

1-1 By: Shapiro S.B. No. 358
1-2 (In the Senate - Filed February 5, 2003; February 11, 2003,
1-3 read first time and referred to Committee on Jurisprudence;
1-4 March 17, 2003, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 6, Nays 0; March 17, 2003,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 358 By: Bivins

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the jurisdiction of constitutional county courts over
1-11 truancy cases and the appointment of magistrates to hear truancy
1-12 cases in certain counties.

1-13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-14 SECTION 1. Section 26.045, Government Code, is amended by
1-15 amending Subsection (c) and adding Subsections (d) and (e) to read
1-16 as follows:

1-17 (c) Except as provided by Subsection (d), a [A] county court
1-18 that is in a county with a criminal district court does not have any
1-19 criminal jurisdiction.

1-20 (d) A county court in a county with a population of two
1-21 million or more has original jurisdiction over cases alleging a
1-22 violation of Section 25.093 or 25.094, Education Code.

1-23 (e) Subsections (c) and (d) do ~~[This subsection does]~~ not
1-24 affect the jurisdiction of a statutory county court.

1-25 SECTION 2. Chapter 54, Government Code, is amended by
1-26 adding Subchapter V to read as follows:

1-27 SUBCHAPTER V. MAGISTRATES IN CERTAIN COUNTY COURTS

1-28 Sec. 54.1151. APPLICATION OF SUBCHAPTER. This subchapter
1-29 applies to a constitutional county court in a county with a
1-30 population of two million or more.

1-31 Sec. 54.1152. APPOINTMENT. (a) The county judge may
1-32 appoint one or more full-time magistrates to hear a matter alleging
1-33 a violation of Section 25.093 or 25.094, Education Code.

1-34 (b) An appointment under Subsection (a) is subject to the
1-35 approval of the commissioners court.

1-36 (c) A magistrate serves at the pleasure of the county judge.

1-37 Sec. 54.1153. QUALIFICATIONS. A magistrate must:

1-38 (1) be a citizen of this state;

1-39 (2) be at least 25 years of age; and

1-40 (3) have been licensed to practice law in this state
1-41 for at least four years preceding the date of appointment.

1-42 Sec. 54.1154. COMPENSATION. A magistrate is entitled to
1-43 the compensation set by the commissioners court. The compensation
1-44 shall be paid from the general fund of the county.

1-45 Sec. 54.1155. POWERS. Except as limited by an order of the
1-46 county judge, a magistrate appointed under this subchapter may:

1-47 (1) conduct hearings and trials, including jury
1-48 trials;

1-49 (2) hear evidence;

1-50 (3) compel production of relevant evidence, including
1-51 books, papers, vouchers, documents, and other writings;

1-52 (4) rule on admissibility of evidence;

1-53 (5) issue summons and attachments for the appearance
1-54 of witnesses;

1-55 (6) examine witnesses;

1-56 (7) swear witnesses for hearings and trials; and

1-57 (8) perform any act and take any measure necessary and
1-58 proper for the efficient performance of the duties assigned by the
1-59 county judge.

1-60 Sec. 54.1156. PAPERS TRANSMITTED TO JUDGE. (a) At the
1-61 conclusion of a hearing, the magistrate shall transmit to the judge
1-62 any papers relating to the case, including:

1-63 (1) the magistrate's findings and recommendations; and

2-1 (2) a statement that notice of the findings and
2-2 recommendations and of the right to a hearing before the judge has
2-3 been given to all parties.

2-4 (b) The judge shall adopt, modify, or reject the
2-5 magistrate's recommendations not later than the third working day
2-6 after the date the judge receives the recommendations.

2-7 (c) The judge shall send written notice of any modification
2-8 or rejection of the magistrate's recommendations to each party to
2-9 the case.

