 (c) On a finding by the county, justice, or municipal court
9 that the individual has committed an offense under Subsection (a)
10 or on a finding by a juvenile court in a county with a population of
11 less than 100,000 that the individual has engaged in conduct that
12 violates Subsection (a), the court may enter an order that includes
13 one or more of the requirements listed in Article 45.054, Code of
14 Criminal Procedure.

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

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

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

26 (d-1) [~~(d)~~] Pursuant to an order of the county, justice, or
27 municipal court based on an affidavit showing probable cause to

1 believe that an individual has committed an offense under this
2 section, a peace officer may take the individual into custody. A
3 peace officer taking an individual into custody under this
4 subsection shall:

5 (1) promptly notify the individual's parent, guardian,
6 or custodian of the officer's action and the reason for that action;
7 and

8 (2) without unnecessary delay:

9 (A) release the individual to the individual's
10 parent, guardian, or custodian or to another responsible adult, if
11 the person promises to bring the individual to the county, justice,
12 or municipal court as requested by the court; or

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

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

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

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

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

1 Code.

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

6 (1) file a complaint against the student or the
7 student's parent or both in an appropriate [~~a justice or municipal~~]
8 court for an offense under Section 25.093 or 25.094, as
9 appropriate, or refer the student to a juvenile court in a county
10 with a population of less than 100,000 for conduct that violates
11 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 SECTION 10. Section 25.0952, Education Code, is amended to
16 read as follows:

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

23 SECTION 11. Section 54.021, Family Code, is amended to read
24 as follows:

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

26 (a) The juvenile court may waive its exclusive original
27 jurisdiction and transfer a child to the constitutional county

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

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

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

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

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

25 (d) Notwithstanding any other law, the costs assessed in a
26 case filed in a constitutional county court for an offense under
27 Section 25.093 or 25.094, Education Code, must be the same as the

1 costs assessed for a case filed in a justice court for an offense
2 under Section 25.093 or 25.094, Education Code.

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

8 SECTION 12. Section 54.023, Family Code, is amended to read
9 as follows:

10 Sec. 54.023. COUNTY, JUSTICE, OR MUNICIPAL COURT:
11 ENFORCEMENT. (a) If a child intentionally or knowingly fails to
12 obey a lawful order of disposition after an adjudication of guilt of
13 an offense that a county, justice, or municipal court has
14 jurisdiction of under Article 4.07, 4.11, or 4.14, Code of Criminal
15 Procedure, the county, justice, or municipal court may:

16 (1) refer the child to the appropriate juvenile court
17 for delinquent conduct for contempt of the county, justice, or
18 municipal court order; or

19 (2) retain jurisdiction of the case and:

20 (A) hold the child in contempt of the county,
21 justice, or municipal court order and impose a fine not to exceed
22 \$500;

23 (B) order the child to be held in a place of
24 nonsecure custody designated under Article 45.058, Code of Criminal
25 Procedure, [~~Section 52.027~~] for a single period not to exceed six
26 hours; or

27 (C) order the Department of Public Safety to

1 suspend the driver's license or permit of the child or, if the child
2 does not have a license or permit, to deny the issuance of a license
3 or permit to the child and, if the child has a continuing obligation
4 under the court's order, require that the suspension or denial be
5 effective until the child fully discharges the obligation.

6 (b) A court that orders suspension or denial of a child's
7 driver's license or permit shall notify the Department of Public
8 Safety on receiving proof that the child has fully complied with the
9 orders of the court.

10 (c) A county, justice, or municipal court may hold a person
11 in contempt and impose a remedy authorized by Subsection (a)(2) if:

12 (1) the person as a child was placed under an order of
13 the county, justice, or municipal court;

14 (2) the person failed to obey the order while the
15 person was 17 years of age or older; and

16 (3) the failure to obey occurred under circumstances
17 that constitute contempt of court.

18 (d) A county, justice, or municipal court may hold a person
19 in contempt and impose a remedy authorized by Subsection (a)(2) if
20 the person, while younger than 17 years of age, engaged in conduct
21 in contempt of an order of the county, justice, or municipal court
22 but contempt proceedings could not be held before the child's 17th
23 birthday.

24 (e) A county, justice, or municipal court may not order a
25 child to a term of confinement or imprisonment for contempt of a
26 county, justice, or municipal court order under this section.

27 (f) A county, justice, or municipal court may not refer a

1 child who violates a court order while 17 years of age or older to a
2 juvenile court for delinquency proceedings for contempt of court.

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

5 (o) In a disposition under this title:

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

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

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

17 (u) For the purposes of disposition under Subsection
18 (d)(2), delinquent conduct that violates a penal law of this state
19 of the grade of felony or misdemeanor does not include conduct that
20 violates a lawful order of a county, municipal, justice, or
21 juvenile court under circumstances that would constitute contempt
22 of that court.

23 SECTION 14. Article 4.07, Code of Criminal Procedure, is
24 amended as follows:

25 Art. 4.07. JURISDICTION OF COUNTY COURTS. (a) Except as
26 provided by Subsection (b), the [~~The~~] county courts shall have
27 original jurisdiction of all misdemeanors of which exclusive

1 original jurisdiction is not given to the justice court, and when
2 the fine to be imposed shall exceed five hundred dollars.

3 (b) The constitutional county court in a county with a
4 population of two million or more may accept jurisdiction over
5 cases alleging a violation of Section 25.093 or 25.094, Education
6 Code.

7 SECTION 15. Article 45.054(a), Code of Criminal Procedure,
8 as added by Chapter 1514, Acts of the 77th Legislature, Regular
9 Session, 2001, is amended to read as follows:

10 (a) On a finding by an appropriate [~~a justice or municipal~~]
11 court that an individual has committed an offense under Section
12 25.094, Education Code, the court has jurisdiction to enter an
13 order that includes one or more of the following provisions
14 requiring that:

15 (1) the individual:

16 (A) attend school without unexcused absences;

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

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

24 (2) the individual attend a special program that the
25 court determines to be in the best interest of the individual,
26 including:

27 (A) an alcohol and drug abuse program;

1 (B) a rehabilitation program;

2 (C) a counseling program, including
3 self-improvement counseling;

4 (D) a program that provides training in
5 self-esteem and leadership;

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

7 (F) a program that provides training in
8 parenting, including parental responsibility;

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

10 (H) a program that provides training in violence
11 avoidance;

12 (I) a program that provides sensitivity
13 training; and

14 (J) a program that provides training in advocacy
15 and mentoring;

16 (3) the individual and the individual's parent attend
17 a class for students at risk of dropping out of school designed for
18 both the individual and the individual's parent;

19 (4) the individual complete reasonable community
20 service requirements; or

21 (5) for the total number of hours ordered by the court,
22 the individual participate in a tutorial program covering the
23 academic subjects in which the student is enrolled provided by the
24 school the individual attends.

25 SECTION 16. Article 45.055(d), Code of Criminal Procedure,
26 is amended to read as follows:

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

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1 individual who files an application under this article to pay any
2 fee or court costs for seeking expunction.

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