

***Criminalizing Truancy  
A Solution of Last Resort***

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***Historical Perspective***

- Compulsory Attendance Law
  - Revamped extensively in 1995 to close loop-holes allowing for numerous types of "Excused" Absences



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## Importance of Attendance

- Why is attendance so important to schools?
  - Drop-out rates correlate to attendance; prison rates correlate to drop-out rates
  - Average Daily Attendance (ADA) is the basic factor in the state school finance system; and determines how much money flows to a poor district
  - Ratings, formerly "Exemplary" rating could not be achieved without 97% attendance rate
  - Average Yearly Progress (AYP) in *No Child Left Behind* (federal law) still rates schools with a formula that includes attendance rates



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## How much money?

- Current state formulas and local tax revenue deliver about \$7,750 per student
- Tier 2 guarantees equalized access to enrichment

### Tier 2 Formula:

$$\text{GYA} = (\text{GL} \times \text{WADA} \times \text{DTR} \times 100) - \text{LR}$$

GYA= guaranteed yield amount

GL= guaranteed level

WADA= students in weighted average daily attendance

DTR = district enrichment tax rate

= current-year M&O collections/prior-year values/100

LR= local revenue

= DTR x prior-year value

Source: Anderson, D., & Dawn-Fisher, L. (n.d.). *Public school finance seminar*. Retrieved from the Texas Education Agency, Finance website, <http://www.tea.state.tx.us/index4.aspx?id=6791>

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## How much money?

- In 2007, Spring ISD increased the district budget by \$1 Million ; \$250,000 just in one class
  - Simply by training their data entry (PEIMS) clerks and teachers on proper coding of students in special programs (weighted students) and on the importance of proper attendance records

See Jonbert, J. (Spg. 2009). From kids to cash: The impact of school attendance on the district budget. *Texas Assn of Secondary School Principals*.

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**COMPULSORY ATTENDANCE**

Education Code §25.085

- Students must attend school each school day for the entire period.

Education Code §25.085(b) and (c)

- Child at least 6 and not yet 18
- Child younger than 6 and previously enrolled in 1st grade
- On enrollment in pre-K or kindergarten



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**Over 18**

Education Code §25.085(e)

- If voluntarily in school after 18th birthday, person must attend each school day for the entire period.
- Enrollment may be revoked for five or more absences in a semester.
- Criminal prosecution is not an option.
- Under §37.107, person may then be an unauthorized person on school grounds.



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**GA-0946 (2012)**

- Is a public school student who is at least 18 years of age or older and younger than 21, and who is enrolled in a district that has adopted a compulsory attendance policy under section 25.085 of the Education Code, subject to prosecution under section 25.094 of the Education Code for a failure to attend school?
- No
- Senate Bill 1489 amended section 25.094 of the Education Code by adding a necessary element to the offense described by that section. Under that amendment, a person 18 years of age or older cannot commit an offense under section 25.094.

Link: [GA-0946](#)



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***Failure to Attend School v. Truancy***

Failure to Attend School	Truancy
Ed.Code §25.094	Fam.Code §51.03
CCP, Ch.45	Fam.Code Title III
Criminal Class C	Civil case (CINS)
12-17 years old	10-16 years old
Up to \$500 fine	No fine
No lawyer needed	Lawyer needed
Parent in court	Can be informal



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***Effect of minimum age requirement***

- So, what do you do if a student under 12 years of age is missing school?
  - Parent Contributing to Nonattendance
  - If 10 years old, juvenile court (Family Code)

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***Warning Notices***

- Education Code §25.095
- Required at the beginning of each school year and when student has three unexcused absences
  - Notice must inform parent:
    - Parent is subject to criminal prosecution (§25.093) and
    - Student is subject to criminal prosecution (§25.094) or
    - Referral to juvenile court if under 100,000 in population



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### ***Original Jurisdiction***

Family Code §54.021(b)

