

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 84TH LEGISLATIVE REGULAR SESSION**

**May 22, 2015**

**TO:** Honorable John Whitmire, Chair, Senate Committee on Criminal Justice

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE:** **HB2398** by White, James (relating to court jurisdiction and procedures relating to truancy; establishing judicial donation trust funds; providing criminal penalties; imposing a court cost.), **Committee Report 2nd House, Substituted**

**Estimated Two-year Net Impact to General Revenue Related Funds** for HB2398, Committee Report 2nd House, Substituted: a positive impact of \$236,809 through the biennium ending August 31, 2017.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

**General Revenue-Related Funds, Five-Year Impact:**

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2016	\$77,369
2017	\$159,440
2018	\$158,047
2019	\$158,047
2020	\$158,047

**All Funds, Five-Year Impact:**

Fiscal Year	Probable Savings/(Cost) from <i>General Revenue Fund</i> <b>1</b>	Probable Revenue Gain/(Loss) from <i>General Revenue Fund</i> <b>1</b>	Probable Revenue Gain/(Loss) from <i>General Revenue Dedicated</i>	Probable Revenue Gain/(Loss) from <i>Judicial Fund</i> <b>573</b>
2016	\$218,131	(\$140,762)	(\$880,169)	(\$140,679)
2017	\$300,202	(\$140,762)	(\$880,169)	(\$140,679)
2018	\$298,809	(\$140,762)	(\$880,169)	(\$140,679)
2019	\$298,809	(\$140,762)	(\$880,169)	(\$140,679)
2020	\$298,809	(\$140,762)	(\$880,169)	(\$140,679)

<b>Fiscal Year</b>	<b>Probable Revenue Gain/(Loss) from Appropriated Fund 0977 Law Enforcement and Custodial Officer Supplement Retirement Trust Fund</b>
2016	(\$104,502)
2017	(\$104,502)
2018	(\$104,502)
2019	(\$104,502)
2020	(\$104,502)

## **Fiscal Analysis**

The bill would repeal the offense of failure to attend school in Section 25.094 of the Education Code and removes truancy from the definition of conduct indicating need for supervision currently under the Family Code Section 51.03(b)(2). It would create a new civil offense called "truant conduct," which would apply to a child age 12 or older and younger than 19. This increases the age through which students are required to attend school by one year.

The current offense of parent contributing to nonattendance would have fines capped at \$100 for a first offense, and increase by \$100 for each subsequent offense up to a maximum of \$500.

The optional referral to court for both students and parents after unexcused absences for three days or parts of days in a four week period is removed; only referrals for unexcused absences on 10 or more days or parts of days remains. School districts are also allowed to delay or forego referring a student to truancy court if the school district applies truancy prevention measures, determines that those are succeeding, and decides it is in the best interest of the student to delay or forego court referral.

The Texas Education Agency (TEA) would be required to create minimum standards and establish best practices for truancy prevention measures, and adopt rules for sanctioning school districts found to be noncompliant with those minimum standards. The bill requires school districts to employ a truancy prevention facilitator or designate an existing employee as such. The bill would require school districts to take one or more of specified actions as truancy prevention measures if a student has unexcused absences for three days or parts of days in a four week period. The bill would prohibit a school district from referring a student to truancy court if the school determines that the student's truancy is due to pregnancy, being in foster care, homelessness, or being the principal earner for the student's family.

The bill would create a new type of truancy court. Truant conduct would only be prosecuted as a civil case and only in a truancy court. Justice, municipal, and certain constitutional county courts would be designated as truancy courts. The bill also establishes procedures for the new truancy courts. The bill requires a truant conduct prosecutor to review referrals and decide whether or not to petition the truancy court for adjudication of the case, and requires a truancy court to dismiss any referrals that do not comply with requirements. If a truancy court determines that probable cause exists to believe that a child alleged to have engaged in truant conduct has a mental illness, the court would be required to dismiss the petition. If the child, parent, or a witness in a case does not speak English, or is deaf, an interpreter must interpret for the person.

The bill requires a person to be served with a summons by registered or certified mail or in person. The bill requires a parent of a child to be present at a truancy court hearing, unless

specifically excused. If a child appears before the truancy court without a parent or guardian, or the parents or guardians are incapable or unwilling to make decisions in the best interests of the child, the court may appoint a guardian ad litem or an attorney to protect the interests of the child in the proceedings. If the parent or person responsible for supporting the child has sufficient resources, the court may require them to reimburse the county or municipality for the cost of the guardian ad litem or attorney.

If a truancy court finds that a child engaged in truant conduct, the court would be able to, after a hearing, enter remedial orders for the child, parent(s), or any other person contributing to the truant conduct. These remedial orders would vary, but could include attendance at school or tutoring, participation in certain programs or community service, or suspension of drivers' licenses or permits for the children. If the child, parent, or other person contributing to truant conduct failed to obey the truancy court orders, the truancy court could find the person in contempt of court. The bill requires juvenile courts to conduct a hearing within 20 days of a juvenile prosecutor's request for adjudication to determine a child referred from truancy court for contempt did engage in conduct that would constitute contempt.

