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H.B. No. 2632

A BILL TO BE ENTITLED

AN ACT

relating to removing a criminal penalty and authorizing a civil  
penalty for truancy.

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

SECTION 1. Article 45.0216(g), Code of Criminal Procedure,  
is amended to read as follows:

(g) This article does not apply to any offense otherwise  
covered by:

(1) Chapter 106, Alcoholic Beverage Code; or

(2) Chapter 161, Health and Safety Code [~~, or~~

~~[(3) Section 25.094, Education Code].~~

SECTION 2. Articles 45.054(a) and (i), Code of Criminal  
Procedure, are amended to read as follows:

(a) On a finding by a county, justice, or municipal court  
that an individual has engaged in conduct that violates [~~committed~~  
~~an offense under~~] Section 25.094, Education Code, the court has  
jurisdiction to enter an order that includes one or more of the  
following provisions requiring that:

(1) the individual:

(A) attend school without unexcused absences;

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

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

4 (2) the individual attend a special program that the  
5 court determines to be in the best interest of the individual,  
6 including:

7 (A) an alcohol and drug abuse program;

8 (B) a rehabilitation program;

9 (C) a counseling program, including  
10 self-improvement counseling;

11 (D) a program that provides training in  
12 self-esteem and leadership;

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

14 (F) a program that provides training in  
15 parenting, including parental responsibility;

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

17 (H) a program that provides training in violence  
18 avoidance;

19 (I) a program that provides sensitivity  
20 training; and

21 (J) a program that provides training in advocacy  
22 and mentoring;

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

26 (4) the individual complete reasonable community  
27 service requirements; or

1           (5) for the total number of hours ordered by the court,  
2 the individual participate in a tutorial program covering the  
3 academic subjects in which the student is enrolled provided by the  
4 school the individual attends.

5           (i) A county, justice, or municipal court shall dismiss the  
6 complaint against an individual alleging that the individual has  
7 engaged in conduct that violates [~~committed an offense under~~]  
8 Section 25.094, Education Code, if:

9           (1) the court finds that the individual has  
10 successfully complied with the conditions imposed on the individual  
11 by the court under this article; or

12           (2) the individual presents to the court proof that  
13 the individual has obtained a high school diploma or a high school  
14 equivalency certificate.

15           SECTION 3. Subchapter B, Chapter 45, Code of Criminal  
16 Procedure, is amended by adding Article 45.0541 to read as follows:

17           Art. 45.0541. AUTOMATIC EXPUNCTION OF TRUANCY RECORDS. (a)  
18 In this article, "truancy offense" means an offense committed under  
19 Section 25.094, Education Code.

20           (b) An individual who has been convicted of a truancy  
21 offense or has had a complaint for a truancy offense dismissed is  
22 entitled to have the conviction or complaint and records relating  
23 to the conviction or complaint automatically expunged.

24           (c) The court in which the individual was convicted or a  
25 complaint for a truancy offense was filed shall order the  
26 conviction, complaints, verdicts, sentences, and other documents  
27 relating to the offense, including any documents in the possession

1 of a school district or law enforcement agency, to be expunged from  
2 the individual's record. After entry of the order, the individual  
3 is released from all disabilities resulting from the conviction or  
4 complaint, and the conviction or complaint may not be shown or made  
5 known for any purpose. The court shall inform the individual of the  
6 expunction.

7 SECTION 4. Article 102.014(d), Code of Criminal Procedure,  
8 is amended to read as follows:

9 (d) A person convicted of an offense under Section 25.093,  
10 Education Code, or found to have engaged in conduct that violates  
11 Section 25.094, Education Code, shall pay as taxable court costs  
12 \$20 in addition to other taxable court costs. The additional court  
13 costs under this subsection shall be collected in the same manner  
14 that other fines and taxable court costs in the case are collected.

15 SECTION 5. Section 25.094, Education Code, is amended by  
16 amending Subsections (a), (b), (c), (d-1), (f), and (g) and adding  
17 Subsections (e-1), (e-2), and (e-3) to read as follows:

18 (a) An individual is liable to the state for a civil penalty  
19 not to exceed \$100 [~~commits an offense~~] if the individual:

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

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

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

27 (b) An action [~~offense~~] under this section may be brought

1 [~~prosecuted~~] in:

2 (1) the constitutional county court of the county in  
3 which the individual resides or in which the school is located, if  
4 the county has a population of 1.75 million or more;

5 (2) a justice court of any precinct in the county in  
6 which the individual resides or in which the school is located; or

7 (3) a municipal court in the municipality in which the  
8 individual resides or in which the school is located.

