

1-1 By: Whitmire S.B. No. 1489
1-2 (In the Senate - Filed March 10, 2011; March 22, 2011, read
1-3 first time and referred to Committee on Jurisprudence;
1-4 April 18, 2011, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 4, Nays 1; April 18, 2011,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1489 By: Rodriguez

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

1-10 relating to educational, juvenile justice, and criminal justice
1-11 responses to truancy.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Subsections (a), (b), (c), (d), and (d-1),
1-14 Section 25.094, Education Code, are amended to read as follows:

1-15 (a) An individual commits an offense if the individual:

1-16 (1) is 12 years of age or older and younger than 18
1-17 years of age;

1-18 (2) is required to attend school under Section 25.085;
1-19 and

1-20 (3) [~~2~~] fails to attend school on 10 or more days or
1-21 parts of days within a six-month period in the same school year or
1-22 on three or more days or parts of days within a four-week period.

1-23 (b) An offense under this section may be prosecuted in:

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

1-27 (2) a justice court of any precinct in the county in
1-28 which the individual resides or in which the school is located [~~or~~]

1-29 [~~(3) a municipal court in the municipality in which~~
1-30 ~~the individual resides or in which the school is located].~~

1-31 (c) On a finding by the county or [~~or~~] justice [~~or municipal~~]
1-32 court that the individual has committed an offense under Subsection
1-33 (a) or on a finding by a juvenile court in a county with a population
1-34 of less than 100,000 that the individual has engaged in conduct that
1-35 violates Subsection (a), the court may enter an order that includes
1-36 one or more of the requirements listed in Article 45.054, Code of
1-37 Criminal Procedure [~~as added by Chapter 1514, Acts of the 77th~~
1-38 ~~Legislature, Regular Session, 2001].~~

1-39 (d) If the county or [~~or~~] justice [~~or municipal~~] court
1-40 believes that a child has violated an order issued under Subsection
1-41 (c), the court may proceed as authorized by Article 45.050, Code of
1-42 Criminal Procedure.

1-43 (d-1) Pursuant to an order of the county or [~~or~~] justice [~~or~~
1-44 ~~municipal~~] court based on an affidavit showing probable cause to
1-45 believe that an individual has committed an offense under this
1-46 section, a peace officer may take the individual into custody. A
1-47 peace officer taking an individual into custody under this
1-48 subsection shall:

1-49 (1) promptly notify the individual's parent, guardian,
1-50 or custodian of the officer's action and the reason for that action;
1-51 and

1-52 (2) without unnecessary delay:

1-53 (A) release the individual to the individual's
1-54 parent, guardian, or custodian or to another responsible adult, if
1-55 the person promises to bring the individual to the county or [~~or~~]
1-56 justice [~~or municipal~~] court as requested by the court; or

1-57 (B) bring the individual to a county or [~~or~~]
1-58 justice [~~or municipal~~] court with venue over the offense.

1-59 SECTION 2. Section 51.03, Family Code, is amended by adding
1-60 Subsection (e-1) to read as follows:

1-61 (e-1) Notwithstanding any other law, for purposes of
1-62 conduct described by Subsection (b)(2), "child" means a person who
1-63 is:

- 2-1 (1) 10 years of age or older;
- 2-2 (2) alleged or found to have engaged in the conduct as
- 2-3 a result of acts committed before becoming 18 years of age; and
- 2-4 (3) required to attend school under Section 25.085,
- 2-5 Education Code.

2-6 SECTION 3. Subsection (h), Section 51.04, Family Code, is

2-7 amended to read as follows:
2-8 (h) In a county with a population of less than 100,000, the

2-9 juvenile court has concurrent jurisdiction with the justice court

2-10 ~~[and municipal courts]~~ over conduct engaged in by a child that

2-11 violates Section 25.094, Education Code.

2-12 SECTION 4. The heading to Section 54.021, Family Code, is

2-13 amended to read as follows:

2-14 Sec. 54.021. COUNTY OR~~[]~~ JUSTICE~~[, OR MUNICIPAL]~~ COURT:

2-15 TRUANCY.

