

TRUANCY REFORM & SCHOOL ATTENDANCE

HB 2398

Code of Criminal Procedure Art. 4.14. JURISDICTION OF MUNICIPAL COURT. (g) A municipality may enter into an agreement with a contiguous municipality or a municipality with boundaries that are within one-half mile of the municipality seeking to enter into the agreement to establish concurrent jurisdiction of the municipal courts in the municipalities and provide original jurisdiction to a municipal court in which a case is brought as if the municipal court were located in the municipality in which the case arose, for:

- (1) all cases in which either municipality has jurisdiction under Subsection (a); and
- (2) cases that arise under Section 821.022, Health and Safety Code~~[-or Section 25.094, Education Code].~~

Commentary by Ted Wood

Source: HB 2398

Effective Date: September 1, 2015

Applicability: The changes in law made by this Act apply only to an offense committed or conduct that occurs on or after the effective date of this Act.

Summary of Changes: This existing municipal court jurisdictional provision drops its reference to Section 25.094, Education Code. This is because of the repeal of Section 25.094 in Section 41 of HB 2398. This provision now has no application to truancy cases. But municipalities may still enter into the type of agreement authorized by Article 4.14 pursuant to HB 2398's amendment to Section 29.003(i), Government Code.

Code of Criminal Procedure Art. 45.0216. EXPUNCTION OF CERTAIN CONVICTION RECORDS. (f) The court shall order the conviction, together with all complaints, verdicts, sentences, and prosecutorial and law enforcement records, and any other documents relating to the offense, expunged from the person's record if the court finds that:

(1) for a person applying for the expunction of a conviction for an offense described by Section 8.07(a)(4) or (5), Penal Code, the person was not convicted of any other offense described by Section 8.07(a)(4) or (5), Penal Code, while the person was a child; and

(2) for a person applying for the expunction of a conviction for an offense described by Section 43.261, Penal Code, the person was not found to have engaged in conduct indicating a need for supervision described by Section 51.03(b)(7) ~~[51.03(b)(8)]~~, Family Code, while the person was a child.

(g) This article does not apply to any offense otherwise covered by:

- (1) Chapter 106, Alcoholic Beverage Code; or
- (2) Chapter 161, Health and Safety Code~~[-or~~
- ~~(3) Section 25.094, Education Code].~~

Commentary by Ted Wood

Source: HB 2398

Effective Date: September 1, 2015

Applicability: The changes in law made by this Act apply only to an offense committed or conduct that occurs on or after the effective date of this Act.

Summary of Changes: Article 45.0216 concerns expunctions generally in justice and municipal courts. The current statute explicitly states that it does not apply to Section 25.094, Education Code. Because Section 41 of HB 2398 repeals Section 25.094, the reference to Section 25.094 must be eliminated. As amended, Article 45.0216 still only concerns criminal convictions. The amended statute does not apply to truancy cases.

Code of Criminal Procedure Art. 45.0531. DISMISSAL OF PARENT CONTRIBUTING TO NONATTENDANCE CHARGE. Notwithstanding any other law, a county, justice, or municipal court, at the court's discretion, may dismiss a charge against a defendant alleging the defendant committed an offense under Section 25.093, Education Code, if the court finds that a dismissal would be in the interest of justice because:

- (1) there is a low likelihood of recidivism by the defendant; or
- (2) sufficient justification exists for the failure to attend school.

Commentary by Ted Wood

Source: HB 2398

Effective Date: September 1, 2015

Applicability: The changes in law made by this Act apply only to an offense committed or conduct that occurs on or after the effective date of this Act.

Summary of Changes: While the offense of failure to attend school is repealed by Section 41 of HB 2398, the offense of Parent Contributing to Nonattendance still exists. Article 45.0531 is a new statute that gives the courts handling parent contributing to nonattendance cases greater leeway in dismissing such cases.

Code of Criminal Procedure Art. 45.0541. EXPUNCTION OF FAILURE TO ATTEND SCHOOL RECORDS. (a) In this article, "truancy offense" means an offense committed under the former Section 25.094, Education Code.

(b) 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 expunged.

(c) Regardless of whether the individual has filed a petition for expunction, the court in which the individual was convicted or a complaint for a truancy offense was filed shall 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. 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.

Commentary by Ted Wood

Source: HB 2398

Effective Date: September 1, 2015

Applicability: The changes in law made by this Act apply only to an offense committed or conduct that occurs on or after the effective date of this Act.

Summary of Changes: This new statute applies to convictions for failure to attend school that occurred under the law prior to the effective date of HB 2398. The statute also applies to complaints for failure to attend school that were ultimately dismissed. Courts that handled these failure-to-attend-school cases are directed to order the records in the cases to be expunged. This includes records held by school districts and law enforcement agencies. While a petition seeking an expunction order can be filed, courts appear to have a duty to order expunctions even in the absence of a petition. The consequence of the order is that the individual who is the subject of the order is "released from all disabilities resulting from the conviction or complaint." A question has arisen as to whether unpaid fines and court costs are no longer owed by the beneficiary of an expunction. The literal language of this statute would appear to call for an affirmative answer.

Another question is whether any effect should be given to this statute at all in light of the applicability provision of HB 2398. See "Applicability" above. The bill is to apply only to an offense committed, or conduct that occurs, on or after the effective date of the bill. The convictions that courts are directed to expunge will all have necessarily occurred prior to the effective date of the bill.

Code of Criminal Procedure Art. 45.056. JUVENILE CASE MANAGERS. (a) On approval of the commissioners court, city council, school district board of trustees, juvenile board, or other appropriate authority, a county court, justice court, municipal court, school district, juvenile probation department, or other appropriate governmental entity may:

(1) employ a case manager to provide services in cases involving juvenile offenders who are before a court consistent with the court's statutory powers or referred to a court by a school administrator or designee for misconduct that would otherwise be within the court's statutory powers prior to a case being filed, with the consent of the juvenile and the juvenile's parents or guardians;

(2) employ one or more juvenile case managers who:

(A) shall assist the court in administering the court's juvenile docket and in supervising the court's orders in juvenile cases; and

(B) may provide:

(i) prevention services to a child considered at risk of entering the juvenile justice system; and

(ii) intervention services to juveniles engaged in misconduct before cases are filed, excluding traffic offenses; or

(3) agree in accordance with Chapter 791, Government Code, with any appropriate governmental entity to jointly employ a case manager or to jointly contribute to the costs of a case manager employed by one governmental entity to provide services described by Subdivisions (1) and (2).

Commentary by Ted Wood

Source: HB 2398

Effective Date: September 1, 2015

Applicability: The changes in law made by this Act apply only to an offense committed or conduct that occurs on or after the effective date of this Act.

Summary of Changes: This statute concerns juvenile case managers. Given that truancy cases are no longer handled as juvenile or criminal cases, there is a question whether this statute applies in truancy cases. The actual amendment to the statute allow a governmental entity to jointly contribute to the costs of a juvenile case manager with another governmental entity.

Code of Criminal Procedure Art. 102.014. COURT COSTS FOR CHILD SAFETY FUND IN MUNICIPALITIES. (d) A person convicted of an offense under Section 25.093 [~~or 25.094~~], Education Code, shall pay as taxable court costs \$20 in addition to other taxable court costs. The additional court costs under this subsection shall be collected in the same manner that other fines and taxable court costs in the case are collected.

Commentary by Ted Wood

Source: HB 2398

Effective Date: September 1, 2015

Applicability: The changes in law made by this Act apply only to an offense committed or conduct that occurs on or after the effective date of this Act.

Summary of Changes: Article 102.014 calls for a \$20 court cost upon conviction of the offense of failure to attend school. With the repeal of the offense by HB 2398, there will obviously no longer be any need for the court cost. The bill does away with the \$20 court cost in failure-to-attend-school cases. But the court cost remains in parent-contributing-to-nonattendance cases because that particular criminal act is not repealed.

Education Code Sec. 7.111. HIGH SCHOOL EQUIVALENCY EXAMINATIONS. (a) The board shall provide for the administration of high school equivalency examinations.

(b) Section 7.111(a-1), Education Code, is amended to conform to the amendment of Section 7.111(a), Education Code, by Chapter 1217 (S.B. 1536), Acts of the 83rd Legislature, Regular Session, 2013, and is further amended to read as follows:

(a-1) A person who does not have a high school diploma may take the examination in accordance with rules adopted by the board if the person is:

- (1) over 17 years of age;
- (2) 16 years of age or older and:

(A) is enrolled in a Job Corps training program under the Workforce Investment Act of 1998 (29 U.S.C. Section 2801 et seq.), and its subsequent amendments;

(B) a public agency providing supervision of the person or having custody of the person under a court order recommends that the person take the examination; or

(C) is enrolled in the Texas Military Department's [~~adjutant general's department's~~] Seaborne ChalleNGe Corps; or

- (3) required to take the examination under a court order issued under Section 65.103(a)(3), Family Code.

Commentary by Ted Wood

Source: HB 2398

Effective Date: September 1, 2015

Applicability: The changes in law made by this Act apply only to an offense committed or conduct that occurs on or after the effective date of this Act.

Summary of Changes: This statute concerns high school equivalency examinations. The amendment recognizes that truancy courts may order children to take the high school equivalency exam under Section 65.103, Family Code.

Education Code Sec. 25.085. COMPULSORY SCHOOL ATTENDANCE. (b) Unless specifically exempted by Section 25.086, a child who is at least six years of age, or who is younger than six years of age and has previously been enrolled in first grade, and who has not yet reached the child's 19th [18th] birthday shall attend school.

(e) A person who voluntarily enrolls in school or voluntarily attends school after the person's 19th [18th] birthday shall attend school each school day for the entire period the program of instruction is offered. A school district may revoke for the remainder of the school year the enrollment of a person who has more than five absences in a semester that are not excused under Section 25.087, except a school district may not revoke the enrollment of a person under this subsection on a day on which the person is physically present at school. A person whose enrollment is revoked under this subsection may be considered an unauthorized person on school district grounds for purposes of Section 37.107.

(f) The board of trustees of a school district may adopt a policy requiring a person described by Subsection (e) who is under 21 years of age to attend school until the end of the school year. Section 65.003(a), Family Code, does not apply [25.094 applies] to a person subject to a policy adopted under this subsection. Sections 25.093 and 25.095 do not apply to the parent of a person subject to a policy adopted under this subsection.

(g) After the third unexcused absence of a person described by Subsection (e), a school district shall issue a warning letter to the person that states the person's enrollment may be revoked for the remainder of the school year if the person has more than five unexcused absences in a semester.

(h) As an alternative to revoking a person's enrollment under Subsection (e), a school district may impose a behavior improvement plan described by Section 25.0915(a-1)(1).

Commentary by Ted Wood

Source: HB 2398

Effective Date: September 1, 2015

Applicability: The changes in law made by this Act apply only to an offense committed or conduct that occurs on or after the effective date of this Act.

Summary of Changes: This statute is our state's compulsory school attendance law. The statute is amended in a significant way. Specifically, 18-year-olds will now be required to attend school. Prior to the amendment, school attendance was not required after a person's 18th birthday. With this change, subsection (e) of the statute is also changed. Subsection (e) addresses persons who voluntarily attend school after the age at which they are legally required to attend. Such voluntary attenders become legally obligated to attend school. Two changes have been made to Subsection (e). First, there is a recognition that only upon turning 19 does the concept of voluntary attendance become relevant. Second, the subsection now declares that a school district may not revoke a voluntary attender's enrollment on a day that the person is physically present at school.

Subsection (f) is also amended. This subsection authorizes school districts to adopt policies to require voluntary school attenders to attend school until the end of the school year. The subsection said a voluntary attender could commit the offense of failure to attend school under a school district policy. The amendment changes things. The amendment says voluntary attenders cannot be found to have engaged in truant conduct. A school district may still enact a policy requiring voluntary attenders to attend school until the end of the school year. But the failure of a voluntary attender to attend cannot constitute truant conduct.

Subsections (g) and (h) are new and concern voluntary attenders who have more than five unexcused absences in a semester. Subsection (g) permits school districts to revoke such a voluntary attender's school enrollment. Subsection (h) authorizes school districts to require the voluntary attender to participate in a behavior improvement plan instead of revoking a voluntary attender's enrollment.

Education Code Sec. 25.091. POWERS AND DUTIES OF PEACE OFFICERS AND OTHER ATTENDANCE OFFICERS. (a) 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 truancy court [~~juvenile court or filing a complaint against the student in a county, justice, or municipal court~~] if the student has unexcused absences for the amount of time specified under Section 65.003(a) [25.094 or under Section 51.03(b)(2)], Family Code; or

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

(3) to serve court-ordered legal process;

(4) to review school attendance records for compliance by each student investigated by the officer;

(5) to maintain an investigative record on each compulsory school attendance requirement violation and related court action and, at the request of a court, the board of trustees of a school district, or the commissioner, to provide a record to the individual or entity requesting the record; and

(6) to make a home visit or otherwise contact the parent of a student who is in violation of compulsory school attendance requirements, except that a peace officer may not enter a residence without the permission of the parent of a student required under this subchapter to attend school or of the tenant or owner of the residence except to lawfully serve court-ordered legal process on the parent[; ~~and~~

~~[(7) to take a student into custody with the permission of the student's parent or in obedience to a court-ordered legal process].~~

(b) 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 truancy court [~~juvenile court or filing a complaint against the student in a county, justice, or municipal court~~] if the student has unexcused absences for the amount of time specified under Section 65.003(a) [~~25.094 or under Section 51.03(b)(2)~~], Family Code; and

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

(3) to monitor school attendance compliance by each student investigated by the officer;

(4) to maintain an investigative record on each compulsory school attendance requirement violation and related court action and, at the request of a court, the board of trustees of a school district, or the commissioner, to provide a record to the individual or entity requesting the record;

(5) to make a home visit or otherwise contact the parent of a student who is in violation of compulsory school attendance requirements, except that the attendance officer may not enter a residence without permission of the parent or of the owner or tenant of the residence; and

(6) at the request of a parent, to escort a student from any location to a school campus to ensure the student's compliance with compulsory school attendance requirements[; ~~and~~

~~[(7) if the attendance officer has or is informed of a court-ordered legal process directing that a student be taken into custody and the school district employing the officer does not employ its own police department, to contact the sheriff, constable, or any peace officer to request that the student be taken into custody and processed according to the legal process].~~

Commentary by Ted Wood

Source: HB 2398

Effective Date: September 1, 2015

Applicability: The changes in law made by this Act apply only to an offense committed or conduct that occurs on or after the effective date of this Act.

Summary of Changes: There are two major changes to Section 25.091. The first change concerns the parts of the statute allowing school attendance officers to refer truant students to court. The law prior to HB 2398 called for referring a student to a juvenile court or filing a complaint against a student in a county, justice or municipal court. The changes authorize attendance officers to refer truant students to the new truancy courts.

The second change prohibits school attendance officers from taking students into custody. Prior to the amendment, officers could take truant students into custody pursuant to a court-ordered legal process. This will no longer be allowed.

Education Code Sec. 25.0915. TRUANCY PREVENTION MEASURES[; ~~REFERRAL AND FILING REQUIREMENT~~]. (a) A school district shall adopt truancy prevention measures designed to:

(1) address student conduct related to truancy in the school setting before the student engages in conduct described by Section 65.003(a), Family Code; and

(2) minimize the need for referrals to truancy [juvenile] court for conduct described by Section 65.003(a) [51.03(b)(2)], Family Code[~~;~~and

~~[(3) minimize the filing of complaints in county, justice, and municipal courts alleging a violation of Section 25.094].~~

(a-1) As a truancy prevention measure under Subsection (a), a school district shall take one or more of the following actions:

(1) impose:

(A) a behavior improvement plan on the student that must be signed by an employee of the school, that the school district has made a good faith effort to have signed by the student and the student's parent or guardian, and that includes:

(i) a specific description of the behavior that is required or prohibited for the student;

(ii) the period for which the plan will be effective, not to exceed 45 school days after the date the contract becomes effective; or

(iii) the penalties for additional absences, including additional disciplinary action or the referral of the student to a truancy court; or

(B) school-based community service; or

(2) refer the student to counseling, mediation, mentoring, a teen court program, community-based services, or other in-school or out-of-school services aimed at addressing the student's truancy.

(a-2) A referral made under Subsection (a-1)(2) may include participation by the child's parent or guardian if necessary.

(a-3) A school district shall offer additional counseling to a student and may not refer the student to truancy court if the school determines that the student's truancy is the result of:

(1) pregnancy;

(2) being in the state foster program;

(3) homelessness; or

(4) being the principal income earner for the student's family.

(a-4) 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 Section 25.0951(a), the school district shall initiate truancy prevention measures under this section on the student.

(b) Each referral to truancy [juvenile] court for conduct described by Section 65.003(a) [51.03(b)(2)], Family Code, ~~[or complaint filed in county, justice, or municipal court alleging a violation by a student of Section 25.094]~~ must:

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

(A) the school applied the truancy prevention measures adopted under Subsection (a) or (a-4) to the student; and

(B) the truancy prevention measures failed to meaningfully address the student's school attendance; and

(2) specify whether the student is eligible for or receives special education services under Subchapter A, Chapter 29.

(c) A truancy court shall dismiss a petition filed by a truant conduct prosecutor under Section 65.054, Family Code, if the court determines that the school district's referral:

~~(1) does [complaint or referral made by a school district under this section that is] not comply [made in compliance] with Subsection (b);~~

(2) does not satisfy the elements required for truant conduct;

(3) is not timely filed, unless the school district delayed the referral under Section 25.0951(d); or

(4) is otherwise substantively defective.

(d) Except as provided by Subsection (e), a school district shall employ a truancy prevention facilitator or juvenile case manager to implement the truancy prevention measures required by this section and any other effective truancy prevention measures as determined by the school district or campus. At least annually, the truancy prevention facilitator shall meet to discuss effective truancy prevention measures with a case manager or other individual designated by a truancy court to provide services to students of the school district in truancy cases.

(e) Instead of employing a truancy prevention facilitator, a school district may designate an existing district employee or juvenile case manager to implement the truancy prevention measures required by this section and any other effective truancy prevention measures as determined by the school district or campus.

(f) The agency shall adopt rules:

(1) creating minimum standards for truancy prevention measures adopted by a school district under this section; and

(2) establishing a set of best practices for truancy prevention measures.

(g) The agency shall adopt rules to provide for sanctions for a school district found to be not in compliance with this section.

Commentary by Ted Wood

Source: HB 2398

Effective Date: September 1, 2015

Applicability: The changes in law made by this Act apply only to an offense committed or conduct that occurs on or after the effective date of this Act.

Summary of Changes: Since 2011, the Education Code has required that school districts adopt “truancy prevention measures.” These measures are designed to address student conduct related to truancy in the school setting. The goal of the measures is to minimize the need to refer students to court for truancy. Under the law prior to HB 2398, each complaint for failure to attend school had to be accompanied by a statement from the student’s school. Each referral to juvenile court also had to be accompanied by a statement from the student’s school. The statement had to certify that the school applied the district’s truancy prevention measures to the student in question. The statement also had to certify that the truancy prevention measures failed to meaningfully address the student’s attendance issues. The complaint also had to specify whether the student is eligible for, or receives, special education services under Subchapter A, Chapter 29, Education Code. If the complaint did not make the required certifications or specify the special education information, then the court would have to dismiss the complaint.

The amendments to Section 25.0915 do not affect the basic idea that was in place prior to the amendments. No longer are complaints filed in justice and municipal courts for the criminal offense of failure to attend school. And no longer are referrals made to juvenile courts. But referrals are made to the new truancy courts. A petition based on the referral must be accompanied by a statement containing the certifications described above. The petition must also containing the specification described above. If the petition is not accompanied by these things, then the truancy court is required to dismiss the petition.

While the amended version of Section 25.0915 operates very much like the previous version of the statute, there are some very significant additions. Subsections (a-1), (a-2), (a-3), (a-4), (d), (e), (f), and (g) have been added to the statute. Additionally, Subsection (c) has been substantially amended. Each of these subsections will be discussed in turn.

Subsection (a-1) gives school districts specific direction concerning the truancy prevention measures that they must adopt. Prior to Subsection (a), there was just a general directive for school districts to adopt truancy prevention measures. There was no specific direction on what the truancy prevention measures needed to be. Under Subsection (a-1), school districts must take at least one of the following actions as a truancy prevention measure.