9 (c) On a finding by the county, justice, or municipal court  
10 [~~that the individual has committed an offense under Subsection (a)~~  
11 ~~or on a finding by a juvenile court in a county with a population of~~  
12 ~~less than 100,000~~] that the individual has engaged in conduct that  
13 violates Subsection (a), the court may enter an order that includes  
14 one or more of the requirements listed in Article 45.054, Code of  
15 Criminal Procedure[~~, as added by Chapter 1514, Acts of the 77th~~  
16 ~~Legislature, Regular Session, 2001~~].

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

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

26 (2) without unnecessary delay:

27 (A) release the individual to the individual's

1 parent, guardian, or custodian or to another responsible adult, if  
2 the person promises to bring the individual to the county, justice,  
3 or municipal court as requested by the court; or

4 (B) bring the individual to a county, justice, or  
5 municipal court with venue over the violation of this section  
6 ~~[offense]~~.

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

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

15 (e-3) A county may retain a civil penalty collected under  
16 this section.

17 (f) It is a ~~[an affirmative]~~ defense ~~[to prosecution]~~ under  
18 this section that one or more of the absences required to be proven  
19 under Subsection (a) were excused by a school official or by the  
20 court or that one or more of the absences were involuntary, but only  
21 if there is an insufficient number of unexcused or voluntary  
22 absences remaining to constitute a violation of ~~[an offense under]~~  
23 this section. The burden is on the respondent ~~[defendant]~~ to show by  
24 a preponderance of the evidence that the absence has been excused or  
25 that the absence was involuntary. A decision by the court to  
26 excuse an absence for purposes of this section does not affect the  
27 ability of the school district to determine whether to excuse the

1 absence for another purpose.

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

7 SECTION 6. Sections 25.095(a) and (c), Education Code, are  
8 amended to read as follows:

9 (a) A school district or open-enrollment charter school  
10 shall notify a student's parent in writing at the beginning of the  
11 school year that if the student is absent from school on 10 or more  
12 days or parts of days within a six-month period in the same school  
13 year or on three or more days or parts of days within a four-week  
14 period:

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

17 (2) the student is subject to an action brought  
18 [~~prosecution~~] under Section 25.094 or to referral to a juvenile  
19 court [~~in a county with a population of less than 100,000~~] for  
20 conduct indicating a need for supervision [~~that violates that~~  
21 ~~section~~].

22 (c) The fact that a parent did not receive a notice under  
23 Subsection (a) or (b) does not create a defense to prosecution under  
24 Section 25.093, a defense to an action brought under Section [~~or~~]  
25 25.094, or a defense in a disposition hearing on an issue as to  
26 whether the child engaged in conduct indicating a need for  
27 supervision.

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

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

7 (1) file a complaint against the [~~student or the~~]  
8 student's parent [~~or both~~] in a county, justice, or municipal court  
9 for an offense under Section 25.093, bring an action in a county,  
10 justice, or municipal court for conduct that violates Section [~~or~~]  
11 25.094, [as appropriate,] or refer the student to a juvenile court  
12 for a determination as to whether the child engaged in conduct  
13 indicating a need for supervision [~~in a county with a population of~~  
14 ~~less than 100,000 for conduct that violates Section 25.094~~]; or

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

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

22 (1) file a complaint against the [~~student or the~~]  
23 student's parent [~~or both~~] in a county, justice, or municipal court  
24 for an offense under Section 25.093, bring an action in a county,  
25 justice, or municipal court for conduct that violates Section [~~or~~]  
26 25.094, [as appropriate,] or refer the student to a juvenile court  
27 for a determination as to whether the child engaged in conduct



1 indicating a need for supervision [~~in a county with a population of~~  
2 ~~less than 100,000 for conduct that violates Section 25.094~~]; or

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

6 SECTION 8. Section 51.02(15), Family Code, is amended to  
7 read as follows:

8 (15) "Status offender" means a child who is accused,  
9 adjudicated, or convicted for conduct that would not, under state  
10 law, be a crime if committed by an adult, including:

11 (A) truancy under Section 51.03(b)(2);

12 (B) running away from home under Section  
13 51.03(b)(3);

14 (C) a fineable only offense under Section  
15 51.03(b)(1) transferred to the juvenile court under Section  
16 51.08(b), but only if the conduct constituting the offense would  
17 not have been criminal if engaged in by an adult;

18 (D) [~~failure to attend school under Section~~  
19 ~~25.094, Education Code,~~

20 [~~(E)~~] a violation of standards of student conduct  
21 as described by Section 51.03(b)(5);

22 (E) [~~(F)~~] a violation of a juvenile curfew  
23 ordinance or order;

24 (F) [~~(G)~~] a violation of a provision of the  
25 Alcoholic Beverage Code applicable to minors only; or

26 (G) [~~(H)~~] a violation of any other fineable only  
27 offense under Section 8.07(a)(4) or (5), Penal Code, but only if the

1 conduct constituting the offense would not have been criminal if  
2 engaged in by an adult.