Upon a finding of truant conduct, the child, parent, or other person responsible for the child's support could be assessed a local court cost of \$50, if the party were financially able to pay that cost. Those court costs collected would be deposited in a special account to be used only to offset the cost of the truancy court's operations. A child found to have engaged in truant conduct could apply to have his or her records sealed by the truancy court at age 18, and the truancy court would be required to seal the records after determining the child had complied with the court ordered remedies.

The bill would permit the governing body of a municipality or the county commissioners court of a county to establish a judicial trust fund to assist children and families who appear in court for truancy or parent contributing to nonattendance. Under the bill, the governing body of a municipality or the commissioners court would establish procedures to receive and disperse funds and establish the eligibility requirements to disperse money. The bill would permit a judge to award money from the judicial trust fund to assist eligible children or families to eliminate barriers to school attendance or prevent criminal behavior.

## **Methodology**

The bill would increase the compulsory attendance age from 18 to 19. The Texas Education Agency estimates that this change will not significantly affect state cost under the Foundation School Program because the additional students subject to compulsory attendance requirements under the bill are also entitled to the benefits of the Foundation School Program under current law. TEA indicated that to the extent sanctions may be required for school districts, there may be costs associated that cannot be determined at this time.

The Office of Court Administration does not anticipate the new court procedures would cause any significant increase or decrease in the workload of the courts.

Repealing the offenses in the Education Code, which are Class C misdemeanors, would result in a loss of court cost revenue to the state from these cases. Including cases from Dallas and Fort Bend Truancy courts, as well as justice and municipal courts, there were 93,786 complaints of failure to attend school in fiscal year 2014. The Office of Court Administration estimated that 50 percent of these types of cases result in a conviction or deferred disposition, both of which result in the assessment of court costs. Applying the 50 percent conviction rate would yield 46,893 cases in which court costs would have been assessed ( $93,783 \times 0.5 = 46,893$ ). The state portion of court

costs assessed on these cases is \$54 per case. The number of cases with court costs assessed, multiplied by the court cost per case would yield \$2,532,222 (46,893 x \$54 = \$2,532,222). Assuming a collection rate to the assessed court costs of 50 percent would result in an estimated \$1,266,111 in lost court cost revenue per year ( $\$2,532,222 \times 0.5 = \$1,266,111$ ).

Removing truancy from the definition of conduct indicating need for supervision (CINS) would result in savings to the state from a reduction in the state share of juvenile probation costs for those children who would otherwise be supervised for truancy. In fiscal year 2014, 357 children were placed on local supervision for truancy. Based on the average cost of \$5.40 per day of juvenile probation supervision found in the General Appropriations Act, this would result in an annual savings of just under \$300,000. First year savings would be less because of a delay between when an offense is committed and a child would begin supervision. If the bill becomes effective immediately, savings in the first year would be slightly greater.

### **Local Government Impact**

County and municipal governments would see reduced revenue from the local portion of courts costs collected for the repealed Class C misdemeanor offense, which could be offset by the \$50 court cost in the new truancy court, as well as a reduction in fines collected.

Assuming 50 percent of 93,786 failure to attend cases have court costs assessed and a collection rate of 50 percent, there would be a loss of \$770,772 in revenue to local governments per year. There would be an indeterminate loss in fine revenue to local governments from the repeal of failure to attend school cases.

The new truancy court would impose a court cost of \$50 on findings of truancy, if the defendant is able to pay. OCA estimates that 90 percent of families will be able to pay. Assuming a 50 percent collection rate on those that are assessed the court cost, this court cost would yield a gain of up to approximately \$1,055,093 in revenue per year. However, referrals and revenue may be lower than estimated given that school districts would be prohibited from referring for three absences only, and would also be able to defer or forego referrals after 10 absences under certain circumstances.

Removing truancy from the definition of conduct indicating need for supervision (CINS) would also result in local savings from a reduction in the local share of juvenile probation costs for those children who would otherwise be supervised for truancy. In fiscal year 2014, 357 children were placed on local supervision for truancy. Based on the average cost of \$7.85 per day of juvenile probation supervision found in the Uniform Cost Report, this would result in an annual savings of approximately \$435,000. First year savings would be less because of a delay between when an offense is committed and a child would begin supervision. If the bill becomes effective immediately, savings in the first year would be slightly greater.

The Juvenile Justice Department indicates that several procedural changes in the bill may have local cost to both the new truancy courts and the existing juvenile courts, though these cannot be determined at this time and would vary by jurisdiction. Travis, Midland, and El Paso Counties indicated they may have to add or reassign staff to expunge failure to attend school records as required by the bill and to meet other requirements of the bill.

Earlier interventions for some students could affect attendance rates and thus school district funding, but there are no data to estimate the possible fiscal impact. There may be additional costs to school districts to either hire a truancy prevention facilitator or to add these duties to an existing employee. There may be costs to adopt policies for truancy prevention measures. Not following these measures could lead to sanctions from the TEA.

**Source Agencies:** 644 Juvenile Justice Department, 212 Office of Court Administration,  
Texas Judicial Council, 304 Comptroller of Public Accounts, 701 Central  
Education Agency

**LBB Staff:** UP, JQ, ESi, JJ, JPo, KJo, KVe, AW