- Juvenile court with consent truancy cases may be transferred to constitutional county court, justice or municipal court

Education Code §25.094

- Complaint must be timely filed
- Code of Criminal Procedure, Ch. 45 applies

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### ***Criminal Prosecution/Age Issues***

Education Code §25.094 (Failure to Attend School)

- An individual commits an offense if the individual
- Is **12 years of age or older and younger than 18**
- Is required to attend school and
- Fails to attend 10 or more days or **parts of days** within a six-month period in the same school year (mandatory) or
- Fails to attend three or more days or parts of days within a four-week period (permissive)

Note: Age limits were changed by 82<sup>nd</sup> Legislature – must be at least 12 and no older than 17-years old. 18-year olds may not be prosecuted. 11 and younger must be processed under Family Code as civil matter (CINS). Best practice in past: for these younger students best to file on parents; even in civil cases, students younger than 10 may not be filed upon – at all. You must file on parent for students younger than 10.



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### ***Deadline- Timely Filing***

Education Code §25.0951

- **Mandatory Filing:** School must file within 10 school days of student's 10th absence.
- Court **must** dismiss if not filed timely (jurisdictional issue).
- A complaint may allege dates previously included in a dismissed complaint.  
– [GA-0574 \(2007\)](#)



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## ***“Excused” Absences***

Education Code §§25.087 & 25.094

- Permissive: any acceptable cause and up to two days per year to visit college as local district policy allows (principal determines “excused”)
- Mandatory (treated as present, if make-up work completed):
  - Religious holy days
  - Court appearances
  - Citizenship appointments and related ceremony
  - Serving as an election clerk
  - Health care appointments, including appointments for autism spectrum disorder practitioners as long as the student commences classes or returns to school on the same day of the appointment.
- Affirmative defense: Absence is excused or involuntary.
- Burden of proof: preponderance of the evidence is on defendant to show that absence was involuntary



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## ***Truancy Prevention Measures***

Education Code § 25.0915

- Provides that a school district shall adopt truancy prevention measures designed to address truancy and related student conduct and minimize court filings.

Complaint must:

- Include a certified statement that the district’s truancy prevention measures have been **applied** and **failed** and
- Specify whether the student is eligible for special education services



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## ***Certification Form- Prevention Measures***

### CERTIFICATION FAILURE TO ATTEND SCHOOL

I, the undersigned school authority, hereby certify that the school, Alpine \_\_\_\_\_ (name of school), has applied truancy prevention measures, to wit:

\_\_\_\_\_  
\_\_\_\_\_

(describe measures taken)

and that such measures, described above, have failed to meaningfully address the student’s \_\_\_\_\_ (name of student) school attendance.

I further certify that this student \_\_\_\_\_ (name)

\_\_\_\_\_ is eligible for and/or does receive special education services

\_\_\_\_\_ is not eligible for or does not receive special education services

It is hereby acknowledged that the undersigned school personnel has authority to certify the facts contained in this document.

SIGNED on this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

SCHOOL AUTHORITY \_\_\_\_\_

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***Fine Alternatives***

Code of Criminal Procedure, Art. 45.051

- In fine-only misdemeanor cases, court may offer alternative
- fine payment options, e.g., installments, service hours or combination.
- Show cause hearing (with notice) to determine compliance
- Additional time to comply may be given

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***Violations of Court Orders/Contempt Options***

Code of Criminal Procedure, Art. 45.050

- For violation of its order the court may:
- Refer case to juvenile court for delinquent conduct (Contempt of Court); or
- Retain jurisdiction and after notice and hearing:
- Hold in contempt and fine up to \$500 and/or
- Order DPS to suspend or deny TDL or permit until obligation is fully discharged

Code of Criminal Procedure, Art. 45.050(b)

- No confinement for:
- Failure to pay fine or costs imposed
- Contempt of another order of justice or municipal court
- May hold person in contempt and impose fine and/or DPS order on TDL

