

## **BILL ANALYSIS**

Senate Research Center  
82R7540 SJM-D

S.B. 1489  
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Jurisprudence  
3/25/2011  
As Filed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

S.B. 1489 amends the Education Code, Family Code, and Government Code as they relate to the jurisdiction for truancy offenses.

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. 1489 addresses the referral of any child to the criminal justice system. Exposure to criminal courts for noncriminal behavior has not been shown to deter truancy, and only leaves our youth with records that will negatively affect their future.

This bill amends the Education Code by removing county courts as a referral option for truancy issues. The bill also removes municipal and justice courts as a referral option for children under the age of 17 for truancy offenses. 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.

As proposed, S.B. 1489 amends current law relating to jurisdiction for the offenses of truancy and failure to attend school.

### **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 Sections 25.091(a) and (b), Education Code, as follows:

(a) Provides that a peace officer serving as an attendance officer has certain powers and duties concerning enforcement of compulsory school attendance requirements, including referring a student to a juvenile court or filing a complaint against a student in a justice or municipal court, as provided by Section 25.094(b) (authorizing an offense under this section to be prosecuted in certain courts), if the student has unexcused absences for the amount of time specified under Section 25.094 (Failure to Attend School) or under Section 51.03(b)(2) (providing that conduct indicating a need for supervision is 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, and filing a complaint in a justice or municipal court against a parent who violates Section 25.093 (Parent Contributing to Nonattendance). Deletes existing text relating to filing a complaint against a student or a parent in a county court. Makes nonsubstantive changes.

(b) 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, including referring a student to a juvenile court or filing a complaint against a student in a justice or municipal court, as provided by Section 25.094(b), 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 justice or municipal court against a parent who violates Section 25.093. Deletes existing text relating to filing a complaint against a student or a parent in a county court. Makes nonsubstantive changes.

SECTION 2. Amends Section 25.093(b), Education Code, as follows:

(b) Requires the attendance officer or other appropriate school officer to file a complaint against the parent in a justice court of any precinct in the county in which the parent resides or in which the school is located, or a municipal court of the municipality in which the parent resides or in which the school is located. Deletes existing text requiring the attendance officer or other appropriate school official to file a complaint against the parent in the constitutional county court of the county in which the parent resides or in which the school is located, if the county has a population of two million or more. Makes nonsubstantive changes.

SECTION 3. Amends Sections 25.094(b), (c), (d), and (d-1), Education Code, as follows:

(b) Authorizes an offense under this section to only be:

(1) referred to juvenile court if the individual was younger than 17 years of age at the time the violation occurred, rather than prosecuted in the constitutional county court of the county in which the individual resides or in which the school is located, if the county has a population of two million or more; or

(2) if the individual was 17 years of age or older at the time the offense was committed, prosecuted in a justice court of any precinct in the county in which the individual resides or in which the school is located, or a municipal court in the municipality in which the individual resides or in which the school is located.

Makes nonsubstantive changes.

(c) Authorizes the court, on a finding by the justice or municipal court that the individual has committed an offense under Subsection (a) (providing that an individual commits an offense if the individual is required to attend school under Section 25.085, and fails to attend school for a certain number of days) or on a finding by a juvenile court, rather than a juvenile court in a county with a population of less than 100,000, that the individual has engaged in conduct that violates Subsection (a), 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 Article 45.054, Code of Criminal Procedure, as added by Chapter 1514, Acts of the 77th Legislature, Regular Session, 2001. Makes conforming changes

(d) Authorizes the court, if the juvenile justice, or municipal court, rather than the county justice, or municipal court, believes that a child has violated an order issued under Subsection (c), to proceed as authorized by Article 45.050 (Failure to Pay Fine; Contempt: Juveniles), Code of Criminal Procedure.