2-10 SECTION 3. Subsections (a) and (b), Section 25.091,
2-11 Education Code, are amended to read as follows:

2-12 (a) A peace officer serving as an attendance officer has the
2-13 following powers and duties concerning enforcement of compulsory
2-14 school attendance requirements:

2-15 (1) to investigate each case of a violation of
2-16 compulsory school attendance requirements referred to the peace
2-17 officer;

2-18 (2) to enforce compulsory school attendance
2-19 requirements by:

2-20 (A) referring a student to a juvenile court or
2-21 filing a complaint against a student in a county, justice, or
2-22 municipal court if the student has unexcused absences for the
2-23 amount of time specified under Section 25.094 or under Section
2-24 51.03(b)(2), Family Code; and

2-25 (B) filing a complaint in a county, justice, or
2-26 municipal court against a parent who violates Section 25.093;

2-27 (3) to serve court-ordered legal process;

2-28 (4) to review school attendance records for compliance
2-29 by each student investigated by the officer;

2-30 (5) to maintain an investigative record on each
2-31 compulsory school attendance requirement violation and related
2-32 court action and, at the request of a court, the board of trustees
2-33 of a school district, or the commissioner, to provide a record to
2-34 the individual or entity requesting the record;

2-35 (6) to make a home visit or otherwise contact the
2-36 parent of a student who is in violation of compulsory school
2-37 attendance requirements, except that a peace officer may not enter
2-38 a residence without the permission of the parent of a student
2-39 required under this subchapter to attend school or of the tenant or
2-40 owner of the residence except to lawfully serve court-ordered legal
2-41 process on the parent; and

2-42 (7) to take a student into custody with the permission
2-43 of the student's parent or in obedience to a court-ordered legal
2-44 process.

2-45 (b) An attendance officer employed by a school district who
2-46 is not commissioned as a peace officer has the following powers and
2-47 duties with respect to enforcement of compulsory school attendance
2-48 requirements:

2-49 (1) to investigate each case of a violation of the
2-50 compulsory school attendance requirements referred to the
2-51 attendance officer;

2-52 (2) to enforce compulsory school attendance
2-53 requirements by:

2-54 (A) referring a student to a juvenile court or
2-55 filing a complaint against a student in a county, justice, or
2-56 municipal court if the student has unexcused absences for the
2-57 amount of time specified under Section 25.094 or under Section
2-58 51.03(b)(2), Family Code; and

2-59 (B) filing a complaint in a county, justice, or
2-60 municipal court against a parent who violates Section 25.093;

2-61 (3) to monitor school attendance compliance by each
2-62 student investigated by the officer;

2-63 (4) to maintain an investigative record on each
2-64 compulsory school attendance requirement violation and related
2-65 court action and, at the request of a court, the board of trustees
2-66 of a school district, or the commissioner, to provide a record to
2-67 the individual or entity requesting the record;

2-68 (5) to make a home visit or otherwise contact the
2-69 parent of a student who is in violation of compulsory school

3-1 attendance requirements, except that the attendance officer may not
 3-2 enter a residence without permission of the parent or of the owner
 3-3 or tenant of the residence;

3-4 (6) at the request of a parent, to escort a student
 3-5 from any location to a school campus to ensure the student's
 3-6 compliance with compulsory school attendance requirements; and

3-7 (7) if the attendance officer has or is informed of a
 3-8 court-ordered legal process directing that a student be taken into
 3-9 custody and the school district employing the officer does not
 3-10 employ its own police department, to contact the sheriff,
 3-11 constable, or any peace officer to request that the student be taken
 3-12 into custody and processed according to the legal process.

3-13 SECTION 4. Subsection (b), Section 25.093, Education Code,
 3-14 is amended to read as follows:

3-15 (b) The attendance officer or other appropriate school
 3-16 official shall file a complaint against the parent in:

3-17 (1) the constitutional county court of the county in
 3-18 which the parent resides or in which the school is located, if the
 3-19 county has a population of two million or more;

3-20 (2) a justice court of any precinct in the county in
 3-21 which the parent resides or in which the school is located; or

3-22 (3) [~~in~~] a municipal court of the municipality in
 3-23 which the parent resides or in which the school is located.