3 SECTION 9. Sections 54.021(b), (c), (d), and (e), Family  
4 Code, are amended to read as follows:

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

9 (1) the person is 12 years of age or older;

10 (2) the juvenile court has waived its original  
11 jurisdiction under this section; and

12 (3) an action [~~a complaint~~] is filed by the  
13 appropriate authority in the county, justice, or municipal court  
14 for a violation [~~charging an offense~~] under Section 25.094,  
15 Education Code.

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

20 (d) Notwithstanding any other law, the costs assessed in a  
21 case filed in or transferred to a constitutional county court for an  
22 offense under Section 25.093, Education Code, or for conduct that  
23 violates Section 25.094, Education Code, must be the same as the  
24 costs assessed for a case filed in a justice court for an offense  
25 under Section 25.093, Education Code, or for conduct that violates  
26 Section 25.094, Education Code.

27 (e) The proceedings before a constitutional county court

1 related to an offense under Section 25.093, Education Code, or  
2 conduct that violates Section 25.094, Education Code, may be  
3 recorded in any manner provided by Section 30.00010, Government  
4 Code, for recording proceedings in a municipal court of record.

5 SECTION 10. Section 54.1955, Government Code, is amended to  
6 read as follows:

7 Sec. 54.1955. POWERS. (a) Except as limited by an order of  
8 the county judge, a magistrate appointed under this subchapter may:

- 9 (1) conduct hearings;
- 10 (2) hear evidence;
- 11 (3) issue summons for the appearance of witnesses;
- 12 (4) examine witnesses;
- 13 (5) swear witnesses for hearings;
- 14 (6) recommend rulings or orders or a judgment in a  
15 case;
- 16 (7) regulate proceedings in a hearing;
- 17 (8) accept a plea of guilty or nolo contendere in a  
18 case alleging a violation of Section 25.093 [~~or 25.094~~], Education  
19 Code, and assess a fine or court costs or order community service in  
20 satisfaction of a fine or costs in accordance with Article 45.049,  
21 Code of Criminal Procedure;
- 22 (9) enter an order suspending a sentence or deferring  
23 a final disposition that includes at least one of the requirements  
24 listed in Article 45.051, Code of Criminal Procedure;
- 25 (10) perform any act and take any measure necessary  
26 and proper for the efficient performance of the duties required by  
27 the referral order, including the entry of an order that includes at

1 least one of the requirements in Article 45.054, Code of Criminal  
2 Procedure; and

3 (11) if the magistrate finds that a child as defined by  
4 Article 45.058, Code of Criminal Procedure, has violated an order  
5 under Article 45.054, Code of Criminal Procedure, proceed as  
6 authorized by Article 45.050, Code of Criminal Procedure.

7 (b) With respect to an issue of law or fact the ruling on  
8 which could result in the dismissal of a prosecution under Section  
9 25.093, Education Code, or an action brought under Section 25.094,  
10 Education Code, a magistrate may not rule on the issue but may make  
11 findings, conclusions, and recommendations on the issue.

12 SECTION 11. Section 71.0352, Government Code, is amended to  
13 read as follows:

14 Sec. 71.0352. JUVENILE DATA [~~DATE~~]: JUSTICE, MUNICIPAL, AND  
15 JUVENILE COURTS. As a component of the official monthly report  
16 submitted to the Office of Court Administration of the Texas  
17 Judicial System:

18 (1) justice and municipal courts shall report the  
19 number of cases filed for the following [~~offenses~~]:

20 (A) failure to attend school under Section  
21 25.094, Education Code;

22 (B) parent contributing to nonattendance under  
23 Section 25.093, Education Code; and

24 (C) violation of a local daytime curfew ordinance  
25 adopted under Section 341.905 or 351.903, Local Government Code;  
26 and

27 (2) in cases in which a child fails to obey an order of

1 a justice or municipal court under circumstances that would  
2 constitute contempt of court, the justice or municipal court shall  
3 report the number of incidents in which the child is:

4 (A) referred to the appropriate juvenile court  
5 for delinquent conduct as provided by Article 45.050(c)(1), Code of  
6 Criminal Procedure, and Section 51.03(a)(2), Family Code; or

7 (B) held in contempt, fined, or denied driving  
8 privileges as provided by Article 45.050(c)(2), Code of Criminal  
9 Procedure.

