

By: Whitmire, West

S.B. No. 1489

A BILL TO BE ENTITLED

AN ACT

relating to educational, juvenile justice, and criminal justice responses to truancy.

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

SECTION 1. Subsections (a), (b), (c), (d), and (d-1), Section 25.094, Education Code, are amended to read as follows:

(a) An individual commits an offense if the individual:

(1) is 12 years of age or older and younger than 18 years of age;

(2) is required to attend school under Section 25.085; and

(3) ~~[(2)]~~ fails to attend school on 10 or more days or parts of days within a six-month period in the same school year or on three or more days or parts of days within a four-week period.

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

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

(2) a justice court of any precinct in the county in which the individual resides or in which the school is located~~[, or~~
~~[(3) a municipal court in the municipality in which the individual resides or in which the school is located].~~

(c) On a finding by the county or~~[,]~~ justice~~[, or municipal]~~ court that the individual has committed an offense under Subsection

1 (a) or on a finding by a juvenile court in a county with a population
2 of less than 100,000 that the individual has engaged in conduct that
3 violates Subsection (a), the court may enter an order that includes
4 one or more of the requirements listed in Article 45.054, Code of
5 Criminal Procedure~~[, as added by Chapter 1514, Acts of the 77th~~
6 ~~Legislature, Regular Session, 2001]~~.

7 (d) If the county or~~[,]~~ justice~~[, or municipal]~~ court
8 believes that a child has violated an order issued under Subsection
9 (c), the court may proceed as authorized by Article 45.050, Code of
10 Criminal Procedure.

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

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

20 (2) without unnecessary delay:

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

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

27 SECTION 2. Section 51.03, Family Code, is amended by adding

1 Subsection (e-1) to read as follows:

2 (e-1) Notwithstanding any other law, for purposes of
3 conduct described by Subsection (b)(2), "child" means a person who
4 is:

- 5 (1) 10 years of age or older;
6 (2) alleged or found to have engaged in the conduct as
7 a result of acts committed before becoming 18 years of age; and
8 (3) required to attend school under Section 25.085,
9 Education Code.

10 SECTION 3. Subsection (h), Section 51.04, Family Code, is
11 amended to read as follows:

12 (h) In a county with a population of less than 100,000, the
13 juvenile court has concurrent jurisdiction with the justice court
14 [~~and municipal courts~~] over conduct engaged in by a child that
15 violates Section 25.094, Education Code.

16 SECTION 4. The heading to Section 54.021, Family Code, is
17 amended to read as follows:

18 Sec. 54.021. COUNTY OR[7] JUSTICE[~~7~~, ~~OR~~ ~~MUNICIPAL~~] COURT:
19 TRUANCY.

20 SECTION 5. Subsections (a), (b), and (c), Section 54.021,
21 Family Code, are amended to read as follows:

22 (a) The juvenile court may waive its exclusive original
23 jurisdiction and transfer a child to the constitutional county
24 court, if the county has a population of two million or more, or to
25 an appropriate justice [~~or municipal~~] court, with the permission of
26 the county or[7] justice[~~7~~, ~~or~~ ~~municipal~~] court, for disposition in
27 the manner provided by Subsection (b) if the child is 12 years of

1 age or older and is alleged to have engaged in conduct described in
2 Section 51.03(b)(2). A waiver of jurisdiction under this
3 subsection may be for an individual case or for all cases in which a
4 child is alleged to have engaged in conduct described in Section
5 51.03(b)(2). The waiver of a juvenile court's exclusive original
6 jurisdiction for all cases in which a child is alleged to have
7 engaged in conduct described in Section 51.03(b)(2) is effective
8 for a period of one year.

9 (b) A county or~~[]~~ justice~~[, or municipal]~~ court may
10 exercise jurisdiction over a person alleged to have engaged in
11 conduct indicating a need for supervision by engaging in conduct
12 described in Section 51.03(b)(2) in a case where:

- 13 (1) the person is 12 years of age or older;
14 (2) the juvenile court has waived its original
15 jurisdiction under this section; and
16 (3) [~~(2)~~] a complaint is filed by the appropriate
17 authority in the county or~~[]~~ justice~~[, or municipal]~~ court
18 charging an offense under Section 25.094, Education Code.

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

23 SECTION 6. Chapter 54, Family Code, is amended by adding
24 Section 54.0402 to read as follows:

25 Sec. 54.0402. DISPOSITIONAL ORDER FOR FAILURE TO ATTEND
26 SCHOOL. A dispositional order regarding conduct under Section
27 51.03(b)(2) is effective for the period specified by the court in

1 the order but may not extend beyond the 180th day after the date of
2 the order or beyond the end of the school year in which the order was
3 entered, whichever period is longer.

