

BILL ANALYSIS

C.S.H.B. 2632
By: Dutton
Juvenile Justice & Family Issues
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties report that in a recent year over 100,000 students, many of whom are minority students or from low-income families, were subject to criminal prosecution in Texas for a failure to attend school offense, also known as a truancy offense. It has been reported that Texas is one of a small number of states where failure to attend school is a criminal offense and that Texas prosecutes many more students for failure to attend school offenses than all the other states. The parties have expressed concern that an individual's conviction in a failure to attend school case may result in a criminal record, which is reflected in a criminal background check and may result in the individual being disqualified for a job or denied entry to a college or the military. C.S.H.B. 2632 seeks to decriminalize truancy.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 2632 repeals an Education Code provision providing for the criminal penalty for a student's failure to attend school and amends the Education Code to instead make an individual whose conduct constitutes failure to attend school liable to the state for a civil penalty not to exceed \$100. The bill establishes that the imposition of this civil penalty is not a conviction and may not be considered a conviction for any purpose. The bill authorizes a peace officer, as an alternative to taking an individual into custody pursuant to a court order based on an affidavit showing probable cause to believe that the individual's conduct constitutes failure to attend school, to issue a citation to the individual. The bill requires the district or county attorney of the county in which the conduct is alleged to have occurred to bring an action in a county, justice, or municipal court to collect the civil penalty of a person who is taken into custody or is issued a citation for conduct constituting failure to attend school.

C.S.H.B. 2632 removes a requirement that a school district take certain actions against a student or a student's parent within 10 school days of a student's 10th absence if the student fails to attend school without excuse on 10 or more days or parts of days within a six-month period in the same school year and instead authorizes a school district under that circumstance to take those actions against a student or the student's parent within 10 school days of the student's most recent absence. The bill removes a condition limiting a school district's authority to refer to juvenile court a student whose conduct constitutes failure to attend school to districts in a county with a population of less than 100,000. The bill instead gives a district the option of referring

such a student to juvenile court for a determination as to whether the child engaged in conduct indicating a need for supervision as an alternative to bringing an action against the student in a county, justice, or municipal court.

C.S.H.B. 2632 amends the Code of Criminal Procedure to entitle an individual who has been convicted of a truancy offense, defined as a failure to attend school offense, or who has had a complaint for such an offense dismissed to have the conviction or complaint and records relating to the conviction or complaint automatically expunged. The bill requires the court in which the individual was convicted or in which such a complaint was filed to order the conviction, complaints, verdicts, sentences, and other documents relating to the offense, including any documents in the possession of a school district or law enforcement agency, to be expunged from the individual's record. The bill establishes that the individual is released from all disabilities resulting from the conviction or complaint after entry of the order and prohibits the conviction or complaint from being shown or made known for any purpose. The bill requires the court to inform the individual of the expunction.

C.S.H.B. 2632 amends the Family Code and the Government Code to make conforming changes.

C.S.H.B. 2632 repeals Article 45.055, Code of Criminal Procedure, and Section 25.094(e), Education Code.

EFFECTIVE DATE

September 1, 2015.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 2632 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED	HOUSE COMMITTEE SUBSTITUTE
SECTION 1. Article 45.0216(g), Code of Criminal Procedure, is amended.	SECTION 1. Same as introduced version.
SECTION 2. Articles 45.054(a) and (i), Code of Criminal Procedure, are amended.	SECTION 2. Same as introduced version.
No equivalent provision.	SECTION 3. Subchapter B, Chapter 45, Code of Criminal Procedure, is amended by adding Article 45.0541 to read as follows: <u>Art. 45.0541. AUTOMATIC EXPUNCTION OF TRUANCY RECORDS. (a) In this article, "truancy offense" means an offense committed under Section 25.094, Education Code.</u> <u>(b) An individual who has been convicted of a truancy offense or has had a complaint for a truancy offense dismissed is entitled to have the conviction or complaint and records relating to the conviction or complaint automatically expunged.</u>

(c) The court in which the individual was convicted or a complaint for a truancy offense was filed shall order the conviction, complaints, verdicts, sentences, and other documents relating to the offense, including any documents in the possession of a school district or law enforcement agency, to be expunged from the individual's record. After entry of the order, the individual is released from all disabilities resulting from the conviction or complaint, and the conviction or complaint may not be shown or made known for any purpose. The court shall inform the individual of the expunction.