- (1) Impose a behavior improvement plan on the student. The plan should ideally include (a) a specific description of the behavior that is required or prohibited; (b) the period for which the plan will be effective; or (c) the penalties for additional absences including referral of the student to a truancy court. At least one of the aforementioned three things must be included in the plan.
- (2) Impose school-based community services on the student;
- (3) Refer the student to counseling, mediation, mentoring, a teen court program, community-based services, or other in-school or out-of-school services aimed at addressing the student’s truancy.

Subsection (a-2) states that a referral under (3) above may include participation by the student’s parent or guardian.

Subsection (a-3) declares that a school district may not refer a student to truancy court if the school determines that the student’s truancy is the result of: (1) pregnancy; (2) being in the state foster program; (3) homelessness; or (4) being the principal income earner for the family.

Subsection (a-4) speaks to the point in time at which school districts are required to initiate truancy prevention measures. That time is when a student fails to attend school without excuse on three or more days or partial days within a four-week period.

As amended, Subsection (c) requires a truancy court to dismiss a petition that does not contain the required statements and specifications required under Subsection (b). But the new Subsection (c) also specifies other deficiencies in the school district’s referral that will mandate dismissal of a petition alleging truant conduct. Specifically, a petition based on a referral that does not satisfy the elements required for truant conduct must be dismissed. Also, a petition based on a referral that is not timely filed must be dismissed. And a petition based on a referral that is “otherwise substantively defective must be dismissed.

Subsection (d) requires, as a general rule, that a school district employ a truancy prevention facilitator or a juvenile case manager. The truancy prevention facilitator or the juvenile case manager is to implement the truancy prevention measures that are the subject of Section 25.0915.

Subsection (e) creates an exception to Subsection (d). Instead of employing a truancy prevention facilitator, a school district may designate an existing employee to implement the truancy prevention measures.

Subsection (f) directs the Texas Education Agency (TEA) to adopt rules setting out minimum standards for the truancy prevention measures that school districts must adopt. The TEA must also adopt rules establishing a set of best practices for truancy prevention measures.

Subsection (g) direct the TEA to adopt rules providing for sanctions for a school district found to be not in compliance with Section 25.0915.

Education Code Sec. 25.0916. UNIFORM TRUANCY POLICIES IN CERTAIN COUNTIES. (a) This section applies only to a county with two or more courts hearing truancy cases and two or more school districts[-

~~(1) with a population greater than 1.5 million; and~~

~~(2) that includes at least:~~

~~[(A) 15 school districts with the majority of district territory in the county; and~~

~~[(B) one school district with a student enrollment of 50,000 or more and an annual dropout rate spanning grades 9-12 of at least five percent, computed in accordance with standards and definitions adopted by the National Center for Education Statistics of the United States Department of Education].~~

(c) Unless the county has already adopted a uniform truancy policy under this section, not ~~[Not]~~ later than January ~~[September]~~ 1, 2016 ~~[2013]~~, the county judge or the county judge's designee and the mayor of the municipality in the county with the greatest population or the mayor's designee shall each appoint one member to serve on the committee as a representative of each of the following:

(1) a juvenile ~~[district]~~ court;

(2) a municipal court;

(3) the office of a justice of the peace;

(4) the superintendent or designee of an independent school district;

(5) an open-enrollment charter school, if one exists in the county;

(6) the office of the prosecutor with original truancy jurisdiction in the county ~~[district attorney]~~; and

(7) the general public.

(c-1) In addition to the members listed in Subsection (c), the chief juvenile probation officer or the officer's designee serves on the committee. The county judge or the county judge's designee and the mayor of the municipality in the county with the greatest population or the mayor's designee may make additional appointments as needed.

(f) Unless a county has already adopted a uniform truancy policy under this section, not ~~[Not]~~ later than May ~~[September]~~ 1, 2016 ~~[2014]~~, the committee shall recommend:

(1) a uniform process for filing truancy cases with truancy courts ~~[the judicial system]~~;

(2) uniform administrative procedures;

(3) uniform deadlines for processing truancy cases;

(4) a local plan with strategies to address truancy, including effective prevention, intervention, and diversion methods to reduce truancy and referrals to a truancy ~~[county, justice, or municipal]~~ court;

(5) a system for tracking truancy information and sharing truancy information among school districts, ~~[and]~~ open-enrollment charter schools, truancy courts, juvenile courts, and juvenile probation departments in the county; and

(6) any changes to statutes or state agency rules the committee determines are necessary to address truancy.

(h) The committee's presiding officer shall issue a report not later than December 1, 2017 ~~[2015]~~, to the county judge and mayor of the municipality with the greatest population in the county on the implementation of the recommendations and compliance with state truancy laws by a school district located in the county.

(i) This section expires January 1, 2018 ~~[2016]~~.

Commentary by Ted Wood

Source: HB 2398

Effective Date: September 1, 2015

Applicability: The changes in law made by this Act apply only to an offense committed or conduct that occurs on or after the effective date of this Act.

Summary of Changes: Section 25.0916 was passed in 2013. The statute called for the creation of a committee in counties with populations of over 1.5 million that also met other requirements. The statute was designed with Bexar County in mind. Committees created under this statute were charged with recommending uniform truancy policies for each school district in the county.

HB 2398 amends this statute in multiple ways. As an initial matter, the new Section 25.0916 greatly expands the universe of counties that must create a committee. Now the statute will apply to any county “with two or more courts hearing truancy cases and two or more school districts.”

Subsection (c) requires counties to create committees by January 1, 2016. Counties that have already adopted a uniform truancy policy (*i.e.*, Bexar County) are exempt from the requirement. Under the original version of this subsection, the county judge and the mayor of the county’s largest municipality make the appointments to the committee. The amended subsection allows a designee of each of those officer to make the appointments.

Subsection (c-1) is new. This statute adds the county's chief juvenile probation officer (or that officer's designee) to the committee. The county judge and the mayor (or their designees who make appointments) are authorized to make additional appointments beyond the designated committee members set out in Subsection (c).

Subsection (f) sets a May 1st deadline for county committees to make their recommendations. Subsection (f) calls for the presiding officer of the committee to issue a report on the implementation of the recommendations by December 1, 2017.

Education Code Sec. 25.093. PARENT CONTRIBUTING TO NONATTENDANCE. (a) If a warning is issued as required by Section 25.095(a), the parent with criminal negligence fails to require the child to attend school as required by law, and the child has absences for the amount of time specified under Section 65.003(a), Family Code [25.094], the parent commits an offense.

(c) An offense under Subsection (a) is a ~~[Class C]~~ misdemeanor, punishable by fine only, in an amount not to exceed:

- (1) \$100 for a first offense;
- (2) \$200 for a second offense;
- (3) \$300 for a third offense;
- (4) \$400 for a fourth offense; or
- (5) \$500 for a fifth or subsequent offense.

(c-1) Each day the child remains out of school may constitute a separate offense. Two or more offenses under Subsection (a) may be consolidated and prosecuted in a single action. If the court orders deferred disposition under Article 45.051, Code of Criminal Procedure, the court may require the defendant to provide personal services to a charitable or educational institution as a condition of the deferral.

Commentary by Ted Wood

Source: HB 2398

Effective Date: September 1, 2015

Applicability: The changes in law made by this Act apply only to an offense committed or conduct that occurs on or after the effective date of this Act.

Summary of Changes: HB 2398 decriminalizes truancy by repealing the statute making failure to attend school a crime (Section 25.094, Education Code). But the bill does not repeal Section 25.093 which creates the offense of parent contributing to nonattendance. While HB 2398 does not repeal Section 25.093, the bill does change the amount of the fine for a conviction. Under the old law, the offense of parent contributing to nonattendance was a Class C misdemeanor. The maximum fine in a Class C misdemeanor case is \$500. The amended version of the statute no longer classifies parent contributing to nonattendance as a Class C misdemeanor. Rather, the amended statute just refers to the offense as a misdemeanor. This allows the penalty to be changed from the general fine amount applicable to all Class C misdemeanors to another amount. Here, the amount of the fine is set at an amount not to exceed \$100 for a first offense. The fine amount increases in stair-step fashion for subsequent parent-contributing-to-nonattendance offenses.

Education Code Sec. 25.095. WARNING NOTICES. (a) A school district or open-enrollment charter school shall 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) the student's parent is subject to prosecution under Section 25.093; and

(2) the student is subject to ~~[prosecution under Section 25.094 or to]~~ referral to a truancy [juvenile] court ~~[in a county with a population of less than 100,000] for truant conduct under Section 65.003(a), Family Code [that violates that section].~~

(b) A school district shall notify a student's parent if the student has been absent from school, without excuse under Section 25.087, on three days or parts of days within a four-week period. The notice must:

(1) inform the parent that:

(A) it is the parent's duty to monitor the student's school attendance and require the student to attend school; and

(B) the student [parent] is subject to truancy prevention measures [prosecution] under Section 25.0915 [25.093]; and

(2) request a conference between school officials and the parent to discuss the absences.

(c) 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 or under Section 65.003(a), Family Code [25.094].

Commentary by Ted Wood

Source: HB 2398

Effective Date: September 1, 2015

Applicability: The changes in law made by this Act apply only to an offense committed or conduct that occurs on or after the effective date of this Act.

Summary of Changes: Section 25.095 concerns warning notices that are sent to parents concerning truancy. The amendments to the statute reflect the more limited definition of truant conduct under HB 2398. Absence from school on three or more days or parts of days in a four-week period no longer constitutes truancy.

Education Code Sec. 25.0951. SCHOOL DISTRICT COMPLAINT OR REFERRAL FOR FAILURE TO ATTEND SCHOOL. (a) 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, a school district shall within 10 school days of the student's 10th absence[~~:-~~

~~[(1) 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; or~~

~~[(2)] refer the student to a truancy [juvenile] court for truant conduct [indicating a need for supervision] under Section 65.003(a) [51.03(b)(2)], Family Code.~~

(b) If a student fails to attend school without excuse as specified by Subsection (a), a school district may file a complaint against the student's parent in a county, justice, or municipal court for an offense under Section 25.093 if the school district provides evidence of the parent's criminal negligence [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), the school district may:

~~[(1) 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; or~~

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

~~[(e)]~~ In this ~~subsection [section]~~, "parent" includes a person standing in parental relation.

(c) ~~[(d)]~~ A court shall dismiss a complaint [~~or referral~~] made by a school district under Subsection (b) [~~under this section~~] that:

(1) does [is] not comply [made in compliance] with this section;

(2) does not allege the elements required for the offense;

(3) is not timely filed, unless the school district delayed the referral under Subsection (d); or

(4) is otherwise substantively defective.

(d) Notwithstanding Subsection (a), a school district may delay a referral of a student for truant conduct, or may choose to not refer a student for truant conduct, if the school district:

(1) is applying truancy prevention measures to the student under Section 25.0915; and

(2) determines that the truancy prevention measures are succeeding and it is in the best interest of the student that a referral be delayed or not be made.

Commentary by Ted Wood

Source: HB 2398

Effective Date: September 1, 2015

Applicability: The changes in law made by this Act apply only to an offense committed or conduct that occurs on or after the effective date of this Act.

Summary of Changes: This is a very significant statute. The process of a truancy court handling a truant conduct case is initiated by a school district referring a student to the court. A school district must make a referral "[i]f 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." The referral must be made within 10 school days of the student's 10th absence.

If a student fails to attend school as indicated above, the relevant school district may also file a complaint against the student's parent. The complaint is for the offense of parent contributing to nonattendance. The complaint is to be filed in a county, justice, or municipal court. (Please note that most county courts will not have jurisdiction over parent-contributing-

to-nonattendance cases.) Typically, the complaint is filed with the court that is handling the truant conduct case against the parent's child. But the court will not be acting as a truancy court when handling a parent-contributing-to-nonattendance case. Rather, the court will be acting in its regular capacity. For example, a justice court will hear the Class C misdemeanor offense of parent contributing to nonattendance under the court's general jurisdiction. *See* Tex. Const. art. V, §19 ("Justice of the peace courts shall have original jurisdiction in criminal matters of misdemeanor cases punishable by fine only . . ."). Similarly, municipal courts will be acting in their normal capacity as courts with jurisdiction over Class C misdemeanor cases. *See* Tex. Gov't Code Ann. §§29.003(b), 30.00005(a) (West Supp. 2014). In counties with a population of 1.75 million or more, the constitutional county court has jurisdiction of parent-contributing-to-nonattendance cases. Tex. Gov't Code Ann. § 26.045(d) (West Supp. 2014). The constitutional county judge in these counties may appoint one or more magistrates to hear parent-contributing-to-nonattendance cases. Tex. Gov't Code Ann. § 54.1172 (West 2013).

As amended, this statute permits complaints to be filed for parent contributing to nonattendance only "if the school district provides evidence of the parent's criminal negligence. For a parent to be convicted of the offense, the parent must have "with criminal negligence" failed to require the child to attend school. This has been a longstanding part of the statute. But the requirement that the school district provide evidence of the parent's criminal negligence is a new provision. The new provision may serve to reduce the number of complaints filed for parent contributing to nonattendance.

Subsection (c) details the circumstances under which a court may dismiss a school district's complaint against a parent for parent contributing to nonattendance.

Subsection (d) is entirely new. (A previous Subsection (d) has become Subsection (c).) This subsection creates an exception to the general rule that school districts must refer students to truancy court if the student engaged in truant conduct. Specifically, a school district is permitted to "delay a referral" if the school district does three things. The first thing the district must do is apply truancy prevention measures to the student. The second thing is that the district must determine that the truancy prevention measures are succeeding. The third thing is that the district must determine that the delay of a referral is in the best interest of the student.

Education Code Sec. 25.0952. PROCEDURES APPLICABLE TO PARENT CONTRIBUTING TO NONATTENDANCE OFFENSE [~~SCHOOL ATTENDANCE RELATED OFFENSES~~]. In a proceeding based on a complaint under Section 25.093 [~~or 25.094~~], the court shall, except as otherwise provided by this chapter, use the procedures and exercise the powers authorized by Chapter 45, Code of Criminal Procedure.

Commentary by Ted Wood

Source: HB 2398

Effective Date: September 1, 2015

Applicability: The changes in law made by this Act apply only to an offense committed or conduct that occurs on or after the effective date of this Act.

Summary of Changes: The amendment to this statute merely reflects the fact that the offense of failure to attend school has been repealed. Accordingly, the procedures and powers set out in Chapter 45 of the Code of Criminal Procedure will no longer apply in truancy cases. But Chapter 45 will continue to apply in parent-contributing-to-nonattendance cases.

Education Code Sec. 29.087. HIGH SCHOOL EQUIVALENCY PROGRAMS. (d) A student is eligible to participate in a program authorized by this section if:

(1) the student has been ordered by a court under Section 65.103, Family Code [~~Article 45.054, Code of Criminal Procedure, as added by Chapter 1514, Acts of the 77th Legislature, Regular Session, 2001~~], or by the Texas Juvenile Justice Department [~~Youth Commission~~] to:

- (A) participate in a preparatory class for the high school equivalency examination; or
- (B) take the high school equivalency examination administered under Section 7.111; or

(2) the following conditions are satisfied:

- (A) the student is at least 16 years of age at the beginning of the school year or semester;
- (B) the student is a student at risk of dropping out of school, as defined by Section 29.081;
- (C) the student and the student's parent or guardian agree in writing to the student's participation;
- (D) at least two school years have elapsed since the student first enrolled in ninth grade and the

student has accumulated less than one third of the credits required to graduate under the minimum graduation requirements of the district or school; and

- (E) any other conditions specified by the commissioner.

Commentary by Ted Wood

Source: HB 2398

Effective Date: September 1, 2015

Applicability: The changes in law made by this Act apply only to an offense committed or conduct that occurs on or after the effective date of this Act.

Summary of Changes: High school equivalency programs prepare eligible students to take a high school equivalency examination. Subsection (d) explains which students are eligible to participate in such a program. Amendments to Subsection (d) simply recognize that the court ordering a student to participate in one of these programs is the truancy court. Additionally, the amendments substitute the Texas Juvenile Justice Division for the Texas Youth Commission.

Education Code Sec. 33.051. DEFINITIONS. (2) "Missing child" means a child whose whereabouts are unknown to the legal custodian of the child and:

(A) the circumstances of whose absence indicate that the child did not voluntarily leave the care and control of the custodian and that the taking of the child was not authorized by law; or

(B) the child has engaged in conduct indicating a need for supervision under Section 51.03(b)(2) [~~51.03(b)(3)~~], Family Code.

Commentary by Ted Wood

Source: HB 2398

Effective Date: September 1, 2015

Applicability: The changes in law made by this Act apply only to an offense committed or conduct that occurs on or after the effective date of this Act.

Summary of Changes: The change in the statutory reference in this statute has nothing to do with truancy reform. The change is necessitated by the deletion of the statutory provision making truancy a form of conduct indicating a need for supervision.

Family Code Sec. 51.02. DEFINITIONS. (15) "Status offender" means a child who is accused, adjudicated, or convicted for conduct that would not, under state law, be a crime if committed by an adult, including:

(A) [~~truancy under Section 51.03(b)(2);~~

~~(B)~~] running away from home under Section 51.03(b)(2) [~~51.03(b)(3)~~];

~~(B)~~ [~~(C)~~] a fineable only offense under Section 51.03(b)(1) transferred to the juvenile court under Section 51.08(b), but only if the conduct constituting the offense would not have been criminal if engaged in by an adult;

~~(D)~~ [~~failure to attend school under Section 25.094, Education Code;~~

~~(C)~~ [~~(E)~~] a violation of standards of student conduct as described by Section 51.03(b)(4) [~~51.03(b)(5)~~];

~~(D)~~ [~~(F)~~] a violation of a juvenile curfew ordinance or order;

~~(E)~~ [~~(G)~~] a violation of a provision of the Alcoholic Beverage Code applicable to minors only; or

~~(F)~~ [~~(H)~~] a violation of any other fineable only offense under Section 8.07(a)(4) or (5), Penal Code, but only if the conduct constituting the offense would not have been criminal if engaged in by an adult.

Commentary by Ted Wood

Source: HB 2398

Effective Date: September 1, 2015

Applicability: The changes in law made by this Act apply only to an offense committed or conduct that occurs on or after the effective date of this Act.

Summary of Changes: Section 51.02 defines the term "status offender." The term no longer includes a child who is accused or convicted of the offense of failure to attend school. HB 2398 repealed the statute making failure to attend school a criminal offense. Additionally, the term no longer includes a child who is accused of (or adjudicated for) truancy. Truancy constituted conduct indicating a need for supervision under the law prior to HB 2398.

Family Code Sec. 51.03. DELINQUENT CONDUCT; CONDUCT INDICATING A NEED FOR SUPERVISION. (a) Delinquent conduct is:

(1) conduct, other than a traffic offense, that violates a penal law of this state or of the United States punishable by imprisonment or by confinement in jail;

(2) conduct that violates a lawful order of a court under circumstances that would constitute contempt of that court in:

(A) a justice or municipal court; ~~[or]~~

(B) a county court for conduct punishable only by a fine; or

(C) a truancy court;

(3) conduct that violates Section 49.04, 49.05, 49.06, 49.07, or 49.08, Penal Code; or

(4) conduct that violates Section 106.041, Alcoholic Beverage Code, relating to driving under the influence of alcohol by a minor (third or subsequent offense).

(b) Conduct indicating a need for supervision is:

(1) subject to Subsection (f), conduct, other than a traffic offense, that violates:

(A) the penal laws of this state of the grade of misdemeanor that are punishable by fine only; or

(B) the penal ordinances of any political subdivision of this state;

~~(2) [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;~~

~~[(3)]~~ 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;

(3) ~~[(4)]~~ conduct prohibited by city ordinance or by state law involving the inhalation of the fumes or vapors of paint and other protective coatings or glue and other adhesives and the volatile chemicals itemized in Section 485.001, Health and Safety Code;

(4) ~~[(5)]~~ an act that violates a school district's previously communicated written standards of student conduct for which the child has been expelled under Section 37.007(c), Education Code;

(5) ~~[(6)]~~ conduct that violates a reasonable and lawful order of a court entered under Section 264.305;

(6) ~~[(7)]~~ notwithstanding Subsection (a)(1), conduct described by Section 43.02(a)(1) or (2), Penal Code;

or

(7) ~~[(8)]~~ notwithstanding Subsection (a)(1), conduct that violates Section 43.261, Penal Code.