3-24 SECTION 5. Subsection (d), Section 25.093, Education Code,
 3-25 as amended by Chapter 1504, Acts of the 77th Legislature, Regular
 3-26 Session, 2001, and as amended and relettered by Chapter 1514, Acts
 3-27 of the 77th Legislature, Regular Session, 2001, is reenacted and
 3-28 amended to read as follows:

3-29 (d) A fine collected under this section shall be deposited
 3-30 as follows:

3-31 (1) one-half shall be deposited to the credit of the
 3-32 operating fund of, as applicable:

3-33 (A) the school district in which the child
 3-34 attends school;

3-35 (B) the open-enrollment charter school the child
 3-36 attends; or

3-37 (C) the juvenile justice alternative education
 3-38 program that the child has been ordered to attend; and

3-39 (2) one-half shall be deposited to the credit of:

3-40 (A) the general fund of the county, if the
 3-41 complaint is filed in the justice court or the constitutional
 3-42 county court; or

3-43 (B) the general fund of the municipality, if the
 3-44 complaint is filed in municipal court.

3-45 SECTION 6. Subsections (b) and (c), Section 25.094,
 3-46 Education Code, are amended to read as follows:

3-47 (b) An offense under this section may be prosecuted in:

3-48 (1) the constitutional county court of the county in
 3-49 which the individual resides or in which the school is located, if
 3-50 the county has a population of two million or more;

3-51 (2) a justice court of any precinct in the county in
 3-52 which the individual resides or in which the school is located; or

3-53 (3) [~~in~~] a municipal court in the municipality in
 3-54 which the individual resides or in which the school is located.

3-55 (c) On a finding by the county, justice, or municipal court
 3-56 that the individual has committed an offense under Subsection (a)
 3-57 or on a finding by a juvenile court in a county with a population of
 3-58 less than 100,000 that the individual has engaged in conduct that
 3-59 violates Subsection (a), the court may enter an order that includes
 3-60 one or more of the requirements listed in Article 45.054, Code of
 3-61 Criminal Procedure, as added by Chapter 1514, Acts of the 77th
 3-62 Legislature, Regular Session, 2001.

3-63 SECTION 7. Subsection (d), Section 25.094, Education Code,
 3-64 as amended by Chapter 1297, Acts of the 77th Legislature, Regular
 3-65 Session, 2001, is amended to read as follows:

3-66 (d) If the county, justice, or municipal court believes that
 3-67 a child has violated an order issued under Subsection (c), the court
 3-68 may proceed as authorized by Section 54.023, Family Code, by
 3-69 holding the child in contempt and imposing a fine not to exceed \$500

4-1 or by referring the child to juvenile court for delinquent conduct.
4-2 SECTION 8. Subsection (d), Section 25.094, Education Code,
4-3 as amended by Chapter 1514, Acts of the 77th Legislature, Regular
4-4 Session, 2001, is relettered as Subsection (d-1) and is amended to
4-5 read as follows:

4-6 (d-1) [~~(d)~~] Pursuant to an order of the county, justice, or
4-7 municipal court based on an affidavit showing probable cause to
4-8 believe that an individual has committed an offense under this
4-9 section, a peace officer may take the individual into custody. A
4-10 peace officer taking an individual into custody under this
4-11 subsection shall:

4-12 (1) promptly notify the individual's parent, guardian,
4-13 or custodian of the officer's action and the reason for that action;
4-14 and

4-15 (2) without unnecessary delay:

4-16 (A) release the individual to the individual's
4-17 parent, guardian, or custodian or to another responsible adult, if
4-18 the person promises to bring the individual to the county, justice,
4-19 or municipal court as requested by the court; or

4-20 (B) bring the individual to a county, justice, or
4-21 municipal court with venue over the offense.

4-22 SECTION 9. Subsections (a) and (b), Section 25.0951,
4-23 Education Code, are amended to read as follows:

4-24 (a) If a student fails to attend school without excuse on 10
4-25 or more days or parts of days within a six-month period in the same
4-26 school year, a school district shall:

4-27 (1) file a complaint against the student or the
4-28 student's parent or both in a county, justice, or municipal court
4-29 for an offense under Section 25.093 or 25.094, as appropriate, or
4-30 refer the student to a juvenile court in a county with a population
4-31 of less than 100,000 for conduct that violates Section 25.094; or

4-32 (2) refer the student to a juvenile court for conduct
4-33 indicating a need for supervision under Section 51.03(b)(2), Family
4-34 Code.

