

SUBJECT: Amending court penalties and procedures for truancy cases

COMMITTEE: Juvenile Justice and Family Issues — committee substitute recommended

VOTE: 5 ayes — Dutton, Riddle, Peña, Rose, J. White

0 nays

2 absent — Hughes, Sanford

WITNESSES: For — Leah Welch; (*Registered, but did not testify*: Matt Simpson, ACLU of Texas; Traci Berry, Goodwill Central Texas; Veronica Delgado-Savage, Southwest Key Programs, Inc.; Stephen Maguire, Texas Network of Youth Services; Larriann Curtis, Texas PTA; 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, Justices of the Peace and Constables Association of Texas; Mindy Morris, Texas Truancy and Dropout Prevention Association; 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; Jennifer Sellers, Texas Students First; Brian Goodman, TRAC; Melissa Goins and Stacey Warner, Williamson County Justice of the Peace Precinct 3)

On — Michael Clearman, Aim; Ron Quiros, Guadalupe County Juvenile Probation and Central Texas Chiefs Association; Robert Garcia, El Paso County Justice of the Peace Precinct 2; Mary Mergler, Texas Appleseed; John Dahill, Texas Conference of Urban Counties; John Kreager, Texas Criminal Justice Coalition; Nichole Bunker-Henderson, Texas Education Agency; Mark Williams, Texas Probation Association; Shannon Edmonds; Tammy Edwards; Steve Swanson; (*Registered, but did not testify*: Arlynn Garcia and Cynthia Rede, El Paso County Justice of the Peace Precinct 2; 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.

DIGEST: CSHB 2632 would make the failure to attend school subject to a civil penalty, instead of a criminal offense, 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.

Automatic expunction of truancy records. Students convicted of a truancy offense or who 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 entered 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 on or after that date.

**SUPPORTERS
SAY:**

Civil penalty for failure to attend school. CSHB 2632 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

because 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 because 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 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 civil or juvenile court actions. The bill would lower the fine to a more reasonable \$100 and would eliminate the inflexible mandate that forces certain cases to 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. Texas schools already are required to have truancy prevention measures in place and should be allowed to craft interventions they think are appropriate and effective in their respective communities.

The bill also would keep the current offense that allows parents to be held accountable for truancy but would 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.

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 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.

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

OTHER
OPPONENTS
SAY:

CSHB 2632 would provide needed improvements to how the state handles truancy cases; however, the bill also should require certain progressive truancy interventions at schools to help address issues before cases were referred to court. These interventions could help reduce any potential influx of truancy cases to juvenile courts under the bill.

NOTES:

The Legislative Budget Board estimates that CSHB 2632 would result in a gain of \$4.4 million to general revenue through fiscal 2016-17.