(e) For the purposes of Subsection (b)(2) ~~[(b)(3)]~~, "child" does not include a person who is married, divorced, or widowed.

(f) Conduct ~~[Except as provided by Subsection (g), conduct]~~ described under Subsection (b)(1) does not constitute conduct indicating a need for supervision unless the child has been referred to the juvenile court under Section 51.08(b).

Commentary by Ted Wood

Source: HB 2398

Effective Date: September 1, 2015

Applicability: The changes in law made by this Act apply only to an offense committed or conduct that occurs on or after the effective date of this Act.

Summary of Changes: Section 51.03 defines the terms "delinquent conduct" and "conduct indicating a need for supervision." The amendment removes the act of truancy from the list of conduct indicating a need for supervision. This effectively means that juvenile courts no longer have jurisdiction over truancy cases.

Additionally, the statute is amended to slightly expand the definition of delinquent conduct. Before the amendment, delinquent conduct included conduct in violation of a lawful order of selected courts that would constitute contempt of court. The selected courts were justice courts, municipal courts, and county court handling criminal cases punishable by fine only. The amendment adds truancy courts to this list.

Family Code Sec. 51.13. EFFECT OF ADJUDICATION OR DISPOSITION. (e) A finding that a child engaged in conduct indicating a need for supervision as described by Section 51.03(b)(7) ~~[51.03(b)(8)]~~ is a conviction only for the purposes of Sections 43.261(c) and (d), Penal Code.

Commentary by Ted Wood

Source: HB 2398

Effective Date: September 1, 2015

Applicability: The changes in law made by this Act apply only to an offense committed or conduct that occurs on or after the effective date of this Act.

Summary of Changes: The change in the statutory reference in this statute has nothing to do with truancy reform. The change is necessitated by the deletion of the statutory provision making truancy a form of conduct indicating a need for supervision.

Family Code Sec. 54.0404. ELECTRONIC TRANSMISSION OF CERTAIN VISUAL MATERIAL DEPICTING MINOR: EDUCATIONAL PROGRAMS. (a) If a child is found to have engaged in conduct indicating a need for supervision described by Section 51.03(b)(7) [~~51.03(b)(8)~~], the juvenile court may enter an order requiring the child to attend and successfully complete an educational program described by Section 37.218, Education Code, or another equivalent educational program.

Commentary by Ted Wood

Source: HB 2398

Effective Date: September 1, 2015

Applicability: The changes in law made by this Act apply only to an offense committed or conduct that occurs on or after the effective date of this Act.

Summary of Changes: The change in the statutory reference in this statute has nothing to do with truancy reform. The change is necessitated by the deletion of the statutory provision making truancy a form of conduct indicating a need for supervision.

Family Code Sec. 54.05. HEARING TO MODIFY DISPOSITION. (b) Except for a commitment to the Texas Juvenile Justice Department or to a post-adjudication secure correctional facility under Section 54.04011[~~a disposition under Section 54.0402,~~] or a placement on determinate sentence probation under Section 54.04(q), all dispositions automatically terminate when the child reaches the child's 18th birthday.

Commentary by Ted Wood

Source: HB 2398

Effective Date: September 1, 2015

Applicability: The changes in law made by this Act apply only to an offense committed or conduct that occurs on or after the effective date of this Act.

Summary of Changes: Section 54.05 concerns hearings to modify juvenile dispositions. Subsection (b) contained a reference to a disposition under Section 54.0402 which is a dispositional order for truancy under Section 51.03(b)(2). HB 2398 eliminates truancy as an act constituting conduct indicating a need for supervision. Accordingly, the reference to Section 54.0402 in Section 54.05 needed to be eliminated.

Family Code Sec. 58.0022. FINGERPRINTS OR PHOTOGRAPHS TO IDENTIFY RUNAWAYS. A law enforcement officer who takes a child into custody with probable cause to believe that the child has engaged in conduct indicating a need for supervision as described by Section 51.03(b)(2) [~~51.03(b)(3)~~] and who after reasonable effort is unable to determine the identity of the child, may fingerprint or photograph the child to establish the child's identity. On determination of the child's identity or that the child cannot be identified by the fingerprints or photographs, the law enforcement officer shall immediately destroy all copies of the fingerprint records or photographs of the child.

Commentary by Ted Wood

Source: HB 2398

Effective Date: September 1, 2015

Applicability: The changes in law made by this Act apply only to an offense committed or conduct that occurs on or after the effective date of this Act.

Summary of Changes: The change in the statutory reference in this statute has nothing to do with truancy reform. The change is necessitated by the deletion of the statutory provision making truancy a form of conduct indicating a need for supervision.

Family Code Sec. 58.003. SEALING OF RECORDS. (c-3) Notwithstanding Subsections (a) and (c) and subject to Subsection (b), a juvenile court, on the court's own motion and without a hearing, shall order the sealing of records concerning a child found to have engaged in conduct indicating a need for supervision described by Section 51.03(b)(6) [~~51.03(b)(7)~~] or taken into custody to determine whether the child engaged in conduct indicating a need for supervision described by Section 51.03(b)(6) [~~51.03(b)(7)~~]. This subsection applies only to records related to conduct indicating a need for supervision described by Section 51.03(b)(6) [~~51.03(b)(7)~~].

Commentary by Ted Wood

Source: HB 2398

Effective Date: September 1, 2015

Applicability: The changes in law made by this Act apply only to an offense committed or conduct that occurs on or after the effective date of this Act.

Summary of Changes: The change in the statutory reference in this statute has nothing to do with truancy reform. The change is necessitated by the deletion of the statutory provision making truancy a form of conduct indicating a need for supervision.

Family Code Sec. 58.106. CONFIDENTIALITY. (a) Except as otherwise provided by this section, information contained in the juvenile justice information system is confidential information for the use of the department and may not be disseminated by the department except:

- (1) with the permission of the juvenile offender, to military personnel of this state or the United States;
- (2) to a person or entity to which the department may grant access to adult criminal history records as provided by Section 411.083, Government Code;
- (3) to a juvenile justice agency;
- (4) to the Texas Juvenile Justice Department [~~Youth Commission and the Texas Juvenile Probation Commission~~] for analytical purposes;
- (5) to the office of independent ombudsman of the Texas Juvenile Justice Department [~~Youth Commission~~]; and
- (6) to a county, justice, or municipal court exercising jurisdiction over a juvenile [~~, including a court exercising jurisdiction over a juvenile under Section 54.021~~].

Commentary by Ted Wood

Source: HB 2398

Effective Date: September 1, 2015

Applicability: The changes in law made by this Act apply only to an offense committed or conduct that occurs on or after the effective date of this Act.

Summary of Changes: The amendments to this statute recognize that the Texas Youth Commission and the Texas Juvenile Probation Commission are now collectively the Texas Juvenile Justice Department. Additionally, the amendments remove the reference to the exercise of a juvenile court over a juvenile in a truancy case.

Family Code Sec. 59.003. SANCTION LEVEL ASSIGNMENT MODEL. (a) Subject to Subsection (e), after a child's first commission of delinquent conduct or conduct indicating a need for supervision, the probation department or prosecuting attorney may, or the juvenile court may, in a disposition hearing under Section 54.04 or a modification hearing under Section 54.05, assign a child one of the following sanction levels according to the child's conduct:

- (1) for conduct indicating a need for supervision, other than conduct described in Section 51.03(b)(3) or (4) [~~51.03(b)(4) or (5)~~] or a Class A or B misdemeanor, the sanction level is one;
- (2) for conduct indicating a need for supervision under Section 51.03(b)(3) or (4) [~~51.03(b)(4) or (5)~~] or a Class A or B misdemeanor, other than a misdemeanor involving the use or possession of a firearm, or for delinquent conduct under Section 51.03(a)(2), the sanction level is two;
- (3) for a misdemeanor involving the use or possession of a firearm or for a state jail felony or a felony of the third degree, the sanction level is three;
- (4) for a felony of the second degree, the sanction level is four;
- (5) for a felony of the first degree, other than a felony involving the use of a deadly weapon or causing serious bodily injury, the sanction level is five;

(6) for a felony of the first degree involving the use of a deadly weapon or causing serious bodily injury, for an aggravated controlled substance felony, or for a capital felony, the sanction level is six; or

(7) for a felony of the first degree involving the use of a deadly weapon or causing serious bodily injury, for an aggravated controlled substance felony, or for a capital felony, if the petition has been approved by a grand jury under Section 53.045, or if a petition to transfer the child to criminal court has been filed under Section 54.02, the sanction level is seven.

Commentary by Ted Wood

Source: HB 2398

Effective Date: September 1, 2015

Applicability: The changes in law made by this Act apply only to an offense committed or conduct that occurs on or after the effective date of this Act.

Summary of Changes: The change in the statutory reference in this statute has nothing to do with truancy reform. The change is necessitated by the deletion of the statutory provision making truancy a form of conduct indicating a need for supervision.

Family Code Sec. 61.002. APPLICABILITY. (a) Except as provided by Subsection (b), this chapter applies to a proceeding to enter a juvenile court order:

- (1) for payment of probation fees under Section 54.061;
- (2) for restitution under Sections 54.041(b) and 54.048;
- (3) for payment of graffiti eradication fees under Section 54.0461;
- (4) for community service under Section 54.044(b);
- (5) for payment of costs of court under Section 54.0411 or other provisions of law;
- (6) requiring the person to refrain from doing any act injurious to the welfare of the child under Section 54.041(a)(1);
- (7) enjoining contact between the person and the child who is the subject of a proceeding under Section 54.041(a)(2);
- (8) ordering a person living in the same household with the child to participate in counseling under Section 54.041(a)(3);
- (9) ~~requiring a parent or guardian of a child found to be truant to participate in an available program addressing truancy under Section 54.041(f);~~
- ~~[(10)]~~ requiring a parent or other eligible person to pay reasonable attorney's fees for representing the child under Section 51.10(e);
- ~~[(11)]~~ requiring the parent or other eligible person to reimburse the county for payments the county has made to an attorney appointed to represent the child under Section 51.10(j);
- ~~[(12)]~~ requiring payment of deferred prosecution supervision fees under Section 53.03(d);
- ~~[(13)]~~ requiring a parent or other eligible person to attend a court hearing under Section 51.115;
- ~~[(14)]~~ requiring a parent or other eligible person to act or refrain from acting to aid the child in complying with conditions of release from detention under Section 54.01(r);
- ~~[(15)]~~ requiring a parent or other eligible person to act or refrain from acting under any law imposing an obligation of action or omission on a parent or other eligible person because of the parent's or person's relation to the child who is the subject of a proceeding under this title;
- ~~[(16)]~~ for payment of fees under Section 54.0462; or
- ~~[(17)]~~ for payment of the cost of attending an educational program under Section 54.0404.

Commentary by Ted Wood

Source: HB 2398

Effective Date: September 1, 2015

Applicability: The changes in law made by this Act apply only to an offense committed or conduct that occurs on or after the effective date of this Act.

Summary of Changes: The amendment to this statute removes a reference to a juvenile court order affecting parents and others in a case involving conduct indicating a need for supervision known as truancy. Truancy no longer constitutes conduct indicating a need for supervision.

Family Code Sec. 65.001. SCOPE AND PURPOSE. (a) This chapter details the procedures and proceedings in cases involving allegations of truant conduct.

(b) The purpose of this chapter is to encourage school attendance by creating simple civil judicial procedures through which children are held accountable for excessive school absences.

(c) The best interest of the child is the primary consideration in adjudicating truant conduct of the child.

Commentary by Ted Wood

Source: HB 2398

Effective Date: September 1, 2015

Applicability: The changes in law made by this Act apply only to an offense committed or conduct that occurs on or after the effective date of this Act.

Summary of Changes: The decriminalization of truancy by the Texas Legislature does not mean that legislators did not want to continue to hold children accountable for missing school. On the contrary, legislators know the importance of keeping kids in school. They know that having negative consequences for missing school can serve to encourage school attendance. So the legislators added a brand new title to the Family Code. Section 65.001(b) explicitly states that the goal of the new title is to hold children accountable for missing school. Section 65.001(b) also recognizes that courts will have a major role in this accountability. Accordingly, Title 3A is created to set out the procedures courts will use in effectuating this accountability. The act of missing school will no longer result in a criminal conviction. But make no mistake, the courts will continue to hold children accountable for missing school.

Family Code Sec. 65.002. DEFINITIONS. In this chapter:

(1) "Child" means a person who is 12 years of age or older and younger than 19 years of age.

(2) "Juvenile court" means a court designated under Section 51.04 to exercise jurisdiction over proceedings under Title 3.

(3) "Qualified telephone interpreter" means a telephone service that employs licensed court interpreters, as defined by Section 157.001, Government Code.

(4) "Truancy court" means a court designated under Section 65.004 to exercise jurisdiction over cases involving allegations of truant conduct.

Commentary by Ted Wood

Source: HB 2398

Effective Date: September 1, 2015

Applicability: The changes in law made by this Act apply only to an offense committed or conduct that occurs on or after the effective date of this Act.

Summary of Changes: There are two tremendously significant points to be gleaned from Section 65.002.

First, truancy courts are not the same thing as juvenile courts. Truancy courts are the courts that will exercise jurisdiction over cases involving allegations of truant conduct. More details about truancy courts are contained in Section 65.002. Juvenile courts, on the other hand, exercise jurisdiction over cases under Title 3 of the Family Code. Truant conduct cases do not fall under Title 3. Rather, truant conduct cases fall under new Title 3A.

Second, the definition of the term "child" for purposes of the new truancy provisions includes 17-year-olds and 18-year-olds. This is a significantly broader definition of the term "child" than in the Juvenile Justice Code. In the Juvenile Justice Code, the term "child" means a person who is "ten years of age or older and under 17 years of age." Tex. Fam. Code Ann. §51.02(2) (West 2014).

Family Code Sec. 65.003. TRUANT CONDUCT. (a) A child engages in truant conduct if the child is required to attend school under Section 25.085, Education Code, and fails to attend school on 10 or more days or parts of days within a six-month period in the same school year.

(b) Truant conduct may be prosecuted only as a civil case in a truancy court.

(c) It is an affirmative defense to an allegation of truant conduct that one or more of the absences required to be proven have been 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 truant conduct. The burden is on the child to show by a preponderance of the evidence that the absence has been or should be excused or that the absence was involuntary. 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.

Commentary by Ted Wood

Source: HB 2398

Effective Date: September 1, 2015

Applicability: The changes in law made by this Act apply only to an offense committed or conduct that occurs on or after the effective date of this Act.

Summary of Changes: The concepts of “delinquent conduct” and “conduct indicating a need for supervision” are a familiar part of juvenile law. *See* Tex. Fam. Code Ann. § 51.03 (West 2014). “Truant conduct” is a similar concept. Section 65.003(a) defines truant conduct. Subsection (b) declares that the act of truant conduct may be prosecuted only as a civil case in a truancy court. This subsection makes it clear that truant conduct is not a criminal offense. This subsection also makes it clear that there is only one type of court in which truant conduct can be prosecuted – a truancy court.

A person can engage in truant conduct only if that person is required to attend school. Truant conduct occurs when such a person “fails to attend school on 10 or more days or parts of days within a six-month period in the same school year.” This exact same conduct constituted the criminal offense of failure-to-attend-school. *See* Tex. Educ. Code Ann. § 25.094 (Vernon 2012). And this exact same conduct constituted “truancy” which was a form of conduct indicating a need for supervision. *See* Tex. Fam Code Ann. §§ 51.03(b)(2), 54.021 (Vernon 2014).

Notably, however, the absence of a child from school “on three or more days or parts of days within a four-week period” does not constitute truant conduct. But this kind of absence did constitute the criminal offense of failure to attend school. *See* Tex. Educ. Code Ann. § 25.094 (Vernon 2012). And this conduct did constitute “truancy” which was a form of conduct indicating a need for supervision. *See* Tex. Fam Code Ann. §§ 51.03(b)(2), 54.021 (Vernon 2014).

So truant conduct is not as broad a concept as the conduct constituting the criminal offense of failure to attend school. Nor is truant conduct as broad a concept as the conduct constituting truancy which was a form of conduct indicating a need for supervision.

Subsection (c) sets out an affirmative defense to allegations that a student has engaged in truant conduct.

Family Code Sec. 65.004. TRUANCY COURTS; JURISDICTION. (a) The following are designated as truancy courts:

- (1) in a county with a population of 1.75 million or more, the constitutional county court;
- (2) justice courts; and
- (3) municipal courts.

(b) A truancy court has exclusive original jurisdiction over cases involving allegations of truant conduct.

(c) A municipality may enter into an agreement with a contiguous municipality or a municipality with boundaries that are within one-half mile of the municipality seeking to enter into the agreement to establish concurrent jurisdiction of the municipal courts in the municipalities and provide original jurisdiction to a municipal court in which a truancy case is brought as if the municipal court were located in the municipality in which the case arose.

(d) A truancy court retains jurisdiction over a person, without regard to the age of the person, who was referred to the court under Section 65.051 for engaging in truant conduct before the person's 19th birthday, until final disposition of the case.

Commentary by Ted Wood

Source: HB 2398

Effective Date: September 1, 2015

Applicability: The changes in law made by this Act apply only to an offense committed or conduct that occurs on or after the effective date of this Act.

Summary of Changes: Section 65.004 creates truancy courts that heretofore have not existed. While the courts are new, there are no new courtrooms and no new judges. Rather, truancy courts are simply certain existing courts authorized to exercise a special area of jurisdiction. Thus, truancy courts are very much like juvenile courts which are actually selected district and county-level courts designated locally to exercise juvenile jurisdiction.

Subsection (b) details the cases over which these new truancy courts may exercise subject matter jurisdiction. The grant of jurisdiction is exceedingly simple; there is only one kind of case over which truancy courts are given jurisdiction.

That kind of case is a case involving allegations of truant conduct. A truancy court has jurisdiction over no other type of case.

Subsection (b) also make clear the fact that the jurisdiction of truancy courts over truancy cases is exclusive and original. Thus, while other types of courts may hear appeals from truant conduct cases, no other court may hear truant conduct cases originally.

Subsection (a) declares that three types of courts are truancy courts. The courts designated as truancy courts are: (1) constitutional county courts in counties with a population of 1.75 million or more; (2) all justice courts; and (3) all municipal courts. No local designation by a juvenile board (or any other governmental entity) is necessary to make these courts truancy courts. The named courts are automatically truancy courts by virtue of Subsection (a).

Subsection (c) authorizes agreements between certain municipalities in regard to the handling of truant conduct cases.

Subsection (d) declares that truancy courts retain jurisdiction over students even after they turn 19. The jurisdiction remains in the truancy court until the case is finally disposed.

Family Code Sec. 65.005. COURT SESSIONS. A truancy court is considered to be in session at all times.

Commentary by Ted Wood

Source: HB 2398

Effective Date: September 1, 2015

Applicability: The changes in law made by this Act apply only to an offense committed or conduct that occurs on or after the effective date of this Act.

Summary of Changes: There are no terms of court associated with truancy courts. The courts are always considered be in session.

Family Code Sec. 65.006. VENUE. Venue for a proceeding under this chapter is the county in which the school in which the child is enrolled is located or the county in which the child resides.

Commentary by Ted Wood

Source: HB 2398

Effective Date: September 1, 2015

Applicability: The changes in law made by this Act apply only to an offense committed or conduct that occurs on or after the effective date of this Act.

Summary of Changes: Typically, a child will attend a school in the county in which he or she live. But this is not always the case. Section 65.006 permits truant conduct cases to be filed in the county in which the student's school is located. The statute also permits truant conduct cases to be filed in the county in which the student lives.

Family Code Sec. 65.007. RIGHT TO JURY TRIAL. (a) A child alleged to have engaged in truant conduct is entitled to a jury trial.

(b) The number of jurors in a case involving an allegation of truant conduct is six. The state and the child are each entitled to three peremptory challenges.

(c) There is no jury fee for a trial under this chapter.

Commentary by Ted Wood

Source: HB 2398

Effective Date: September 1, 2015

Applicability: The changes in law made by this Act apply only to an offense committed or conduct that occurs on or after the effective date of this Act.

Summary of Changes: Neither civil rules nor the Code of Criminal Procedure apply to truant conduct cases. Thus, provisions in those rules and statutes concerning juries do not apply in truant conduct cases. If there are to be any provisions concerning juries in truant conduct cases, his provisions must necessarily be part of title 3A (*i.e.*, Chapter 65.)

