

BILL ANALYSIS

C.S.S.B. 1234
By: Whitmire
Corrections
Committee Report (Substituted)

BACKGROUND AND PURPOSE

It is a criminal offense for most children to be chronically absent from school without an excuse. C.S.S.B. 1234 seeks to revise provisions related to truancy and reduce the exposure of Texas children to the criminal justice system.

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.S.B. 1234 amends the Code of Criminal Procedure to clarify that a high school equivalency certificate obtained by an individual after taking a high school equivalency examination administered in accordance with state law is the certificate that the individual must present to a county, justice, or municipal court for the court to be required to dismiss a complaint against the individual alleging that the individual committed the offense of failure to attend school or that an individual must present before the individual's 21st birthday to the court in which the individual was convicted for the court to be required to expunge the individual's conviction of such an offense and related records.

C.S.S.B. 1234 requires, rather than authorizes, a county court, justice court, municipal court, school district, or juvenile probation department to employ a case manager or agree with an appropriate governmental entity in accordance with the Interlocal Cooperation Act to jointly employ a case manager to provide services in cases involving a juvenile offender who is before a court consistent with the court's statutory powers. The bill includes among the cases for which an entity must employ a case manager a case involving a student, before the student is referred to a court for conduct constituting the offense of failure to attend school, who is referred to the case manager by a school administrator or designee for intervention services because the student is considered at risk of dropping out of school, if the student and the student's parent or guardian consent to the referral to the case manager. The bill exempts a school district that employs a truancy prevention facilitator from the requirement to employ a case manager. The bill removes a provision requiring the governing body of the authority to approve the case manager's employment.

C.S.S.B. 1234 amends the Education Code to prohibit a school district from revoking the enrollment of a person who voluntarily enrolls in school or voluntarily attends school after the person's 18th birthday and who has more than five unexcused absences in a semester on a day on which the person is physically present at school. The bill removes a statutory provision specifically including such a person in the class of persons who are required to attend school but who are authorized to be excused for temporary absence resulting from any cause acceptable to the teacher, principal, or superintendent of the school in which the persons are enrolled.

C.S.S.B. 1234 specifies that the truancy prevention measures a school district is required to

adopt must address student conduct related to truancy in the school setting before the student engages in conduct constituting the offense of failure to attend school. The bill authorizes a school district, as such a truancy prevention measure, to issue a warning letter to the student and the student's parent or guardian that states the number of absences of the student and explains the consequences if the student has additional absences; to impose school-based community service and to impose a behavior improvement plan on the student that must be signed by the student, the student's parent or guardian, and an employee of the school and that includes specified information; or to refer the student to counseling, community-based services, or other in-school or out-of-school services aimed at addressing the student's truancy. The bill authorizes such a referral to include participation by the child's parent or guardian if necessary.

C.S.S.B. 1234 makes the Class C misdemeanor offense of failure to attend school punishable by a fine not to exceed \$100 for a first offense, \$200 for a second offense, \$300 for a third offense, \$400 for a fourth offense, or \$500 for a fifth or subsequent offense. The bill makes the authorization for a school district, if a student fails to attend school without excuse for a certain number of days within a certain period, to file a complaint for a failure to attend school or parent contribution to nonattendance offense, as appropriate, against both the student and the student's parent contingent on the district providing evidence that both the student and the student's parent contributed to the student's failure to attend school.

EFFECTIVE DATE

September 1, 2013.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.S.B. 1234 may differ from the engrossed version in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the engrossed and committee substitute versions of the bill.

SENATE ENGROSSED

SECTION 1. Subsection (i), Article 45.054, Code of Criminal Procedure, is amended.

SECTION 2. Subsection (e), Article 45.055, Code of Criminal Procedure, is amended.

SECTION 3. Article 45.056, Code of Criminal Procedure, is amended by amending Subsection (a) and adding Subsection (a-1) to read as follows:

(a) Except as provided by Subsection (a-1), [~~On approval of the commissioners court, city council, school district board of trustees, juvenile board, or other appropriate authority,~~] a county court, justice court, municipal court, school district, or juvenile probation department shall [~~or other appropriate governmental entity may:~~] [~~(+) employ a case manager or agree, in accordance with Chapter 791, Government~~

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Same as engrossed version.