SECTION 3. Article 102.014(d), Code of Criminal Procedure, is amended.

SECTION 4. Same as introduced version.

SECTION 4. Section 25.094, Education Code, is amended by amending Subsections (a), (b), (c), (d-1), (f), and (g) and adding Subsections (e-1) and (e-2) to read as follows:

SECTION 5. Section 25.094, Education Code, is amended by amending Subsections (a), (b), (c), (d-1), (f), and (g) and adding Subsections (e-1) and (e-2) to read as follows:

(a) An individual is liable to the state for a civil penalty not to exceed \$200 [~~commits an offense~~] if the individual:

(a) An individual is liable to the state for a civil penalty not to exceed \$100 [~~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) 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.

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- (2) is required to attend school under Section 25.085; and
- (3) 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 action [~~offense~~] under this section may be brought [~~prosecuted~~] in:

(b) An action [~~offense~~] under this section may be brought [~~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 1.75 million or more;
- (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.

- (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 1.75 million or more;
- (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, justice, or municipal court [~~that the individual has committed an offense under Subsection (a) or on a finding by a juvenile court in a county with a population of less than~~

(c) On a finding by the county, justice, or municipal court [~~that the individual has committed an offense under Subsection (a) or on a finding by a juvenile court in a county with a population of less than~~

100,000] that the individual has engaged in conduct that violates Subsection (a), the court may enter an order that includes one or more of the requirements listed in Article 45.054, Code of Criminal Procedure[~~—as added by Chapter 1514, Acts of the 77th Legislature, Regular Session, 2001~~].

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

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

(2) without unnecessary delay:

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

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

(e-1) The imposition of a civil penalty under this section is not a conviction and may not be considered a conviction for any purpose.

(e-2) The district or county attorney of the county in which the conduct described by this section is alleged to have occurred shall bring an action in a county, justice, or municipal court to collect the civil penalty of a person who is taken into custody or is issued a citation for a violation under this section.

(f) It is a [an affirmative] defense [~~to prosecution~~] under this section that one or more of the absences required to be proven under Subsection (a) were excused by a school official or by the court or that one or more of the absences were involuntary, but only if there is an insufficient number of unexcused or voluntary absences remaining to constitute an offense under this section. The burden is on the respondent [~~defendant~~] to show by a preponderance of the evidence that the absence has been excused or that the absence was involuntary. A decision by the court to excuse an absence for purposes of

100,000] that the individual has engaged in conduct that violates Subsection (a), the court may enter an order that includes one or more of the requirements listed in Article 45.054, Code of Criminal Procedure[~~—as added by Chapter 1514, Acts of the 77th Legislature, Regular Session, 2001~~].

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

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

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

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

(e-1) The imposition of a civil penalty under this section is not a conviction and may not be considered a conviction for any purpose.

(e-2) The district or county attorney of the county in which the conduct described by this section is alleged to have occurred shall bring an action in a county, justice, or municipal court to collect the civil penalty of a person who is taken into custody or is issued a citation for a violation under this section.

(f) It is a [an affirmative] defense [~~to prosecution~~] under this section that one or more of the absences required to be proven under Subsection (a) were excused by a school official or by the court or that one or more of the absences were involuntary, but only if there is an insufficient number of unexcused or voluntary absences remaining to constitute an offense under this section. The burden is on the respondent [~~defendant~~] to show by a preponderance of the evidence that the absence has been excused or that the absence was involuntary. A decision by the court to excuse an absence for purposes of

this section does not affect the ability of the school district to determine whether to excuse the absence for another purpose.