Section 65.007 gives those persons accused of having engaged in truant conduct the right to a jury trial. The number of jurors in such a trial is six. Three peremptory strikes are allotted to each side. Unlike regular civil cases, no fee is to be charged for a jury. *Cf.* Tex.Gov't Code Ann. § 51.604 (West 2013).

Family Code Sec. 65.008. WAIVER OF RIGHTS. A right granted to a child by this chapter or by the constitution or laws of this state or the United States is waived in proceedings under this chapter if:

- (1) the right is one that may be waived;
- (2) the child and the child's parent or guardian are informed of the right, understand the right, understand the possible consequences of waiving the right, and understand that waiver of the right is not required;
- (3) the child signs the waiver;
- (4) the child's parent or guardian signs the waiver; and
- (5) the child's attorney signs the waiver, if the child is represented by counsel.

Commentary by Ted Wood

Source: HB 2398

Effective Date: September 1, 2015

Applicability: The changes in law made by this Act apply only to an offense committed or conduct that occurs on or after the effective date of this Act.

Summary of Changes: Section 65.008 permits a child to waive any rights that may be waived. This begs the question: what rights may be waived? Section 65.008 does not say. There are no specific provisions in Chapter 65 saying that certain rights may not be waived. So we proceed on the understanding that any right may be waived unless a statute or constitutional provision declares otherwise.

While just about any right may be waived, Section 65.008 does not allow a child to unilaterally waive any right. One of the child's parents or the child's guardian must also agree to the waiver. And agreement by a child, parent, or guardian to waive any right can only be accomplished if these individuals: (1) have been informed of the right; (2) understand the right; (3) understand the possible consequences of waiving the right; and (4) understand that waiver of the right is not required.

Additionally, if the child is represented by an attorney, a right may only be waived if the attorney signs the waiver.

Family Code Sec. 65.009. EFFECT OF ADJUDICATION. (a) An adjudication of a child as having engaged in truant conduct is not a conviction of crime. An order of adjudication does not impose any civil disability ordinarily resulting from a conviction or operate to disqualify the child in any civil service application or appointment.

(b) The adjudication of a child as having engaged in truant conduct may not be used in any subsequent court proceedings, other than for the purposes of determining an appropriate remedial action under this chapter or in an appeal under this chapter.

Commentary by Ted Wood

Source: HB 2398

Effective Date: September 1, 2015

Applicability: The changes in law made by this Act apply only to an offense committed or conduct that occurs on or after the effective date of this Act.

Summary of Changes: Section 65.009(a) emphasizes the fact that a court's adjudication that a particular student has engaged in truant conduct is not a conviction of a crime. HB 2398 has decriminalized truancy; the court proceedings set out in Title 3A will never result in a criminal conviction.

Subsection (b) sets out a general rule that the adjudication of a person of having engaged in truant conduct is never to be used in any later court proceedings. For example, consider a student who later in life is charged as an adult with committing a crime. The fact that the student was once found to have engaged in truant conduct is not to be mentioned. There are two exceptions to the general rule. First, a person's truant conduct adjudication can be raised for the purposes of determining an appropriate remedial action under Chapter 65. Second, such an adjudication can be mentioned on appeal.

Family Code Sec. 65.010. BURDEN OF PROOF. A court or jury may not return a finding that a child has engaged in truant conduct unless the state has proved the conduct beyond a reasonable doubt.

Commentary by Ted Wood

Source: HB 2398

Effective Date: September 1, 2015

Applicability: The changes in law made by this Act apply only to an offense committed or conduct that occurs on or after the effective date of this Act.

Summary of Changes: Because neither criminal rules nor juvenile rules apply, Title 3A must establish procedure and standards for use in truant conduct cases. The burden of proof is one of these standards. The burden of proof in these cases is established as “beyond a reasonable doubt.” This is also the standard in criminal cases, of course. But there is no reason this standard cannot also be the standard in truant conduct cases. As a matter of comparison, this is the same standard used in juvenile cases. *See* Tex. Fam. Code Ann. § 54.03 (West 2014).

Family Code Sec. 65.011. APPLICABLE STATUTES REGARDING DISCOVERY. Discovery in a proceeding under this chapter is governed by Chapter 39, Code of Criminal Procedure, other than Articles 39.14(i) and (j).

Commentary by Ted Wood

Source: HB 2398

Effective Date: September 1, 2015

Applicability: The changes in law made by this Act apply only to an offense committed or conduct that occurs on or after the effective date of this Act.

Summary of Changes: Just as an applicable burden of proof must be established, applicable discovery rules must be put in place. Title 3A does not attempt to reinvent the wheel and create an entirely new set of discovery rules. Rather, Title 3A simply adopts the discovery rules set out in Chapter 39, Code of Criminal Procedure. There are two particular provisions in Chapter 39 – Articles 39.14(i) and (j) that have not been made part of the truancy court procedures. This is similar to the practice in juvenile cases. The Juvenile Justice Code states that discovery in juvenile cases is governed by the Code of Criminal Procedure. *See* Tex. Fam. Code Ann. § 51.17(b) (West 2014).

Family Code Sec. 65.012. PROCEDURAL RULES. The supreme court may promulgate rules of procedure applicable to proceedings under this chapter, including guidelines applicable to the informal disposition of truancy cases.

Commentary by Ted Wood

Source: HB 2398

Effective Date: September 1, 2015

Applicability: The changes in law made by this Act apply only to an offense committed or conduct that occurs on or after the effective date of this Act.

Summary of Changes: This section authorizes (but does not require) the Supreme Court to establish procedures applicable to cases handled by truancy courts. Because the statutory procedures governing truancy courts are brand new, there may be gaps in the rules where a particular issue is not addressed. This provision allows the Supreme Court to fill in any gaps in the rules that may come to light.

Family Code Sec. 65.013. INTERPRETERS. (a) When on the motion for appointment of an interpreter by a party or on the motion of the court, in any proceeding under this chapter, the court determines that the child, the child's parent or guardian, or a witness does not understand and speak English, an interpreter must be sworn to interpret for the person. Articles 38.30(a), (b), and (c), Code of Criminal Procedure, apply in a proceeding under this chapter. A qualified telephone interpreter may be sworn to provide interpretation services if an interpreter is not available to appear in person before the court.

(b) In any proceeding under this chapter, if a party notifies the court that the child, the child's parent or guardian, or a witness is deaf, the court shall appoint a qualified interpreter to interpret the proceedings in any language, including sign language, that the deaf person can understand. Articles 38.31(d), (e), (f), and (g), Code of Criminal Procedure, apply in a proceeding under this chapter.

Commentary by Ted Wood

Source: HB 2398

Effective Date: September 1, 2015

Applicability: The changes in law made by this Act apply only to an offense committed or conduct that occurs on or after the effective date of this Act.

Summary of Changes: Subsection (a) provides for the appointment of foreign language interpreters. Subchapter (b) provides for the appointment of interpreters for the deaf. An interpreter is to be appointed any time a child, a parent, a guardian, or a witness needs the services of an interpreter.

Family Code Sec. 65.014. SIGNATURES. Any requirement under this chapter that a document be signed or that a document contain a person's signature, including the signature of a judge or a clerk of the court, is satisfied if the document contains the signature of the person as captured on an electronic device or as a digital signature.

Commentary by Ted Wood

Source: HB 2398

Effective Date: September 1, 2015

Applicability: The changes in law made by this Act apply only to an offense committed or conduct that occurs on or after the effective date of this Act.

Summary of Changes: Section 65.014 explicitly declares that any requirements for signatures under Chapter 65 may be satisfied with electronic signatures.

Family Code Sec. 65.015. PUBLIC ACCESS TO COURT HEARINGS. (a) Except as provided by Subsection (b), a truancy court shall open a hearing under this chapter to the public unless the court, for good cause shown, determines that the public should be excluded.

(b) The court may prohibit a person from personally attending a hearing if the person is expected to testify at the hearing and the court determines that the person's testimony would be materially affected if the person hears other testimony at the hearing.

Commentary by Ted Wood

Source: HB 2398

Effective Date: September 1, 2015

Applicability: The changes in law made by this Act apply only to an offense committed or conduct that occurs on or after the effective date of this Act.

Summary of Changes: As a general rule, truancy court hearings must be open to the public. There is an exception to the general rule for “good cause shown.”

Subsection (b) authorizes truancy courts to prohibit a person from personally attending a hearing if the person is expected to testify. The court can order such a prohibition only upon finding that the person’s testimony would be materially affected by hearing other testimony.

Family Code Sec. 65.016. RECORDING OF PROCEEDINGS. (a) The proceedings in a truancy court that is not a court of record may not be recorded.

(b) The proceedings in a truancy court that is a court of record must be recorded by stenographic notes or by electronic, mechanical, or other appropriate means.

Commentary by Ted Wood

Source: HB 2398

Effective Date: September 1, 2015

Applicability: The changes in law made by this Act apply only to an offense committed or conduct that occurs on or after the effective date of this Act.

Summary of Changes: Truancy courts are essentially justice courts, municipal courts, and (some) county-level courts exercising special jurisdiction over allegations of truant conduct. These underlying courts are a mix of courts of record and courts that are not courts of record.

County-level courts are courts of record. Municipal courts of record are (obviously) courts of record.

Justice courts are not courts of record. Municipal courts that are not courts of record are (again rather obviously) not courts of record.

Proceedings in courts of record are recorded. Proceedings in courts that are not courts of record are not recorded.

In enacting Title 3A, the Legislature did not want to require courts that are not courts of record to record proceedings. The intent was that courts that are not courts of record be able to conduct truancy proceedings without court reporters.

On the other hand, legislators wanted courts of record to continue to record proceedings. The result is Section 65.016 which calls for the recording of proceedings in courts of record but not in non-record courts.

Family Code Sec. 65.017. JUVENILE CASE MANAGERS. A truancy court may employ a juvenile case manager in accordance with Article 45.056, Code of Criminal Procedure, to provide services to children who have been referred to the truancy court or who are in jeopardy of being referred to the truancy court.

Commentary by Ted Wood

Source: HB 2398

Effective Date: September 1, 2015

Applicability: The changes in law made by this Act apply only to an offense committed or conduct that occurs on or after the effective date of this Act.

Summary of Changes: x main focus of HB 2398, the truancy reform legislation, is to prevent truant conduct before it occurs. Juvenile case managers put much of their focus on providing help to students who are in jeopardy of being referred to truancy court. Section 65.017 authorizes truancy courts to employ juvenile case managers.

Family Code Sec. 65.051. INITIAL REFERRAL TO TRUANCY COURT. When a truancy court receives a referral under Section 25.0915, Education Code, and the court is not required to dismiss the referral under that section, the court shall forward the referral to a truant conduct prosecutor who serves the court.

Commentary by Ted Wood

Source: HB 2398

Effective Date: September 1, 2015

Applicability: The changes in law made by this Act apply only to an offense committed or conduct that occurs on or after the effective date of this Act.

Summary of Changes: Section 65.051 is the first section in Subchapter B of Chapter 65. Subchapter B is entitled “Initial Procedures.” This is a reference to the initial procedures to be taken by a truancy court in an individual truancy case.

A truancy case is actually initiated by a school district referring a student to a truancy court for the student’s truant conduct. This referral is required by Section 25.0915, Education Code. Section 65.051 directs the truancy court as to what should be done upon receiving a referral. Specifically, the truancy court is required to forward the referral to a truant conduct prosecutor who serves the court. Every referral must be forwarded to the truant conduct prosecutor.

The statute suggests that the truancy court is not to forward a referral if the court is required to dismiss the referral under Section 25.0915. But Section 25.0915 does not provide grounds for the court to dismiss a school district referral before forwarding the referral to a prosecutor.

Family Code Sec. 65.052. TRUANT CONDUCT PROSECUTOR. In a justice or municipal court or a constitutional county court that is designated as a truancy court, the attorney who represents the state in criminal matters in that court shall serve as the truant conduct prosecutor.

Commentary by Ted Wood

Source: HB 2398

Effective Date: September 1, 2015

Applicability: The changes in law made by this Act apply only to an offense committed or conduct that occurs on or after the effective date of this Act.

Summary of Changes: Prosecutors in underlying justice, municipal and county courts, serve as “truant conduct prosecutors” in cases heard by those courts in their capacity as truancy courts.

Family Code Sec. 65.053. REVIEW BY PROSECUTOR. (a) The truant conduct prosecutor shall promptly review the facts described in a referral received under Section 65.051.

(b) The prosecutor may, in the prosecutor's discretion, determine whether to file a petition with the truancy court requesting an adjudication of the child for truant conduct. If the prosecutor decides not to file a petition requesting an adjudication, the prosecutor shall inform the truancy court and the school district of the decision.

(c) The prosecutor may not file a petition for an adjudication of a child for truant conduct if the referral was not made in compliance with Section 25.0915, Education Code.

Commentary by Ted Wood

Source: HB 2398

Effective Date: September 1, 2015

Applicability: The changes in law made by this Act apply only to an offense committed or conduct that occurs on or after the effective date of this Act.

Summary of Changes: Every referral a school district makes to a truancy court for truant conduct is forwarded by the court to a truant conduct prosecutor. Subsection (a) requires prosecutors to look at each referral promptly. In every case, the prosecutor is to determine if the referral complies with Section 25.0915, Education Code. If the referral does not comply, the prosecutor may not file a petition for adjudication of the child for truant conduct.

Even if the referral does comply with Section 25.0915, the prosecutor has discretion to decline to file a petition with the court.

Family Code Sec. 65.054. STATE'S PETITION. (a) A petition for an adjudication of a child for truant conduct initiates an action of the state against a child who has allegedly engaged in truant conduct.

(b) The proceedings shall be styled "In the matter of _____, Child," identifying the child by the child's initials only.

(c) The petition may be on information and belief.

(d) The petition must state:

(1) with reasonable particularity the time, place, and manner of the acts alleged to constitute truant conduct;

(2) the name, age, and residence address, if known, of the child who is the subject of the petition;

(3) the names and residence addresses, if known, of at least one parent, guardian, or custodian of the child and of the child's spouse, if any; and

(4) if the child's parent, guardian, or custodian does not reside or cannot be found in the state, or if their places of residence are unknown, the name and residence address of any known adult relative residing in the county or, if there is none, the name and residence address of the known adult relative residing nearest to the location of the court.

(e) Filing fees may not be charged for the filing of the state's petition.

Commentary by Ted Wood

Source: HB 2398

Effective Date: September 1, 2015

Applicability: The changes in law made by this Act apply only to an offense committed or conduct that occurs on or after the effective date of this Act.

Summary of Changes: A case of truant conduct is not initiated by a school district's filing of a referral with a truancy court. Rather, a case of truant conduct is initiated by the filing of a petition with a truancy court by a truant conduct prosecutor.

Section 65.054 provides very specific direction as to the things a petition alleging truant must contain. Subsection (e) clarifies that no filing fees are to be charged upon the filing of a petition.

Family Code Sec. 65.055. LIMITATIONS PERIOD. A petition may not be filed after the 45th day after the date of the last absence giving rise to the act of truant conduct.

Commentary by Ted Wood

Source: HB 2398

Effective Date: September 1, 2015

Applicability: The changes in law made by this Act apply only to an offense committed or conduct that occurs on or after the effective date of this Act.

Summary of Changes: The handling of truant conduct cases is meant to be accomplished swiftly. School districts are to make truant conduct referrals to truancy courts “within 10 school days of the student’s 10th absence.” See Section 25.0951(a), Education Code. The referrals go to the truancy court which is to forward the referral to a truant conduct prosecutor. See Section 65.051. As we learn here in Section 65.055, truant conduct prosecutors must prepare a petitions alleging truant conduct quickly. Truant conduct petitions must be filed not later than the 45th day after the date of the student’s last absence.

Family Code Sec. 65.056. HEARING DATE. (a) After the petition has been filed, the truancy court shall set a date and time for an adjudication hearing.

(b) The hearing may not be held on or before the 10th day after the date the petition is filed.

Commentary by Ted Wood

Source: HB 2398

Effective Date: September 1, 2015

Applicability: The changes in law made by this Act apply only to an offense committed or conduct that occurs on or after the effective date of this Act.

Summary of Changes: This statute instructs truancy courts to set a date and time for an adjudication hearing upon the filing of a petition alleging truant conduct. The hearing must be no earlier than the 11th day after the petition is filed. This gives time for the accused child, parents, guardians, and others time to prepare for the hearing.

Family Code Sec. 65.057. SUMMONS. (a) After setting the date and time of an adjudication hearing, the truancy court shall direct the issuance of a summons to:

(1) the child named in the petition;

(2) the child's parent, guardian, or custodian;

(3) the child's guardian ad litem, if any; and

(4) any other person who appears to the court to be a proper or necessary party to the proceeding.

(b) The summons must require the persons served to appear before the court at the place, date, and time of the adjudication hearing to answer the allegations of the petition. A copy of the petition must accompany the summons. If a person, other than the child, required to appear under this section fails to attend a hearing, the truancy court may proceed with the hearing.

(c) The truancy court may endorse on the summons an order directing the person having the physical custody or control of the child to bring the child to the hearing.

(d) A party, other than the child, may waive service of summons by written stipulation or by voluntary appearance at the hearing.

Commentary by Ted Wood

Source: HB 2398

Effective Date: September 1, 2015

Applicability: The changes in law made by this Act apply only to an offense committed or conduct that occurs on or after the effective date of this Act.

Summary of Changes: Once a petition has been filed and a hearing has been set, the child must be notified of the charge and the hearing. Section 65.057 directs that this notice is to be accomplished by means of a summons with the petition attached. The child’s parent guardian, or custodian is also to be notified. Any guardian ad litem for the child must also be notified.

Significantly, the summons may order the person having custody of the child to bring the child to the hearing. Subsection (b) authorizes courts to proceed with hearings in the absence of a person, other than the child, who has been ordered to attend.

Family Code Sec. 65.058. SERVICE OF SUMMONS. (a) If a person to be served with a summons is in this state and can be found, the summons shall be served on the person personally or by registered or certified mail, return receipt requested, at least five days before the date of the adjudication hearing.

(b) Service of the summons may be made by any suitable person under the direction of the court.

Commentary by Ted Wood

Source: HB 2398

Effective Date: September 1, 2015

Applicability: The changes in law made by this Act apply only to an offense committed or conduct that occurs on or after the effective date of this Act.

Summary of Changes: This section sets out the permissible methods of serving a summons. The summons can be served on a child (Or another) in person, but this is not required. Service by registered or certified mail is permissible. Service must be effectuated at least five days before the adjudication hearing. If service is not effectuated by the date required, the adjudication hearing will have to be delayed.

Family Code Sec. 65.059. REPRESENTATION BY ATTORNEY. (a) A child may be represented by an attorney in a case under this chapter. Representation by an attorney is not required.

(b) A child is not entitled to have an attorney appointed to represent the child, but the court may appoint an attorney if the court determines it is in the best interest of the child.

(c) The court may order a child's parent or other responsible person to pay for the cost of an attorney appointed under this section if the court determines that the person has sufficient financial resources.

Commentary by Ted Wood

Source: HB 2398

Effective Date: September 1, 2015

Applicability: The changes in law made by this Act apply only to an offense committed or conduct that occurs on or after the effective date of this Act.

Summary of Changes: Attorneys are not required in truant conduct cases. But this is not to say attorneys may not represent accused children in truancy court.

Section 65.059 allows (but does not require) a truancy court to appoint an attorney for a child in certain circumstances. This provision is very similar to Article 1.051 of the Code of Criminal Procedure which permits appointments of attorneys in the interest of justice. Justices of the peace and municipal judges have power to appoint attorneys to represent defendants under Article 1.051, although the power is rarely used. Had Section 65.059 not been included in these new truancy provisions, then interest-of-justice appointments would not be authorized in truancy cases. This is because Article 1.051 applies only to criminal cases and under House Bill 2398, truancy cases are no longer criminal cases.

A child's parent (or other responsible person) may be ordered to pay for the cost of an appointed attorney. But such an order can be made only if the court first determines that the person has sufficient financial resources.

Family Code Sec. 65.060. CHILD'S ANSWER. After the petition has been filed, the child may answer, orally or in writing, the petition at or before the commencement of the hearing. If the child does not answer, a general denial of the alleged truant conduct is assumed.

Commentary by Ted Wood

Source: HB 2398

Effective Date: September 1, 2015

Applicability: The changes in law made by this Act apply only to an offense committed or conduct that occurs on or after the effective date of this Act.