2-16 SECTION 5. Subsections (a), (b), and (c), Section 54.021,

2-17 Family Code, are amended to read as follows:

2-18 (a) The juvenile court may waive its exclusive original

2-19 jurisdiction and transfer a child to the constitutional county

2-20 court, if the county has a population of two million or more, or to

2-21 an appropriate justice ~~[or municipal]~~ court, with the permission of

2-22 the county or~~[]~~ justice~~[, or municipal]~~ court, for disposition in

2-23 the manner provided by Subsection (b) if the child is 12 years of

2-24 age or older and is alleged to have engaged in conduct described in

2-25 Section 51.03(b)(2). A waiver of jurisdiction under this

2-26 subsection may be for an individual case or for all cases in which a

2-27 child is alleged to have engaged in conduct described in Section

2-28 51.03(b)(2). The waiver of a juvenile court's exclusive original

2-29 jurisdiction for all cases in which a child is alleged to have

2-30 engaged in conduct described in Section 51.03(b)(2) is effective

2-31 for a period of one year.

2-32 (b) A county or~~[]~~ justice~~[, or municipal]~~ court may

2-33 exercise jurisdiction over a person alleged to have engaged in

2-34 conduct indicating a need for supervision by engaging in conduct

2-35 described in Section 51.03(b)(2) in a case where:

2-36 (1) the person is 12 years of age or older;

2-37 (2) the juvenile court has waived its original

2-38 jurisdiction under this section; and

2-39 (3) ~~(2)~~ a complaint is filed by the appropriate

2-40 authority in the county or~~[]~~ justice~~[, or municipal]~~ court

2-41 charging an offense under Section 25.094, Education Code.

2-42 (c) A proceeding in a county or~~[]~~ justice~~[, or municipal]~~

2-43 court on a complaint charging an offense under Section 25.094,

2-44 Education Code, is governed by Chapter 45, Code of Criminal

2-45 Procedure.

2-46 SECTION 6. Chapter 54, Family Code, is amended by adding

2-47 Section 54.0402 to read as follows:

2-48 Sec. 54.0402. DISPOSITIONAL ORDER FOR FAILURE TO ATTEND

2-49 SCHOOL. A dispositional order regarding conduct under Section

2-50 51.03(b)(2) is effective for the period specified by the court in

2-51 the order but may not extend beyond the 180th day after the date of

2-52 the order or beyond the end of the school year in which the order was

2-53 entered, whichever period is longer.

2-54 SECTION 7. Section 54.05, Family Code, is amended by

2-55 amending Subsections (a) and (b) and adding Subsection (a-1) to

2-56 read as follows:

2-57 (a) Except as provided by Subsection (a-1), any ~~[Any]~~

2-58 disposition, except a commitment to the Texas Youth Commission, may

2-59 be modified by the juvenile court as provided in this section until:

2-60 (1) the child reaches his 18th birthday; or

2-61 (2) the child is earlier discharged by the court or

2-62 operation of law.

2-63 (a-1) A disposition regarding conduct under Section

2-64 51.03(b)(2) may be modified by the juvenile court as provided by

2-65 this section until the expiration of the period described by

2-66 Section 54.0402.

2-67 (b) Except for a commitment to the Texas Youth Commission or

2-68 a disposition under Section 54.0402, all dispositions

2-69 automatically terminate when the child reaches his 18th birthday.

3-1 SECTION 8. Article 45.054, Code of Criminal Procedure, is
3-2 amended by amending Subsections (a) and (b) and adding Subsections
3-3 (i) and (j) to read as follows:

3-4 (a) On a finding by a county or [~~7~~] justice [~~7~~, ~~or municipal~~]
3-5 court that an individual has committed an offense under Section
3-6 25.094, Education Code, the court has jurisdiction to enter an
3-7 order that includes one or more of the following provisions
3-8 requiring that:

3-9 (1) the individual:
3-10 (A) attend school without unexcused absences;
3-11 (B) attend a preparatory class for the high
3-12 school equivalency examination administered under Section 7.111,
3-13 Education Code, if the court determines that the individual is too
3-14 old to do well in a formal classroom environment; or

3-15 (C) if the individual is at least 16 years of age,
3-16 take the high school equivalency examination administered under
3-17 Section 7.111, Education Code;