4 SECTION 7. Section 54.05, Family Code, is amended by
5 amending Subsections (a) and (b) and adding Subsection (a-1) to
6 read as follows:

7 (a) Except as provided by Subsection (a-1), any ~~[Any]~~
8 disposition, except a commitment to the Texas Youth Commission, may
9 be modified by the juvenile court as provided in this section until:

10 (1) the child reaches his 18th birthday; or

11 (2) the child is earlier discharged by the court or
12 operation of law.

13 (a-1) A disposition regarding conduct under Section
14 51.03(b)(2) may be modified by the juvenile court as provided by
15 this section until the expiration of the period described by
16 Section 54.0402.

17 (b) Except for a commitment to the Texas Youth Commission or
18 a disposition under Section 54.0402, all dispositions
19 automatically terminate when the child reaches his 18th birthday.

20 SECTION 8. Article 45.054, Code of Criminal Procedure, is
21 amended by amending Subsections (a) and (b) and adding Subsections
22 (i) and (j) to read as follows:

23 (a) On a finding by a county or ~~[r]~~ justice ~~[, or municipal]~~
24 court that an individual has committed an offense under Section
25 25.094, Education Code, the court has jurisdiction to enter an
26 order that includes one or more of the following provisions
27 requiring that:

1 (1) the individual:

2 (A) attend school without unexcused absences;

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

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

10 (2) the individual attend a special program that the
11 court determines to be in the best interest of the individual,
12 including:

13 (A) an alcohol and drug abuse program;

14 (B) a rehabilitation program;

15 (C) a counseling program, including
16 self-improvement counseling;

17 (D) a program that provides training in
18 self-esteem and leadership;

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

20 (F) a program that provides training in
21 parenting, including parental responsibility;

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

23 (H) a program that provides training in violence
24 avoidance;

25 (I) a program that provides sensitivity
26 training; and

27 (J) a program that provides training in advocacy

1 and mentoring;

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

5 (4) the individual complete reasonable community
6 service requirements; or

7 (5) for the total number of hours ordered by the court,
8 the individual participate in a tutorial program covering the
9 academic subjects in which the student is enrolled provided by the
10 school the individual attends.

11 (b) An order under Subsection (a)(3) that requires the
12 parent of an individual to attend a class for students at risk of
13 dropping out of school is enforceable in the justice~~[, municipal,]~~
14 or juvenile court by contempt.

15 (i) A county or justice court shall dismiss the complaint
16 against an individual alleging that the individual committed an
17 offense under Section 25.094, Education Code, if:

18 (1) the court finds that the individual has
19 successfully complied with the conditions imposed on the individual
20 by the court under this article; or

21 (2) the individual presents to the court proof that
22 the individual has obtained a high school diploma or a high school
23 equivalency certificate.

24 (j) A county or justice court may waive or reduce a fee or
25 court cost imposed under this article if the court finds that
26 payment of the fee or court cost would cause financial hardship.

27 SECTION 9. Article 45.055, Code of Criminal Procedure, is

1 amended by amending Subsection (a) and adding Subsection (e) to
2 read as follows:

3 (a) Except as provided by Subsection (e), an [An] individual
4 convicted of not more than one violation of Section 25.094,
5 Education Code, may, on or after the individual's 18th birthday,
6 apply to the court in which the individual was convicted to have the
7 conviction and records relating to the conviction expunged.

8 (e) A court shall expunge an individual's conviction under
9 Section 25.094, Education Code, and records relating to a
10 conviction, regardless of whether the individual has previously
11 been convicted of an offense under that section, if:

12 (1) the court finds that the individual has
13 successfully complied with the conditions imposed on the individual
14 by the court under Article 45.054; or

15 (2) before the individual's 21st birthday, the
16 individual presents to the court proof that the individual has
17 obtained a high school diploma or a high school equivalency
18 certificate.

19 SECTION 10. Subsections (a) and (c), Article 45.056, Code
20 of Criminal Procedure, are amended to read as follows:

21 (a) On approval of the commissioners court, [~~city council,~~]
22 school district board of trustees, juvenile board, or other
23 appropriate authority, a county court, justice court, [~~municipal~~
24 ~~court,~~] school district, juvenile probation department, or other
25 appropriate governmental entity may:

26 (1) employ a case manager to provide services in cases
27 involving juvenile offenders before a court consistent with the

1 court's statutory powers; or

2 (2) agree in accordance with Chapter 791, Government
3 Code, to jointly employ a case manager.