Summary of Changes: As with other petitions that serve to initiate court cases, the respondent (in this case the child) is expected to answer. The answer may be oral or written. The answer may be made before the hearing or at the commencement of the hearing. And if the child does not answer at all, the default situation is that a general denial of the alleged truant conduct is assumed.

Family Code Sec. 65.061. GUARDIAN AD LITEM. (a) If a child appears before the truancy court without a parent or guardian, or it appears to the court that the child's parent or guardian is incapable or unwilling to make decisions in the best interest of the child with respect to proceedings under this chapter, the court may appoint a guardian ad litem to protect the interests of the child in the proceedings.

(b) An attorney for a child may also be the child's guardian ad litem. A law enforcement officer, probation officer, or other employee of the truancy court may not be appointed as a guardian ad litem.

(c) The court may order a child's parent or other person responsible to support the child to reimburse the county or municipality for the cost of the guardian ad litem. The court may issue the order only after determining that the parent or other responsible person has sufficient financial resources to offset the cost of the child's guardian ad litem wholly or partly.

Commentary by Ted Wood

Source: HB 2398

Effective Date: September 1, 2015

Applicability: The changes in law made by this Act apply only to an offense committed or conduct that occurs on or after the effective date of this Act.

Summary of Changes: Section 65.061 authorizes truancy courts to appoint a guardian ad litem for children accused of engaging in truant conduct. But there are only two situations in which a court is authorized to make such an appointment. The first situation is when a child appears before a truancy court without a parent or guardian. The second is when a child's parent or guardian appears to be incapable or unwilling to make decisions in the child's best interest. A court may order a child's parent (or other responsible person) to pay for the guardian ad litem. But this order may be made only if the court finds the person is financially able to do so.

Family Code Sec. 65.062. ATTENDANCE AT HEARING. (a) The child must be personally present at the adjudication hearing. The truancy court may not proceed with the adjudication hearing in the absence of the child.

(b) A parent or guardian of a child and any court-appointed guardian ad litem of a child is required to attend the adjudication hearing.

(c) Subsection (b) does not apply to:

(1) a person for whom, for good cause shown, the court excuses attendance;

(2) a person who is not a resident of this state; or

(3) a parent of a child for whom a managing conservator has been appointed and the parent is not a conservator of the child.

Commentary by Ted Wood

Source: HB 2398

Effective Date: September 1, 2015

Applicability: The changes in law made by this Act apply only to an offense committed or conduct that occurs on or after the effective date of this Act.

Summary of Changes: A child must always be in attendance at a truancy court hearing. In fact, a truancy court hearing may not take place in the absence of the accused child. Parents and guardians are also required to attend truancy hearings. But a hearing can take place in the absence of any parent or guardian.

Family Code Sec. 65.063. RIGHT TO REEMPLOYMENT. (a) An employer may not terminate the employment of a permanent employee because the employee is required under Section 65.062(b) to attend a hearing.

(b) Notwithstanding any other law, an employee whose employment is terminated in violation of this section is entitled to return to the same employment that the employee held when notified of the hearing if the employee, as soon as practical after the hearing, gives the employer actual notice that the employee intends to return.

(c) A person who is injured because of a violation of this section is entitled to:

(1) reinstatement to the person's former position;

(2) damages not to exceed an amount equal to six times the amount of monthly compensation received by the person on the date of the hearing; and

(3) reasonable attorney's fees in an amount approved by the court.

(d) It is a defense to an action brought under this section that the employer's circumstances changed while the employee attended the hearing and caused reemployment to be impossible or unreasonable. To establish a defense under this subsection, an employer must prove that the termination of employment was because of circumstances other than the employee's attendance at the hearing.

Commentary by Ted Wood

Source: HB 2398

Effective Date: September 1, 2015

Applicability: The changes in law made by this Act apply only to an offense committed or conduct that occurs on or after the effective date of this Act.

Summary of Changes: This provision is nearly identical to Section 51.116, Family Code, which is applicable in juvenile cases. The purpose of the statute is to protect persons who are required to attend truancy hearings from negative employment repercussions.

Family Code Sec. 65.064. SUBPOENA OF WITNESS. A witness may be subpoenaed in accordance with the procedures for the subpoena of a witness under the Code of Criminal Procedure.

Commentary by Ted Wood

Source: HB 2398

Effective Date: September 1, 2015

Applicability: The changes in law made by this Act apply only to an offense committed or conduct that occurs on or after the effective date of this Act.

Summary of Changes: Section 65.064 allows for witnesses to be subpoenaed and borrows the relevant procedures from the Code of Criminal Procedure.

Family Code Sec. 65.065. CHILD ALLEGED TO BE MENTALLY ILL. (a) A party may make a motion requesting that a petition alleging a child to have engaged in truant conduct be dismissed because the child has a mental illness, as defined by Section 571.003, Health and Safety Code. In response to the motion, the truancy court shall temporarily stay the proceedings to determine whether probable cause exists to believe the child has a mental illness. In making a determination, the court may:

(1) consider the motion, supporting documents, professional statements of counsel, and witness testimony; and

(2) observe the child.

(b) If the court determines that probable cause exists to believe that the child has a mental illness, the court shall dismiss the petition. If the court determines that evidence does not exist to support a finding that the child has a mental illness, the court shall dissolve the stay and continue with the truancy court proceedings.

Commentary by Ted Wood

Source: HB 2398

Effective Date: September 1, 2015

Applicability: The changes in law made by this Act apply only to an offense committed or conduct that occurs on or after the effective date of this Act.

Summary of Changes: This statute details the procedures if a child accused of engaging in truant conduct possibly has a mental illness. Upon a motion suggesting that the child has a mental illness, the truancy court is required to temporarily stay the proceedings. Once the proceedings are stayed, the court must determine whether there is probable cause to believe the child has a mental illness. Upon finding probable cause, the court can do only one thing – dismiss the petition.

Family Code Sec. 65.101. ADJUDICATION HEARING; JUDGMENT. (a) A child may be found to have engaged in truant conduct only after an adjudication hearing conducted in accordance with the provisions of this chapter.

(b) At the beginning of the adjudication hearing, the judge of the truancy court shall explain to the child and the child's parent, guardian, or guardian ad litem:

(1) the allegations made against the child;

(2) the nature and possible consequences of the proceedings;

(3) the child's privilege against self-incrimination;

(4) the child's right to trial and to confrontation of witnesses;

(5) the child's right to representation by an attorney if the child is not already represented; and

(6) the child's right to a jury trial.

(c) Trial is by jury unless jury is waived in accordance with Section 65.008. Jury verdicts under this chapter must be unanimous.

(d) The Texas Rules of Evidence do not apply in a truancy proceeding under this chapter except:

(1) when the judge hearing the case determines that a particular rule of evidence applicable to criminal cases must be followed to ensure that the proceedings are fair to all parties; or

(2) as otherwise provided by this chapter.

(e) A child alleged to have engaged in truant conduct need not be a witness against nor otherwise incriminate himself or herself. An extrajudicial statement of the child that was obtained in violation of the constitution of this state or the United States may not be used in an adjudication hearing. A statement made by the child out of court is insufficient to support a finding of truant conduct unless it is corroborated wholly or partly by other evidence.

(f) At the conclusion of the adjudication hearing, the court or jury shall find whether the child has engaged in truant conduct. The finding must be based on competent evidence admitted at the hearing. The child shall be presumed to have not engaged in truant conduct and no finding that a child has engaged in truant conduct may be returned unless the state has proved the conduct beyond a reasonable doubt. In all jury cases the jury will be instructed that the burden is on the state to prove that a child has engaged in truant conduct beyond a reasonable doubt.

(g) If the court or jury finds that the child did not engage in truant conduct, the court shall dismiss the case with prejudice.

(h) If the court or jury finds that the child did engage in truant conduct, the court shall proceed to issue a judgment finding the child has engaged in truant conduct and order the remedies the court finds appropriate under Section 65.103. The jury is not involved in ordering remedies for a child who has been adjudicated as having engaged in truant conduct.

Commentary by Ted Wood

Source: HB 2398

Effective Date: September 1, 2015

Applicability: The changes in law made by this Act apply only to an offense committed or conduct that occurs on or after the effective date of this Act.

Summary of Changes: Subsection (a) states that a child may be found to have engaged in truant conduct only after an adjudication hearing. This means that a child may not simply plead true to the allegations and avoid showing up in court.

Subsection (b) requires the truancy court judge to make several explanations to the child at the outset of the hearing. Most of these explanations concern the child's rights – such as the right to a jury trial.

Subsection (c) explicitly guarantees the accused child the right to have a jury trial. *See also* Section 65.007. But this right can be waived under the conditions set out in Section 65.008.

Subsection (d) says that, as a general rule, the Texas Rules of Evidence do not apply in a truancy court proceeding.

Subsection (e) states that a child accused of engaging in truant conduct need not be a witness against herself.

Subsection (f) discusses the ultimate decision for the finder of fact (whether judge or jury) in a truancy case. The question is whether the child has engaged in truant conduct. The reasonable-doubt standard is repeated here. *See also* Section 65.010. And, of course, the burden of proof belongs to the State.

Subsection (g) requires the truancy court to dismiss any case in which the judge or jury did not engage in truant conduct.

Subsection (h) discusses the next step for a court in which a child is found to have engaged in truant conduct. Specifically, the court must issue a judgment. The judgment must state that the child engaged in truant conduct. The judgment must also list the remedies the court finds to be appropriate under Section 65.103. This subsection also limits the role of the jury to making the determination as to whether the child has engaged in truant conduct. The jury has no role in fashioning remedial orders.

Family Code Sec. 65.102. REMEDIAL ACTIONS. (a) The truancy court shall determine and order appropriate remedial actions in regard to a child who has been found to have engaged in truant conduct.

(b) The truancy court shall orally pronounce the court's remedial actions in the child's presence and enter those actions in a written order.

(c) After pronouncing the court's remedial actions, the court shall advise the child and the child's parent, guardian, or guardian ad litem of:

(1) the child's right to appeal, as detailed in Subchapter D; and

(2) the procedures for the sealing of the child's records under Section 65.201.

Commentary by Ted Wood

Source: HB 2398

Effective Date: September 1, 2015

Applicability: The changes in law made by this Act apply only to an offense committed or conduct that occurs on or after the effective date of this Act.

Summary of Changes: The main purpose of a finding that a child has engaged in truant conduct is to authorize a judge to order remedial actions that will serve to keep the child in school. The judge must announce the remedial actions in the child's presence. The remedial actions are to be made part of the court's written order.

Subsection (c) requires the trial court to advise the child and the child's parent, guardian, or guardian ad litem of the child's right to appeal. The judge must also detail the procedures for the sealing of the child's records.

Family Code Sec. 65.103. REMEDIAL ORDER. (a) A truancy court may enter a remedial order requiring a child who has been found to have engaged in truant conduct to:

(1) attend school without unexcused absences;

(2) attend a preparatory class for the high school equivalency examination administered under Section 7.111, Education Code, if the court determines that the individual is unlikely to do well in a formal classroom environment due to the individual's age;

(3) if the child is at least 16 years of age, take the high school equivalency examination administered under Section 7.111, Education Code, if that is in the best interest of the child;

(4) attend a nonprofit, community-based special program that the court determines to be in the best interest of the child, including:

(A) an alcohol and drug abuse program;

(B) a rehabilitation program;

(C) a counseling program, including a self-improvement program;

(D) a program that provides training in self-esteem and leadership;

(E) a work and job skills training program;

(F) a program that provides training in parenting, including parental responsibility;

(G) a program that provides training in manners;

(H) a program that provides training in violence avoidance;

(I) a program that provides sensitivity training; and

(J) a program that provides training in advocacy and mentoring;

(5) complete not more than 50 hours of community service on a project acceptable to the court; and

(6) participate for a specified number of hours in a tutorial program covering the academic subjects in which the child is enrolled that are provided by the school the child attends.

(b) A truancy court may not order a child who has been found to have engaged in truant conduct to:

(1) attend a juvenile justice alternative education program, a boot camp, or a for-profit truancy class; or

(2) perform more than 16 hours of community service per week under this section.

(c) In addition to any other order authorized by this section, a truancy court may order the Department of Public Safety to suspend the driver's license or permit of a child who has been found to have engaged in truant conduct. If the child does not have a driver's license or permit, the court may order the Department of Public Safety to deny the issuance of a license or permit to the child. The period of the license or permit suspension or the order that the issuance of a license or permit be denied may not extend beyond the maximum time period that a remedial order is effective as provided by Section 65.104.

Commentary by Ted Wood

Source: HB 2398

Effective Date: September 1, 2015

Applicability: The changes in law made by this Act apply only to an offense committed or conduct that occurs on or after the effective date of this Act.

Summary of Changes: Subsection (a) sets forth a long list of remedial actions that truancy courts may order upon a finding that a child has engaged in truant conduct. These remedies are almost word-for-word the same as the remedies available to the courts handling the criminal failure-to-attend-school cases. *See* Tex. Crim. Proc. Code Ann. art. 45.054(a) (West Supp. 2014) (repealed by Section 41 of HB 2398 effective 09/01/15). So although truancy has been decriminalized, the remedies that were available to judges handling failure-to-attend-school cases are still available.

Subsection (b) prohibits a truancy court from ordering a child to attend certain programs including any for-profit truancy class. This is a new provision.

Subsection (c) authorizes a truancy court to suspend a child's driver's license.

Family Code Sec. 65.104. MAXIMUM TIME REMEDIAL ORDER IS EFFECTIVE. A truancy court's remedial order under Section 65.103 is effective until the later of:

(1) the date specified by the court in the order, which may not be later than the 180th day after the date the order is entered; or

(2) the last day of the school year in which the order was entered.

Commentary by Ted Wood

Source: HB 2398

Effective Date: September 1, 2015

Applicability: The changes in law made by this Act apply only to an offense committed or conduct that occurs on or after the effective date of this Act.

Summary of Changes: The remedial orders issued by a truancy court effectively come with an expiration date. A truancy court's remedial orders are of no force and effect after the 180th day after the remedial orders are entered.

Family Code Sec. 65.105. ORDERS AFFECTING PARENTS AND OTHERS. (a) If a child has been found to have engaged in truant conduct, the truancy court may:

(1) order the child and the child's parent to attend a class for students at risk of dropping out of school that is designed for both the child and the child's parent;

(2) order any person found by the court to have, by a wilful act or omission, contributed to, caused, or encouraged the child's truant conduct to do any act that the court determines to be reasonable and necessary for the welfare of the child or to refrain from doing any act that the court determines to be injurious to the child's welfare;

(3) enjoin all contact between the child and a person who is found to be a contributing cause of the child's truant conduct, unless that person is related to the child within the third degree by consanguinity or affinity, in which case the court may contact the Department of Family and Protective Services, if necessary;

(4) after notice to, and a hearing with, all persons affected, order any person living in the same household with the child to participate in social or psychological counseling to assist in the child's rehabilitation;

(5) order the child's parent or other person responsible for the child's support to pay all or part of the reasonable costs of treatment programs in which the child is ordered to participate if the court finds the child's parent or person responsible for the child's support is able to pay the costs;

(6) order the child's parent to attend a program for parents of students with unexcused absences that provides instruction designed to assist those parents in identifying problems that contribute to the child's unexcused absences and in developing strategies for resolving those problems; and

(7) order the child's parent to perform not more than 50 hours of community service with the child.

(b) A person subject to an order proposed under Subsection (a) is entitled to a hearing before the order is entered by the court.

(c) On a finding by the court that a child's parents have made a reasonable good faith effort to prevent the child from engaging in truant conduct and that, despite the parents' efforts, the child continues to engage in truant conduct, the court shall waive any requirement for community service that may be imposed on a parent under this section.

Commentary by Ted Wood

Source: HB 2398

Effective Date: September 1, 2015

Applicability: The changes in law made by this Act apply only to an offense committed or conduct that occurs on or after the effective date of this Act.

Summary of Changes: When a truancy court finds that a child has engaged in truant conduct, the court is not restricted to making remedial orders to the child alone. Rather, the court may make remedial orders affecting parents and others. This is also the way things work in the juvenile courts. In fact, Section 65.105 is in large part a copy of the Section 54.041, Family Code.

Subsection (b) envisions a “proposed” order coming out of a hearing concerning whether the child in question has engaged in truant conduct. A truancy court must give the parent or other person the right to have a special hearing on the proposed remedial measures before entering those measures in an order.

One of the remedial measures that a truancy court may impose upon a parent or other person is a requirement to perform up to 50 hours of community service with the child. But Subsection (c) allows for this community service requirement placed upon a parent to be waived if certain findings are made.

Family Code Sec. 65.106. LIABILITY FOR CLAIMS ARISING FROM COMMUNITY SERVICE. (a) A municipality or county that establishes a program to assist children and their parents in rendering community service under this subchapter may purchase an insurance policy protecting the municipality or county against a claim brought by a person other than the child or the child's parent for a cause of action that arises from an act of the child or parent while rendering the community service. The municipality or county is not liable for the claim to the extent that damages are recoverable under a contract of insurance or under a plan of self-insurance authorized by statute.

(b) The liability of the municipality or county for a claim that arises from an action of the child or the child's parent while rendering community service may not exceed \$100,000 to a single person and \$300,000 for a single occurrence in the case of personal injury or death, and \$10,000 for a single occurrence of property damage. Liability may not extend to punitive or exemplary damages.

(c) This section does not waive a defense, immunity, or jurisdictional bar available to the municipality or county or its officers or employees, nor shall this section be construed to waive, repeal, or modify any provision of Chapter 101, Civil Practice and Remedies Code.

Commentary by Ted Wood

Source: HB 2398

Effective Date: September 1, 2015

Applicability: The changes in law made by this Act apply only to an offense committed or conduct that occurs on or after the effective date of this Act.

Summary of Changes: This section is nearly a word-for-word adoption of the same law in juvenile cases. *See* Tex. Fam. Code Ann. § 54.044(d). The law lets cities and counties purchase insurance to protect against liability for the possible bad acts of persons performing community service.

Family Code Sec. 65.107. COURT COST. (a) If a child is found to have engaged in truant conduct, the truancy court, after giving the child, parent, or other person responsible for the child's support a reasonable opportunity to be heard, shall order the child, parent, or other person, if financially able to do so, to pay a court cost of \$50 to the clerk of the court.

(b) The court's order to pay the \$50 court cost is not effective unless the order is reduced to writing and signed by the judge. The written order to pay the court cost may be part of the court's order detailing the remedial actions in the case.

(c) The clerk of the court shall keep a record of the court costs collected under this section and shall forward the funds to the county treasurer, municipal treasurer, or person fulfilling the role of a county treasurer or municipal treasurer, as appropriate.

(d) The court costs collected under this section shall be deposited in a special account that can be used only to offset the cost of the operations of the truancy court.

Commentary by Ted Wood

Source: HB 2398

Effective Date: September 1, 2015

Applicability: The changes in law made by this Act apply only to an offense committed or conduct that occurs on or after the effective date of this Act.

Summary of Changes: The criminal offense of failure to attend school calls for the payment of court costs upon conviction. Of course, House Bill 2398 repeals the offense of failure to attend school. Thus, there is no longer any basis for the assessment of criminal court costs in truancy cases.

Section 65.107 does call for the assessment of a new court costs in truancy courts. The cost is \$50 and is generally to be assessed upon a finding that the child has engaged in delinquent conduct. But there is a rather large exception to the assessment of the court cost. If a child or parent is not financially able to pay the \$50 cost, then the court is not authorized to assess the cost.

Truancy courts must provide the child or parent an opportunity to be heard in regard to the person's financial ability to pay the court cost. And the court must determine that the child or parent is financially able to pay the cost. If either of those things does not happen, the court is without authority to assess the cost.

Subsection (b) requires that any order to pay the \$50 court cost be reduced to writing. The order may be part of the court's judgment.

The court cost is to be deposited in a special account maintained by the county or the city. No part of the collected court costs goes to the State. The money collected may only be used to offset the operation of the truancy court.

Family Code Sec. 65.108. HEARING TO MODIFY REMEDY. (a) A truancy court may hold a hearing to modify any remedy imposed by the court. A remedy may only be modified during the period the order is effective under Section 65.104.

(b) There is no right to a jury at a hearing under this section.

(c) A hearing to modify a remedy imposed by the court shall be held on the petition of the state, the court, or the child and the child's parent, guardian, guardian ad litem, or attorney. Reasonable notice of a hearing to modify disposition shall be given to all parties.