3-18 (2) the individual attend a special program that the
3-19 court determines to be in the best interest of the individual,
3-20 including:

3-21 (A) an alcohol and drug abuse program;

3-22 (B) a rehabilitation program;

3-23 (C) a counseling program, including
3-24 self-improvement counseling;

3-25 (D) a program that provides training in
3-26 self-esteem and leadership;

3-27 (E) a work and job skills training program;

3-28 (F) a program that provides training in
3-29 parenting, including parental responsibility;

3-30 (G) a program that provides training in manners;

3-31 (H) a program that provides training in violence
3-32 avoidance;

3-33 (I) a program that provides sensitivity
3-34 training; and

3-35 (J) a program that provides training in advocacy
3-36 and mentoring;

3-37 (3) the individual and the individual's parent attend
3-38 a class for students at risk of dropping out of school designed for
3-39 both the individual and the individual's parent;

3-40 (4) the individual complete reasonable community
3-41 service requirements; or

3-42 (5) for the total number of hours ordered by the court,
3-43 the individual participate in a tutorial program covering the
3-44 academic subjects in which the student is enrolled provided by the
3-45 school the individual attends.

3-46 (b) An order under Subsection (a)(3) that requires the
3-47 parent of an individual to attend a class for students at risk of
3-48 dropping out of school is enforceable in the justice [~~7~~, ~~municipal~~]
3-49 or juvenile court by contempt.

3-50 (i) A county or justice court shall dismiss the complaint
3-51 against an individual alleging that the individual committed an
3-52 offense under Section 25.094, Education Code, if:

3-53 (1) the court finds that the individual has
3-54 successfully complied with the conditions imposed on the individual
3-55 by the court under this article; or

3-56 (2) the individual presents to the court proof that
3-57 the individual has obtained a high school diploma or a high school
3-58 equivalency certificate.

3-59 (j) A county or justice court may waive or reduce a fee or
3-60 court cost imposed under this article if the court finds that
3-61 payment of the fee or court cost would cause financial hardship.

3-62 SECTION 9. Article 45.055, Code of Criminal Procedure, is
3-63 amended by amending Subsection (a) and adding Subsection (e) to
3-64 read as follows:

3-65 (a) Except as provided by Subsection (e), an [~~An~~] individual
3-66 convicted of not more than one violation of Section 25.094,
3-67 Education Code, may, on or after the individual's 18th birthday,
3-68 apply to the court in which the individual was convicted to have the
3-69 conviction and records relating to the conviction expunged.

4-1 (e) A court shall expunge an individual's conviction under
4-2 Section 25.094, Education Code, and records relating to a
4-3 conviction, regardless of whether the individual has previously
4-4 been convicted of an offense under that section, if:

4-5 (1) the court finds that the individual has
4-6 successfully complied with the conditions imposed on the individual
4-7 by the court under Article 45.054; or

4-8 (2) before the individual's 21st birthday, the
4-9 individual presents to the court proof that the individual has
4-10 obtained a high school diploma or a high school equivalency
4-11 certificate.

4-12 SECTION 10. Subsections (a) and (c), Article 45.056, Code
4-13 of Criminal Procedure, are amended to read as follows:

4-14 (a) On approval of the commissioners court, [~~city council,~~
4-15 school district board of trustees, juvenile board, or other
4-16 appropriate authority, a county court, justice court, [~~municipal~~
4-17 ~~court,~~] school district, juvenile probation department, or other
4-18 appropriate governmental entity may:

4-19 (1) employ a case manager to provide services in cases
4-20 involving juvenile offenders before a court consistent with the
4-21 court's statutory powers; or

4-22 (2) agree in accordance with Chapter 791, Government
4-23 Code, to jointly employ a case manager.

4-24 (c) A county or justice court on approval of the
4-25 commissioners court [~~or a municipal court on approval of the city~~
4-26 ~~council]~~ may employ one or more full-time juvenile case managers to
4-27 assist the court in administering the court's juvenile docket and
4-28 in supervising its court orders in juvenile cases.

