

BILL ANALYSIS

Senate Research Center

H.B. 1490
By: Huberty et al. (Whitmire)
Criminal Justice
5/20/2015
Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

H.B. 1490 amends current law relating to public school interventions for truancy and eliminating a criminal penalty and authorizing a civil penalty for 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 Article 45.0216(g), Code of Criminal Procedure, as follows:

(g) Provides that this article does not apply to any offense otherwise covered by:

(1) and (2) Makes nonsubstantive changes;

Deletes existing Subdivision (3) referencing Section 25.094 (Failure to Attend School), Education Code.

SECTION 2. Amends Articles 45.054(a) and (i), Code of Criminal Procedure, as follows:

(a) Provides that, on a finding by a county, justice, or municipal court that an individual has engaged in conduct that violates, rather than committed an offense under, Section 25.094, Education Code, the court has jurisdiction to enter an order that includes one or more of certain provisions as set forth requiring that the individual perform certain actions.

(i) Requires that a county, justice, or municipal court dismiss the complaint against an individual alleging that the individual has engaged in conduct that violates, rather than committed an offense under, Section 25.094, Education Code, if the court finds that the individual has successfully complied with the conditions imposed on the individual by the court under this article, or the individual presents to the court proof that the individual has obtained a high school diploma or a high school equivalency certificate.

SECTION 3. Amends Subchapter B, Chapter 45, Code of Criminal Procedure, by adding Article 45.0541, as follows:

Art. 45.0541. AUTOMATIC EXPUNCTION OF TRUANCY RECORDS. (a) Defines "truancy offense."

(b) Provides that an individual who has been convicted of a truancy offense or has had a complaint for a truancy offense dismissed is entitled to have the conviction or complaint and records relating to the conviction or complaint automatically expunged.

(c) Requires the court in which the individual was convicted or a complaint for a truancy offense was filed to order the conviction, 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 individual's record. Provides that after entry of the order, the individual is released from all disabilities resulting from the conviction or complaint, and the conviction or complaint may not be shown or made known for any purpose. Requires the court to inform the individual of the expunction.

SECTION 4. Amends Article 102.014(d), Code of Criminal Procedure, as follows:

(d) Requires a person convicted of an offense under Section 25.093 (Parent Contributing to Nonattendance), Education Code, or found to have engaged in conduct that violates Section 25.094, Education Code, to pay as taxable court costs \$20 in addition to other taxable court costs. Requires that the additional court costs under this subsection be collected in the same manner that other fines and taxable court costs in the case are collected.

SECTION 5. 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) Makes no change to this subdivision;

(2) to enforce compulsory school attendance requirements by:

(A) applying truancy prevention measures and, if applicable, progressive truancy interventions adopted under Section 25.0915 to the student;

(B) if the truancy prevention measures and, if applicable, progressive truancy interventions fail to meaningfully address the student's conduct:

(i) and (ii) Makes no change to these subdivisions;

(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) Makes no change to this subdivision;

(2) to enforce compulsory school attendance requirements by:

(A) applying truancy prevention measures and, if applicable, progressive truancy interventions adopted under Section 25.0915 to the student;

(B) if the truancy prevention measures and, if applicable, progressive truancy interventions fail to meaningfully address the student's conduct:

(i) and (ii) Makes no change to these subdivisions;

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

SECTION 6. Amends the heading to Section 25.0915, Education Code, to read as follows:

Sec. 25.0915. TRUANCY PREVENTION MEASURES AND PROGRESSIVE TRUANCY INTERVENTIONS; REFERRAL AND FILING REQUIREMENT.

SECTION 7. Amends Sections 25.0915(a), (b), and (c), as follows:

(a) Requires a school district to adopt truancy prevention measures and authorizes a school district to adopt progressive truancy interventions for students who violate compulsory attendance requirements that are designed to:

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

(b) Requires that each referral to juvenile court for conduct described by Section 51.03(b)(2) (relating to 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 complaint filed in county, justice, or municipal court alleging a violation by a student of Section 25.094:

(1) be accompanied by a statement from the student's school certifying that:

(A) the school applied the truancy prevention measures and, if applicable, the progressive truancy interventions adopted under Subsection (a) to the student; and

(B) the truancy prevention measures and, if applicable, the progressive truancy interventions failed to meaningfully address the student's school attendance;

(2) Makes no change to this subdivision.