(d) Notwithstanding any other law, in considering a motion to modify a remedy imposed by the court, the truancy court may consider a written report from a school district official or employee, juvenile case manager, or professional consultant in addition to the testimony of witnesses. The court shall provide the attorney for the child and the prosecuting attorney with access to all written matters to be considered by the court. The court may order counsel not to reveal items to the child or to the child's parent, guardian, or guardian ad litem if the disclosure would materially harm the treatment and rehabilitation of the child or would substantially decrease the likelihood of receiving information from the same or similar sources in the future.

(e) The truancy court shall pronounce in court, in the presence of the child, the court's changes to the remedy, if any. The court shall specifically state the new remedy and the court's reasons for modifying the remedy in a written order. The court shall furnish a copy of the order to the child.

Commentary by Ted Wood

Source: HB 2398

Effective Date: September 1, 2015

Applicability: The changes in law made by this Act apply only to an offense committed or conduct that occurs on or after the effective date of this Act.

Summary of Changes: Section 65.108 explains that a truancy court's remedial order can be modified. This statute explains the procedures. The concept is not an entirely new one. The same idea exists in juvenile cases. *See* Tex. Fam. Code Ann. § 54.05 (West 2014) ("Hearing to Modify Disposition").

Family Code Sec. 65.109. MOTION FOR NEW TRIAL. The order of a truancy court may be challenged by filing a motion for new trial. Rules 505.3(c) and (e), Texas Rules of Civil Procedure, apply to a motion for new trial.

Commentary by Ted Wood

Source: HB 2398

Effective Date: September 1, 2015

Applicability: The changes in law made by this Act apply only to an offense committed or conduct that occurs on or after the effective date of this Act.

Summary of Changes: The new truancy provisions consist of new procedures and borrowed procedures. This statute is an example of a borrowed procedure. Motions for new trial are permitted in truant conduct cases. But House Bill 2398 makes no attempt to create an entirely new motion-for-new-trial procedure. Rather, the applicable rules for motions for new trials will be Rules 505.3(c) and (e) of the Texas Rules of Civil Procedure.

Family Code Sec. 65.151. RIGHT TO APPEAL. (a) The child, the child's parent or guardian, or the state may appeal any order of a truancy court. A person subject to an order entered under Section 65.105 may appeal that order.

(b) An appeal from a truancy court shall be to a juvenile court. The case must be tried de novo in the juvenile court. This chapter applies to the de novo trial in the juvenile court. On appeal, the judgment of the truancy court is vacated.

(c) A judgment of a juvenile court in a trial conducted under Subsection (b) may be appealed in the same manner as an appeal under Chapter 56.

Commentary by Ted Wood

Source: HB 2398

Effective Date: September 1, 2015

Applicability: The changes in law made by this Act apply only to an offense committed or conduct that occurs on or after the effective date of this Act.

Summary of Changes: An appeal from an order of a truancy court is possible. All appeals go to the juvenile court. And all appeals are handled on a “de novo” basis. In other words, the juvenile court tries the case over again. Once an appeal is made, the judgment of the truancy court is vacated.

This statute calls into question the rationale for Section 65.016 which requires the recording of the proceedings in truancy courts that are courts of record. The primary purpose for recording court proceedings is to create a record for appeal. But if all appeals from truancy courts are de novo, there would appear to be no reason for creating a record.

Subsection (c) does not talk about appeals from a truancy court. Rather, Subsection (c) discusses appeals from a juvenile court’s action in a truancy court appeal. Appeals from a juvenile court’s action in a truancy court appeal are handled in the same way as any other appeal from a juvenile court.

Family Code Sec. 65.152. GOVERNING LAW. Rule 506, Texas Rules of Civil Procedure, applies to the appeal of an order of a truancy court to a juvenile court in the same manner as the rule applies to an appeal of a judgment of a justice court to a county court, except an appeal bond is not required.

Commentary by Ted Wood

Source: HB 2398

Effective Date: September 1, 2015

Applicability: The changes in law made by this Act apply only to an offense committed or conduct that occurs on or after the effective date of this Act.

Summary of Changes: This statute explains that Rule 506 of the Texas Rules sets out the procedures involved in appealing a truancy court order to the juvenile court. There is one exception to the provisions in Rule 506 – no appeal bond is required.

Family Code Sec. 65.153. COUNSEL ON APPEAL. (a) A child may be represented by counsel on appeal.

(b) If the child and the child’s parent, guardian, or guardian ad litem request an appeal, the attorney who represented the child before the truancy court, if any, shall file a notice of appeal with the court that will hear the appeal and inform that court whether that attorney will handle the appeal.

(c) An appeal serves to vacate the order of the truancy court.

Commentary by Ted Wood

Source: HB 2398

Effective Date: September 1, 2015

Applicability: The changes in law made by this Act apply only to an offense committed or conduct that occurs on or after the effective date of this Act.

Summary of Changes: As in cases originally before the truancy court, a person appealing the order of a truancy court may be represented by an attorney. But there is no requirement that an attorney be appointed to represent the appellant. *See* Section 65.059.

Family Code Sec. 65.201. SEALING OF RECORDS. (a) A child who has been found to have engaged in truant conduct may apply, on or after the child’s 18th birthday, to the truancy court that made the finding to seal the records relating to the allegation and finding of truant conduct held by:

(1) the court;

(2) the truant conduct prosecutor; and

(3) the school district.

(b) The application must include the following information or an explanation of why one or more of the following is not included:

(1) the child's:

(A) full name;

(B) sex;

(C) race or ethnicity;

(D) date of birth;

(E) driver's license or identification card number; and

(F) social security number;

(2) the dates on which the truant conduct was alleged to have occurred; and

(3) if known, the cause number assigned to the petition and the court and county in which the petition was filed.

(c) The truancy court shall order that the records be sealed after determining the child complied with the remedies ordered by the court in the case.

(d) All index references to the records of the truancy court that are ordered sealed shall be deleted not later than the 30th day after the date of the sealing order.

(e) A truancy court, clerk of the court, truant conduct prosecutor, or school district shall reply to a request for information concerning a child's sealed truant conduct case that no record exists with respect to the child.

(f) Inspection of the sealed records may be permitted by an order of the truancy court on the petition of the person who is the subject of the records and only by those persons named in the order.

(g) A person whose records have been sealed under this section is not required in any proceeding or in any application for employment, information, or licensing to state that the person has been the subject of a proceeding under this chapter. Any statement that the person has never been found to have engaged in truant conduct may not be held against the person in any criminal or civil proceeding.

(h) On or after the fifth anniversary of a child's 16th birthday, on the motion of the child or on the truancy court's own motion, the truancy court may order the destruction of the child's records that have been sealed under this section if the child has not been convicted of a felony.

Commentary by Ted Wood

Source: HB 2398

Effective Date: September 1, 2015

Applicability: The changes in law made by this Act apply only to an offense committed or conduct that occurs on or after the effective date of this Act.

Summary of Changes: Section 65.201 only concerns truancy cases in which the child has been found to have engaged in truant conduct. If a truancy case results in something other than such a finding (*i.e.*, a dismissal), then this statute does not apply.

As a general rule, the records of cases in which a child has been found to have engaged in truant conduct are confidential. *See* Commentary on Section 65.202 below.

Section 65.201 authorizes the sealing of truancy case records. If the records are sealed, then persons and entities able to see the case records under Section 65.202 would be unable to view the records.

The records are not sealed automatically. Rather, as explained in Subsection (a), a child must make a motion to have the records sealed. The child may not make such a motion until he or she turns 18.

Subsection (a) also states that any sealing order does not only apply to records held by the truancy court. An order sealing records also applies to records held by truant conduct prosecutors and records held by school districts.

Subsection (b) details the information that is required to be listed in a motion to seal.

Subsection (c) requires the child to have complied with the remedies ordered by the court in the case in order to obtain a sealing order. A child who has not complies with the court's remedial order is ineligible to obtain a sealing order.

Subsection (d) requires truancy court index records to be sealed within 30 days of the sealing order.

Subsection (e) instructs those receiving requests for information concerning a truancy case that has been sealed as to how they should respond. The proper response is to say that no record exists with respect to the child in question.

Subsection (f) allows very limited inspection of truancy court records that have been sealed. The person who is the subject of the records (*i.e.*, the child) may petition the court for certain persons to see the sealed records. The court may (but is not required to) grant the petition.

Subsection (g) authorizes persons who obtain a sealing order to state that he or she has never been the subject of a truancy court proceeding. Such a statement may be made in response to an application for employment, information, or

licensing. In effect, this provision provides persons whose truant conduct adjudications have been sealed some of the same benefits of orders of nondisclosure and expunctions.

Subsection (h) discusses an act that is one step beyond sealing the records of a truancy case. This subsection deals with the actual, physical destruction of truancy court records. When a person turns 21, he or she can make a motion that previously-sealed records be destroyed. The truancy court can also make such a motion. The judge has the discretion to grant such a motion only if the child has not been convicted of a felony. The judge is not required to grant the motion – even if the movant has never been convicted of a felony.

Family Code Sec. 65.202. CONFIDENTIALITY OF RECORDS. Records and files created under this chapter may be disclosed only to:

(1) the judge of the truancy court, the truant conduct prosecutor, and the staff of the judge and prosecutor;

(2) the child or an attorney for the child;

(3) a governmental agency if the disclosure is required or authorized by law;

(4) a person or entity to whom the child is referred for treatment or services if the agency or institution disclosing the information has entered into a written confidentiality agreement with the person or entity regarding the protection of the disclosed information;

(5) the Texas Department of Criminal Justice and the Texas Juvenile Justice Department for the purpose of maintaining statistical records of recidivism and for diagnosis and classification;

(6) the agency; or

(7) with leave of the truancy court, any other person, agency, or institution having a legitimate interest in the proceeding or in the work of the court.

Commentary by Ted Wood

Source: HB 2398

Effective Date: September 1, 2015

Applicability: The changes in law made by this Act apply only to an offense committed or conduct that occurs on or after the effective date of this Act.

Summary of Changes: As a general rule, records in truant conduct cases are confidential. But, as this statute shows, there are several persons or entities that will still have access to truant conduct case records. The sixth entity is listed as “the agency.” The statute does not make clear what agency is being referenced. Because the identity of the sixth listed entity is unclear, the provision giving access to “the agency” is essentially meaningless.

Family Code Sec. 65.203. DESTRUCTION OF CERTAIN RECORDS. A truancy court shall order the destruction of records relating to allegations of truant conduct that are held by the court or by the prosecutor if a prosecutor decides not to file a petition for an adjudication of truant conduct after a review of the referral under Section 65.053.

Commentary by Ted Wood

Source: HB 2398

Effective Date: September 1, 2015

Applicability: The changes in law made by this Act apply only to an offense committed or conduct that occurs on or after the effective date of this Act.

Summary of Changes: This provision applies to situations in which a truant conduct prosecutor: (1) has been forwarded by the truancy court a school district’s referral of a student for truant conduct; (2) reviews the referral; and (3) decides not to file a petition seeking an adjudication of truant conduct.

In such a situation, the truant conduct prosecutor is required to inform the truancy court and the school district of his or her decision. *See* Section 65.053(b). Upon receiving this information from the prosecutor, the truancy court must issue the order envisioned by Section 65.203. Specifically, this section requires the truancy court to “order the destruction of records relating to allegations of truant conduct that are held by the court or by the prosecutor.”

If the records are destroyed, then obviously they will not be available for inspection by anyone.

Family Code Sec. 65.251. FAILURE TO OBEY TRUANCY COURT ORDER; CHILD IN CONTEMPT OF COURT. (a) If a child fails to obey an order issued by a truancy court under Section 65.103(a) or a child is in direct

contempt of court, the truancy court, after providing notice and an opportunity for a hearing, may hold the child in contempt of court and order either or both of the following:

(1) that the child pay a fine not to exceed \$100; or

(2) that the Department of Public Safety suspend the child's driver's license or permit or, if the child does not have a license or permit, order that the Department of Public Safety deny the issuance of a license or permit to the child until the child fully complies with the court's orders.

(b) If a child fails to obey an order issued by a truancy court under Section 65.103(a) or a child is in direct contempt of court and the child has failed to obey an order or has been found in direct contempt of court on two or more previous occasions, the truancy court, after providing notice and an opportunity for a hearing, may refer the child to the juvenile probation department as a request for truancy intervention, unless the child failed to obey the truancy court order or was in direct contempt of court while 17 years of age or older.

(c) On referral of the child to the juvenile probation department, the truancy court shall provide to the juvenile probation department:

(1) documentation of all truancy prevention measures taken by the originating school district;

(2) documentation of all truancy orders for each of the child's previous truancy referrals, including:

(A) court remedies and documentation of the child's failure to comply with the truancy court's orders, if applicable, demonstrating all interventions that were exhausted by the truancy court; and

(B) documentation describing the child's direct contempt of court, if applicable;

(3) the name, birth date, and last known address of the child and the school in which the child is enrolled;

and

(4) the name and last known address of the child's parent or guardian.

(d) The juvenile probation department may, on review of information provided under Subsection (c):

(1) offer further remedies related to the local plan for truancy intervention strategies adopted under Section 25.0916, Education Code; or

(2) refer the child to a juvenile court for a hearing to be conducted under Section 65.252.

(e) A truancy court may not order the confinement of a child for the child's failure to obey an order of the court issued under Section 65.103(a).

Commentary by Ted Wood

Source: HB 2398

Effective Date: September 1, 2015

Applicability: The changes in law made by this Act apply only to an offense committed or conduct that occurs on or after the effective date of this Act.

Summary of Changes: Subchapter F is the sixth and final subchapter of the new Chapter 65. The subchapter addresses the enforcement of truancy court orders. Section 65.251 is the first of nine sections within the subchapter.

Subsection (a) authorizes a truancy court to hold a child in contempt in two situations. The first situation occurs when a child who has been found to have engaged in truant conduct fails to obey the truancy court's remedial order. The second situation occurs when a child commits an act of direct contempt.

A truancy court can only hold a child in contempt after providing notice and an opportunity for a hearing. Subsection (a) provides two explicit actions that a truancy court can take upon finding a child in contempt. First, the court can order the child to pay a fine of up to \$100. Second, the court can order DPS to suspend a child's driver's license or permit until the child fully complies with the court's remedial orders.

Subsection (b) provides an additional option for dealing with contempt if the contemnor has twice previously been found to be in contempt of court. Specifically, a truancy court may refer the child to the county's juvenile probation department. The juvenile probation department is then to participate in truancy prevention measures. This additional option is available only if the child in question committed the act of contempt while 17 or older.

Subsection (c) instructs truancy courts concerning the documents they send to the juvenile probation department if the court refers a child to the juvenile probation department under Subsection (b).

Subsection (d) details the two options a juvenile probation department has upon receiving a referral under Subsection (b). First, the juvenile probation department may offer further remedies related to the local plan for truancy intervention strategies. Second, the juvenile probation department may refer the child to a juvenile court for a hearing as envisioned under Section 65.252. The truancy court does not direct which of these two options the juvenile probation department is to choose. The decision as to which option to employ is solely the decision of the juvenile probation department.

Subsection (e) makes it clear that a truancy court may not order a child confined to jail for contempt of court.

Family Code Sec. 65.252. PROCEEDINGS IN JUVENILE COURT. (a) After a referral by the local juvenile probation department, the juvenile court prosecutor shall determine if probable cause exists to believe that the child engaged in direct contempt of court or failed to obey an order of the truancy court under circumstances that would constitute contempt of court. On a finding that probable cause exists, the prosecutor shall determine whether to request an adjudication. Not later than the 20th day after the date the juvenile court receives a request for adjudication from the prosecutor, the juvenile court shall conduct a hearing to determine if the child engaged in conduct that constitutes contempt of the order issued by the truancy court or engaged in direct contempt of court.

(b) If the juvenile court finds that the child engaged in conduct that constitutes contempt of the order issued by the truancy court or direct contempt of court, the juvenile court shall:

(1) enter an order requiring the child to comply with the truancy court's order;

(2) forward a copy of the order to the truancy court within five days; and

(3) admonish the child, orally and in writing, of the consequences of subsequent referrals to the juvenile court, including:

(A) a possible charge of delinquent conduct for contempt of the truancy court's order or direct contempt of court; and

(B) a possible detention hearing.

(c) If the juvenile court prosecutor finds that probable cause does not exist to believe that the child engaged in direct contempt or in conduct that constitutes contempt of the order issued by the truancy court, or if the juvenile probation department finds that extenuating circumstances caused the original truancy referral, the juvenile court shall enter an order requiring the child's continued compliance with the truancy court's order and notify the truancy court not later than the fifth day after the date the order is entered.

(d) This section does not limit the discretion of a juvenile prosecutor or juvenile court to prosecute a child for conduct under Section 51.03.

Commentary by Ted Wood

Source: HB 2398

Effective Date: September 1, 2015

Applicability: The changes in law made by this Act apply only to an offense committed or conduct that occurs on or after the effective date of this Act.

Summary of Changes: This statute concerns the proceedings in juvenile court that will occur if: (1) a child has been found to be in contempt of court for a third (or fourth, or fifth, etc.) time; (2) the truancy court chooses to refer the child to the county's juvenile probation department; and (3) the juvenile probation department elects to refer the child to juvenile court.

Subsection (a) places a requirement for the juvenile court prosecutor to take an initial look at the case. The prosecutor must determine whether probable cause exists to believe the child engaged in direct contempt or conduct constituting contempt of court. If the prosecutor determines that probable cause exists, then the prosecutor must decide whether to request an adjudication. This is totally a matter of prosecutorial discretion.

If a juvenile court prosecutor requests an adjudication, the juvenile court must conduct a hearing within 20 days of the request. This provision exists to force juvenile courts to act on these requests promptly. Without such a requirement, a request for adjudication could fall through the cracks and not be acted upon. The purpose of the hearing in juvenile court is to determine if the child engaged in contempt.

Subsection (b) requires the juvenile court to do certain three things if the court finds that the child engaged in contempt. First, the juvenile court is to enter an order requiring the child to comply with the truancy court's orders. Second, the juvenile court must forward a copy of the order to the truancy court within five days. Third, the juvenile court must admonish the child, both orally and in writing, of the consequences of subsequent referrals to juvenile court. One consequence is a possible charge of delinquent conduct. Another consequence is a possible detention hearing.

Subsection (c) speaks to what is to happen if the juvenile prosecutor finds no probable cause to believe the child engaged in contempt. In such an event, the juvenile court is to enter an order requiring continued compliance with the truancy court's remedial order. The juvenile court has five days to notify the truancy court of the order. This is exactly the same thing that happens if the juvenile court finds the child engaged in contempt with one exception. The exception is that the juvenile court does not admonish the child about the consequences of subsequent referrals to juvenile court.

Subsection (d) states that Section 65.252 does not limit the discretion of the juvenile prosecutor to prosecute a child for conduct under Section 51.03, Family Code.

Family Code Sec. 65.253. PARENT OR OTHER PERSON IN CONTEMPT OF COURT. (a) A truancy court may enforce the following orders by contempt:

- (1) an order that a parent of a child, guardian of a child, or any court-appointed guardian ad litem of a child attend an adjudication hearing under Section 65.062(b);
- (2) an order requiring a person other than a child to take a particular action under Section 65.105(a);
- (3) an order that a child's parent, or other person responsible to support the child, reimburse the municipality or county for the cost of the guardian ad litem appointed for the child under Section 65.061(c); and
- (4) an order that a parent, or person other than the child, pay the \$50 court cost under Section 65.107.
- (b) A truancy court may find a parent or person other than the child in direct contempt of the court.
- (c) The penalty for a finding of contempt under Subsection (a) or (b) is a fine in an amount not to exceed \$100.
- (d) In addition to the assessment of a fine under Subsection (c), direct contempt of the truancy court by a parent or person other than the child is punishable by:
 - (1) confinement in jail for a maximum of three days;
 - (2) a maximum of 40 hours of community service; or
 - (3) both confinement and community service.

Commentary by Ted Wood

Source: HB 2398

Effective Date: September 1, 2015

Applicability: The changes in law made by this Act apply only to an offense committed or conduct that occurs on or after the effective date of this Act.

Summary of Changes: The child accused of engaging in truant conduct is not the only individual that a truancy court can hold in contempt. A truancy court can also hold a parent, guardian or guardian ad litem in contempt.