4 (c) A county or justice court on approval of the
5 commissioners court [~~or a municipal court on approval of the city~~
6 ~~council~~] may employ one or more full-time juvenile case managers to
7 assist the court in administering the court's juvenile docket and
8 in supervising its court orders in juvenile cases.

9 SECTION 11. Subsections (d), (f), and (h), Article
10 102.0174, Code of Criminal Procedure, are amended to read as
11 follows:

12 (d) The [~~ordinance or~~] order must authorize the judge or
13 justice to waive the fee required by Subsection (b) or (c) in a case
14 of financial hardship.

15 (f) The clerks of the respective courts shall collect the
16 costs and pay them to the county [~~or municipal~~] treasurer[~~, as~~
17 ~~applicable,~~] or to any other official who discharges the duties
18 commonly delegated to the county [~~or municipal~~] treasurer for
19 deposit in the fund.

20 (h) A fund must be administered by or under the direction of
21 the commissioners court [~~or under the direction of the governing~~
22 ~~body of the municipality~~].

23 SECTION 12. Subsection (a), Section 7.111, Education Code,
24 is amended to read as follows:

25 (a) The board shall provide for the administration of high
26 school equivalency examinations, including administration by the
27 adjutant general's department for students described by

1 Subdivision (2)(C). A person who does not have a high school
2 diploma may take the examination in accordance with rules adopted
3 by the board if the person is:

4 (1) over 17 years of age;

5 (2) 16 years of age or older and:

6 (A) is enrolled in a Job Corps training program
7 under the Workforce Investment Act of 1998 (29 U.S.C. Section 2801
8 et seq.), and its subsequent amendments;

9 (B) a public agency providing supervision of the
10 person or having custody of the person under a court order
11 recommends that the person take the examination; or

12 (C) is enrolled in the adjutant general's
13 department's Seaborne Challenge Corps; or

14 (3) required to take the examination under a justice
15 [~~or municipal~~] court order issued under Article 45.054(a)(1)(C),
16 Code of Criminal Procedure.

17 SECTION 13. Subsections (a) and (b), Section 25.091,
18 Education Code, are amended to read as follows:

19 (a) A peace officer serving as an attendance officer has the
20 following powers and duties concerning enforcement of compulsory
21 school attendance requirements:

22 (1) to investigate each case of a violation of
23 compulsory school attendance requirements referred to the peace
24 officer;

25 (2) to enforce compulsory school attendance
26 requirements by:

27 (A) applying truancy prevention measures adopted

1 under Section 25.0915 to the student; and

2 (B) if the truancy prevention measures fail to
3 meaningfully address the student's conduct:

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

9 (ii) [~~(B)~~] filing a complaint in a county
10 or [~~7~~] justice [~~7~~, ~~or municipal~~] court against a parent who violates
11 Section 25.093;

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

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

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

20 (6) to make a home visit or otherwise contact the
21 parent of a student who is in violation of compulsory school
22 attendance requirements, except that a peace officer may not enter
23 a residence without the permission of the parent of a student
24 required under this subchapter to attend school or of the tenant or
25 owner of the residence except to lawfully serve court-ordered legal
26 process on the parent; and

27 (7) to take a student into custody with the permission

1 of the student's parent or in obedience to a court-ordered legal
2 process.

3 (b) An attendance officer employed by a school district who
4 is not commissioned as a peace officer has the following powers and
5 duties with respect to enforcement of compulsory school attendance
6 requirements:

7 (1) to investigate each case of a violation of the
8 compulsory school attendance requirements referred to the
9 attendance officer;

10 (2) to enforce compulsory school attendance
11 requirements by:

12 (A) applying truancy prevention measures adopted
13 under Section 25.0915 to the student; and

14 (B) if the truancy prevention measures fail to
15 meaningfully address the student's conduct:

16 (i) referring the [~~a~~] student to a juvenile
17 court or filing a complaint against the [~~a~~] student in a county
18 or [~~7~~] justice [~~7~~, ~~or municipal~~] court if the student has unexcused
19 absences for the amount of time specified under Section 25.094 or
20 under Section 51.03(b)(2), Family Code; and

21 (ii) [~~(B)~~] filing a complaint in a county
22 or [~~7~~] justice [~~7~~, ~~or municipal~~] court against a parent who violates
23 Section 25.093;

