

By: Whitmire

S.B. No. 1489

A BILL TO BE ENTITLED

AN ACT

relating to jurisdiction for the offenses of truancy and failure to attend school.

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

SECTION 1. Sections 25.091(a) and (b), Education Code, are amended to read as follows:

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

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

(2) to enforce compulsory school attendance requirements by:

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

(B) filing a complaint in a [~~county~~] justice[~~]~~ or municipal court against a parent who violates Section 25.093;

(3) to serve court-ordered legal process;

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

1 (5) 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 (6) 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 a peace officer may not enter
9 a residence without the permission of the parent of a student
10 required under this subchapter to attend school or of the tenant or
11 owner of the residence except to lawfully serve court-ordered legal
12 process on the parent; and

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

16 (b) An attendance officer employed by a school district who
17 is not commissioned as a peace officer has the following powers and
18 duties with respect to enforcement of compulsory school attendance
19 requirements:

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

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

25 (A) referring a student to a juvenile court or
26 filing a complaint against a student in a [~~county~~] justice[~~7~~] or
27 municipal court, as provided by Section 25.094(b), if the student

1 has unexcused absences for the amount of time specified under
2 Section 25.094 or under Section 51.03(b)(2), Family Code; and

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

5 (3) to monitor school attendance compliance by each
6 student investigated by the officer;

7 (4) 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 (5) 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 the attendance officer may not
15 enter a residence without permission of the parent or of the owner
16 or tenant of the residence;

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

20 (7) if the attendance officer has or is informed of a
21 court-ordered legal process directing that a student be taken into
22 custody and the school district employing the officer does not
23 employ its own police department, to contact the sheriff,
24 constable, or any peace officer to request that the student be taken
25 into custody and processed according to the legal process.

26 SECTION 2. Section 25.093(b), Education Code, is amended to
27 read as follows:

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

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

6 [~~2~~] a justice court of any precinct in the county in
7 which the parent resides or in which the school is located; or

8 (2) [~~3~~] a municipal court of the municipality in
9 which the parent resides or in which the school is located.

10 SECTION 3. Sections 25.094(b), (c), (d), and (d-1),
11 Education Code, are amended to read as follows:

12 (b) An offense under this section may only be [~~prosecuted~~
13 ~~in~~]:

14 (1) referred to juvenile court if the individual was
15 younger than 17 years of age at the time the violation occurred [~~the~~
16 ~~constitutional county court of the county in which the individual~~
17 ~~resides or in which the school is located, if the county has a~~
18 ~~population of two million or more]; or~~

19 (2) if the individual was 17 years of age or older at
20 the time the offense was committed, prosecuted in:

21 (A) a justice court of any precinct in the county
22 in which the individual resides or in which the school is located;
23 or

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

26 (c) On a finding by the [~~county,~~] justice[~~7~~] or municipal
27 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~~
2 ~~population of less than 100,000~~] that the individual has engaged in
3 conduct that violates Subsection (a), the court may enter an order
4 that includes one or more of the requirements listed in Article
5 45.054, Code of Criminal Procedure [~~, as added by Chapter 1514, Acts~~
6 ~~of the 77th Legislature, Regular Session, 2001~~].

7 (d) If the juvenile [~~county~~], 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 juvenile [~~county~~],
12 justice, or municipal court based on an affidavit showing probable
13 cause to believe that an individual has committed an offense under
14 or engaged in conduct that violates this section, a peace officer
15 may take the individual into custody. A peace officer taking an
16 individual into custody under this 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 juvenile
24 [~~county~~], justice, or municipal court as requested by the court; or

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

1 SECTION 4. Section 25.095(a), Education Code, is amended to
2 read as follows:

3 (a) A school district or open-enrollment charter school
4 shall notify a student's parent in writing at the beginning of the
5 school year that if the student is absent from school on 10 or more
6 days or parts of days within a six-month period in the same school
7 year or on three or more days or parts of days within a four-week
8 period:

9 (1) the student's parent is subject to prosecution
10 under Section 25.093; and

11 (2) the student is subject to prosecution ~~[under~~
12 ~~Section 25.094]~~ or to referral to a juvenile court, as provided by
13 Section 25.094(b), [in a county with a population of less than
14 100,000] for conduct that violates that section.