Subsection (a) details four orders that a truancy court can require a parent, guardian or guardian ad litem to take. If the parent (or other person) does not take these actions, the truancy court can enforce these four orders by holding the parent (or other person) in contempt.

Subsection (b) explains that a parent or other person besides the child may be found to be in direct contempt of court.

Subsection (c) authorizes a truancy court to fine a person in contempt up to \$100.

Subsection (d) authorizes different consequences including confinement in jail for up to three days and up to 40 hours of community service.

Family Code Sec. 65.254. WRIT OF ATTACHMENT. A truancy court may issue a writ of attachment for a person who violates an order entered under Section 65.057(c). The writ of attachment is executed in the same manner as in a criminal proceeding as provided by Chapter 24, Code of Criminal Procedure.

Commentary by Ted Wood

Source: HB 2398

Effective Date: September 1, 2015

Applicability: The changes in law made by this Act apply only to an offense committed or conduct that occurs on or after the effective date of this Act.

Summary of Changes: The statute references an order under Section 65.057(c). This is an order directing a person with physical custody and control of a child to bring the child to a truancy court hearing. A person who violates the order can be the object of a writ of attachment issued by the truancy court. Chapter 24 of the Code of Criminal Procedure dictates the writ-of-attachment procedures.

Family Code Sec. 65.255. ENTRY OF TRUANCY COURT ORDER AGAINST PARENT OR OTHER ELIGIBLE PERSON. (a) The truancy court shall:

(1) provide notice to a person who is the subject of a proposed truancy court order under Section 65.253;
and

(2) provide a sufficient opportunity for the person to be heard regarding the proposed order.

(b) A truancy court order under Section 65.253 must be in writing and a copy promptly furnished to the parent or other eligible person.

(c) The truancy court may require the parent or other eligible person to provide suitable identification to be included in the court's file. Suitable identification includes fingerprints, a driver's license number, a social security number, or similar indicia of identity.

Commentary by Ted Wood

Source: HB 2398

Effective Date: September 1, 2015

Applicability: The changes in law made by this Act apply only to an offense committed or conduct that occurs on or after the effective date of this Act.

Summary of Changes: Section 65.255 concerns orders under Section 65.253. The orders under Section 65.253 are directed at parents, guardians, and guardians ad litem. The statute requires the object of such an order to be given notice and an opportunity to be heard. The order must be in writing and must be promptly furnished to the parent or other person. The statute authorizes truancy courts to require the parent or other person to provide suitable identification to be included in the court's file.

Family Code Sec. 65.256. APPEAL. (a) The parent or other eligible person against whom a final truancy court order has been entered under Section 65.253 may appeal as provided by law from judgments entered by a justice court in civil cases.

(b) Rule 506, Texas Rules of Civil Procedure, applies to an appeal under this section, except an appeal bond is not required.

(c) The pendency of an appeal initiated under this section does not abate or otherwise affect the proceedings in the truancy court involving the child.

Commentary by Ted Wood

Source: HB 2398

Effective Date: September 1, 2015

Applicability: The changes in law made by this Act apply only to an offense committed or conduct that occurs on or after the effective date of this Act.

Summary of Changes: Section 65.256 creates a right to appeal for a parent or other person against whom a final truancy court order has been made.

Family Code Sec. 65.257. MOTION FOR ENFORCEMENT. (a) The state may initiate enforcement of a truancy court order under Section 65.253 against a parent or person other than the child by filing a written motion. In ordinary and concise language, the motion must:

- (1) identify the provision of the order allegedly violated and sought to be enforced;
- (2) state specifically and factually the manner of the person's alleged noncompliance;
- (3) state the relief requested; and
- (4) contain the signature of the party filing the motion.

(b) The state must allege the particular violation by the person of the truancy court order that the state had a reasonable basis for believing the person was violating when the motion was filed.

(c) The truancy court may also initiate enforcement of an order under this section on its own motion.

Commentary by Ted Wood

Source: HB 2398

Effective Date: September 1, 2015

Applicability: The changes in law made by this Act apply only to an offense committed or conduct that occurs on or after the effective date of this Act.

Summary of Changes: This statute allows the State to make a motion for enforcement in regard to an order of a truancy court directed at a parent or other adult. But the truancy court is also given power to initiate enforcement of an order on its own motion.

Family Code Sec. 65.258. NOTICE AND APPEARANCE. (a) On the filing of a motion for enforcement, the truancy court shall by written notice set the date, time, and place of the hearing and order the person against whom enforcement is sought to appear and respond to the motion.

(b) The notice must be given by personal service or by certified mail, return receipt requested, on or before the 10th day before the date of the hearing on the motion. The notice must include a copy of the motion for enforcement. Personal service must comply with the Code of Criminal Procedure.

(c) If a person moves to strike or specially excepts to the motion for enforcement, the truancy court shall rule on the exception or motion to strike before the court hears evidence on the motion for enforcement. If an exception is sustained, the court shall give the movant an opportunity to replead and continue the hearing to a designated date and time without the requirement of additional service.

(d) If a person who has been personally served with notice to appear at the hearing does not appear, the truancy court may not hold the person in contempt, but may issue a warrant for the arrest of the person.

Commentary by Ted Wood

Source: HB 2398

Effective Date: September 1, 2015

Applicability: The changes in law made by this Act apply only to an offense committed or conduct that occurs on or after the effective date of this Act.

Summary of Changes: Section 65.258 sets out details as to the handling of a motion for enforcement in regard to the order of a truancy court against a parent or other adult.

Family Code Sec. 65.259. CONDUCT OF ENFORCEMENT HEARING. (a) The movant must prove beyond a reasonable doubt that the person against whom enforcement is sought engaged in conduct constituting contempt of a reasonable and lawful court order as alleged in the motion for enforcement.

(b) The person against whom enforcement is sought has a privilege not to be called as a witness or otherwise to incriminate himself or herself.

(c) The truancy court shall conduct the enforcement hearing without a jury.

(d) The truancy court shall include in the court's judgment:

(1) findings for each violation alleged in the motion for enforcement; and

(2) the punishment, if any, to be imposed.

(e) If the person against whom enforcement is sought was not represented by counsel during any previous court proceeding involving a motion for enforcement, the person may, through counsel, raise any defense or affirmative defense to the proceeding that could have been asserted in the previous court proceeding that was not asserted because the person was not represented by counsel.

(f) It is an affirmative defense to enforcement of a truancy court order under Section 65.253 that the court did not provide the parent or other eligible person with due process of law in the proceeding in which the court entered the order.

Commentary by Ted Wood

Source: HB 2398

Effective Date: September 1, 2015

Applicability: The changes in law made by this Act apply only to an offense committed or conduct that occurs on or after the effective date of this Act.

Summary of Changes: Section 65.259 explains the details of a hearing on a motion for enforcement in regard to the order of a truancy court against a parent or other adult.

Family Code Sec. 264.304. HEARING; DETERMINATION OF AT-RISK CHILD. (c) The court shall determine that the child is an at-risk child if the court finds that the child has engaged in the following conduct:

(1) conduct, other than a traffic offense and except as provided by Subsection (d), that violates:

(A) the penal laws of this state; or

(B) the penal ordinances of any political subdivision of this state;

(2) the unexcused voluntary absence of the child on 10 or more days or parts of days within a six-month period [~~or three or more days or parts of days within a four-week period~~] from school without the consent of the child's parent, managing conservator, or guardian;

(3) the voluntary absence of the child from the child's home without the consent of the child's parent, managing conservator, or guardian for a substantial length of time or without intent to return;

(4) conduct that violates the laws of this state prohibiting driving while intoxicated or under the influence of intoxicating liquor (first or second offense) or driving while under the influence of any narcotic drug or of any other drug to a degree that renders the child incapable of safely driving a vehicle (first or second offense); or

(5) conduct that evidences a clear and substantial intent to engage in any behavior described by Subdivisions (1)-(4).

Commentary by Ted Wood

Source: HB 2398

Effective Date: September 1, 2015

Applicability: The changes in law made by this Act apply only to an offense committed or conduct that occurs on or after the effective date of this Act.

Summary of Changes: The amendment to this statute is a recognition that missing school on three or more days or parts of days no longer is a violation of the law.

Government Code Sec. 26.045. ORIGINAL CRIMINAL JURISDICTION. (d) A county court in a county with a population of 1.75 million or more has original jurisdiction over cases alleging a violation of Section 25.093 [~~or 25.094~~], Education Code, or alleging truant conduct under Section 65.003(a), Family Code.

Commentary by Ted Wood

Source: HB 2398

Effective Date: September 1, 2015

Applicability: The changes in law made by this Act apply only to an offense committed or conduct that occurs on or after the effective date of this Act.

Summary of Changes: Section 26.045 is the statute setting out the jurisdiction of the constitutional county courts. Generally, constitutional county courts do not have jurisdiction of Class C misdemeanors. But Subsection (d) has for some time now made an exception for failure-to-attend-school cases in counties with populations of 1.75 million or more. HB 2398 repeals the offense of failure to attend school and creates the concept of truant conduct that will be handled in truancy courts. The amendment to Section 26.045 recognizes that constitutional county courts in counties with populations of 1.75 million or more now have truancy court jurisdiction.

The title to Section 26.045 is still shown as “Original Criminal Jurisdiction.” This is because the other subsections in Section 26.045 do concern the jurisdiction of the county court at law in true criminal cases. Under the laws established by HB 2398, cases involving truant conduct are not criminal cases. Thus, the placement of Subsection (d) in Section 26.045 is probably not the most logical placement.

Government Code Sec. 29.003. JURISDICTION. (i) A municipality may enter into an agreement with a contiguous municipality or a municipality with boundaries that are within one-half mile of the municipality seeking to enter into the agreement to establish concurrent jurisdiction of the municipal courts in the municipalities and provide original jurisdiction to a municipal court in which a case is brought as if the municipal court were located in the municipality in which the case arose, for:

(1) all cases in which either municipality has jurisdiction under Subsection (a); and

(2) cases that arise under Section 821.022, Health and Safety Code, or Section 65.003(a) [25.094], Family [Education] Code.

Commentary by Ted Wood

Source: HB 2398

Effective Date: September 1, 2015

Applicability: The changes in law made by this Act apply only to an offense committed or conduct that occurs on or after the effective date of this Act.

Summary of Changes: Section 29.003 sets out the jurisdiction of municipal courts. Subsection (i) allows certain municipal courts to enter into an agreement to establish concurrent jurisdiction with each other in certain cases. Prior to HB 2398, one of the specified types of cases in which this concurrent jurisdiction could be exercised was failure-to-attend-school cases. HB 2398’s amendment to this statute changes the type of case to truant conduct cases. This change recognizes the fact that failure-to-attend-school cases no longer exist and have been replaced by truant conduct cases.

Government Code Sec. 36.001. JUDICIAL DONATION TRUST FUNDS ESTABLISHMENT OF TRUST FUNDS. (a) The governing body of a municipality or the commissioners court of a county may establish a judicial donation trust fund as a separate account held outside the municipal or county treasury to be used in accordance with this chapter.

(b) The governing body of a municipality or the commissioners court of a county may accept a gift, grant, donation, or other consideration from a public or private source that is designated for the judicial donation trust fund.

(c) Money received under Subsection (b) shall be deposited in the judicial donation trust fund and may only be disbursed in accordance with this chapter.

(d) Interest and income from the assets of the judicial donation trust fund shall be credited to and deposited in the trust fund.

Commentary by Ted Wood

Source: HB 2398

Effective Date: September 1, 2015

Applicability: The changes in law made by this Act apply only to an offense committed or conduct that occurs on or after the effective date of this Act.

Summary of Changes: Chapter 36 is an entirely new chapter the Government Code. The new chapter concerns “judicial donation trust funds.” The new chapter consists of three sections – Sections 36.001, 36.002, and 36.003.

Section 36.001 authorizes commissioners courts and city councils to establish judicial donation trust funds. The establishment of these funds is totally discretionary. The fund is supposed to be a separate account completely outside the municipal or county treasury.

The statute authorizes commissioners court or city council to accept gifts, grants, and donations that is designated to go to the fund. Interest and income from the assets of the fund stay in the fund.

Government Code Sec. 36.002. PROCEDURES AND ELIGIBILITY. The governing body of a municipality or the commissioners court of a county shall:

(1) adopt the procedures necessary to receive and disburse money from the judicial donation trust fund under this chapter; and

(2) establish eligibility requirements for disbursement of money under this chapter to assist needy children or families who appear before a county, justice, or municipal court for a criminal offense or truant conduct, as applicable, by providing money for resources and services that eliminate barriers to school attendance or that seek to prevent criminal behavior.

Commentary by Ted Wood

Source: HB 2398

Effective Date: September 1, 2015

Applicability: The changes in law made by this Act apply only to an offense committed or conduct that occurs on or after the effective date of this Act.

Summary of Changes: This statute authorizes commissioners courts and city councils to adopt procedures necessary to receive money and disburse money from the judicial donation trust fund. The statute discloses the purpose of the fund – namely, to assist needy children or families who appear before selected courts. The selected courts are county courts, justice courts, municipal courts.

Commissioners courts and city councils are directed to establish eligibility requirement for receiving funds. One statutory requirement is that a potential recipient appear before one of the selected courts for a criminal offense or for truant conduct. Of course, a person will never appear before a county, justice or municipal court for truant conduct. But a person may appear before one of these courts acting as a truancy court in response to an allegation of truant conduct.

The envisioned assistance is supposed to go “for resources and services that eliminate barriers to school attendance of that seek to prevent criminal behavior.” Clearly, the funds are envisioned to prevent criminal acts and truant conduct.

Government Code Sec. 36.003. USE OF FUNDS IN ACCOUNT. (a) The judge of a county, justice, or municipal court, in accordance with Section 36.002, may award money from a judicial donation trust fund established under Section 36.001 to eligible children or families who appear before the court for a truancy or curfew violation or in another misdemeanor offense proceeding before the court.

(b) A judge of a county, justice, or municipal court may order the municipal or county treasurer to issue payment from the judicial donation trust fund for money awarded under this section.

Commentary by Ted Wood

Source: HB 2398

Effective Date: September 1, 2015

Applicability: The changes in law made by this Act apply only to an offense committed or conduct that occurs on or after the effective date of this Act.

Summary of Changes: Section 36.003 offers further detail as to how money in a judicial donation trust fund may be used. The judge may award money fund money to eligible children or families who appear before the court for a truancy or curfew violation. The statute makes no mention of truancy courts, but seems to envision that the term “county, justice or municipal court” includes those courts acting as truancy courts.

Government Code Sec. 54.1172. APPOINTMENT. (a) The county judge may appoint one or more part-time or full-time magistrates to hear a matter alleging a violation of Section 25.093 [~~or 25.094~~], Education Code, or alleging truant conduct under Section 65.003(a), Family Code.

Commentary by Ted Wood

Source: HB 2398

Effective Date: September 1, 2015

Applicability: The changes in law made by this Act apply only to an offense committed or conduct that occurs on or after the effective date of this Act.

Summary of Changes: For many years now, Section 26.045(d) of the Government Code has given constitutional county courts in extremely large Texas counties special criminal jurisdiction. This is jurisdiction that constitutional county courts in other counties do not have. Specifically, constitutional county courts in these large counties were given special jurisdiction to hear failure-to-attend-school cases and parent-contributing-to-nonattendance cases. Statutory county courts in these large counties also had jurisdiction in these cases pursuant to Section 25.0003(a), Government Code.

At one time, this special jurisdiction applied only in counties with populations of 2 million or more. But recently, the population threshold was dropped to 1.75 million. The relevant time period for determining the population of a county for purposes of statutory interpretation is the 2010 decennial census. *See* Tex. Gov’t Code Ann. § 312.011(20) (West 2015). According to the 2010 decennial census, only three counties meet the 1.75 million population requirement – Dallas County, Harris County, and Tarrant County.

While county-level courts in these three counties were given this special jurisdiction, there was no intent that these courts would actually hear the cases. Instead, the intent was that the county judge would appoint magistrates to handle failure-to-attend-school cases and parent-contributing-to-nonattendance cases. Section 54.1172 authorizes the appointment of these magistrates. As a practical matter, Dallas County is the only one of the three eligible counties in which special magistrates have been appointed to handle these matters. In Harris County and Tarrant County, justices of the peace and municipal judges have been handling failure-to-attend-school cases and parent-contributing-to-nonattendance cases.

The intent of HB 2398 was to enable to Dallas County to continue to utilize the appointed masters. House Bill 2398 did not do away with parent-contributing-to-nonattendance cases. Therefore no amendment to Section 54.1172 was necessary to enable masters to continue to hear such cases. But HB 2398 eliminated failure-to-attend-school cases and replaced them with truant conduct cases handled by truancy courts. Section 54.1172 had to be amended to permit the appointed masters to hear cases involving allegations of truant conduct. Accordingly, the amendment to Section 54.1172 eliminates the reference to failure-to-attend-school cases under Section 25.094, Education Code. In place of the reference to Section 25.094 is a reference to Section 65.003 – the new Family Code provision defining the concept of “truant conduct.”

Government Code Sec. 54.1952. APPOINTMENT. (a) The county judge may appoint one or more part-time or full-time magistrates to hear a matter alleging a violation of Section 25.093 [~~or 25.094~~], Education Code, or alleging truant conduct under Section 65.003(a), Family Code, referred to the magistrate by a court having jurisdiction over the matter.

Commentary by Ted Wood

Source: HB 2398

Effective Date: September 1, 2015

Applicability: The changes in law made by this Act apply only to an offense committed or conduct that occurs on or after the effective date of this Act.

Summary of Changes: Subchapter JJ, Chapter 54, Government Code concerns magistrates in counties with more than 585,000 people that are contiguous to a county of over 4 million. There is only one county that meets these requirements – Fort Bend County. Section 54.1952 has for a number of years permitted the constitutional county judge to appoint one or more masters to hear certain cases. Those cases are failure-to-attend-school cases and parent-contributing-to-nonattendance cases. The constitutional county court does not actually have jurisdiction of these cases. But the courts with jurisdiction of these cases are permitted to refer them to the master appointed by the county judge.

Prior to the HB 2398 decriminalization of truancy, the cases involved in this system included failure to attend school. Of course, HB 2398 has repealed the statute making failure-to-attend-school a crime and has replaced the statute with the concept of truant conduct. The amendment to Section 54.1952 eliminates the reference to Section 25.094, Transportation Code (failure-to-attend-school). The amendment replaces that reference with a reference to Section 65.003(a), Family Code (truant conduct). The amendment allows masters to hear truant conduct cases in Fort Bend County.

Government Code Sec. 54.1955. POWERS. (a) Except as limited by an order of the county judge, a magistrate appointed under this subchapter may:

- (1) conduct hearings;
- (2) hear evidence;
- (3) issue summons for the appearance of witnesses;
- (4) examine witnesses;
- (5) swear witnesses for hearings;
- (6) recommend rulings or orders or a judgment in a case;
- (7) regulate proceedings in a hearing;
- (8) accept a plea of guilty or nolo contendere in a case alleging a violation of Section 25.093 [~~or 25.094~~],

Education Code, and assess a fine or court costs or order community service in satisfaction of a fine or costs in accordance with Article 45.049, Code of Criminal Procedure;

(9) for a violation of Section 25.093, Education Code, enter an order suspending a sentence or deferring a final disposition that includes at least one of the requirements listed in Article 45.051, Code of Criminal Procedure;

(10) for an uncontested adjudication of truant conduct under Section 65.003, Family Code, accept a plea to the petition or a stipulation of evidence, and take any other action authorized under Chapter 65, Family Code; and

(11) perform any act and take any measure necessary and proper for the efficient performance of the duties required by the referral order, including the entry of an order that includes at least one of the remedial options [~~requirements~~] in Section 65.103, Family Code [~~Article 45.054, Code of Criminal Procedure; and~~

~~[(11) if the magistrate finds that a child as defined by Article 45.058, Code of Criminal Procedure, has violated an order under Article 45.054, Code of Criminal Procedure, proceed as authorized by Article 45.050, Code of Criminal Procedure].~~

(b) 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 [~~or 25.094~~], Education Code, or a case of truant conduct under Section 65.003, Family Code, a magistrate may not rule on the issue but may make findings, conclusions, and recommendations on the issue.

Commentary by Ted Wood

Source: HB 2398

Effective Date: September 1, 2015

Applicability: The changes in law made by this Act apply only to an offense committed or conduct that occurs on or after the effective date of this Act.