10 SECTION 12. Section 103.021, Government Code, is amended to  
11 read as follows:

12 Sec. 103.021. ADDITIONAL FEES AND COSTS IN CRIMINAL OR  
13 CIVIL CASES: CODE OF CRIMINAL PROCEDURE. An accused or  
14 defendant, or a party to a civil suit, as applicable, shall pay the  
15 following fees and costs under the Code of Criminal Procedure if  
16 ordered by the court or otherwise required:

17 (1) a personal bond fee (Art. 17.42, Code of Criminal  
18 Procedure) . . . the greater of \$20 or three percent of the amount  
19 of the bail fixed for the accused;

20 (2) cost of electronic monitoring as a condition of  
21 release on personal bond (Art. 17.43, Code of Criminal Procedure)  
22 . . . actual cost;

23 (3) a fee for verification of and monitoring of motor  
24 vehicle ignition interlock (Art. 17.441, Code of Criminal  
25 Procedure) . . . not to exceed \$10;

26 (3-a) costs associated with operating a global  
27 positioning monitoring system as a condition of release on bond

1 (Art. 17.49(b)(2), Code of Criminal Procedure) . . . actual costs,  
2 subject to a determination of indigency;

3 (3-b) costs associated with providing a defendant's  
4 victim with an electronic receptor device as a condition of the  
5 defendant's release on bond (Art. 17.49(b)(3), Code of Criminal  
6 Procedure) . . . actual costs, subject to a determination of  
7 indigency;

8 (4) repayment of reward paid by a crime stoppers  
9 organization on conviction of a felony (Art. 37.073, Code of  
10 Criminal Procedure) . . . amount ordered;

11 (5) reimbursement to general revenue fund for payments  
12 made to victim of an offense as condition of community supervision  
13 (Art. 42.12, Code of Criminal Procedure) . . . not to exceed \$50 for  
14 a misdemeanor offense or \$100 for a felony offense;

15 (6) payment to a crime stoppers organization as  
16 condition of community supervision (Art. 42.12, Code of Criminal  
17 Procedure) . . . not to exceed \$50;

18 (7) children's advocacy center fee (Art. 42.12, Code  
19 of Criminal Procedure) . . . not to exceed \$50;

20 (8) family violence center fee (Art. 42.12, Code of  
21 Criminal Procedure) . . . \$100;

22 (9) community supervision fee (Art. 42.12, Code of  
23 Criminal Procedure) . . . not less than \$25 or more than \$60 per  
24 month;

25 (10) additional community supervision fee for certain  
26 offenses (Art. 42.12, Code of Criminal Procedure) . . . \$5 per  
27 month;

1           (11) for certain financially able sex offenders as a  
2 condition of community supervision, the costs of treatment,  
3 specialized supervision, or rehabilitation (Art. 42.12, Code of  
4 Criminal Procedure) . . . all or part of the reasonable and  
5 necessary costs of the treatment, supervision, or rehabilitation as  
6 determined by the judge;

7           (12) fee for failure to appear for trial in a justice  
8 or municipal court if a jury trial is not waived (Art. 45.026, Code  
9 of Criminal Procedure) . . . costs incurred for impaneling the  
10 jury;

11           (13) costs of certain testing, assessments, or  
12 programs during a deferral period (Art. 45.051, Code of Criminal  
13 Procedure) . . . amount ordered;

14           (14) special expense on dismissal of certain  
15 misdemeanor complaints (Art. 45.051, Code of Criminal Procedure)  
16 . . . not to exceed amount of fine assessed;

17           (15) an additional fee:

18                   (A) for a copy of the defendant's driving record  
19 to be requested from the Department of Public Safety by the judge  
20 (Art. 45.0511(c-1), Code of Criminal Procedure) . . . amount equal  
21 to the sum of the fee established by Section 521.048,  
22 Transportation Code, and the state electronic Internet portal fee;

