

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 1489
By: Whitmire
Jurisprudence
4/15/2011
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

C.S.S.B. 1489 amends current law relating to educational, juvenile justice, and criminal justice responses to truancy.

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 25.094(a), (b), (c), (d), and (d-1), Education Code, as follows:

(a) Provides that an individual commits an offense if the individual:

(1) is 12 years of age or older and younger than 18 years of age;

(2) is required to attend school under Section 25.085 (Compulsory School Attendance); and

(3) fails to attend 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.

(b) Authorizes an offense under this section to be prosecuted in the constitutional 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 a justice court of any precinct in the county in which the individual resides or in which the school is located. Deletes existing text relating to prosecuting an offense under this section in a municipal court in the municipality in which the individual resides or in which the school is located.

(c) Authorizes the court, on a finding by the county or justice court that the individual has committed an offense under Subsection (a) or on a finding by 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 county or justice 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 county or justice 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 county or justice court, rather than the county, justice, or municipal court, as requested by the court; or

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

Makes nonsubstantive changes.

SECTION 2. Amends Section 51.03, Family Code, by adding Subsection (e-1), to define, notwithstanding any other law, for purposes of conduct described by Subsection (b)(2) (relating to 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), "child."

SECTION 3. Amends Section 51.04(h), Family Code, to provide that in a county with a population of less than 100,000, the juvenile court has concurrent jurisdiction with the justice court, rather than with the justice and municipal courts, over conduct engaged in by a child that violates Section 25.094 (Failure to Attend School), Education Code.

SECTION 4. Amends the heading to Section 54.021, Family Code, to read as follows:

Sec. 54.021. COUNTY OR JUSTICE COURT: TRUANCY.

SECTION 5. Amends Sections 54.021(a), (b), and (c), Family Code, as follows:

(a) Authorizes 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 court, rather than an appropriate justice or municipal court, with the permission of the county or justice court, rather than with the permission of the county, justice, or municipal court, for disposition in the manner provided by Subsection (b) if the child is 12 years of age or older and is alleged to have engaged in conduct described in Section 51.03(b)(2).

(b) Authorizes a county or justice 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 in Section 51.03(b)(2) in a case where:

(1) the person is 12 years of age or older;

(2) the juvenile court has waived its original jurisdiction under this section; and

(3) a complaint is filed by the appropriate authority in the county or justice court, rather than in the county, justice, or municipal court, charging an offense under Section 25.094, Education Code.

(c) Provides that a proceeding in a county or justice 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.

SECTION 6. Amends Chapter 54, Family Code, by adding Section 54.0402, as follows:

Sec. 54.0402. DISPOSITIONAL ORDER FOR FAILURE TO ATTEND SCHOOL. Provides that a dispositional order regarding conduct under Section 51.03(b)(2) 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.

SECTION 7. Amends Section 54.05, Family Code, by amending Subsections (a) and (b) and adding Subsection (a-1), as follows:

(a) Authorizes any disposition, except a commitment to the Texas Youth Commission (TYC), except as provided by Subsection (a-1), to be modified by the juvenile court as provided in this section until the child reaches his 18th birthday, or the child is earlier discharged by the court or operation of law.

(a-1) Authorizes a disposition regarding conduct under Section 51.03(b)(2) to be modified by the juvenile court as provided by this section until the expiration of the period described by Section 54.0402.

(b) Provides that, except for a commitment to TYC or a disposition under Section 54.0402, all dispositions automatically terminate when the child reaches his 18th birthday.

SECTION 8. Amends Article 45.054, Code of Criminal Procedure, by amending Subsections (a) and (b) and adding Subsections (i) and (j), as follows:

(a) Provides that the court, on a finding by a county or justice court, rather than 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 certain provisions requiring the individual, or the individual and the individual's parent, to take certain actions.

(b) Provides that an order under Subsection (a)(3) (requiring that the individual and the individual's parent attend a class for students at risk of dropping out of school designed for both the individual and the individual's parent) 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 juvenile court, rather than the justice, municipal, or juvenile court, by contempt.

(i) Requires a county or justice court to dismiss the complaint against an individual alleging that the individual committed an offense under Section 25.094, Education Code, if:

(1) the court finds that the individual has successfully complied with the conditions imposed on the individual by the court under this article; or

(2) the individual presents to the court proof that the individual has obtained a high school diploma or a high school equivalency certificate.