4-29 SECTION 11. Subsections (d), (f), and (h), Article
4-30 102.0174, Code of Criminal Procedure, are amended to read as
4-31 follows:

4-32 (d) The [~~ordinance or~~] order must authorize the judge or
4-33 justice to waive the fee required by Subsection (b) or (c) in a case
4-34 of financial hardship.

4-35 (f) The clerks of the respective courts shall collect the
4-36 costs and pay them to the county [~~or municipal]~~ treasurer [~~, as~~
4-37 ~~applicable,~~] or to any other official who discharges the duties
4-38 commonly delegated to the county [~~or municipal]~~ treasurer for
4-39 deposit in the fund.

4-40 (h) A fund must be administered by or under the direction of
4-41 the commissioners court [~~or under the direction of the governing~~
4-42 ~~body of the municipality]~~.

4-43 SECTION 12. Subsection (a), Section 7.111, Education Code,
4-44 is amended to read as follows:

4-45 (a) The board shall provide for the administration of high
4-46 school equivalency examinations, including administration by the
4-47 adjutant general's department for students described by
4-48 Subdivision (2)(C). A person who does not have a high school
4-49 diploma may take the examination in accordance with rules adopted
4-50 by the board if the person is:

4-51 (1) over 17 years of age;

4-52 (2) 16 years of age or older and:

4-53 (A) is enrolled in a Job Corps training program
4-54 under the Workforce Investment Act of 1998 (29 U.S.C. Section 2801
4-55 et seq.), and its subsequent amendments;

4-56 (B) a public agency providing supervision of the
4-57 person or having custody of the person under a court order
4-58 recommends that the person take the examination; or

4-59 (C) is enrolled in the adjutant general's
4-60 department's Seaborne Challenge Corps; or

4-61 (3) required to take the examination under a justice
4-62 [~~or municipal]~~ court order issued under Article 45.054(a)(1)(C),
4-63 Code of Criminal Procedure.

4-64 SECTION 13. Subsections (a) and (b), Section 25.091,
4-65 Education Code, are amended to read as follows:

4-66 (a) A peace officer serving as an attendance officer has the
4-67 following powers and duties concerning enforcement of compulsory
4-68 school attendance requirements:

4-69 (1) to investigate each case of a violation of

5-1 compulsory school attendance requirements referred to the peace
5-2 officer;

5-3 (2) to enforce compulsory school attendance
5-4 requirements by:

5-5 (A) applying truancy prevention measures adopted
5-6 under Section 25.0915 to the student; and

5-7 (B) if the truancy prevention measures fail to
5-8 meaningfully address the student's conduct:

5-9 (i) referring the [a] student to a juvenile
5-10 court or filing a complaint against the [a] student in a county
5-11 or [7] justice[~~, or municipal~~] court if the student has unexcused
5-12 absences for the amount of time specified under Section 25.094 or
5-13 under Section 51.03(b)(2), Family Code; or [and]

5-14 (ii) [~~(B)~~] filing a complaint in a county
5-15 or [7] justice[~~, or municipal~~] court against a parent who violates
5-16 Section 25.093;

5-17 (3) to serve court-ordered legal process;

5-18 (4) to review school attendance records for compliance
5-19 by each student investigated by the officer;

5-20 (5) to maintain an investigative record on each
5-21 compulsory school attendance requirement violation and related
5-22 court action and, at the request of a court, the board of trustees
5-23 of a school district, or the commissioner, to provide a record to
5-24 the individual or entity requesting the record;

5-25 (6) to make a home visit or otherwise contact the
5-26 parent of a student who is in violation of compulsory school
5-27 attendance requirements, except that a peace officer may not enter
5-28 a residence without the permission of the parent of a student
5-29 required under this subchapter to attend school or of the tenant or
5-30 owner of the residence except to lawfully serve court-ordered legal
5-31 process on the parent; and

5-32 (7) to take a student into custody with the permission
5-33 of the student's parent or in obedience to a court-ordered legal
5-34 process.

