

BILL ANALYSIS

Senate Research Center

C.S.S.B. 1432
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Education
4/11/2001
Committee Report (Substituted)

DIGEST AND PURPOSE

Currently, the failure of students to attend school is a problem faced by several school districts around the state. C.S.S.B. 1432 amends various sections of current state law to more effectively deal with the state's growing truancy problem.

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 Section 25.002(f), Education Code, to require a school district to record the name, address, and date of birth of the person enrolling a child.

SECTION 2. Amends Section 25.091, Education Code, as follows:

Sec. 25.091. New heading: POWERS AND DUTIES OF PEACE OFFICERS AND OTHER ATTENDANCE OFFICERS. Provides that a peace officer serving as an attendance officer has certain powers and duties concerning enforcement of compulsory school attendance requirements. Provides that an attendance officer employed by a school district who is not commissioned as a peace officer has certain powers and duties with respect to enforcement of compulsory school attendance requirements. Defines "parent" and "peace officer." Deletes wording related to the powers, duties, and prohibited actions of a school attendance officer.

SECTION 3. Amends Section 25.093, Education Code, as follows:

Sec. 25.093. New heading: PARENT CONTRIBUTING TO TRUANCY. (a) Requires the school attendance officer or other appropriate school official, as required by Section 25.095, if any parent of a child required to attend school fails to require the child to attend school as required by law, to warn the parent in writing that attendance is immediately required.

(b) Provides that the parent commits an offense if a warning is issued as required by Section 25.095 and the parent, with criminal negligence, fails to require the child to attend school as required by law, and the child has absences, rather than unexcused voluntary absences, for the amount of time specified under Section 25.094, rather than Section 51.03(b)(2), Family Code.

(c) Requires the attendance officer or other appropriate school official to file a complaint against the parent in a justice court, but not the county court, of any precinct in the county in which the parent resides or in which the school is located, or in a municipal court of the municipality in which the parent resides or in which the school is located. Deletes wording related to the filing of a complaint.

(d) Deletes wording related to a requirement of a court in which a complaint is filed. Provides that an offense under Subsection (b), rather than this section, is a Class C misdemeanor. Authorizes each day a child remains out of school after a warning has been given or the child has been ordered to attend school by the municipal or justice, rather than the juvenile, court to be constituted as a separate offense. Authorizes two or more offenses under Subsection (b), rather than this section, to be consolidated and prosecuted in a single action. Authorizes the court, if the court orders deferred disposition under Article 45.051 (Suspension of Sentence and Deferral of Final Disposition), Code of Criminal Procedure, rather than probates a sentence, to require the defendant to provide, rather than render, personal services to a charitable or educational institution as a condition of the deferral, rather than probation.

[Note: As filed, the bill does not state if the above reference to Article 45.051, Code of Criminal Procedure is to Article 45.051, Chapter 532, Acts of the 76th Legislature, Regular Session, 1999, or to Article 45.051, Chapter 1387, Acts of the 76th Legislature, Regular Session, 1999.]

(e) Makes a conforming change.

(f) Makes conforming changes.

(g) Authorizes the court in which a conviction, deferred adjudication, or deferred disposition for an offense under this section occurs to order the defendant to attend a program, rather than a class, for parents of students with unexcused absences that provides instruction designed to assist those parents in identifying problems that contribute to the student's unexcused absences and in developing strategies for resolving those problems if a program is available, rather than if the school district in which the person resides offers such a class. Makes conforming changes.

(h) Authorizes the court, if a parent refuses to obey a court order entered under this section, to punish the parent for contempt of court under Section 21.002 (Contempt of Court), Government Code.

(i) Provides that it is an affirmative defense to prosecution under this section that one or more of the absences required to be proven under Subsection (b) was excused by a school official or should be excused by the court. Provides that the burden is on the defendant to show by a preponderance of evidence that the absence has been or should be excused. Provides that a decision by the court to excuse an absence for purposes of this section does not affect the ability of the school district to determine whether to excuse the absence for another purpose.

SECTION 4. Amends Section 25.094, Education Code, to provide that an individual, rather than a child, commits an offense under certain circumstances. Deletes wording related to an amount of time an individual fails to attend school. Authorizes a justice or municipal court, on a finding by the court that the individual has committed an offense under this section, to enter an order that includes one or more of the requirements listed in Article 45.054 (Failure to Attend School Proceedings), Code of Criminal Procedure, rather than Section 54.021(d), Family Code. Deletes wording related to transferring a complaint to a juvenile court. Authorizes a peace officer, pursuant to an order of the justice or municipal court based on an affidavit showing probable cause to believe that an individual has committed an offense under this section, to take the individual into custody. Deletes wording relating to reasonable grounds needed to take a child into custody. Sets forth an affirmative defense to prosecution under this section. Provides that the burden is on the defendant to show by a preponderance of evidence that the absence has been or should be excused. Provides that a decision by the court to excuse an absence for purposes of this section does not affect the ability of the school district to determine whether to excuse the absence for another purpose. Sets forth an affirmative

defense to prosecution under this section. Provides that the burden is on the defendant to show by a preponderance of evidence that the absence was involuntary. Deletes wording relating to authorization to have a conviction expunged, requirements of an application under this section, and requirements regarding expunging an applicant's record. Makes conforming changes.