4-35 (b) If a student fails to attend school without excuse on
4-36 three or more days or parts of days within a four-week period but
4-37 does not fail to attend school for the time described by Subsection
4-38 (a), the school district may:

4-39 (1) file a complaint against the student or the
4-40 student's parent or both in a county, justice, or municipal court
4-41 for an offense under Section 25.093 or 25.094, as appropriate, or
4-42 refer the student to a juvenile court in a county with a population
4-43 of less than 100,000 for conduct that violates Section 25.094; or

4-44 (2) refer the student to a juvenile court for conduct
4-45 indicating a need for supervision under Section 51.03(b)(2), Family
4-46 Code.

4-47 SECTION 10. Section 25.0952, Education Code, is amended to
4-48 read as follows:

4-49 Sec. 25.0952. PROCEDURES APPLICABLE TO TRUANCY-RELATED
4-50 OFFENSES. In a proceeding [~~in a justice or municipal court~~] based
4-51 on a complaint under Section 25.093 or 25.094, the court shall,
4-52 except as otherwise provided by this chapter, use the procedures
4-53 and exercise the powers authorized by Chapter 45, Code of Criminal
4-54 Procedure.

4-55 SECTION 11. Subsection (a), Section 51.03, Family Code, is
4-56 amended to read as follows:

4-57 (a) Delinquent conduct is:

4-58 (1) conduct, other than a traffic offense, that
4-59 violates a penal law of this state or of the United States
4-60 punishable by imprisonment or by confinement in jail;

4-61 (2) conduct that violates a lawful order of a
4-62 [~~municipal~~] court [~~or justice court~~] under circumstances that would
4-63 constitute contempt of that court in:

4-64 (A) a justice or municipal court; or

4-65 (B) a county court for conduct punishable only by
4-66 a fine;

4-67 (3) conduct that violates Section 49.04, 49.05, 49.06,
4-68 49.07, or 49.08, Penal Code; or

4-69 (4) conduct that violates Section 106.041, Alcoholic

5-1 Beverage Code, relating to driving under the influence of alcohol
5-2 by a minor (third or subsequent offense).

5-3 SECTION 12. Section 54.021, Family Code, is amended to read
5-4 as follows:

5-5 Sec. 54.021. COUNTY, JUSTICE, OR MUNICIPAL COURT: TRUANCY.
5-6 (a) The juvenile court may waive its exclusive original
5-7 jurisdiction and transfer a child to the constitutional county
5-8 court, if the county has a population of two million or more, or to
5-9 an appropriate justice or municipal court, with the permission of
5-10 the county, justice, or municipal court, for disposition in the
5-11 manner provided by Subsection (b) [~~of this section~~] if the child is
5-12 alleged to have engaged in conduct described in Section 51.03(b)(2)
5-13 [~~of this code~~]. A waiver of jurisdiction under this subsection may
5-14 be for an individual case or for all cases in which a child is
5-15 alleged to have engaged in conduct described in Section 51.03(b)(2)
5-16 [~~of this code~~]. The waiver of a juvenile court's exclusive original
5-17 jurisdiction for all cases in which a child is alleged to have
5-18 engaged in conduct described in Section 51.03(b)(2) [~~of this code~~]
5-19 is effective for a period of one year.

5-20 (b) A county, justice, or municipal court may exercise
5-21 jurisdiction over a person alleged to have engaged in conduct
5-22 indicating a need for supervision by engaging in conduct described
5-23 in Section 51.03(b)(2) in a case where:

5-24 (1) the juvenile court has waived its original
5-25 jurisdiction under this section; and

5-26 (2) a complaint is filed by the appropriate authority
5-27 in the county, justice, or municipal court charging an offense
5-28 under Section 25.094, Education Code.

5-29 (c) A proceeding in a county, justice, or municipal court on
5-30 a complaint charging an offense under Section 25.094, Education
5-31 Code, is governed by Chapter 45, Code of Criminal Procedure.

5-32 (d) Notwithstanding any other law, the costs assessed in a
5-33 case filed in or transferred to a constitutional county court for an
5-34 offense under Section 25.093 or 25.094, Education Code, must be the
5-35 same as the costs assessed for a case filed in a justice court for an
5-36 offense under Section 25.093 or 25.094, Education Code.