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***Undue Hardship***

Code of Criminal Procedure, Art. 45.0491

- Justice or municipal court may waive payment of a fine or costs if it determines:
- Defendant is indigent and
- Paying fine and costs would impose an "undue hardship" on defendant

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**Expunction**

Expunction - CCP Art. 45.055

- Individual and parent must receive notice of expunction rights in open court; two types
  - (1) One Case CCP, Art. 45.055
    - An individual convicted of not more than one violation may, on or after the individual's 18th birthday, apply to the court in which the individual was convicted to have the conviction and records expunged.
    - If the court finds the applicant has not been convicted of more than one violation, the court shall order the conviction, and all documents relating to the offense, including documents in the possession of a school district or law enforcement agency, to be expunged.
    - Mandatory \$30 fee to defray costs of expunction notices
  - (2) Success, CCP, Art. 45.055(e)
    - A court shall expunge an individual's conviction under Section 25.094, Education Code, and records relating to a conviction, regardless of whether the individual has previously been convicted of an offense under that section, if:
      - the court finds that the individual has successfully complied with the conditions imposed on the individual by the court under Article 45.054; or
      - before the individual's 21st birthday, the individual presents to the court proof that the individual has obtained a high school diploma or a high school equivalency certificate.

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**Parent Contributing to Non-Attendance**

Education Code §25.093

- Formerly "Thwarting Compulsory Attendance" and "Parent Contributing to Truancy"
- Class C – up to \$500 fine per offense
- Contempt – Government Code §21.002(c)
- Contempt for violation of court order not failure to pay fine




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**Jurisdiction**

Education Code §25.095(a),(b)

- Warning letter must be sent to parent before criminal complaint is filed
- Education Code §25.093(a)
- Complaint:
  - Parent acted with criminal negligence by failing to require child to attend school and
  - Allege requisite number of unexcused absences




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***Criminal Negligence***

Penal Code §6.03(d)

- Failure to perceive a risk the actor should have perceived
- Why should parent perceive the risk of child not attending school?
  - §25.095(a) warning notice was sent at the beginning of the school year (Student Code of Conduct)
  - §25.095(b) warning notice was sent when student reached three unexcused absences during a four-week period



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***Jurisdiction***

Education Code §25.093(b)

- If filed in justice or municipal court:
  - Where parent resides or
  - Where school is located
- Constitutional county court if county has a population of 2 million or more

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***Who is a Parent?***

Education Code §25.002

- “Parent” includes a person with legal control of a child under a court order.

Education Code §§25.091, 25.093, 25.095, 25.0951, 26.002 & CCP, Art. 45.054(h)

- “Parent” includes a person standing in parental relation to the child.

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***Number of Absences***

Education Code §25.0951

- Permissive filing: three – nine days or parts of days missed without an excuse in four weeks
- Mandatory filing: 10 or more days or parts of days missed without an excuse in six months in the same school year
- Now must file within 10 days of 10th absence



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***Separate Offenses***

Education Code §25.093(c)

- Each day child remains out of school may constitute a separate offense.
- Cases can be consolidated and tried together

Education Code §25.093(h)

- Affirmative defense: Same as FTAS

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***Disposition Options***

Education Code §25.093(f)

- Court may order parent to:
  - Provide services to charitable organization or educational institution
  - Attend program to help parents identify and resolve failure to attend issues, if such a program is available
- Contempt – Government Code §21.002(c)



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***Fines***

Education Code §25.093(d)

- Any fines must be deposited:
  - ½ to school district, charter school or JJAEP where child attends school and
  - ½ to general fund of the municipality or the county if complaint filed in justice or county court



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***Parents' Failure to Appear***

Code of Criminal Procedure, Arts. 45.054 & 45.057

- Summons orders parent to appear personally with the child.
- Summons warning says Failure to Appear may result in arrest and prosecution.
- Failure to attend hearing after receiving summons is a Class C misdemeanor.