SECTION 5. Amends Section 25.095, Education Code, to require a school district to notify a student's parent or legal guardian in writing at the beginning of the school year that if the student is absent from school three days or parts of days in a four-week period without parental consent or is absent without an excuse for 10 or more days or parts of days in a six-month period, the student or the student's parent or legal guardian is subject to prosecution. Sets forth certain requirements of the notice. Deletes wording related to certain consequences of a student's absences.

SECTION 6. Amends Chapter 25C, Education Code, by adding Section 25.0951 and 25.0952, as follows:

Sec. 25.0951. SCHOOL DISTRICT COMPLAINT OR REFERRAL FOR FAILURE TO ATTEND SCHOOL. (a) Requires a school district, 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, to take certain actions.

(b) Authorizes the school district, 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 in Subsection (a), to take certain actions.

(c) Defines "parent."

Sec. 25.0952. PROCEDURES APPLICABLE TO TRUANCY-RELATED OFFENSES. Requires a justice or municipal court, in a proceeding in the court based on a complaint under Section 25.093 or 25.094, to use the procedures and exercise the powers authorized by Chapter 45 (Justice and Municipal Courts), Code of Criminal Procedure, except as otherwise provided by this chapter.

SECTION 7. Amends Article 45.050, Code of Criminal Procedure, to define "child." Prohibits a justice or municipal court from ordering the confinement of a child for contempt of another order of a justice or municipal court. Deletes wording related to the jurisdiction of a justice or municipal court to hold a child in contempt of a court order. Authorizes a justice or municipal court, if a child fails to obey an order of the justice or municipal court under circumstances that would constitute contempt of court, to retain jurisdiction of the case and take certain actions. Requires a court that orders suspension or denial of a driver's license or permit under this section to notify the Department of Public Safety on receiving proof that the child has fully complied with the orders of the court. Makes conforming changes.

SECTION 8. Amends Chapter 45B, Code of Criminal Procedure, by adding Articles 45.054-45.059, as follows:

Art. 45.054. FAILURE TO ATTEND SCHOOL PROCEEDINGS. (a) Sets forth the provisions that a justice or municipal court, on a finding by the court that an individual has committed an offense under Section 25.094, Education Code, has jurisdiction to require in an order that the individual take certain actions.

(b) Provides that an order under Subsection (a)(3) that requires the parent of an individual to attend a class for students at risk of dropping out of school is enforceable in the justice or municipal court by contempt.

(c) Requires a court having jurisdiction under this section to endorse on the summons

issued to the parent of the individual who is the subject of the hearing an order directing the parent to appear personally at the hearing and directing the person having custody of the individual to bring the individual to the hearing.

(d) Sets forth the conditions under which an individual commits an offense under this subsection, and provides that an offense under this subsection is a Class C misdemeanor.

(e) Requires the court, on the commencement of proceedings under this article, to inform the individual who is the subject of the hearing and the individual's parent in open court of the individual's expunction rights and provide the individual and the individual's parent with a written copy of Article 45.055.

(f) Authorizes the court, in addition to any other order authorized by this article, to order the Department of Public Safety to suspend or deny the issuance of the driver's license or permit of the individual who is the subject of the hearing for a period specified by the court not to exceed 365 days.

(g) Provides that a dispositional order under this article is effective for the period specified by the court in the order but is prohibited from extending beyond the 180th day after the date of the order or beyond the end of the school year in which the order was entered, whichever period is longer.

(h) Defines "parent."

Art. 45.055. EXPUNCTION OF CONVICTION AND RECORDS IN FAILURE TO ATTEND SCHOOL CLASSES. (a) Authorizes an individual convicted of not more than one violation of Section 25.094 (Failure to Attend School), Education Code, to apply to the court in which the individual was convicted, on or after the individual's 18th birthday, to have the conviction and records relating to the conviction expunged.

(b) Sets forth the requirements for an applicant to request an expunction.

(c) Authorizes the court to expunge the conviction and records relating to the conviction without a hearing or to order a hearing on the application if the facts are in doubt. Requires the court, if the court finds that the applicant has not been convicted of more than one violation of Section 25.094, Education Code, to order the conviction, together with all complaints, verdicts, sentences, and other documents relating to the offense, including any documents in the possession of a school district or law enforcement agency, to be expunged from the applicant's record. Provides that the applicant is released from all disabilities resulting from the conviction and prohibits the conviction from being shown or made known for any purpose after entry of the order. Requires the court to inform the applicant of the court's decision.