(d-1) Authorizes a peace officer, pursuant to an order of the juvenile, justice, or municipal court, rather than the county, justice, or municipal court, based on an affidavit showing probable cause to believe that an individual has committed an offense under or engaged in conduct that violates this section, to take the individual into custody. Requires a peace officer taking an individual into custody under this subsection to:

(1) promptly notify the individual's parent, guardian, or custodian of the officer's action and the reason for that action; and

(2) without unnecessary delay:

(A) release the individual to the individual's parent, guardian, or custodian or to another responsible adult, if the person promises to bring the individual to the juvenile justice, or municipal court, rather than the county, justice, or municipal court, as requested by the court; or

(B) bring the individual to a juvenile, justice, or municipal court, rather than the county, justice, or municipal court, with venue over the offense or the conduct.

Makes nonsubstantive changes.

SECTION 4. Amends Section 25.095(a), Education Code, to require 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's parent is subject to prosecution under Section 25.093, and the student is subject to prosecution, rather than prosecution under Section 25.094, or to referral to a juvenile court, as provided by Section 25.094(b), rather than a juvenile court in a county with a population of less than 100,000 for conduct that violates that section.

SECTION 5. Amends Sections 25.0951(a) and (b), Education Code, as follows:

(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, within 10 school days of the student's 10th absence, to:

(1) file a complaint against the student, if the student was 17 years of age or older at the time the offense was committed, or the student's parent or both in a justice or municipal court, rather than in a county, justice, or municipal court, for an offense under Section 25.093 or 25.094, as appropriate; or

(2) if the student was younger than 17 years of age at the time the violation occurred:

(A) refer the student to a juvenile court for conduct indicating a need for supervision under Section 51.03(b)(2), Family Code;

(B) file a complaint against the student's parent in a justice or municipal court for an offense under Section 25.093; or

(C) refer the student to juvenile court and file a complaint against the student's parent in justice or municipal court.

Deletes existing text in Subdivision (1) relating to the referral of the student to a juvenile court in a county with a population of less than 100,000 for conduct that violates Section 25.094.

(b) Authorizes a 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 by Subsection (a), to:

(1) file a complaint against the student, if the student was 17 years of age or older at the time the offense was committed, or the student's parent or both in a justice or municipal court, rather than in a county, justice, or municipal court, for an offense under Section 25.093 or 25.094, as appropriate; or

(2) if the student was younger than 17 years of age at the time the violation occurred:

(A) refer the student to a juvenile court for conduct indicating a need for supervision under Section 51.03(b)(2), Family Code;

(B) file a complaint against the student's parent in a justice or municipal court for an offense under Section 25.093; or

(C) refer the student to juvenile court and file a complaint against the student's parent in justice or municipal court.

Deletes existing text in Subdivision (1) relating to the referral of the student to a juvenile court in a county with a population of less than 100,000 for conduct that violates Section 25.094.

SECTION 6. Amends Article 45.054(a), Code of Criminal Procedure, to provide that the court, on a finding by a justice or municipal court, rather than a county, justice, or municipal court, that an individual has committed an offense under Section 25.094, Education Code, or by a juvenile court that an individual engaged in conduct in violation of that section, has jurisdiction to enter an order that includes certain provisions requiring the individual, or the individual and the individual's parent, to take certain actions.

SECTION 7. Amends Section 51.03(f), Family Code, to provide conduct described under Subsection (b)(1) (providing that conduct indicating a need for supervision is subject to Subsection (f), conduct, other than a traffic offense, that violates the penal laws of this state of the grade of misdemeanor that are punishable by fine only, or the penal ordinances of any political subdivision of this state), does not constitute conduct indicating a need for supervision unless the child has been referred to the juvenile court under Section 51.08(b) (requiring a court in which there is pending a complaint against a child alleging a violation of a misdemeanor offense punishable by fine only other than a traffic offense or a violation of a penal ordinance of a political subdivision other than a traffic offense, except as provided by Subsection (d), to waive its original jurisdiction and refer the child to juvenile court if the child has previously been convicted of certain offenses). Deletes existing text providing an exception provided under Subsection (g).

SECTION 8. Amends Section 54.021, Family Code, as follows:

Sec. 54.021. New heading: JUSTICE OR MUNICIPAL COURT: TRUANCY. (a) Redesignates existing Subsection (b) as Subsection (a). Authorizes a justice or municipal court, rather than a county, 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 by Section 51.03(b)(2) only as provided by Section 25.094(b), Education Code, rather than described in Section 51.03(b)(2) in a case where the juvenile court has waived its original jurisdiction under this section, and a complaint is filed by the appropriate authority in the county, justice, or municipal court charging an offense under Section 25.094, Education Code.