Summary of Changes: This statute concerns the powers of a master who has been appointed to handle allegations of truant conduct in Fort Bend County. *See* analysis of Section 54.1952 for background. The statute is amended to make clear the fact that masters have power to act in cases of truant conduct that are normally handled by truancy courts.

Government Code Sec. 54.1956. NOT GUILTY PLEA ENTERED OR DENIAL OF ALLEGED CONDUCT. (a) On entry of a not guilty plea for a violation of Section 25.093, Education Code, the magistrate shall refer the case back to the referring court for all further pretrial proceedings and a full trial on the merits before the court or a jury.

(b) On denial by a child of truant conduct, as defined by Section 65.003(a), Family Code, the magistrate shall refer the case to the appropriate truancy court for adjudication.

Commentary by Ted Wood

Source: HB 2398

Effective Date: September 1, 2015

Applicability: The changes in law made by this Act apply only to an offense committed or conduct that occurs on or after the effective date of this Act.

Summary of Changes: This statute concerns the powers of a master who has been appointed to handle allegations of truant conduct in Fort Bend County. *See* analysis of Section 54.1952 for background. The amendment clarifies that magistrates hearing allegations of truant conduct must refer the case back to the truancy court when a student denies the allegations.

Government Code Sec. 71.0352. JUVENILE ~~DATA~~ ~~[DATE]~~: JUSTICE, MUNICIPAL, AND TRUANCY ~~[JUVENILE]~~ COURTS. As a component of the official monthly report submitted to the Office of Court Administration of the Texas Judicial System:

(1) a justice court, ~~and~~ municipal court, or truancy court ~~[courts]~~ shall report the number of cases filed for ~~[the following offenses]~~:

(A) truant conduct under Section 65.003(a), Family Code ~~[failure to attend school under Section 25.094, Education Code]~~;

(B) the offense of parent contributing to nonattendance under Section 25.093, Education Code; and

(C) a violation of a local daytime curfew ordinance adopted under Section 341.905 or 351.903, Local Government Code; and

(2) in cases in which a child fails to obey an order of a justice court, ~~[or]~~ municipal court, or truancy court under circumstances that would constitute contempt of court, the justice court, ~~[or]~~ municipal court, or truancy court shall report the number of incidents in which the child is:

(A) referred to the appropriate juvenile court for delinquent conduct as provided by Article 45.050(c)(1), Code of Criminal Procedure, or ~~and~~ Section 65.251 ~~[54.03(a)(2)]~~, Family Code; or

(B) held in contempt, fined, or denied driving privileges as provided by Article 45.050(c)(2), Code of Criminal Procedure, or Section 65.251, Family Code.

Commentary by Ted Wood

Source: HB 2398

Effective Date: September 1, 2015

Applicability: The changes in law made by this Act apply only to an offense committed or conduct that occurs on or after the effective date of this Act.

Summary of Changes: Section 71.0352 sets out specific court case statistics that must be reported to the Office of Court Administration [OCA] each month. The amendment to this statute recognizes the existence of truancy courts and requires that certain truancy court activity statistics be reported to OCA.

Government Code Sec. 102.021. COURT COSTS ON CONVICTION: CODE OF CRIMINAL PROCEDURE. A person convicted of an offense shall pay the following under the Code of Criminal Procedure, in addition to all other costs:

(1) court cost on conviction of any offense, other than a conviction of an offense relating to a pedestrian or the parking of a motor vehicle (Art. 102.0045, Code of Criminal Procedure) . . . \$4;

(2) a fee for services of prosecutor (Art. 102.008, Code of Criminal Procedure) . . . \$25;

(3) fees for services of peace officer:

(A) issuing a written notice to appear in court for certain violations (Art. 102.011, Code of Criminal Procedure) . . . \$5;

(B) executing or processing an issued arrest warrant, capias, or capias pro fine (Art. 102.011, Code of Criminal Procedure) . . . \$50;

(C) summoning a witness (Art. 102.011, Code of Criminal Procedure) . . . \$5;

(D) serving a writ not otherwise listed (Art. 102.011, Code of Criminal Procedure) . . . \$35;

(E) taking and approving a bond and, if necessary, returning the bond to courthouse (Art. 102.011, Code of Criminal Procedure) . . . \$10;

(F) commitment or release (Art. 102.011, Code of Criminal Procedure) . . . \$5;

(G) summoning a jury (Art. 102.011, Code of Criminal Procedure) . . . \$5;

(H) attendance of a prisoner in habeas corpus case if prisoner has been remanded to custody or held to bail (Art. 102.011, Code of Criminal Procedure) . . . \$8 each day;

(I) mileage for certain services performed (Art. 102.011, Code of Criminal Procedure) . . . \$0.29 per mile; and

(J) services of a sheriff or constable who serves process and attends examining trial in certain cases (Art. 102.011, Code of Criminal Procedure) . . . not to exceed \$5;

(4) services of a peace officer in conveying a witness outside the county (Art. 102.011, Code of Criminal Procedure) . . . \$10 per day or part of a day, plus actual necessary travel expenses;

(5) overtime of peace officer for time spent testifying in the trial or traveling to or from testifying in the trial (Art. 102.011, Code of Criminal Procedure) . . . actual cost;

(6) court costs on an offense relating to rules of the road, when offense occurs within a school crossing zone (Art. 102.014, Code of Criminal Procedure) . . . \$25;

(7) court costs on an offense of passing a school bus (Art. 102.014, Code of Criminal Procedure) . . . \$25;

(8) court costs on an offense of parent contributing to student nonattendance [~~truancy or contributing to truancy~~] (Art. 102.014, Code of Criminal Procedure) . . . \$20;

(9) cost for visual recording of intoxication arrest before conviction (Art. 102.018, Code of Criminal Procedure) . . . \$15;

(10) cost of certain evaluations (Art. 102.018, Code of Criminal Procedure) . . . actual cost;

(11) additional costs attendant to certain intoxication convictions under Chapter 49, Penal Code, for emergency medical services, trauma facilities, and trauma care systems (Art. 102.0185, Code of Criminal Procedure) . . . \$100;

(12) additional costs attendant to certain child sexual assault and related convictions, for child abuse prevention programs (Art. 102.0186, Code of Criminal Procedure) . . . \$100;

(13) court cost for DNA testing for certain felonies (Art. 102.020(a)(1), Code of Criminal Procedure) . . . \$250;

(14) court cost for DNA testing for the offense of public lewdness or indecent exposure (Art. 102.020(a)(2), Code of Criminal Procedure) . . . \$50;

(15) court cost for DNA testing for certain felonies (Art. 102.020(a)(3), Code of Criminal Procedure) . . . \$34;

(16) if required by the court, a restitution fee for costs incurred in collecting restitution installments and for the compensation to victims of crime fund (Art. 42.037, Code of Criminal Procedure) . . . \$12;

(17) if directed by the justice of the peace or municipal court judge hearing the case, court costs on conviction in a criminal action (Art. 45.041, Code of Criminal Procedure) . . . part or all of the costs as directed by the judge; and

(18) costs attendant to convictions under Chapter 49, Penal Code, and under Chapter 481, Health and Safety Code, to help fund drug court programs established under Chapter 122, 123, 124, or 125, Government Code, or former law (Art. 102.0178, Code of Criminal Procedure) . . . \$60.

Commentary by Ted Wood

Source: HB 2398

Effective Date: September 1, 2015

Applicability: The changes in law made by this Act apply only to an offense committed or conduct that occurs on or after the effective date of this Act.

Summary of Changes: Section 102.021 is a summary listing of court costs to be paid upon conviction of a criminal offense. The amendment to this statute recognizes that HB 2398 has done away with failure-to-appear-cases. Accordingly, there is no longer any \$20 court cost for a conviction for failure to attend school. But the court cost remains in parent-contributing-to-nonattendance cases because that particular criminal act is not repealed. This summary statute merely recognizes the changes made to the foundational court cost statute – Article 102.014 of the Code of Criminal Procedure.

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

- (1) a personal bond fee (Art. 17.42, Code of Criminal Procedure) . . . the greater of \$20 or three percent of the amount of the bail fixed for the accused;
- (2) cost of electronic monitoring as a condition of release on personal bond (Art. 17.43, Code of Criminal Procedure) . . . actual cost;
- (3) a fee for verification of and monitoring of motor vehicle ignition interlock (Art. 17.441, Code of Criminal Procedure) . . . not to exceed \$10;
- (3-a) costs associated with operating a global positioning monitoring system as a condition of release on bond (Art. 17.49(b)(2), Code of Criminal Procedure) . . . actual costs, subject to a determination of indigency;
- (3-b) costs associated with providing a defendant's victim with an electronic receptor device as a condition of the defendant's release on bond (Art. 17.49(b)(3), Code of Criminal Procedure) . . . actual costs, subject to a determination of indigency;
- (4) repayment of reward paid by a crime stoppers organization on conviction of a felony (Art. 37.073, Code of Criminal Procedure) . . . amount ordered;
- (5) reimbursement to general revenue fund for payments made to victim of an offense as condition of community supervision (Art. 42.12, Code of Criminal Procedure) . . . not to exceed \$50 for a misdemeanor offense or \$100 for a felony offense;
- (6) payment to a crime stoppers organization as condition of community supervision (Art. 42.12, Code of Criminal Procedure) . . . not to exceed \$50;
- (7) children's advocacy center fee (Art. 42.12, Code of Criminal Procedure) . . . not to exceed \$50;
- (8) family violence center fee (Art. 42.12, Code of Criminal Procedure) . . . \$100;
- (9) community supervision fee (Art. 42.12, Code of Criminal Procedure) . . . not less than \$25 or more than \$60 per month;
- (10) additional community supervision fee for certain offenses (Art. 42.12, Code of Criminal Procedure) . . . \$5 per month;
- (11) for certain financially able sex offenders as a condition of community supervision, the costs of treatment, specialized supervision, or rehabilitation (Art. 42.12, Code of Criminal Procedure) . . . all or part of the reasonable and necessary costs of the treatment, supervision, or rehabilitation as determined by the judge;
- (12) fee for failure to appear for trial in a justice or municipal court if a jury trial is not waived (Art. 45.026, Code of Criminal Procedure) . . . costs incurred for impaneling the jury;
- (13) costs of certain testing, assessments, or programs during a deferral period (Art. 45.051, Code of Criminal Procedure) . . . amount ordered;
- (14) special expense on dismissal of certain misdemeanor complaints (Art. 45.051, Code of Criminal Procedure) . . . not to exceed amount of fine assessed;
- (15) an additional fee:
 - (A) for a copy of the defendant's driving record to be requested from the Department of Public Safety by the judge (Art. 45.0511(c-1), Code of Criminal Procedure) . . . amount equal to the sum of the fee established by Section 521.048, Transportation Code, and the state electronic Internet portal fee;
 - (B) as an administrative fee for requesting a driving safety course or a course under the motorcycle operator training and safety program for certain traffic offenses to cover the cost of administering the article (Art. 45.0511(f)(1), Code of Criminal Procedure) . . . not to exceed \$10; or
 - (C) for requesting a driving safety course or a course under the motorcycle operator training and safety program before the final disposition of the case (Art. 45.0511(f)(2), Code of Criminal Procedure) . . . not to exceed the maximum amount of the fine for the offense committed by the defendant;
- (16) a request fee for teen court program (Art. 45.052, Code of Criminal Procedure) . . . \$20, if the court ordering the fee is located in the Texas-Louisiana border region, but otherwise not to exceed \$10;
- (17) a fee to cover costs of required duties of teen court (Art. 45.052, Code of Criminal Procedure) . . . \$20, if the court ordering the fee is located in the Texas-Louisiana border region, but otherwise \$10;
- (18) a mileage fee for officer performing certain services (Art. 102.001, Code of Criminal Procedure) . . . \$0.15 per mile;
- (19) certified mailing of notice of hearing date (Art. 102.006, Code of Criminal Procedure) . . . \$1, plus postage;
- (20) certified mailing of certified copies of an order of expunction (Art. 102.006, Code of Criminal Procedure) . . . \$2, plus postage;
- (20-a) a fee to defray the cost of notifying state agencies of orders of expungement (Art. 45.0216, Code of Criminal Procedure) . . . \$30 per application;

~~[(20 b) 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) sight orders:

(A) if the face amount of the check or sight order does not exceed \$10 (Art. 102.007, Code of Criminal Procedure) . . . not to exceed \$10;

(B) if the face amount of the check or sight order is greater than \$10 but does not exceed \$100 (Art. 102.007, Code of Criminal Procedure) . . . not to exceed \$15;

(C) if the face amount of the check or sight order is greater than \$100 but does not exceed \$300 (Art. 102.007, Code of Criminal Procedure) . . . not to exceed \$30;

(D) if the face amount of the check or sight order is greater than \$300 but does not exceed \$500 (Art. 102.007, Code of Criminal Procedure) . . . not to exceed \$50; and

(E) if the face amount of the check or sight order is greater than \$500 (Art. 102.007, Code of Criminal Procedure) . . . not to exceed \$75;

(22) fees for a pretrial intervention program:

(A) a supervision fee (Art. 102.012(a), Code of Criminal Procedure) . . . \$60 a month plus expenses; and

(B) a district attorney, criminal district attorney, or county attorney administrative fee (Art. 102.0121, Code of Criminal Procedure) . . . not to exceed \$500;

(23) parking fee violations for child safety fund in municipalities with populations:

(A) greater than 850,000 (Art. 102.014, Code of Criminal Procedure) . . . not less than \$2 and not to exceed \$5; and

(B) less than 850,000 (Art. 102.014, Code of Criminal Procedure) . . . not to exceed \$5;

(24) an administrative fee for collection of fines, fees, restitution, or other costs (Art. 102.072, Code of Criminal Procedure) . . . not to exceed \$2 for each transaction; and

(25) a collection fee, if authorized by the commissioners court of a county or the governing body of a municipality, for certain debts and accounts receivable, including unpaid fines, fees, court costs, forfeited bonds, and restitution ordered paid (Art. 103.0031, Code of Criminal Procedure) . . . 30 percent of an amount more than 60 days past due.

Commentary by Ted Wood

Source: HB 2398

Effective Date: September 1, 2015

Applicability: The changes in law made by this Act apply only to an offense committed or conduct that occurs on or after the effective date of this Act.

Summary of Changes: Section 103.021 is a summary statute that lists certain court costs and fees. The amendment to this statute eliminates a reference to a \$30 fee that is called for by Article 45.055 of the Code of Criminal Procedure. Article 45.055 concerns expunctions in failure-to-attend-school cases. Because HB 2398 repeals the statute making the failure to attend school a criminal offense, HB 2398 also repeals Article 45.055. Because Article 45.055 is repealed, the \$30 expunction fee is also eliminated. Accordingly, there should be no mention of the fee in the summary statute.

Government Code [Sec. 103.035. ADDITIONAL COSTS IN TRUANCY CASES: FAMILY CODE.](#) A party to a truancy case in a truancy court shall pay court costs of \$50 under Section 65.107, Family Code, if ordered by the truancy court.

Commentary by Ted Wood

Source: HB 2398

Effective Date: September 1, 2015

Applicability: The changes in law made by this Act apply only to an offense committed or conduct that occurs on or after the effective date of this Act.

Summary of Changes: HB 2398 creates a new \$50 court cost. The cost is to be paid (generally) upon a finding that a student has engaged in truant conduct. The statute calling for this new court cost is Section 65.107, Family Code. The creation of a new Section 103.035 is to list this new court cost in that part of the Government Code that summarizes court costs.

Local Government Code Sec. 81.032. ACCEPTANCE OF DONATIONS AND BEQUESTS. The commissioners court may accept a gift, grant, donation, bequest, or devise of money or other property on behalf of the county, including a donation under Chapter 36, Government Code, for the purpose of performing a function conferred by law on the county or a county officer.

Commentary by Ted Wood

Source: HB 2398

Effective Date: September 1, 2015

Applicability: The changes in law made by this Act apply only to an offense committed or conduct that occurs on or after the effective date of this Act.

Summary of Changes: Section 81.032 authorizes commissioners courts to accept gifts. The amendment explicitly permits commissioners courts to accept donations to a judicial donation trust fund. This explicit authorization is probably not necessary to permit donations to the judicial donation trust fund. But the explicit statement removes any possible doubt about the county receiving donations to the judicial donation trust fund.

SECTION 41. The following laws are repealed:

- (1) Articles 45.054 and 45.055, Code of Criminal Procedure;
- (2) Sections 25.094 and 25.0916(d), Education Code; and
- (3) Sections 51.03(d), (e-1), and (g), 51.04(h), 51.08(e), 54.021, 54.0402, 54.041(f) and (g), and 54.05(a-

1), Family Code.

Commentary by Ted Wood

Source: HB 2398

Effective Date: September 1, 2015

Applicability: The changes in law made by this Act apply only to an offense committed or conduct that occurs on or after the effective date of this Act.

Summary of Changes: Section 25.094 makes failure to attend school a crime. The first step in the decriminalization of truancy is to repeal this statute. This is exactly why Section 25.094 is repealed. The repeal begins a chain reaction that necessitates changes to (or repeals of) other statutes.

Section 25.0916 deals with uniform truancy policies in certain counties. Subsection (d) contained a deadline (September 1, 2013) for action in the past. That deadline has come and gone and is no longer relevant. Accordingly, Subsection (d) is repealed.

Article 45.054 sets out details of handling of failure-to-attend-school cases. But with the repeal of the failure-to-attend-school statute, these procedures and remedies would make no sense in the Code of Criminal Procedure. Accordingly, HB 2398 repeals Article 45.054. But this does not mean the procedures and remedies should be abandoned and forgotten. The remedies appear almost totally intact in new Section 65.103, Family Code. Some of the procedures survive and appear in other portions of Chapter 65.

Article 45.055 concerns expunctions in failure-to-attend-school cases. The repeal of this statute eliminates these expunction procedures. But this does not mean there are no expunctions under the new truancy laws. A new Article 45.0541 of the Code of Criminal Procedure contains information about the expunction of proceedings in truancy courts. Article 45.055 also called for a \$30 fee in expunction proceedings. This fee has been done away with entirely.

Section 51.03(d) concerns affirmative defenses in truancy proceedings in juvenile courts. With the elimination of truancy proceedings in juvenile courts, there is no need for this section of code detailing affirmative defenses.

Section 51.03(e-1) describes the term “child” for purposes of truancy proceedings in the juvenile courts. But with the elimination of truancy proceedings in juvenile courts, there is no need for this section of code defining the term “child.”

Section 51.03(g) also refers to missing school as being conduct indicating a need for supervision. With the elimination of truancy proceedings in juvenile courts, there is no need for this statute.

Section 51.04(h) is a jurisdictional statute giving juvenile courts in certain counties concurrent jurisdiction with justice and municipal courts over conduct that constitutes failure to attend school. In light of the repeal of the statute making the failure to attend school a crime, there is no need for Section 51.04(h). Accordingly, the statute is repealed.

Section 51.08(e) is another statute rendered irrelevant by the repeal of the statute making the failure to attend school a crime – Section 25.094, Education Code. Accordingly, Section 51.08(e) is repealed.

Section 54.021 is a relatively long statute dealing with the handling of truancy cases in juvenile court. HB 2398 amended Section 51.03, Family Code to remove habitual absence from school from the list of conduct indicating a need for supervision. By doing so, juvenile courts no longer have any authority to hear what used to be known as truancy cases.

Thus, the many details concerning truancy cases in juvenile court spelled out in Section 54.021 are rendered irrelevant. Accordingly, Section 54.021 is repealed in its entirety.

Section 54.0402 is a one-sentence statute about disposition orders in truancy cases in juvenile courts. With the repeal of the statutes calling for juvenile courts to handle truancy cases, Section 54.0402 is irrelevant. Accordingly, the statute is repealed.

Section 54.041(f) describes a program that the parents of a child who has been found to have engaged in truancy may be ordered to attend. But with the elimination of truancy cases in the juvenile courts, this statute has no relevance. Accordingly, the statute is repealed.

Section 54.041(g) also becomes irrelevant in the absence of truancy cases in the juvenile courts. This statute allowed a juvenile court to waive restitution orders against parents in truancy cases in certain situations. The statute is repealed.

Section 54.05(a-1) concerns with hearings to modify dispositions in truancy cases in juvenile court. Given that juvenile courts no longer handle truancy cases, this provision is irrelevant. Accordingly, the statutory provision is repealed.