(d) Prohibits the justice or municipal court from requiring an individual who files an application under this article to pay any fee or court costs for seeking expunction.

Art. 45.056. AUTHORITY TO EMPLOY TRUANCY CASE MANAGERS; REIMBURSEMENT. Authorizes a justice court, municipal court, school district, juvenile probation department, or other appropriate governmental entity, on approval of certain authorities, to take certain actions. Authorizes a local entity to apply, or more than one local entity to jointly apply, to the criminal justice division of the governor's office for reimbursement of all or part of the costs of employing one or more truancy case managers from funds appropriated to the governor's office or otherwise available for that purpose. Sets forth the eligibility requirements for reimbursement under this article.

Art. 45.057. OFFENSES COMMITTED BY JUVENILES. (a) Defines “child.”

(b) Sets forth the jurisdictional powers of a justice or municipal court on a finding by the court that a child committed an offense that the court has jurisdiction of under Article 4.11 or 4.14, other than a traffic offense.

(c) Authorizes the justice or municipal court to order the parent, managing conservator, or guardian of the child required to attend a program under Subsection (b) to pay an amount not greater than \$100 to pay for the costs of the program.

(d) Authorizes a justice or municipal court to require a child, parent, managing conservator, or guardian required to attend a program, class, or function under this article to submit proof of attendance to the court.

(e) Requires a justice or municipal court to endorse on the summons issued to a parent, managing conservator, or guardian an order to appear personally at the hearing with the child. Requires the summons to include a warning that the failure of the parent, managing conservator, or guardian to appear may be punishable as a Class C misdemeanor.

(f) Provides that an order under this article involving a child is enforceable under Article 45.050.

(g) Sets forth the conditions constituting an offense under this article. Provides that an offense under this subsection is a Class C misdemeanor.

(h) Provides that any other order under this article is enforceable by the justice or municipal court by contempt.

Art. 45.058. CHILDREN TAKEN INTO CUSTODY. (a) Authorizes a child to be released to the child’s parent, guardian, custodian, or other responsible adult as provided by Section 52.02(a)(1), Family Code, if the child is taken into custody for an offense that a justice or municipal court has jurisdiction of under Article 4.11 or 4.14, other than public intoxication.

(b) Requires a child described by Subsection (a) to be taken only to a place previously designated by the head of the law enforcement agency with custody of the child as a appropriate place of nonsecure custody for children unless certain conditions are met.

(c) Requires a place of nonsecure custody for children to be an unlocked, multipurpose area. Provides that a lobby, office, or interrogation room is suitable if the area is not designated, set aside, or used as a secure detention area and is not part of a secure detention area. Authorizes a place of nonsecure custody to be a juvenile processing office designated under Section 52.025 (Designation of Juvenile Processing Office), Family Code, if the area is not locked when it is used as a place of nonsecure custody.

(d) Sets forth the required procedures to be followed in a place of nonsecure custody for children.

(e) Prohibits a child, notwithstanding any other provision of this article, from being detained in a place of nonsecure custody for more than six hours under any circumstances.

(f) Authorizes a child taken into custody for an offense that a justice or municipal court has jurisdiction of under Article 4.11 or 4.14, other than public intoxication, to be presented or detained in a specific detention facility under certain conditions.

(g) Authorizes a law enforcement officer to issue a field release citation, as provided by Article 14.06 in place of taking a child into custody for a traffic offense or an offense, other than public intoxication, punishable by fine only.

(h) Defines “child.”

Art. 45.059. CHILDREN TAKEN INTO CUSTODY FOR VIOLATION OF JUVENILE CURFEW OR ORDER. Requires a peace officer taking into custody a person younger than 17 years of age for violation of a juvenile curfew ordinance of a municipality or order of the commissioners court of a county to take certain actions without unnecessary delay. Sets forth required procedures for a juvenile curfew processing officer to follow. Provides that a place designated under this article as a juvenile curfew processing office is not subject to the approval of the juvenile board having jurisdiction where the governmental entity is located.

SECTION 9. Amends Article 102.014(d), Code of Criminal Procedure, to require a person convicted of an offense under Section 25.094 (Failure to Attend School), Education Code, to pay as taxable court costs \$20 in addition to other taxable court costs. Deletes wording related to a child convicted of an offense under Section 25.094, Education Code.

SECTION 10. Amends Sections 51.03(b), (d), and (e), Family Code, to delete wording related to conduct indicating a need for supervision. Provides that conduct indicating a need for supervision is, among other things, 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; or the voluntary absence of a child from the child’s home without the consent of the child’s parent or guardian for a substantial length of time or without intent to return.