(j) Authorizes a county or justice court to waive or reduce a fee or court cost imposed under this article if the court finds that payment of the fee or court cost would cause financial hardship.

SECTION 9. Amends Article 45.055, Code of Criminal Procedure, by amending Subsection (a) and adding Subsection (e), as follows:

(a) Authorizes an individual convicted of not more than one violation of Section 25.094, Education Code, except as provided by Subsection (e), on or after the individual's 18th birthday, to apply to the court in which the individual was convicted to have the conviction and records relating to the conviction expunged.

(e) Requires a court to expunge an individual's conviction under Section 25.094, Education Code, and records relating to a conviction, regardless of whether the individual has previously been convicted of an offense under that section, if:

(1) the court finds that the individual has successfully complied with the conditions imposed on the individual by the court under Article 45.054; or

(2) before the individual's 21st birthday, the individual presents to the court proof that the individual has obtained a high school diploma or a high school equivalency certificate.

SECTION 10. Amends Articles 45.056(a) and (c), Code of Criminal Procedure, as follows:

(a) Authorizes a county court, justice court, school district, juvenile probation department, or other appropriate governmental entity, on approval of the commissioners court, school district board of trustees, juvenile board, or other appropriate authority, to:

(1) employ a case manager to provide services in cases involving juvenile offenders before a court consistent with the court's statutory powers; or

(2) agree in accordance with Chapter 791 (Interlocal Cooperation Contracts), Government Code, to jointly employ a case manager.

(c) Authorizes a county or justice court on approval of the commissioners court to employ one or more full-time juvenile case managers to assist the court in administering the court's juvenile docket and in supervising its court orders in juvenile cases. Deletes existing text authorizing a municipal court on approval of the city council to employ one or more full-time juvenile case managers to assist the court in administering the court's juvenile docket and in supervising its court orders in juvenile cases.

SECTION 11. Amends Articles 102.0174(d), (f), and (h), Code of Criminal Procedure, as follows:

(d) Requires that the order, rather than the ordinance or order, authorize the judge or justice to waive the fee required by Subsection (b) or (c) in a case of financial hardship.

(f) Requires the clerks of the respective courts to collect the costs and pay them to the county treasurer, rather to the county or municipal treasurer, as applicable, or to any other official who discharges the duties commonly delegated to the county treasurer, rather than the county or municipal treasurer, for deposit in the fund.

(h) Requires that a fund be administered by or under the direction of the commissioners court, rather than by or under the direction of the commissioners court or under the direction of the governing body of the municipality.

SECTION 12. Amends Section 7.111(a), Education Code, as follows:

(a) Requires the State Board of Education (SBOE) to provide for the administration of high school equivalency examinations, including administration by the adjutant general's department for students described by Subdivision (2)(C). Authorizes a person who does not have a high school diploma to take the examination in accordance with rules adopted by SBOE if the person is, among other criteria, required to take the examination under a justice court order, rather than a justice or municipal court order, issued under Article 45.054(a)(1)(C), Code of Criminal Procedure.

SECTION 13. 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) to investigate each case of a violation of compulsory school attendance requirements referred to the peace officer;

(2) to enforce compulsory school attendance requirements by:

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

(B) if the truancy prevention measures fail to meaningfully address the student's conduct:

(i) referring the student to a juvenile court or filing a complaint against the student in a county or justice court, rather than in a county, justice, or municipal court, 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; or

(ii) filing a complaint in a county or justice court, rather than in a county, justice, or municipal court, against a parent who violates Section 25.093 (Parent Contributing to Nonattendance). Makes nonsubstantive changes; and

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

(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) to investigate each case of a violation of the compulsory school attendance requirements referred to the attendance officer;

(2) to enforce compulsory school attendance requirements by:

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

(B) if the truancy prevention measures fail to meaningfully address the student's conduct:

(i) referring the student to a juvenile court or filing a complaint against the student in a county or justice court, rather than 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

(ii) filing a complaint in a county or justice court, rather than in a county, justice, or municipal court, against a parent who violates Section 25.093; and

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

SECTION 14. Amends Subchapter C, Chapter 25, Education Code, by adding Section 25.0915, as follows:

Sec. 25.0915. TRUANCY PREVENTION MEASURES; REFERRAL AND FILING REQUIREMENT. (a) Requires a school district to adopt truancy prevention measures designed to:

- (1) address student conduct related to truancy in the school setting; and
- (2) minimize the need for referrals to juvenile court for and complaints filed in county or justice court alleging truancy.

