

Truancy Reform

Changes in the Law Effective September 1, 2015



Agenda

- 1:00 pm – Welcome, Introductions
- 1:10-2:00 pm – History of Truancy in Texas, Overview of terminology, etc
- 2:00-3:00 – Overview of New Law
- 3:00-3:15 – Break
- 3:15-4:00 – School Responsibilities
- 4:00-4:45 – Court responsibilities
- 4:45-5:00 – Q&A



History of Truancy in Texas

- Compulsory School Attendance – 1916
 - Children between 8-14, 100 days per year
- Parents responsible for ensuring children complied
- Children who didn't attend could be adjudicated as truants
 - Juvenile court
- 1995-2001
 - Juvenile court could transfer jurisdiction to county, municipal or justice court to be handled as CIVIL truancy OR
 - Could be filed directly with county, municipal or justice court as CRIMINAL as failure to attend school
- 2001
 - No longer civil in county, municipal or justice court; only criminal
- 2015 – New legislation discussed today



Texas Court Structure & Jurisdiction

- District Court – General Jurisdiction Courts
 - Original Jurisdiction over Felony Criminal Matters
- County Courts at Law – Statutory Limited Jurisdiction Courts
 - Generally, Class A and B misdemeanors
- County Courts – Constitutional Limited Jurisdiction Courts
 - Generally, Class A and B misdemeanors
- Justice Courts – Constitutional Limited Jurisdiction Courts
 - Class C misdemeanors
- Municipal Courts – Statutory Limited Jurisdiction Courts
 - Class C misdemeanors
- Juvenile Courts
 - Delinquent Conduct or Conduct Indicating a Need for Supervision



Delinquent Conduct & CINS vs. Criminal Offenses

- Delinquent Conduct (Family Code Sec. 51.03)
 - Conduct, other than traffic offense, that violates a penal law of this state or of the United States and is punishable by imprisonment or by confinement in jail
 - Ex. Felonies, Class A and B misdemeanors
 - Conduct that violates a lawful order of a court under circumstances that would constitute contempt of that court in a JP or municipal court, or a county court for conduct punishable by a fine
 - DWI, Flying While Intoxicated, Boating While Intoxicated; Intoxicated Assault, and Intoxication Manslaughter
 - Driving under the influence of alcohol by a minor (third or subsequent offense)
- Delinquent conduct is:
 - Prosecuted in a juvenile court
 - Not considered criminal in nature



Delinquent Conduct & CINS vs. Criminal Offenses (cont.)

- Conduct Indicating a Need for Supervision (CINS) (Family Code Sec. 51.03)
 - Conduct, other than a traffic offense, that is a Class C misdemeanor or violates the penal ordinance of any political subdivision of this state
 - Voluntary runaway
 - Huffing of paint or glue vapors, etc.
 - Violation of a school district's previously communicated written Student Code of Conduct for which the child has been expelled
 - Conduct that violates a reasonable and lawful order for services from a court
 - Prostitution
 - Electronic transmission of certain visual material depicting a minor (sexting)
- CINS is:
 - Prosecuted in a juvenile court
 - Not considered criminal in nature



Delinquent Conduct & CINS vs. Criminal Offenses (cont)

- Conduct designated as a Class C Misdemeanor Offense may be filed against a child as a:
 - Criminal offense in the justice or municipal court; OR
 - CINS offense in the juvenile courts

- Class C Misdemeanor Offenses against a child:
 - Are treated as criminal cases for all intents and purposes
 - Result in a criminal conviction on the child's record
 - Result in potential fines
 - Result in criminal court costs that may or may not be waived
 - Treated like an adult in many respects



Truancy Legislation - 84th Legislature

- Senate Bill 106 (Whitmire)

Did not pass but entire text of bill was added to House Bill 2398

- House Bill 2398 (White/Reynolds, Whitmire/West)

- Effective September 1, 2015

- Truancy bills that did not pass:

House Bills – 93, 297, 378, 1490, 2362, 2821

Senate Bill – 285



Law Prior to 9/1/15

(Effective Date of HB 2398)

Truancy AND Failure to Attend School

- Failing to attend school in 10 or more days or parts of days within a six month period in the same school year; OR
- Failing to attend school in three or more days or parts of days within a four-week period



Law Prior to 9/1/15

(Effective Date of HB 2398)

Two ways to process cases in judicial system:

- As a criminal case (Education Code Sec. 25.094)–
 - Failure to Attend School
 - Handled primarily by justice and municipal courts (some county courts)
 - Applies to students between the ages of 12 – 18
 - Class C misdemeanor
 - 69,052 cases filed in 2014 in JP/Municipal Courts, plus 24,224 in specialized constitutional county courts – total of 93,786 (57,711 in JP courts)
- As a civil case (Family Code Sec. 51.03(b)(2))–
 - Truancy
 - Filed in juvenile court (district and county-level courts designated to act as juvenile courts)
 - May be transferred to county, justice or municipal courts to handle
 - Applies to students between the ages of 10 – 17
 - Conduct Indicating Need for Supervision (CINS)
 - 569 cases filed in 2014