5-35 (b) An attendance officer employed by a school district who
5-36 is not commissioned as a peace officer has the following powers and
5-37 duties with respect to enforcement of compulsory school attendance
5-38 requirements:

5-39 (1) to investigate each case of a violation of the
5-40 compulsory school attendance requirements referred to the
5-41 attendance officer;

5-42 (2) to enforce compulsory school attendance
5-43 requirements by:

5-44 (A) applying truancy prevention measures adopted
5-45 under Section 25.0915 to the student; and

5-46 (B) if the truancy prevention measures fail to
5-47 meaningfully address the student's conduct:

5-48 (i) referring the [a] student to a juvenile
5-49 court or filing a complaint against the [a] student in a county
5-50 or [7] justice[~~, or municipal~~] court if the student has unexcused
5-51 absences for the amount of time specified under Section 25.094 or
5-52 under Section 51.03(b)(2), Family Code; and

5-53 (ii) [~~(B)~~] filing a complaint in a county
5-54 or [7] justice[~~, or municipal~~] court against a parent who violates
5-55 Section 25.093;

5-56 (3) to monitor school attendance compliance by each
5-57 student investigated by the officer;

5-58 (4) to maintain an investigative record on each
5-59 compulsory school attendance requirement violation and related
5-60 court action and, at the request of a court, the board of trustees
5-61 of a school district, or the commissioner, to provide a record to
5-62 the individual or entity requesting the record;

5-63 (5) to make a home visit or otherwise contact the
5-64 parent of a student who is in violation of compulsory school
5-65 attendance requirements, except that the attendance officer may not
5-66 enter a residence without permission of the parent or of the owner
5-67 or tenant of the residence;

5-68 (6) at the request of a parent, to escort a student
5-69 from any location to a school campus to ensure the student's

6-1 compliance with compulsory school attendance requirements; and
6-2 (7) if the attendance officer has or is informed of a
6-3 court-ordered legal process directing that a student be taken into
6-4 custody and the school district employing the officer does not
6-5 employ its own police department, to contact the sheriff,
6-6 constable, or any peace officer to request that the student be taken
6-7 into custody and processed according to the legal process.

6-8 SECTION 14. Subchapter C, Chapter 25, Education Code, is
6-9 amended by adding Section 25.0915 to read as follows:

6-10 Sec. 25.0915. TRUANCY PREVENTION MEASURES; REFERRAL AND
6-11 FILING REQUIREMENT. (a) A school district shall adopt truancy
6-12 prevention measures designed to:

6-13 (1) address student conduct related to truancy in the
6-14 school setting; and

6-15 (2) minimize the need for referrals to juvenile court
6-16 for and complaints filed in county or justice court alleging
6-17 truancy.

6-18 (b) Each referral to juvenile court for or complaint filed
6-19 in county or justice court alleging truancy by a student must be
6-20 accompanied by a statement from the student's school certifying
6-21 that:

6-22 (1) the school applied the truancy prevention measures
6-23 adopted under Subsection (a) to the student; and

6-24 (2) the truancy prevention measures failed to
6-25 meaningfully address the student's conduct related to truancy.

6-26 SECTION 15. Subsections (b) and (d), Section 25.093,
6-27 Education Code, are amended to read as follows:

6-28 (b) The attendance officer or other appropriate school
6-29 official shall file a complaint against the parent in:

6-30 (1) the constitutional county court of the county in
6-31 which the parent resides or in which the school is located, if the
6-32 county has a population of two million or more; or

6-33 (2) a justice court of any precinct in the county in
6-34 which the parent resides or in which the school is located[~~or~~

6-35 ~~[(3) a municipal court of the municipality in which~~
6-36 ~~the parent resides or in which the school is located].~~

6-37 (d) A fine collected under this section shall be deposited
6-38 as follows:

6-39 (1) one-half shall be deposited to the credit of the
6-40 operating fund of, as applicable:

6-41 (A) the school district in which the child
6-42 attends school;

6-43 (B) the open-enrollment charter school the child
6-44 attends; or

6-45 (C) the juvenile justice alternative education
6-46 program that the child has been ordered to attend; and

6-47 (2) one-half shall be deposited to the credit of[~~+~~
6-48 ~~[(A)] the general fund of the county[, if the~~

6-49 ~~complaint is filed in the justice court or the constitutional~~
6-50 ~~county court; or~~