5-37 (e) The proceedings before a constitutional county court
5-38 related to an offense under Section 25.093 or 25.094, Education
5-39 Code, may be recorded in any manner provided by Section 30.00010,
5-40 Government Code, for recording proceedings in a municipal court of
5-41 record.

5-42 SECTION 13. Subsections (o) and (u), Section 54.04, Family
5-43 Code, are amended to read as follows:

5-44 (o) In a disposition under this title:

5-45 (1) a status offender may not, under any
5-46 circumstances, be committed to the Texas Youth Commission for
5-47 engaging in conduct that would not, under state or local law, be a
5-48 crime if committed by an adult;

5-49 (2) a status offender may not, under any circumstances
5-50 other than as provided under Subsection (n), be placed in a
5-51 post-adjudication secure correctional facility; and

5-52 (3) a child adjudicated for contempt of a county,
5-53 justice, or municipal court order may not, under any circumstances,
5-54 be placed in a post-adjudication secure correctional facility or
5-55 committed to the Texas Youth Commission for that conduct.

5-56 (u) For the purposes of disposition under Subsection
5-57 (d)(2), delinquent conduct that violates a penal law of this state
5-58 of the grade of felony or misdemeanor does not include conduct that
5-59 violates a lawful order of a county, municipal, justice, or
5-60 juvenile court under circumstances that would constitute contempt
5-61 of that court.

5-62 SECTION 14. Subsection (a), Article 45.054, Code of
5-63 Criminal Procedure, as added by Chapter 1514, Acts of the 77th
5-64 Legislature, Regular Session, 2001, is amended to read as follows:

5-65 (a) On a finding by a county, justice, or municipal court
5-66 that an individual has committed an offense under Section 25.094,
5-67 Education Code, the court has jurisdiction to enter an order that
5-68 includes one or more of the following provisions requiring that:

5-69 (1) the individual:

6-1 (A) attend school without unexcused absences;
6-2 (B) attend a preparatory class for the high
6-3 school equivalency examination administered under Section 7.111,
6-4 Education Code, if the court determines that the individual is too
6-5 old to do well in a formal classroom environment; or
6-6 (C) if the individual is at least 16 years of age,
6-7 take the high school equivalency examination administered under
6-8 Section 7.111, Education Code;
6-9 (2) the individual attend a special program that the
6-10 court determines to be in the best interest of the individual,
6-11 including:
6-12 (A) an alcohol and drug abuse program;
6-13 (B) a rehabilitation program;
6-14 (C) a counseling program, including
6-15 self-improvement counseling;
6-16 (D) a program that provides training in
6-17 self-esteem and leadership;
6-18 (E) a work and job skills training program;
6-19 (F) a program that provides training in
6-20 parenting, including parental responsibility;
6-21 (G) a program that provides training in manners;
6-22 (H) a program that provides training in violence
6-23 avoidance;
6-24 (I) a program that provides sensitivity
6-25 training; and
6-26 (J) a program that provides training in advocacy
6-27 and mentoring;
6-28 (3) the individual and the individual's parent attend
6-29 a class for students at risk of dropping out of school designed for
6-30 both the individual and the individual's parent;
6-31 (4) the individual complete reasonable community
6-32 service requirements; or
6-33 (5) for the total number of hours ordered by the court,
6-34 the individual participate in a tutorial program covering the
6-35 academic subjects in which the student is enrolled provided by the
6-36 school the individual attends.
6-37 SECTION 15. Subsection (d), Article 45.055, Code of
6-38 Criminal Procedure, is amended to read as follows:
6-39 (d) The [~~justice or municipal~~] court may not require an
6-40 individual who files an application under this article to pay any
6-41 fee or court costs for seeking expunction.
6-42 SECTION 16. (a) The change in law made by this Act applies
6-43 only to an offense committed on or after the effective date of this
6-44 Act. For purposes of this section, an offense is committed before
6-45 the effective date of this Act if any element of the offense occurs
6-46 before that date.
6-47 (b) An offense committed before the effective date of this
6-48 Act is covered by the law in effect when the offense was committed,
6-49 and the former law is continued in effect for that purpose.
6-50 SECTION 17. This Act takes effect September 1, 2003.

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