(b) Requires that each referral to juvenile court for or complaint filed in county or justice court alleging truancy by a student be accompanied by a statement from the student's school certifying that:

- (1) the school applied the truancy prevention measures adopted under Subsection (a) to the student; and
- (2) the truancy prevention measures failed to meaningfully address the student's conduct related to truancy.

SECTION 15. Amends Sections 25.093(b) and (d), Education code, as follows:

(b) Requires 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, or a justice court of any precinct in the county in which the parent resides or in which the school is located. Deletes existing text relating to a municipal court of the municipality in which the parent or in which the school is located.

(d) Requires that a fine collected under this section be deposited as follows:

(1) one-half is required to be deposited to the credit of the operating fund of, as applicable:

- (A) the school district in which the child attends school;
- (B) the open-enrollment charter school the child attends; or
- (C) the juvenile justice alternative education program that the child has been ordered to attend; and

(2) one-half is required to be deposited to the credit of the general fund of the county.

Deletes existing text requiring that one-half be deposited to the credit of the general fund of the county if the complaint is filed in the justice court or the constitutional county court, or the general fund of the municipality if the complaint is filed in municipal court.

SECTION 16. 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 or the student's parent or both in a county or justice court, rather than in a county, justice, or municipal court, for an offense under Section 25.093 or 25.094, as appropriate, or refer the student to a juvenile

court in a county with a population of less than 100,000 for conduct that violates Section 25.094; or

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

(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 or the student's parent or both in a county or justice court, rather than in a county, justice, or municipal court, for an offense under Section 25.093 or 25.094, as appropriate, or refer the student to a juvenile court in a county with a population of less than 100,000 for conduct that violates Section 25.094; or

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

SECTION 17. Amends Section 102.121, Government Code, as follows:

Sec. 102.121. ADDITIONAL COURT COSTS ON CONVICTION IN MUNICIPAL COURT: CODE OF CRIMINAL PROCEDURE. Requires the clerk of a municipal court to collect fees and costs on conviction of a defendant as follows:

(1) a jury fee (Art. 102.004, Code of Criminal Procedure) . . . \$3;

(2) a fee for withdrawing request for jury less than 24 hours before time of trial (Art. 102.004, Code of Criminal Procedure) . . . \$3;

(3) a jury fee for two or more defendants tried jointly (Art. 102.004, Code of Criminal Procedure) . . . one jury fee of \$3;

(4) a security fee on a misdemeanor offense (Art. 102.017, Code of Criminal Procedure) . . . \$3;

(5) a fee for technology fund on a misdemeanor offense (Art. 102.0172, Code of Criminal Procedure) . . . not to exceed \$4; and

(6) a civil justice fee (Art. 102.022, Code of Criminal Procedure)...\$0.10.

Deletes existing Subdivision (6) relating to a juvenile case manager fee and redesignates existing Subdivision (7) as Subdivision (6).

SECTION 18. Repealer: Article 102.014(d) (requiring a person convicted of an offense under Section 25.093 or 25.094, Education Code, to pay as taxable court costs \$20 in addition to other taxable court costs), Code of Criminal Procedure.

Repealer: Article 102.0174(b) (authorizing the governing body of a municipality by ordinance to create a juvenile case manager fund and to require a defendant convicted of a fine-only misdemeanor offense in a municipal court to pay a juvenile case manager fee not to exceed \$5 as a cost of court), Code of Criminal Procedure.

SECTION 19. Makes application of this Act prospective.

SECTION 20. Requires the governing body of a municipality that created a juvenile case manager fund under Article 102.0174, Code of Criminal Procedure, not later than September 1, 2012, to abolish the juvenile case manager fund, and transfer any money in the juvenile case manager fund to the municipal treasury.

SECTION 21. Effective date: September 1, 2011.