SECTION 2. Same as engrossed version.

SECTION 3. Article 45.056, Code of Criminal Procedure, is amended by amending Subsection (a) and adding Subsection (a-1) to read as follows:

(a) Except as provided by Subsection (a-1), [~~On approval of the commissioners court, city council, school district board of trustees, juvenile board, or other appropriate authority,~~] a county court, justice court, municipal court, school district, or juvenile probation department shall [~~or other appropriate governmental entity may:~~] [~~(+) employ a case manager or agree, in accordance with Chapter 791, Government~~

Code, with any entity listed in this subsection or another appropriate governmental entity to jointly employ a case manager to provide services in cases involving:

(1) a juvenile offender who is [offenders] before a court consistent with the court's statutory powers; or

(2) a student, before the student is referred to a court for a violation of Section 25.094, Education Code, who is referred to the case manager by a school administrator or designee for intervention services because the student is considered at risk of dropping out of school, if the student and the student's parent or guardian consent to the referral to the [agree in accordance with Chapter 791, Government Code, to jointly employ a] case manager.

(a-1) A school district that has selected an attendance officer under Section 25.088, Education Code, is not required to employ a case manager.

(See SECTION 8 below.)

SECTION 4. Subsection (a), Section 25.087, Education Code, is amended to read as follows:

(a) A person required to attend school[; including a person required to attend school under Section 25.085(e);] may be excused for temporary absence resulting from any cause acceptable to the teacher, principal, or

Code, with any entity listed in this subsection or another appropriate governmental entity to jointly employ a case manager to provide services in cases involving:

(1) a juvenile offender who is [offenders] before a court consistent with the court's statutory powers; or

(2) a student, before the student is referred to a court for a violation of Section 25.094, Education Code, who is referred to the case manager by a school administrator or designee for intervention services because the student is considered at risk of dropping out of school, if the student and the student's parent or guardian consent to the referral to the [agree in accordance with Chapter 791, Government Code, to jointly employ a] case manager.

(a-1) A school district that employs a truancy prevention facilitator is not required to employ a case manager.

SECTION 4. Subsection (e), Section 25.085, Education Code, is amended to read as follows:

(e) A person who voluntarily enrolls in school or voluntarily attends school after the person's 18th birthday shall attend school each school day for the entire period the program of instruction is offered. A school district may revoke for the remainder of the school year the enrollment of a person who has more than five absences in a semester that are not excused under Section 25.087, except that a school district may not revoke the enrollment of a person under this subsection on a day on which the person is physically present at school. A person whose enrollment is revoked under this subsection may be considered an unauthorized person on school district grounds for purposes of Section 37.107.

SECTION 5. Same as engrossed version.

superintendent of the school in which the person is enrolled.

SECTION 5. Section 25.0915, Education Code, is amended to read as follows:

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

(1) address student conduct related to truancy in the school setting before the student violates Section 25.094;

(2) minimize the need for referrals to juvenile court for conduct described by Section 51.03(b)(2), Family Code; and

(3) minimize the filing of complaints in county, justice, and municipal courts alleging a violation of Section 25.094.

(b) As a truancy prevention measure under Subsection (a), a school district shall:

(1) issue a warning letter to the student and the student's parent or guardian that states the number of absences of the student and explains the consequences if the student has additional absences;

(2) impose:

(A) a behavior contract on the student that must be signed by the student, the student's parent or guardian, and an employee of the school and that includes:

(i) a specific description of the behavior that is required or prohibited for the student;

(ii) the period for which the contract will be effective, not to exceed 45 school days after the date the contract becomes effective; and

(iii) the penalties for additional absences, including additional disciplinary action or the referral of the student to a juvenile court; and

(B) school-based community service; or

(3) refer the student to counseling, community-based services, or other in-school or out-of-school services aimed at addressing the student's truancy.

(c) A referral made under Subsection (b)(3) may include participation by the child's parent or guardian if necessary.