24 (3) to monitor school attendance compliance by each
25 student investigated by the officer;

26 (4) to maintain an investigative record on each
27 compulsory school attendance requirement violation and related

1 court action and, at the request of a court, the board of trustees
2 of a school district, or the commissioner, to provide a record to
3 the individual or entity requesting the record;

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

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

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

18 SECTION 14. Subchapter C, Chapter 25, Education Code, is
19 amended by adding Section 25.0915 to read as follows:

20 Sec. 25.0915. TRUANCY PREVENTION MEASURES; REFERRAL AND
21 FILING REQUIREMENT. (a) A school district shall adopt truancy
22 prevention measures designed to:

23 (1) address student conduct related to truancy in the
24 school setting; and

25 (2) minimize the need for referrals to juvenile court
26 for and complaints filed in county or justice court alleging
27 truancy.

1 (b) Each referral to juvenile court for or complaint filed
2 in county or justice court alleging truancy by a student must be
3 accompanied by a statement from the student's school certifying
4 that:

5 (1) the school applied the truancy prevention measures
6 adopted under Subsection (a) to the student; and

7 (2) the truancy prevention measures failed to
8 meaningfully address the student's conduct related to truancy.

9 SECTION 15. Subsections (b) and (d), Section 25.093,
10 Education Code, are amended to read as follows:

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

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

16 (2) a justice court of any precinct in the county in
17 which the parent resides or in which the school is located[~~, or~~

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

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

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

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

26 (B) the open-enrollment charter school the child
27 attends; or

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

3 (2) one-half shall be deposited to the credit of[+
4 [~~(A)~~] the general fund of the county[~~, if the~~
5 ~~complaint is filed in the justice court or the constitutional~~
6 ~~county court, or~~

7 [~~(B)~~ ~~the general fund of the municipality, if the~~
8 ~~complaint is filed in municipal court]~~.

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

11 (a) If a student fails to attend school without excuse on 10
12 or more days or parts of days within a six-month period in the same
13 school year, a school district shall within 10 school days of the
14 student's 10th absence:

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

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

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

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

7 (2) refer the student to a juvenile court for conduct
8 indicating a need for supervision under Section 51.03(b)(2), Family
9 Code.

10 SECTION 17. Section 102.121, Government Code, is amended to
11 read as follows:

12 Sec. 102.121. ADDITIONAL COURT COSTS ON CONVICTION IN
13 MUNICIPAL COURT: CODE OF CRIMINAL PROCEDURE. The clerk of a
14 municipal court shall collect fees and costs on conviction of a
15 defendant as follows:

16 (1) a jury fee (Art. 102.004, Code of Criminal
17 Procedure) . . . \$3;

18 (2) a fee for withdrawing request for jury less than 24
19 hours before time of trial (Art. 102.004, Code of Criminal
20 Procedure) . . . \$3;

21 (3) a jury fee for two or more defendants tried jointly
22 (Art. 102.004, Code of Criminal Procedure) . . . one jury fee of \$3;

23 (4) a security fee on a misdemeanor offense (Art.
24 102.017, Code of Criminal Procedure) . . . \$3;

25 (5) a fee for technology fund on a misdemeanor offense
26 (Art. 102.0172, Code of Criminal Procedure) . . . not to exceed \$4;

27 and

1 (6) [~~a juvenile case manager fee (Art. 102.0174, Code~~
2 ~~of Criminal Procedure) . . . not to exceed \$5; and~~

3 [~~(7)~~] a civil justice fee (Art. 102.022, Code of
4 Criminal Procedure) . . . \$0.10.

5 SECTION 18. Subsection (d), Article 102.014, and Subsection
6 (b), Article 102.0174, Code of Criminal Procedure, are repealed.

7 SECTION 19. The change in law made by this Act applies only
8 to conduct that occurs on or after the effective date of this Act.
9 Conduct that occurs before the effective date of this Act is
10 governed by the law in effect at the time the conduct occurred, and
11 the former law is continued in effect for that purpose. For
12 purposes of this section, conduct occurs before the effective date
13 of this Act if any element of the violation occurs before that date.

14 SECTION 20. Not later than September 1, 2012, the governing
15 body of a municipality that created a juvenile case manager fund
16 under Article 102.0174, Code of Criminal Procedure, shall:

- 17 (1) abolish the juvenile case manager fund; and
- 18 (2) transfer any money in the juvenile case manager
19 fund to the municipal treasury.

20 SECTION 21. This Act takes effect September 1, 2011.