15 SECTION 5. 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 within 10 school days of the
20 student's 10th absence:

21 (1) file a complaint against the student, if the
22 student was 17 years of age or older at the time the offense was
23 committed, or the student's parent or both in a ~~[county,~~
24 justice~~]~~ or municipal court for an offense under Section 25.093
25 or 25.094, as appropriate ~~[, or refer the student to a juvenile court~~
26 ~~in a county with a population of less than 100,000 for conduct that~~
27 ~~violates Section 25.094]; or~~

1 (2) if the student was younger than 17 years of age at
2 the time the violation occurred:

3 (A) refer the student to a juvenile court for
4 conduct indicating a need for supervision under Section
5 51.03(b)(2), Family Code;

6 (B) file a complaint against the student's parent
7 in a justice or municipal court for an offense under Section 25.093;
8 or

9 (C) refer the student to juvenile court and file
10 a complaint against the student's parent in justice or municipal
11 court.

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

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

23 (2) if the student was younger than 17 years of age at
24 the time the violation occurred:

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

1 (B) file a complaint against the student's parent
2 in a justice or municipal court for an offense under Section 25.093;
3 or

4 (C) refer the student to juvenile court and file
5 a complaint against the student's parent in justice or municipal
6 court.

7 SECTION 6. Article 45.054(a), Code of Criminal Procedure,
8 is amended to read as follows:

9 (a) On a finding by a [~~county,~~] justice[~~7~~] or municipal
10 court that an individual has committed an offense under Section
11 25.094, Education Code, or by a juvenile court that an individual
12 engaged in conduct in violation of that section, the court has
13 jurisdiction to enter an order that includes one or more of the
14 following provisions 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 7. Section 51.03(f), Family Code, is amended to
26 read as follows:

27 (f) Conduct [~~Except as provided by Subsection (g), conduct~~]

1 described under Subsection (b)(1) does not constitute conduct
2 indicating a need for supervision unless the child has been
3 referred to the juvenile court under Section 51.08(b).

4 SECTION 8. Section 54.021, Family Code, is amended to read
5 as follows:

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

20 [(b)] A [~~county~~] justice[~~]~~ or municipal court may
21 exercise jurisdiction over a person alleged to have engaged in
22 conduct indicating a need for supervision by engaging in conduct
23 described in Section 51.03(b)(2) only as provided by [~~in a case~~
24 ~~where:~~

25 [~~(1) the juvenile court has waived its original~~
26 ~~jurisdiction under this section; and~~

27 [~~(2) a complaint is filed by the appropriate authority~~

1 ~~in the county, justice, or municipal court charging an offense~~
2 ~~under] Section 25.094(b) [~~25.094~~], Education Code.~~

3 (b) [~~(c)~~] A proceeding in a [~~county,~~] justice[~~,~~] or
4 municipal court on a complaint charging an offense under Section
5 25.094, Education Code, is governed by Chapter 45, Code of Criminal
6 Procedure.

7 (c) [~~(d)~~ ~~Notwithstanding any other law, the costs assessed~~
8 ~~in a case filed in or transferred to a constitutional county court~~
9 ~~for an offense under Section 25.093 or 25.094, Education Code, must~~
10 ~~be the same as the costs assessed for a case filed in a justice court~~
11 ~~for an offense under Section 25.093 or 25.094, Education Code.~~

12 [~~(e)~~] The proceedings before a justice or municipal
13 [~~constitutional county~~] court related to an offense under Section
14 25.093 or 25.094, Education Code, may be recorded in any manner
15 provided by Section 30.00010, Government Code, for recording
16 proceedings in a municipal court of record.

17 SECTION 9. Sections 26.045(c) and (e), Government Code, are
18 amended to read as follows:

19 (c) Except as provided by Subsection [~~Subsections (d) and~~]
20 (f), a county court that is in a county with a criminal district
21 court does not have any criminal jurisdiction.

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

24 SECTION 10. The following are repealed:

- 25 (1) Article 45.054(a-1), Code of Criminal Procedure;
- 26 (2) Section 51.03(g), Family Code;
- 27 (3) Section 51.04(h), Family Code;

1 (4) Section 26.045(d), Government Code; and

2 (5) Subchapter W, Chapter 54, Government Code.

3 SECTION 11. The change in law made by this Act applies only
4 to conduct that violates Section 25.093 or 25.094, Education Code,
5 as amended by this Act, that occurs on or after the effective date
6 of this Act. Conduct that violates Section 25.093 or 25.094,
7 Education Code, as amended by this Act, that occurs before the
8 effective date of this Act is covered by the law in effect at the
9 time the conduct occurred, and the former law is continued in effect
10 for that purpose. For purposes of this section, conduct occurs
11 before the effective date of this Act if any element of the
12 violation occurred before that date.

13 SECTION 12. This Act takes effect September 1, 2011.