(d) Each referral to juvenile court for conduct described by Section 51.03(b)(2), Family Code, or complaint filed in county, justice, or municipal court alleging a violation by a student of Section 25.094 must:

SECTION 6. Section 25.0915, Education Code, is amended to read as follows:

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

(1) address student conduct related to truancy in the school setting before the student violates Section 25.094;

(2) minimize the need for referrals to juvenile court for conduct described by Section 51.03(b)(2), Family Code; and

(3) minimize the filing of complaints in county, justice, and municipal courts alleging a violation of Section 25.094.

(b) As a truancy prevention measure under Subsection (a), a school district may:

(1) issue a warning letter to the student and the student's parent or guardian that states the number of absences of the student and explains the consequences if the student has additional absences;

(2) impose:

(A) a behavior improvement plan on the student that must be signed by the student, the student's parent or guardian, and an employee of the school and that includes:

(i) a specific description of the behavior that is required or prohibited for the student;

(ii) the period for which the plan will be effective, not to exceed 45 school days after the date the contract becomes effective; and

(iii) the penalties for additional absences, including additional disciplinary action or the referral of the student to a juvenile court; and

(B) school-based community service; or

(3) refer the student to counseling, community-based services, or other in-school or out-of-school services aimed at addressing the student's truancy.

(c) A referral made under Subsection (b)(3) may include participation by the child's parent or guardian if necessary.

(d) Each referral to juvenile court for conduct described by Section 51.03(b)(2), Family Code, or complaint filed in county, justice, or municipal court alleging a violation by a student of Section 25.094 must:

- (1) be accompanied by a statement from the student's school certifying that:
 - (A) the school applied the truancy prevention measures adopted under Subsection (a) to the student; and
 - (B) the truancy prevention measures failed to meaningfully address the student's school attendance; and
- (2) specify whether the student is eligible for or receives special education services under Subchapter A, Chapter 29.

SECTION 6. Subsection (e), Section 25.094, Education Code, is amended to read as follows:

(e) An offense under this section is a Class C misdemeanor punishable by a fine not to exceed \$100.

SECTION 7. Subsections (a) and (b), Section 25.0951, 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 or 25.094, as appropriate, or refer the student to a juvenile court 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

- (1) be accompanied by a statement from the student's school certifying that:
 - (A) the school applied the truancy prevention measures adopted under Subsection (a) to the student; and
 - (B) the truancy prevention measures failed to meaningfully address the student's school attendance; and
- (2) specify whether the student is eligible for or receives special education services under Subchapter A, Chapter 29.

SECTION 7. Subsection (e), Section 25.094, Education Code, is amended to read as follows:

(e) An offense under this section is a Class C misdemeanor punishable by a fine not to exceed:

- (1) \$100 for a first offense;
- (2) \$200 for a second offense;
- (3) \$300 for a third offense;
- (4) \$400 for a fourth offense; or
- (5) \$500 for a fifth or subsequent offense.

SECTION 8. Subsections (a) and (b), Section 25.0951, 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, if the district provides evidence that both the student and the student's parent contributed to the student's failure to attend school, both the student and the parent in a county, justice, or municipal court for an offense under Section 25.093 or 25.094, as appropriate, or refer the student to a juvenile court 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 or 25.094, as appropriate, or refer the student to a juvenile court 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. Subsections (e) and (f), Section 25.085, Education Code, are repealed.

SECTION 9. The changes in law made by this Act apply only to conduct violating Section 25.094, Education Code, on or after the effective date of this Act. A violation that occurs before the effective date of this Act is covered by the law in effect when the violation occurred, and the former law is continued in effect for that purpose. For purposes of this section, a violation occurs before the effective date of this Act if any element of the violation occurs before that date.

SECTION 10. This Act takes effect September 1, 2013.

district may:

(1) file a complaint against the student or the student's parent ~~or, if the district provides evidence that both the student and the student's parent contributed to the student's failure to attend school, both the student and the parent~~ in a county, justice, or municipal court for an offense under Section 25.093 or 25.094, as appropriate, or refer the student to a juvenile court 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.

(See SECTION 4 above.)

SECTION 9. Same as engrossed version.

SECTION 10. Same as engrossed version.