

BILL ANALYSIS

Senate Research Center
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S.B. 1234
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Criminal Justice
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 1234 amends sections of the Education Code, Code of Criminal Procedure, and Government Code as they relate to the offense of truancy.

Current law states that every child from the ages of six to 17 is required by law to attend school. If the child has 10 or more unexcused absences within a six-month period, or three or more unexcused absences within a four-week period, the child is considered truant. Truancy is currently a Class C misdemeanor. Violators may be referred to county, municipal, justice, and juvenile courts.

S.B. 1234 repeals the offense of failure to attend school in the Education Code. The Family Code violation is left for referral to juvenile courts to address the issue of truancy.

The intent of this bill is to diminish the exposure of Texas children to the criminal justice system by mandating that the juvenile system maintain jurisdiction over juvenile truancy cases. It also requires that records be sealed and eliminates the fine of up to \$500.

S.B. 1234 adds a section to the Education Code which requires schools to utilize a progressive sanctions model. This model is designed to decrease the number of referrals to courts while addressing the cases of truancy.

This bill also repeals Section 25.093, Education Code (Parent Contributing to Nonattendance).

As proposed, S.B. 1234 amends current law relating to the establishment of progressive sanctions for students who fail to attend school and to the repeal of the offenses of failure to attend school and parent contributing to nonattendance.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Article 4.14(g), Code of Criminal Procedure, as follows:

(g) Authorizes a municipality to enter into an agreement with a contiguous municipality or a municipality with boundaries that are within one-half mile of the municipality seeking to enter into the agreement to establish concurrent jurisdiction of the municipal courts in the municipalities and provide original jurisdiction to a municipal court in which a case is brought as if the municipal court were located in the municipality in which the case arose, for:

(1) all cases in which either municipality has jurisdiction under Subsection (a) (relating to establishing certain exclusive original jurisdiction for municipal courts); and

(2) cases that arise under Section 821.022 (Seizure of Cruelly Treated Animal), Health and Safety Code, rather than cases that arise under Section 821.022, Health and Safety Code, or Section 25.094 (Failure to Attend School), Education Code.

SECTION 2. Amends Article 45.0216(g), Code of Criminal Procedure, to provide that this article does not apply to any offense otherwise covered by Chapter 106 (Provisions Relating to Age), Alcoholic Beverage Code, or Chapter 161 (Public Health Provisions), Health and Safety Code, rather than any offense otherwise covered by Chapter 106, Alcoholic Beverage Code, Chapter 161, Health and Safety Code, or Section 25.094, Education Code.

SECTION 3. Amends Article 45.056(h), Code of Criminal Procedure, as added by Chapter 1055 (S.B. 209), Acts of the 82nd Legislature, Regular Session, 2011, to provide that Subsections (f) (relating to requiring a juvenile case manager to timely report to a judge who signs an order or judgment) and (g) (relating to requiring a judge assigned to a case to consult on certain factors with the juvenile case manager supervising the case) do not apply to a part-time judge, rather than a part-time judge or a county judge of a county court that has one or more appointed full-time magistrates under Section 54.1172 (Appointment), Government Code.

SECTION 4. Amends Section 25.085(f), Education Code, to delete existing text providing that Section 25.094 applies to a person subject to a policy adopted under this subsection and that Sections 25.093 (Parent Contributing to Nonattendance) and 25.095 (Warning Notice) do not apply to the parent of a person subject to a policy adopted under this subsection.

SECTION 5. Amends Sections 25.091(a) and (b), Education Code, as follows:

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

(1) Makes no change to this subdivision;

(2) to enforce compulsory school attendance requirements by:

(A) applying truancy prevention measures adopted under Section 25.0915 or progressive sanctions under Section 29.0945 to the student; and

(B) if the progressive sanctions fail to meaningfully address the student's conduct, referring the student to a juvenile court if the student has unexcused absences for the amount of time specified under Section 51.03(b)(2) (relating to providing that conduct indicating a need for supervision includes the absence of a child 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 from school), Family Code, rather than if truancy prevention measures fail to meaningfully address the student's conduct, referring the student to a juvenile court or filing a complaint against the student in a county, justice, or municipal court 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, or filing a complaint in a county, justice, or municipal court against a parent who violates Section 25.093;

(3)-(5) Makes no change to these subdivisions;

(6) to make a home visit or otherwise contact the parent of a student who is in violation of compulsory school attendance requirements, except that a peace officer is prohibited from entering a residence without the permission of the parent of a student required under this subchapter (Operation of Schools and School Attendance) to attend school or of the tenant or owner of the residence, rather than prohibiting the peace officer from entering a residence without such

permission, except to lawfully serve court-ordered legal process on the parent; and

(7) Makes no change to this subdivision.