6-51 ~~[(B) the general fund of the municipality, if the~~
6-52 ~~complaint is filed in municipal court].~~

6-53 SECTION 16. Subsections (a) and (b), Section 25.0951,
6-54 Education Code, are amended to read as follows:

6-55 (a) If a student fails to attend school without excuse on 10
6-56 or more days or parts of days within a six-month period in the same
6-57 school year, a school district shall within 10 school days of the
6-58 student's 10th absence:

6-59 (1) file a complaint against the student or the
6-60 student's parent or both in a county or[~~or~~] justice[~~or municipal~~]
6-61 court for an offense under Section 25.093 or 25.094, as
6-62 appropriate, or refer the student to a juvenile court in a county
6-63 with a population of less than 100,000 for conduct that violates
6-64 Section 25.094; or

6-65 (2) refer the student to a juvenile court for conduct
6-66 indicating a need for supervision under Section 51.03(b)(2), Family
6-67 Code.

6-68 (b) If a student fails to attend school without excuse on
6-69 three or more days or parts of days within a four-week period but

7-1 does not fail to attend school for the time described by Subsection
7-2 (a), the school district may:

7-3 (1) file a complaint against the student or the
7-4 student's parent or both in a county ~~or~~ justice ~~or municipal~~
7-5 court for an offense under Section 25.093 or 25.094, as
7-6 appropriate, or refer the student to a juvenile court in a county
7-7 with a population of less than 100,000 for conduct that violates
7-8 Section 25.094; or

7-9 (2) refer the student to a juvenile court for conduct
7-10 indicating a need for supervision under Section 51.03(b)(2), Family
7-11 Code.

7-12 SECTION 17. Section 102.121, Government Code, is amended to
7-13 read as follows:

7-14 Sec. 102.121. ADDITIONAL COURT COSTS ON CONVICTION IN
7-15 MUNICIPAL COURT: CODE OF CRIMINAL PROCEDURE. The clerk of a
7-16 municipal court shall collect fees and costs on conviction of a
7-17 defendant as follows:

7-18 (1) a jury fee (Art. 102.004, Code of Criminal
7-19 Procedure) . . . \$3;

7-20 (2) a fee for withdrawing request for jury less than 24
7-21 hours before time of trial (Art. 102.004, Code of Criminal
7-22 Procedure) . . . \$3;

7-23 (3) a jury fee for two or more defendants tried jointly
7-24 (Art. 102.004, Code of Criminal Procedure) . . . one jury fee of \$3;

7-25 (4) a security fee on a misdemeanor offense (Art.
7-26 102.017, Code of Criminal Procedure) . . . \$3;

7-27 (5) a fee for technology fund on a misdemeanor offense
7-28 (Art. 102.0172, Code of Criminal Procedure) . . . not to exceed \$4;
7-29 and

7-30 (6) ~~[a juvenile case manager fee (Art. 102.0174, Code~~
7-31 ~~of Criminal Procedure) . . . not to exceed \$5; and~~

7-32 ~~[(7)]~~ a civil justice fee (Art. 102.022, Code of
7-33 Criminal Procedure) . . . \$0.10.

7-34 SECTION 18. Subsection (d), Article 102.014, and Subsection
7-35 (b), Article 102.0174, Code of Criminal Procedure, are repealed.

7-36 SECTION 19. The change in law made by this Act applies only
7-37 to conduct that occurs on or after the effective date of this Act.
7-38 Conduct that occurs before the effective date of this Act is
7-39 governed by the law in effect at the time the conduct occurred, and
7-40 the former law is continued in effect for that purpose. For
7-41 purposes of this section, conduct occurs before the effective date
7-42 of this Act if any element of the violation occurs before that date.

7-43 SECTION 20. Not later than September 1, 2012, the governing
7-44 body of a municipality that created a juvenile case manager fund
7-45 under Article 102.0174, Code of Criminal Procedure, shall:

7-46 (1) abolish the juvenile case manager fund; and

7-47 (2) transfer any money in the juvenile case manager
7-48 fund to the municipal treasury.

7-49 SECTION 21. This Act takes effect September 1, 2011.

7-50 * * * * *