23                   (B) as an administrative fee for requesting a  
24 driving safety course or a course under the motorcycle operator  
25 training and safety program for certain traffic offenses to cover  
26 the cost of administering the article (Art. 45.0511(f)(1), Code of  
27 Criminal Procedure) . . . not to exceed \$10; or

1 (C) for requesting a driving safety course or a  
2 course under the motorcycle operator training and safety program  
3 before the final disposition of the case (Art. 45.0511(f)(2), Code  
4 of Criminal Procedure) . . . not to exceed the maximum amount of the  
5 fine for the offense committed by the defendant;

6 (16) a request fee for teen court program (Art.  
7 45.052, Code of Criminal Procedure) . . . \$20, if the court  
8 ordering the fee is located in the Texas-Louisiana border region,  
9 but otherwise not to exceed \$10;

10 (17) a fee to cover costs of required duties of teen  
11 court (Art. 45.052, Code of Criminal Procedure) . . . \$20, if the  
12 court ordering the fee is located in the Texas-Louisiana border  
13 region, but otherwise \$10;

14 (18) a mileage fee for officer performing certain  
15 services (Art. 102.001, Code of Criminal Procedure) . . . \$0.15 per  
16 mile;

17 (19) certified mailing of notice of hearing date (Art.  
18 102.006, Code of Criminal Procedure) . . . \$1, plus postage;

19 (20) certified mailing of certified copies of an order  
20 of expunction (Art. 102.006, Code of Criminal Procedure) . . . \$2,  
21 plus postage;

22 (20-a) a fee to defray the cost of notifying state  
23 agencies of orders of expungement (Art. 45.0216, Code of Criminal  
24 Procedure) . . . \$30 per application;

25 [~~(20-b) a fee to defray the cost of notifying state~~  
26 ~~agencies of orders of expunction (Art. 45.055, Code of Criminal~~  
27 ~~Procedure) . . . \$30 per application;~~]



1           (21) sight orders:

2           (A) if the face amount of the check or sight order  
3 does not exceed \$10 (Art. 102.007, Code of Criminal Procedure)  
4 . . . not to exceed \$10;

5           (B) if the face amount of the check or sight order  
6 is greater than \$10 but does not exceed \$100 (Art. 102.007, Code of  
7 Criminal Procedure) . . . not to exceed \$15;

8           (C) if the face amount of the check or sight order  
9 is greater than \$100 but does not exceed \$300 (Art. 102.007, Code of  
10 Criminal Procedure) . . . not to exceed \$30;

11           (D) if the face amount of the check or sight order  
12 is greater than \$300 but does not exceed \$500 (Art. 102.007, Code of  
13 Criminal Procedure) . . . not to exceed \$50; and

14           (E) if the face amount of the check or sight order  
15 is greater than \$500 (Art. 102.007, Code of Criminal Procedure)  
16 . . . not to exceed \$75;

17           (22) fees for a pretrial intervention program:

18           (A) a supervision fee (Art. 102.012(a), Code of  
19 Criminal Procedure) . . . \$60 a month plus expenses; and

20           (B) a district attorney, criminal district  
21 attorney, or county attorney administrative fee (Art. 102.0121,  
22 Code of Criminal Procedure) . . . not to exceed \$500;

23           (23) parking fee violations for child safety fund in  
24 municipalities with populations:

25           (A) greater than 850,000 (Art. 102.014, Code of  
26 Criminal Procedure) . . . not less than \$2 and not to exceed \$5; and

27           (B) less than 850,000 (Art. 102.014, Code of

1 Criminal Procedure) . . . not to exceed \$5;

2 (24) an administrative fee for collection of fines,  
3 fees, restitution, or other costs (Art. 102.072, Code of Criminal  
4 Procedure) . . . not to exceed \$2 for each transaction; and

5 (25) a collection fee, if authorized by the  
6 commissioners court of a county or the governing body of a  
7 municipality, for certain debts and accounts receivable, including  
8 unpaid fines, fees, court costs, forfeited bonds, and restitution  
9 ordered paid (Art. 103.0031, Code of Criminal Procedure) . . . 30  
10 percent of an amount more than 60 days past due.

11 SECTION 13. Article 45.055, Code of Criminal Procedure, and  
12 Section 25.094(e), Education Code, are repealed.

13 SECTION 14. The changes in law made by this Act apply to a  
14 person taken into custody or issued a citation on or after the  
15 effective date of this Act, regardless of whether the conduct for  
16 which the person was taken into custody or issued a citation  
17 occurred before, on, or after that date.

18 SECTION 15. This Act takes effect September 1, 2015.