(b) Provides that an attendance officer employed by a school district who is not commissioned as a peace officer has the following powers and duties with respect to enforcement of compulsory school attendance requirements:

(1) Makes no change to this subdivision;

(2) to enforce compulsory school attendance requirements by:

(A) applying truancy prevention measures adopted under Section 25.0915 or progressive sanctions under Section 25.0945 to the student; and

(B) if the progressive sanctions fail to meaningfully address the student's conduct, referring the student to a juvenile court if the student has unexcused absences for the amount of time specified under Section 51.03(b)(2), Family Code, rather than if truancy prevention measures fail to meaningfully address the student's conduct, referring the student to a juvenile court or filing a complaint against the student in a county, justice, or municipal court 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 filing a complaint in a county, justice, or municipal court against a parent who violates Section 25.093; and

(3)-(7) Makes no change to these subdivisions.

SECTION 6. Amends Section 25.0915, Education Code, as follows:

Sec. 25.0915. New heading: TRUANCY PREVENTION MEASURES; REFERRAL REQUIREMENT. (a) Requires a school district to adopt truancy prevention measures designed to address student conduct related to truancy in the school setting, and minimize the need for referrals to juvenile court for conduct described by Section 51.03(b)(2), Family Code. Deletes existing text requiring a school district to adopt truancy prevention measures designed to minimize the filing of complaints in county, justice, and municipal courts alleging a violation of Section 25.094.

(b) Requires that each referral to juvenile court for conduct described by Section 51.03(b)(2), Family Code, rather than 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:

(1) be accompanied by a statement from the student's school certifying that:

(A) the school applied progressive sanctions under Section 25.0945, rather than the truancy prevention measures adopted under Subsection (a), to the student; and

(B) the progressive sanctions, rather than 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 (Special Education Program), Chapter 29.

SECTION 7. Amends Subchapter C, Chapter 25, Education Code, by adding Section 25.0945, as follows:

Sec. 25.0945. PROGRESSIVE SANCTIONS FOR FAILURE TO ATTEND SCHOOL.

(a) Requires a school district or open-enrollment charter school employee, before referring a student to a juvenile court for conduct indicating a need for supervision under Section 51.03(b)(2), Family Code, to impose progressive sanctions on the student. Authorizes the employee, under the progressive sanctions, to:

(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 is required to 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.

(b) Authorizes a referral made under Subsection (a)(3) to include participation by the child's parent or guardian if necessary.

(c) Requires the school district or open-enrollment charter school, if the student fails to comply with or complete the progressive sanctions under this section, to refer the student to a juvenile court for conduct indicating a need for supervision under Section 51.03(b)(2), Family Code.

SECTION 8. Amends Sections 25.095(a) and (b), Education Code, as follows:

(a) Requires a school district or open-enrollment charter school to notify a student's parent in writing at the beginning of the school year that if the student is absent from 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 the student is subject to progressive sanctions under Section 25.0945 and possible referral to a juvenile court, rather than subjecting the student's parent to prosecution under Section 25.093, and the student to prosecution under Section 25.094 or to referral to a juvenile court in a county with a population of less than 100,000 for conduct that violates that section.

(b) Requires a school district to notify a student's parent if the student has been absent from school, without excuse under Section 25.087 (Excused Absences), on three days or parts of days within a four-week period. Requires that the notice inform the parent that it is the parent's duty to monitor the student's school attendance and require the student to attend school, and request a conference between school officials and the parent to discuss the absences. Deletes existing text requiring that the parent is subject to prosecution under Section 25.093.

SECTION 9. Amends Section 51.02(15), Family Code, to redefine "status offender."

SECTION 10. Amends Section 29.003(i), Government Code, to authorize a municipality to enter into an agreement with a contiguous municipality or a municipality with boundaries that are within one-half mile of the municipality seeking to enter into the agreement to establish concurrent jurisdiction of the municipal courts in the municipalities and provide original jurisdiction to a municipal court in which a case is brought as if the municipal court were located in the municipality in which the case arose, for certain cases, including cases that arise under Section 821.022, Health and Safety Code, rather than under Section 821.022, Health and Safety Code and Section 25.094, Education Code.