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***Expunction of Other Class C's***

Art. 55.01 Code of Criminal Procedure

- A person is entitled to expunction if:
  - Tried for the offense and
    - Acquitted
    - Convicted and subsequently pardoned
    - Convicted and pardoned based upon actual innocence

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***Expunction of Other Class C's***

Art. 55.01 Code of Criminal Procedure

- A person is entitled to expunction if:
  - Released from the charge without a final conviction and no court ordered community supervision under 42.12, unless a Class C, **provided that:**
  - Regardless of any statute of limitation, if **an information has not been presented** and
    - 180 days have elapsed since the arrest for a Class C and no felony in same transaction **or**
    - **Prosecutor certifies** that arrest records and files are not needed for any criminal investigation or prosecution, including another person's prosecution

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***Expunction of Other Class C's***

Art. 55.01 Code of Criminal Procedure

- A person is entitled to expunction if:
  - Released from the charge without a final conviction and no court ordered community supervision under 42.12, unless a Class C, **provided that:**
  - Regardless of any statute of limitation, if an information has been **presented** and was later **dismissed or quashed** because:
    - Completion of pre-trial diversion
    - Presentment by mistake, false information or indication of lack of probable cause or
    - Information is void

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***Contact Information***

- Sharon N. Pruitt, Assistant Attorney General, Texas Attorney General's Office, Juvenile Crime Prevention, (512) 936-6406, [sharon.pruitt@texasattorneygeneral.gov](mailto:sharon.pruitt@texasattorneygeneral.gov)
- Rebecca Schlosser, J.D., Ed.D., Alpine Municipal Judge & Associate Professor, Sul Ross State University, Educational Leadership Program, (432) 386-3830, [rschlosser@sulross.edu](mailto:rschlosser@sulross.edu)

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**CERTIFICATION**  
**FAILURE TO ATTEND SCHOOL**

I, the undersigned school authority, hereby certify that the school,  
Alpine \_\_\_\_\_ (name of school), has applied truancy  
prevention measures, to wit:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(describe measures taken)

and that such measures, described above, have failed to meaningfully address the student's  
\_\_\_\_\_ (name of student) school attendance.

I further certify that this student \_\_\_\_\_ (name)

\_\_\_\_\_ is eligible for and/or does receive special education services

\_\_\_\_\_ is not eligible for or does not receive special education services

It is hereby acknowledged that the undersigned school personnel has authority to certify the facts  
contained in this document.

SIGNED on this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
SCHOOL AUTHORITY

**PREVENTION MEASURE - COMPULSORY ATTENDANCE**

I, the undersigned Mediator, do hereby certify that the following truancy prevention measures were taken on this day, the \_\_\_\_\_, day of \_\_\_\_\_, 20\_\_\_\_, regarding the following student: \_\_\_\_\_ at Alpine \_\_\_\_\_ School.

Prevention Measure(s), Taken to Date: Mediation on \_\_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The school has provided the following information and documents: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Is this student eligible and/or receive special education services: Yes No

The parent/student have provided the following information and documents: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The meeting was attended by the following persons in addition to the Mediator:

- 1. \_\_\_\_\_ Relationship \_\_\_\_\_
- 2. \_\_\_\_\_ Relationship \_\_\_\_\_
- 3. \_\_\_\_\_ Relationship \_\_\_\_\_
- 4. \_\_\_\_\_ Relationship \_\_\_\_\_
- 5. \_\_\_\_\_ Relationship \_\_\_\_\_

The following plan was developed during the mediation and agreed to by all parties as indicated by their signatures below:

Plan: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

It is hereby acknowledged by the signatures below that all parties will abide by this agreement. It is further acknowledged by said signature that the parties are aware that failure to comply with this agreement and/or further absences by the student will result in filing of a complaint for Failure to Attend School, a Class "C" Misdemeanor, with Alpine Municipal Court, Alpine, Texas, by the school in question.

Parties Signatures: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Mediator Signature: \_\_\_\_\_