(d) Sets forth the criteria for an affirmative defense to an allegation of conduct under Subsection (b)(2). Provides that the burden is on the respondent to show by a preponderance of evidence that the absence has been or should be excused or that the absence was involuntary. Provides that a decision by the court to excuse an absence for purposes of this subsection does not affect the ability of the school district to determine whether to excuse the absence for another purpose. Deletes wording related to the criteria for an absence to be excused.

(e) Makes a conforming change.

SECTION 11. Amends Section 51.12(a), Family Code, to authorize a child to be detained only in a place of nonsecure custody in compliance with Article 45.058 (Children Taken Into Custody), Code of Criminal Procedure, rather than Section 52.027.

SECTION 12. Amends Section 54.021, Family Code, to authorize a justice or municipal court to exercise jurisdiction over a person alleged to have engaged in conduct indicating a need for supervision by engaging in conduct described in Section 51.03(b)(2) in a case where a complaint is filed by the appropriate authority in the justice or municipal court charging an offense under Section 25.094 (Failure to Attend School), Education Code. Provides that a proceeding in a justice or municipal court on a complaint charging an offense under Section 25.094, Education Code, is governed by Chapter 45 (Justice and Municipal Courts), Code of Criminal Procedure.

SECTION 13. Amends Section 54.041(f), Family Code, to make conforming changes.

SECTION 14. Amends Section 264.302(e), Family Code, to require the Department of Protective and Regulatory Services to provide services for a child and the child’s family if a contract to provide services under this section is available in the county and the child is referred to the department as an at-risk child by a justice or municipal court under Article 45.057 (Offenses Committed by Juveniles Other Than Failure to Attend School), Code of Criminal Procedure, rather than Section 54.022.

SECTION 15. Amends Section 7.111(a), Education Code, as amended by Chapters 76 and 1282, Acts of the 76th Legislature, Regular Session, 1999, to authorize a person who does not have a high school diploma to take the examination in accordance with rules adopted by the board if the person is, among other things, required to take the examination under a justice or municipal court order issued under Article 45.054(a)(1)(B), Code of Criminal Procedure, rather than Section 54.021(d)(1)(B), Family Code.

SECTION 16. Amends Section 351.903(b), Local Government Code, to provide that this authority includes the authority to prescribe procedures, in compliance with Article 45.059 (Children Taken Into Custody for Violation of Juvenile Curfew or Order), Code of Criminal Procedure, rather than Section 52.028 (Children Taken into Custody for Violation of Juvenile Curfew Ordinance or Order), Family Code, a police officer must follow in enforcing the curfew.

SECTION 17. Repealer: Section 25.096 (Additional Authorization to Enforce Compulsory Attendance Law), Education Code; Sections 52.027 (Children Taken into Custody for Traffic Offenses, Other Fineable Only Offenses, or as a Status Offender), 52.028 (Children Taken into Custody for Violation of Juvenile Curfew Ordinance or Order), 52.021(c)-(h), and 54.022 (Justice or Municipal Court: Certain Misdemeanors), Family Code.

SECTION 18. Makes application of this Act prospective.

SECTION 19. Provides that an absence that occurs during the 2001-2002 school year, for the purposes of Sections 25.093 and 25.094, Education Code, as amended by this Act, and Section 51.03, Family Code, as amended by this Act, is included in determining the number of a student's absences, regardless of whether the absence occurred before the effective date of this Act.

SECTION 20. Effective date: September 1, 2001.

SUMMARY OF COMMITTEE CHANGES

Amends As Filed S.B. 1432 as follows:

SECTION 1. Adds proposed text amending Section 25.002(f), Education Code.

Redesignates SECTIONS 1-19 as SECTIONS 2-20 with amendments as follows.

SECTION 2. Adds proposed text pertaining to powers and duties of a peace officer serving as an attendance officer.

SECTION 3. Adds proposed text and deletes existing text pertaining to the issuance of a warning to parents regarding school attendance. Adds proposed text pertaining to the venue in which a complaint must be filed. Amends existing text pertaining to an offense under this section. Makes conforming changes.

SECTION 4. Makes a conforming change.

SECTION 5. Adds proposed text pertaining to notifying a student's parent or legal guardian regarding a student's absence from school.

SECTION 6. Adds proposed text pertaining to filing a complaint regarding a student's failure to attend school. Defines "parent."

SECTION 7. Removes proposed text pertaining to authorized actions of a juvenile court. Makes conforming changes.

SECTION 8. Art. 45.054. Adds proposed text pertaining to the jurisdiction of a justice or municipal court. Makes conforming changes.

Art. 45.057. Amends article title and removes proposed text pertaining to the jurisdiction of a justice or municipal court.

Art. 45.058. Removes proposed text pertaining to required procedures to be followed in a place of nonsecure custody of children. Makes nonsubstantive changes.