SECTION 11. Amends Section 54.1955, Government Code, as added by Chapter 995 (H.B. 2132), Acts of the 82nd Legislature, Regular Session, 2011, as follows:

Sec. 54.1955. POWERS. Deletes existing Subsection (a) designation and existing text authorizing a magistrate appointed under this subchapter (Burnet County Criminal Magistrates), except as limited by an order of the county judge, to accept a plea of guilty or nolo contendere in a case alleging a violation of Section 25.093 or 25.094, Education Code, and assess a fine or court costs or order community service in satisfaction of a fine or costs in accordance with Article 45.049 (Community Service in Satisfaction of Fine or Costs), Code of Criminal Procedure, and, if the magistrate finds that a child as defined by Article 45.058 (Children Taken Into Custody), Code of Criminal Procedure, has violated an order under Article 45.054, Code of Criminal Procedure, to proceed as authorized by Article 45.050 (Failure to Pay Fine; Contempt: Juveniles), Code of Criminal Procedure. Makes nonsubstantive changes.

Deletes existing Subsection (b) prohibiting a magistrate, with respect to an issue of law or fact the ruling on which could result in the dismissal of a prosecution under Section 25.093 or 25.094, Education Code, from ruling on the issue but authorizes a magistrate to make findings, conclusions, and recommendations on the issue.

SECTION 12. Amends Section 71.0352, Government Code, as follows:

Sec. 71.0352. JUVENILE DATE: JUSTICE, MUNICIPAL, AND JUVENILE COURTS. Deletes existing text requiring justice and municipal courts, as a component of the official monthly report submitted to the Office of Court Administration of the Texas Judicial System, to report the number of cases filed for failure to attend school under Section 25.094, Education Code, and for parent contributing to nonattendance under Section 25.093, Education Code. Makes nonsubstantive changes.

SECTION 13. Repealers: (1) Articles 45.054 (Failure to Attend School) and 45.055 (Expunction of Conviction and Records in Failure to Attend School Cases), Code of Criminal Procedure;

(2) Article 45.056(e) (relating to requiring a juvenile case manager to give priority to cases brought under Sections 25.093 and 25.094, Education Code), Code of Criminal Procedure;

(3) Article 102.014(d) (relating to requiring a person convicted of an offense under Section 25.093 or 25.094, Education Code, to pay a certain fee amount), Code of Criminal Procedure;

(4) Sections 25.093 (Parent Contributing to Nonattendance) and 25.094 (Failure to Attend School), Education Code;

(5) Section 25.095(c) (relating to providing that the fact that a parent did not receive a certain notice does not create a defense to prosecution under Section 25.093 or 25.094), Education Code;

- (6) Section 25.0951 (School District Complaint or Referral for Failure to Attend School), Education Code;
- (7) Section 25.0952 (Procedures Applicable to School Attendance-Related Offenses), Education Code;
- (8) Section 51.03(g) (relating to providing that certain conduct that violates Section 25.094, Education Code, is conduct indicating a need for supervision under certain circumstances), Family Code;
- (9) Section 51.04(h) (relating to providing that a juvenile court has concurrent jurisdiction with the justice and municipal courts over conduct engaged in by a child that violates Section 25.094, Education Code, under certain circumstances), Family Code;
- (10) Section 51.08(e) (relating to prohibiting a juvenile court from refusing to accept the transfer of a case brought under Section 25.094, Education Code, under certain circumstances) Family Code;
- (11) Section 54.021 (County, Justice, or Municipal Court: Truancy), Family Code;
- (12) Section 54.041(f) (relating to authorizing the court, if a child is found to have engaged in conduct indicating a need for supervision, to order the child's parents or guardians to attend a certain program), Family Code;
- (13) Section 26.045(d) (relating to providing that a county court in a county with a certain population has original jurisdiction over cases alleging a violation of Section 25.093 or 25.094, Education Code), Government Code;
- (14) Section 54.1172 (Appointment), Government Code; and
- (15) Section 54.1952 (Jurisdiction), Government Code, as added by Chapter 995 (H.B. 2132), Acts of the 82nd Legislature, Regular Session, 2011.

SECTION 14. Provides that the repeal of a law by this Act does not apply to an offense committed under Section 25.093 or 25.094, Education Code, before the effective date of the repeal. Provides that an offense committed before the effective date of the repeal is covered by the law in effect at the time the offense was committed, and the former law is continued in effect for that purpose. Provides that an offense, for the purposes of this section, is committed before the effective date of this Act if any element of the offense was committed before that date.

SECTION 15. Effective date: September 1, 2013.