(c) Requires a court to dismiss a complaint or referral made by a school district under this section that is not made in compliance with Subsection (b), does not satisfy the elements required for the offense, is not timely filed, or is otherwise defective. Requires that a dismissal under this section be made before a hearing of the complaint or referral is scheduled and without requiring the presence of the defendant.

SECTION 8. Amends Subchapter C, Chapter 25, Education Code, by adding Section 25.0917, as follows:

Sec. 25.0917. PROGRESSIVE TRUANCY INTERVENTION SYSTEM. (a) Requires that a system of progressive interventions for truancy adopted by a school district under Section 25.0915 include at least three tiers of interventions.

(b) Authorizes a school district to apply the first tier of interventions to a student who has at least three unexcused absences within a school year, and to apply successive tiers of interventions to the student if the student continues to accumulate unexcused absences following the application of the first tier consequences.

(c) Requires that the first tier of progressive truancy interventions include:

(1) a conference with the student, the student's parent or guardian, and an employee of the school that the student attends and regularly scheduled follow-up meetings to assess the student's progress; and

(2) an attendance contract, signed by the attendees of the conference under Subdivision (1), that includes:

(A) a description of the attendance expectations that the school has for the student;

(B) the period for which the contract is in effect, not to exceed 45 days following the date the contract is signed; and

(C) a description of the consequences that may be imposed on the student if the student accumulates additional absences or commits

school offenses, which may include additional disciplinary actions or a referral to juvenile court.

(d) Requires that a least one of the tiers of truancy interventions after the first tier include an individualized assessment of the student by a school employee that:

(1) identifies the reasons that the student has accumulated unexcused absences;

(2) refers the student to counseling, if necessary; and

(3) refers the student to any services, including school-sponsored or community-based services, that focus on addressing the student's absences from school.

(e) Provides that the consequences imposed on a student who has accumulated additional unexcused absences following the application of the first tier of progressive truancy intervention consequences may include:

(1) school-based community service;

(2) participation in a school-based restorative justice program;

(3) referral to a school-based teen court;

(4) weekend courses designed to improve attendance and behavior;

(5) if the student is eligible for or is receiving special education services under Subchapter A, Chapter 29, from a school district, or is covered by Section 504, Rehabilitation Act of 1973 (29 U.S.C. Section 794), a full reevaluation under Section 29.004 or under Section 504 of the Rehabilitation Act of 1973, as appropriate, or an assessment of the student's individualized education program to address the causes of the student's unexcused absences, as necessary; or

(6) if the student is not receiving special education services from a school district, an initial evaluation for special education services under Section 29.004 or under Section 504, Rehabilitation Act of 1973 (29 U.S.C. Section 794), as appropriate.

SECTION 9. Amends Section 25.094, Education Code, by amending Subsections (a), (b), (c), (d-1), (f), and (g) and adding Subsections (e-1) and (e-2), as follows:

(a) Provides that an individual is liable to the state for a civil penalty not to exceed \$100, rather than an individual commits an offense, if the individual;

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

(b) Provides that an action, rather than an offense, under this section may be brought, rather than prosecuted, in certain courts as set forth.

(c) Authorizes the court, on a finding by the county, justice, or municipal court 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.

Deletes existing text authorizing the court, on a finding by the county, justice, or municipal 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, Code of Criminal Procedure, as added by Chapter 1514 (relating to truancy, high school equivalency programs, and the authority of justice, municipal, and certain juvenile courts in relation to children; providing criminal penalties), Acts of the 77th Legislature, Regular Session, 2001.

(d-1) Authorizes a peace officer pursuant to an order of the county, justice, or municipal court based on an affidavit showing probable cause to believe that an individual has violated this section, rather than committed an offense under this section, to issue a citation or take the individual into custody. Makes no further change to this subsection.

(e-1) Provides that the imposition of a civil penalty under this section is not a conviction and is prohibited from being considered a conviction for any purpose.

(e-2) Requires the district or county attorney of the county in which the conduct described by this section is alleged to have occurred to bring an action in a county, justice, or municipal court to collect the civil penalty of a person who is taken into custody or is issued a citation for a violation under this section.

