

SUBJECT: Changing truancy from class C misdemeanor to civil penalty

COMMITTEE: Juvenile Justice and Family Issues — committee substitute recommended

VOTE: 7 ayes — Dutton, Riddle, Hughes, Peña, Rose, Sanford, J. White
0 nays

WITNESSES: For — Traci Berry, Goodwill Central Texas and Texas Association of Goodwills; Lauren Rose, Texans Care for Children; Mary Mergler, Texas Appleseed; John Kreager, Texas Criminal Justice Coalition; (*Registered, but did not testify*: Matt Simpson, American Civil Liberties Union of Texas; Katherine Barillas, One Voice Texas; Bill Hammond, Texas Association of Business; Sarah Crockett, Texas CASA; Larriann Curtis, Texas PTA; Derek Cohen, Texas Public Policy Foundation; Adrianna Cuellar Rojas, United Ways of Texas)

Against — Jody Lyons, Frisco ISD Truancy Prevention; William Chapman, Jarrell ISD; James Henry, Justice Court/Juvenile Case Managers; John Payton and David Cobos, Justice of the Peace and Constables Association; Mindy Morris, Texas Truancy and Dropout Prevention Association; Brian Goodman, TRAC; Emily Arroyo; Bill Gravell); (*Registered, but did not testify*: Boyd Richie, Dallas County Truancy Courts; Peter Perez, Elgin ISD; Carlos Cantu, Efrain Davila, and Marsha Winship, Georgetown ISD; Tammy Fitzner, Jarrell ISD; Robert Garcia and Cynthia Rede, El Paso County Justice of the Peace Precinct Two; Jennifer Sellers, Texas Students First; Melissa Goins and Stacey Warner, Williamson County Justice of the Peace Precinct 3)

On — Michael Clearman, Aim; Dustin Rynders, Disability Rights Texas; Ron Quiros, Guadalupe County Juvenile Probation, Central Texas Chiefs Association; Ramiro Canales, Texas Association of School Administrators, Texas Association of Community Schools, Texas Rural Education Association; Nichole Bunker-Henderson, Texas Education Agency; Mark Williams, Texas Probation Association; Tammy Edwards; Jeff Gasaway; Joe Kopec; Steve Swanson; (*Registered, but did not testify*:

David Slayton, Texas Judicial Council; Bronson Tucker, Texas Justice Court Training Center; Jill Mata, Texas Juvenile Justice Department)

BACKGROUND: Education Code, sec. 25.094 makes it a class C misdemeanor (maximum fine of \$500) for an individual who is required to attend school and is between the ages of 12 and 17 to fail to attend school on 10 or more days or parts of days within a six-month period or on three or more days or parts of days within a four-week period. Offenses may be prosecuted in municipal or justice courts, or in constitutional county court if the county where the student lives or where the school is located has a population of 1.75 million or more.

Truancy also is considered “conduct indicating a need for supervision” under Family Code, sec. 51.03(b)(2) and is a civil matter when handled through juvenile probation and the juvenile courts.

When a student has 10 or more unexcused absences, Education Code, sec. 25.0951(a) requires school districts to either refer the student to juvenile court or to file complaints against a student, the student’s parent, or both for either the offense of truancy or the offense of parent contributing to nonattendance, found in Education Code, sec. 25.093. The criminal complaints can be filed in county, justice, or municipal courts.

Education Code, sec. 25.0915 requires school districts to adopt truancy prevention measures and lists criteria that the measures should be designed to accomplish.

DIGEST: CSHB 1490 would make the failure to attend school subject to a civil penalty, instead of a criminal offense, would require school districts to adopt progressive truancy interventions, and would require the automatic expunction of truancy records or complaints.

Civil penalty for failure to attend school. The bill would replace the current class C misdemeanor for failure to attend school with a civil penalty of \$100. The imposition of the civil penalty would not be considered a conviction for any purpose. If a student had 10 or more

unexcused absences, districts would be able, but not required, to file a civil action against the student in county, justice, or municipal court or to refer the student to a juvenile court. The current requirement that school districts file a court complaint against the student's parents if a student had 10 or more unexcused absences would be made permissive.

The bill would revise current provisions allowing peace officers to take individuals into custody, upon court order, for failure to attend school. The bill would add the option of issuing a citation in these cases.

Progressive truancy interventions. School districts would be required to adopt a progressive truancy intervention system that met criteria established by the bill. Systems of progressive truancy interventions would have to include at least three tiers of intervention. Districts would be required to apply the first tier of interventions to students with at least three unexcused absences in a school year and would have to apply the successive tiers if that student continued to have unexcused absences.

The first tier would have to include a conference with regular follow-up meetings and an attendance contract that included a description of the consequences if the student continued to have absences or school offenses. The consequences could include additional disciplinary action or a referral to juvenile court.

At least one tier after the first would have to include an individualized assessment of the student that identified the reasons for the absences, referred the student to counseling, if necessary, and referred the student to any services that focused on addressing the student's absences.

The bill would authorize certain consequences for students who continue to have unexcused absences after first-tier intervention, including community service, a restorative justice program, referral to teen court, weekend courses focusing on improved attendance and behavior, a reevaluation or assessment of certain individualized education programs, or an initial evaluation for special education services.