Law Prior to 9/1/15

(Effective Date of HB 2398)

Parent Contributing to Nonattendance

- Education Code Sec. 25.093
- Offense committed by parent of truant child
- Handled by justice and municipal courts
- Class C Misdemeanor
- 78,440 cases filed in 2014
 - including specialized constitutional county courts



House Bill 2398

➤ Repeals:

- Education Code Sec. 25.094 – Failure to Attend School and
- Family Code Sec. 51.03(b)(2) – Truancy (CINS)

➤ Enacts:

- New Chapter in the Family Code
- Chapter 65 – Truancy Court Proceedings



New Family Code Chapter 65

Purpose and Highlights

- Failure to attend school is decriminalized
- Encourages school attendance by creating simple civil judicial procedures through which children are held accountable for excessive school absences
- Justice and municipal courts, which currently handle most cases regarding failure to attend, will continue to handle these cases, acting in a special capacity as truancy courts
- Judges retain same remedial options to deal with conduct as exists under current law
- Crime of parent contributing to non-attendance remains, fees limited based on number of offenses
- New \$50 court cost for truancy cases to be retained by the county
- Strengthens guidelines for truancy prevention and intervention measures
- Expunction of past truancy conviction records



New Family Code Chapter 65

Truant Conduct

- New definition of truant conduct
 - “A child engages in truant conduct if the child is required to attend school under Sec. 25.085, Education Code, and fails to attend on 10 or more days or parts of days within a six-month period in the same school year.” (Family Code Sec. 65.003(a))
 - DOES NOT include a child’s failure to attend school on three or more days or parts of days within a four-week period
- Sec. 25.085 amended to specifically require 18-year olds to attend school
- A person who is voluntarily attending school after age 19 cannot commit truant conduct



New Family Code Chapter 65: Truant Conduct

- The best interest of the child is primary consideration in adjudicating truant conduct
- Adjudication of engaging in truant conduct is not a criminal conviction and may not be used in subsequent court proceedings except:
 - For purposes of determining an appropriate remedial action under Chapter 65
 - or
 - In an appeal under Chapter 65



New Family Code Chapter 65: Truancy Courts

- Exclusive original jurisdiction over truant conduct cases:
 - Municipal and justice courts
 - Constitutional county courts in counties of 1.75 million or more population
- Municipalities under certain circumstances may enter into agreements to establish concurrent jurisdiction of the municipal courts in the municipalities and provide original jurisdiction as if the municipal court were located in the municipality in which the case arose.
- Truancy court retains jurisdiction over person until final disposition, without regard to age, if person was referred before their 19th birthday
- Juvenile courts will no longer have jurisdiction over truant conduct



New Family Code Chapter 65: Truancy Court Proceedings

- Venue – County where school is located or county where child resides
- Jury Trial
 - Child has right to jury trial
 - Six - member jury
 - No jury fee can be charged
 - State and child each entitled to three peremptory challenges
- State's burden of proof – beyond a reasonable doubt
- Statute of Limitations – Petition may not be filed more than 45 days after the date of the last absence giving rise to the act of truancy



New Family Code Chapter 65: Truancy Court Proceedings

- Truancy court prosecutors
 - attorney who represents the state in criminal matters in the court serves as truancy court prosecutor
- Interpreters
 - foreign language interpreter (may be a qualified telephone interpreter) must be provided for a child, child's parent, or a witness if court determines it is necessary
 - If court notified that child, child's parent or a witness is deaf, court must appoint a qualified interpreter
- Public access to court hearings
 - proceedings presumed open unless court, for good cause, determines public should be excluded
- Recording of hearings
 - proceedings in courts that are not courts of record may not be recorded
- Juvenile case managers
 - May be employed by courts to provide services to children who have been referred or who are in jeopardy of being referred to the truancy court
- Discovery
 - Similar to juvenile court discovery – governed by Chapter 39, Code of Criminal Procedure, other than Articles 39.14(i) and (j)



New Family Code Chapter 65: Truancy Court Proceedings

- Representation by Attorney
 - A child may be represented by an attorney
 - Child is not entitled to have an attorney appointed but court may appoint one if it determines it is in the best interest of the child
 - Court may order parent or other responsible person to pay for appointed attorney if court determines person has sufficient resources
- Guardian ad litem appointment
 - Court may appoint a GAL if child appears without parent or guardian or it appears parents are incapable or unwilling to make decisions in the best interest of the child
 - child's attorney may also serve as GAL
 - Court may not appoint a law enforcement officer, probation officer, or other employee of the court to serve as GAL
 - Court may order parents or other responsible person to pay if court determines they have the financial resources to offset the costs wholly or partly
- Child alleged to be mentally ill
 - Party may make motion to have case dismissed because child is mentally ill (as defined by Sec. 571.003, Health and Safety Code)
 - If court determines probable cause exists to believe child is mentally ill court must dismiss petition