(f) Provides that it is a defense, rather than it is an affirmative defense to prosecution, under this section that one or more of the absences required to be proven under Subsection (a) were excused by a school official or by the court or that one or more of the absences were involuntary, but only if there is an insufficient number of unexcused or voluntary absences remaining to constitute an offense under this section. Provides that the burden is on the respondent, rather than defendant, to show by a preponderance of the evidence that the absence has been excused or that the absence was involuntary. Makes no further change to this subsection.

(g) Makes conforming changes.

SECTION 10. Amends Sections 25.095(a) and (c), Education Code, as follows:

(a) Requires 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:

(1) Makes no change to this subdivision;

(2) the student is subject to an action brought under Section 25.094 or to referral to a juvenile court for conduct indicating a need for supervision, rather than the student is subject to prosecution under Section 25.094 or to referral to a juvenile court in a county with a population of less than 100,000 for conduct that violates that section.

(c) Provides that the fact that a parent did not receive a notice under Subsection (a) or (b) does not create a defense to prosecution under Section 25.093, a defense to an action brought under Section 25.094, or a defense in a disposition hearing on an issue as to whether the child engaged in conduct indicating a need for supervision. Makes a nonsubstantive change.

SECTION 11. Amends Sections 25.0951(a) and (b), Education Code, as follows:

(a) Authorizes 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 within 10 school days of the student's most recent absence:

(1) file a complaint against the student's parent in a county, justice, or municipal court for an offense under Section 25.093, bring an action in a county, justice, or municipal court for conduct that violates Section 25.094, or refer the student to a

juvenile court for a determination as to whether the child engaged in conduct indicating a need for supervision;

(2) Makes no change to this subdivision.

Deletes existing text requiring 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 within 10 school days of the student's 10th absence file a complaint against the student or the student's parent or both 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.

(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's parent in a county, justice, or municipal court for an offense under Section 25.093, bring an action in a county, justice, or municipal court for conduct that violates Section 25.094, or refer the student to a juvenile court for a determination as to whether the child engaged in conduct indicating a need for supervision; or

(2) Makes no change to this subdivision.

Deletes existing text authorizing 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 file a complaint against the student or the student's parent or both 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.

SECTION 12. Amends Section 51.02(15), Family Code, to redefine "status offender."

SECTION 13. Amends Sections 54.021(b), (c), (d), and (e), Family Code, as follows:

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

(c) Makes conforming changes.

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

(e) Provides that the proceedings before a constitutional county court related to an offense under Section 25.093, Education Code, or conduct that violates Section 25.094, Education Code, may be recorded in any manner provided by Section 30.00010 (Court Reporter), Government Code, for recording proceedings in a municipal court of record.

SECTION 14. Amends Section 54.1955, Government Code, as follows:

Sec. 54.1955. POWERS. (a) Deletes a reference to Section 25.094, Education Code.

(b) Prohibits a magistrate, with respect to an issue of law or fact the ruling on which could result in the dismissal of a prosecution under Section 25.093, Education Code, or an action brought under Section 25.094, Education Code, a from ruling on the issue but authorizes the magistrate to make findings, conclusions, and recommendations on the issue.

SECTION 15. Amends Section 71.0352, Government Code, to delete a reference to offenses.

SECTION 16. Amends Section 103.021, Government Code, as follows:

Sec. 103.021. ADDITIONAL FEES AND COSTS IN CRIMINAL OR CIVIL CASES: CODE OF CRIMINAL PROCEDURE. Requires an accused or defendant, or a party to a civil suit, as applicable, to pay the following fees and costs under the Code of Criminal Procedure if ordered by the court or otherwise required:

(1)-(20-a) Makes no change to these subdivisions;

Deletes existing subdivision (20-b) relating to a fee to defray the cost of notifying state agencies of orders of expunction (Art. 45.055, Code of Criminal Procedure) . . . \$30 per application;

(21)-(25) Makes no change to these subdivisions.

SECTION 17. Repealers: (1) Article 45.055 (Expunction of Conviction and Records in Failure to Attend School Classes), Code of Criminal Procedure; and

(2) Section 25.094(e) (providing that an offense under this section is a Class C misdemeanor), Education Code.

SECTION 18. Provides that the changes in law made by this Act apply to a person taken into custody or issued a citation on or after the effective date of this Act, regardless of whether the conduct for which the person was taken into custody or issued a citation occurred before, on, or after that date.

SECTION 19. Effective date: September 1, 2015.