(g) It is a ~~an affirmative~~ defense ~~to prosecution~~ under this section that one or more of the absences required to be proven under Subsection (a) was involuntary. The burden is on the respondent ~~defendant~~ to show by a preponderance of the evidence that the absence was involuntary.

SECTION 5. Sections 25.095(a) and (c), Education Code, are amended.

SECTION 6. Sections 25.0951(a) and (b), Education Code, are amended to read as follows:

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

(1) file a complaint against the ~~student or the~~ student's parent ~~or both~~ in a county, justice, or municipal court for an offense under Section 25.093, bring an action in a county, justice, or municipal court for conduct that violates Section ~~or~~ 25.094, [as appropriate,] or refer the student to a juvenile court for a determination as to whether the child engaged in conduct indicating a need for supervision [in a county with a population of less than 100,000 for conduct that violates Section 25.094]; or

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

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

(1) file a complaint against the ~~student or the~~ student's parent ~~or both~~ in a county, justice, or municipal court for an offense under Section 25.093, bring an action in a county, justice, or municipal court for conduct that violates Section ~~or~~ 25.094, [as appropriate,] or refer the student to a juvenile court for a determination as to

this section does not affect the ability of the school district to determine whether to excuse the absence for another purpose.

(g) It is a ~~an affirmative~~ defense ~~to prosecution~~ under this section that one or more of the absences required to be proven under Subsection (a) was involuntary. The burden is on the respondent ~~defendant~~ to show by a preponderance of the evidence that the absence was involuntary.

SECTION 6. Same as introduced version.

SECTION 7. Sections 25.0951(a) and (b), Education Code, are amended to read as follows:

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

(1) file a complaint against the ~~student or the~~ student's parent ~~or both~~ in a county, justice, or municipal court for an offense under Section 25.093, bring an action in a county, justice, or municipal court for conduct that violates Section ~~or~~ 25.094, [as appropriate,] or refer the student to a juvenile court for a determination as to whether the child engaged in conduct indicating a need for supervision [in a county with a population of less than 100,000 for conduct that violates Section 25.094]; or

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

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

(1) file a complaint against the ~~student or the~~ student's parent ~~or both~~ in a county, justice, or municipal court for an offense under Section 25.093, bring an action in a county, justice, or municipal court for conduct that violates Section ~~or~~ 25.094, [as appropriate,] or refer the student to a juvenile court for a determination as to

whether the child engaged in conduct indicating a need for supervision [in a county with a population of less than 100,000 for conduct that violates Section 25.094]; or

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

SECTION 7. Section 51.02(15), Family Code, is amended.

SECTION 8. Sections 54.021(b), (c), (d), and (e), Family Code, are amended.

SECTION 9. Section 54.1955, Government Code, is amended.

SECTION 10. Section 71.0352, Government Code, is amended.

SECTION 11. Section 103.021, Government Code, is amended.

SECTION 12. Article 45.055, Code of Criminal Procedure, and Section 25.094(e), Education Code, are repealed.

SECTION 13. The changes in law made by this Act apply to a person taken into custody or issued a citation on or after the effective date of this Act, regardless of whether the conduct for which the person was taken into custody or issued a citation occurred before, on, or after that date.

SECTION 14. This Act takes effect September 1, 2015.

whether the child engaged in conduct indicating a need for supervision [in a county with a population of less than 100,000 for conduct that violates Section 25.094]; or

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

SECTION 8. Same as introduced version.

SECTION 9. Same as introduced version.

SECTION 10. Same as introduced version.

SECTION 11. Same as introduced version.

SECTION 12. Same as introduced version.

SECTION 13. Same as introduced version.

SECTION 14. Same as introduced version.

SECTION 15. Same as introduced version.