Deletes existing Subsection (a) authorizing the juvenile court to waive its exclusive original jurisdiction and transfer a child to the constitutional county court, if the county has a population of two million or more, or to an appropriate justice or municipal court, with the permission of the county, justice, or municipal court, for disposition in the manner provided by Subsection (b) if the child is alleged to have engaged in conduct described in Section 51.03(b)(2). Deletes existing text authorizing a waiver of jurisdiction under this subsection to be for an individual case or for all cases in which a child is alleged to have engaged in conduct described in Section 51.03(b)(2). Deletes existing text providing that the waiver of a juvenile court's exclusive original jurisdiction for all cases in which a child is alleged to have engaged in conduct described in Section 51.03(b)(2) is effective for a period of one year.

(b) Redesignates existing Subsection (c) as Subsection (b). Provides that a proceeding in a justice or municipal court, rather than in a county, 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.

(c) Redesignates existing Subsection (e) as Subsection (c). Authorizes the proceedings before a justice or municipal court, rather than a constitutional county court, related to an offense under Section 25.093 or 25.094, Education Code, to be recorded in any manner provided by Section 30.00010 (Court Reporter), Government Code, for recording proceedings in a municipal court of record.

Deletes existing Subsection (d) requiring that the costs assessed in a case filed in or transferred to a constitutional county court for an offense under Section 25.093 or 25.094, Education Code, notwithstanding any other law, be the same as the costs assessed for a case filed in a justice court for an offense under Section 25.093 or 25.094, Education Code.

SECTION 9. Amends Sections 26.045(c) and (e), Government Code, as follows:

(c) Provides that a county court that is in a county with a criminal district court, except as provided by Subsection (f) (providing that a county court has concurrent jurisdiction with a municipal court in cases that arise in the municipality's extraterritorial jurisdiction and that arise under an ordinance of the municipality applicable to the extraterritorial jurisdiction under Section 216.902, Local Government Code), rather than Subsections (d) (providing that a county court in a county with a population of two million or more has original jurisdiction over cases alleging a violation of Section 25.093 or 25.094, Education Code) and (f), does not have any criminal jurisdiction.

(e) Provides that Subsection (c), rather than Subsections (c) and (d), does not affect the jurisdiction of a statutory county court.

SECTION 10. (1) Repealer: Article 45.054(a-1) (providing that on a finding by a county, justice, or municipal court that an individual has committed an offense under Section 25.094, Education Code, the court has jurisdiction to enter an order that includes one or more certain provisions requiring the individual to take certain actions), Code of Criminal Procedure;

(2) Repealer: Section 51.03(g) (providing that in a county with a population of less than 100,000, conduct described by Subsection (b)(1)(A) that violates Section 25.094, Education Code, is conduct indicating a need for supervision), Family Code;

(3) Repealer: Section 51.04(h) (providing that in a county with a population of less than 100,000, the 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), Family Code;

(4) Repealer: Section 26.045(d) (providing that a county court in a county with a population of two million or more has original jurisdiction over cases alleging a violation of Section 25.093 or 25.094, Education Code), Government Code; and

(5) Repealer: Subchapter W (Magistrates in Certain County Courts), Chapter 54 (Masters; Magistrates; Referees; Associate Judges), Government Code.

SECTION 11. Provides that the change in law made by this Act applies only to conduct that violates Section 25.093 or 25.094, Education Code, as amended by this Act, that occurs on or after the effective date of this Act. Provides that conduct that violates Section 25.093 or 25.094, Education Code, as amended by this Act, that occurs before the effective date of this Act is covered by the law in effect at the time the conduct occurred, and the former law is continued in effect for that purpose. Provides that for purposes of this section, conduct occurs before the effective date of this Act if any element of the violation occurred before that date.

SECTION 12. Effective date: September 1, 2011.