Automatic expunction of truancy records. Students convicted of a truancy offense or who have had a truancy complaint dismissed would be entitled to have the conviction or complaint and related records automatically expunged. The court handling the case would be required to order the records, including documents in possession of the school district or a law enforcement agencies, to be expunged from the student's record. After a court enters an expunction order, the conviction or complaint could not be shown or made known for any purpose. The court would be required to tell the student of the expunction.

The bill would repeal provisions for expunging records relating to criminal convictions for failure to attend school and would eliminate the \$30 fee that courts can charge defendants in these cases to defray the cost of notifying state agencies of an expunction order.

The bill would take effect September 1, 2015, and would apply to persons issued citations or taken into custody after that date.

**SUPPORTERS
SAY:**

Civil penalty for failure to attend school. CSHB 1490 is needed to move the state away from relying on the criminal justice system to handle truancy. While the state and school districts should take truancy seriously, it is not a criminal act and is best handled in other ways.

Many jurisdictions use the current option of filing criminal truancy complaints in justice or municipal courts, which can result in overly harsh consequences. For example, a conviction can result in a criminal record which can have long-lasting effects on obtaining jobs, higher education, and more. Students can be assessed \$500 fines and court costs that can be difficult for some to pay, resulting in additional consequences. Unpaid fines can lead some to drop out of school, and could lead to an arrest when students turn 17 years old.

Judges can order students to attend programs which may be hard to attend or inappropriate. It can be difficult for students or their parents to understand the potential consequences of a criminal conviction, especially since students have no right to legal representation for class C

misdemeanors and may be before the courts without an informed legal advocate.

Handling these cases in criminal courts can be especially unfair since some truant students have underlying problems or reasons outside of their control that keep them from school. For example, family, health, economic, and transportation issues or the need to access services can lead to multiple absences. The consequences for truancy can fall disproportionately on low-income, minority, and disabled students.

The bill would address these issues by eliminating the criminal offense of truancy and handling cases more appropriately as a civil or juvenile court action. The bill would lower the fine to a more reasonable \$100 and would eliminate the inflexible mandate that forces certain cases be cited as a class C misdemeanor in local courts or to be referred to the juvenile court system. Instead, school districts would have the option to refer cases as civil or juvenile court actions but only after a student had gone through the progressive intervention program that would be established by the bill.

The bill also would keep the current offense that allows parents to be held accountable for truancy, but make filing such cases optional. This would give districts additional flexibility in handling these cases.

A uniform, statewide approach is needed to reduce inconsistent treatment of truancy and to keep all truants out of the criminal justice system. The bill would put Texas in line with almost every state by handling truancy as a civil matter.

The bill would not burden juvenile courts with truancy cases. Because of the requirement for progressive interventions and multiple unexcused absences before a case can move to juvenile court, the number of such cases should be limited.

Progressive truancy interventions. CSHB 1490 would require school districts to create progressive interventions programs to ensure that attempts are first made to address the reasons for chronic absences before

moving to a civil penalty or juvenile court. While school districts currently are required to have truancy prevention measures, they may not be detailed enough and may not apply incrementally more serious interventions to more serious cases. The bill would not mandate a specific program, but would allow local jurisdictions to develop their own program within the bill's guidelines.

The bill would not be burdensome to districts. Districts already are required to adopt truancy prevention measures, and some may be using progressive interventions that meet the bill's requirements. The importance of keeping students in school and handling truancy appropriately warrant the requirement that districts adopt progressive interventions.

Automatic expunction of truancy records. The bill would require automatic record expunction for those with criminal truancy convictions to ensure that these students were not burdened with a criminal record after the offense was decriminalized.

OPPONENTS
SAY:

Civil penalty for failure to attend school. The Legislature should not reduce the tools available to school districts to handle students who accumulate excessive unexcused absences by eliminating the class C misdemeanor for truancy. Truancy is properly classified as a class C misdemeanor, making it analogous to a traffic citation.

By the time a case is filed in a justice or municipal court, students have been given multiple chances to meet attendance requirements and court intervention may be necessary. Some municipal and justice courts have developed successful programs, services, and partnerships to address failure to attend school, and in some cases, these might be the best option. There are different kinds of truancy, some of which might best be handled by a class C misdemeanor citation, which may be necessary to get some students to attend school. Current law contains provisions allowing truancy records to be expunged.

The bill could result in more cases being handled by juvenile courts,

which already have full caseloads of more serious cases. An influx of truancy cases could strain juvenile courts and cause delays, which is especially unwise in truancy cases in which the goal is to get the student back in school. Costs for these cases could increase, including costs for retaining and providing lawyers.

Progressive truancy interventions. The state should not mandate that districts adopt specific types of intervention programs. Many already have successful truancy programs that could have to be altered to fit the provisions of the bill. Requiring all school districts to adopt and use progressive truancy intervention programs could burden schools and impose added costs on some. It could be difficult to offer the services and intervention required by the bill with existing staff and resources, many of which already are stretched thin. Some provisions, such as requiring referrals to outside services could cause substantial work that is outside of current school personnel's expertise.

Automatic expunction of truancy records. The bill contains no guidelines for when truancy records would be automatically expunged, which could lead to confusion and make it difficult for prosecutors and others to track previous offenses.

NOTES:

The bill would result in an increase of \$2.1 million to general revenue related funds though fiscal 2016-17, according to the fiscal note.