New Family Code Chapter 65: Truancy Court Proceedings

- Rules of Evidence do not apply except:
 - when judge determines that a particular rule must be followed to ensure fairness to all parties; OR
 - as otherwise provided by Chapter 65.
- Judgment - Remedial Order
 - The remedies provided under Sec. 65.103 are almost identical to those available to courts currently handling failure-to-attend-school cases
 - Court **MAY NOT** order child to attend juvenile justice alternative education programs, boot camps or for-profit truancy classes and **MAY NOT** order more than 16 hours of community service per week
 - Order is effective until 180th day after the date the order is entered or the last day of the school year in which the order was entered



New Family Code Chapter 65: Remedial Order

- Attend School without unexcused absences
- Attend GED Preparatory Class, if unlikely to do well in formal classroom environment due to their age
- Take the GED (if at least 16), if in the best interest of the child
- Attend a special program:
 - Alcohol and drug abuse program
 - Rehabilitation program
 - Counseling program, including self-improvement program
 - Self-esteem and leadership programs
 - Work and job skills training program
 - Parenting training program
 - Manners training program
 - Violence avoidance training program
 - Sensitivity training program
 - Advocacy or Mentoring Program
- Up to 50 hours of Community Service
- Tutoring



New Family Code Chapter 65: Truancy Court Proceedings

- Orders affecting the parents and others
 - Court may enter remedial order affecting parents and other who may have contributed to truant conduct (similar to current provisions in Family Code Sec. 54.041)
 - At-Risk of Dropping Out Class
 - Do any act that the court determines reasonable and necessary if parent/other contributing
 - Enjoin contact between the person and the child (unless related within third degree, in which case judge can contact CPS)
 - Social or psychological counseling to assist child
 - Pay all or part of the costs of treatment, if able to pay
 - Attend program to assist with identifying problems contributing to absences
 - Up to 50 hours of community service with the child
 - Entitled to hearing before order is entered



New Family Code Chapter 65: Truancy Court Proceedings

- Appeals

- The child, child's parent or guardian or the state may appeal a truancy court order
- Others may appeal orders affecting parents and others
- Appeals are to a juvenile court and must be tried de novo
- A juvenile court's order may be appealed in the same manner as under Chapter 56 of the Family Code

- Enforcement

- The state may make a motion for the enforcement of a truancy court order
- The court may also initiate enforcement of an order on its own motion



New Family Code Chapter 65: Truancy Court Proceedings

- Modification

- Court may hold hearing to modify any remedy imposed by court
- May only be modified during the period the order is effective
- No right to jury trial for hearing
- Court may consider written report from school district official or employee, juvenile case manager or professional consultant in addition to witness testimony
- Court may order counsel not to disclose material that may materially harm the treatment and rehabilitation of the child or would substantially decrease likelihood of receiving information from same or similar sources
- Court must pronounce changes to the remedy in open court in the presence of the child.
- Written order must include court's reasons for modifying the remedy



New Family Code Chapter 65: Truancy Court Proceedings

- Contempt - Child

- A truancy court **MAY NOT** order a child confined to jail for contempt of court
- Court may order contempt if child fails to obey remedial order or when a child commits an act of direct contempt
- Court may order one or both of the following:
 - Require child to pay fine up to \$100
 - Order DPS to suspend child's driver's license or permit or deny the issuance of a license or permit, if the child does not currently have one, until the child complies with the court's order
- If the child is found to have failed to obey an order or been in direct contempt on **two or more** previous occasions, the court may refer the child to the juvenile probation department as a request for truancy intervention (does not apply if failure to obey order or direct contempt was done when child was 17 years of age or older)



New Family Code Chapter 65: Truancy Court Proceedings

- Contempt – Parent
 - Court may also order that parent be held in contempt for failing to obey court's order or in direct contempt of the court
 - Penalty is a fine not to exceed \$100
 - May also order one or both of the following:
 - Confinement in jail for up to 3 days
 - Maximum of 40 hours of community service



New Family Code Chapter 65: Truancy Court Proceedings

- Sealing and confidentiality of records
 - After a child turns 18, a child may apply to have the records related to the child's truancy case sealed
 - The court shall order the records sealed if it determines that the child complied with the remedial order in the case
 - Records in a truancy case are confidential and may only be released to the judge, the prosecutor and their staff, the child or the child's attorney and a few government agencies under certain circumstances



Parent Contributing to Nonattendance

- Changed designation of offense from a "Class C misdemeanor to a "misdemeanor"
- Maximum fine amounts listed based on number of offenses:
 - \$100 for the first offense, \$200 for the second, \$300 for the third, \$400 for the fourth and \$500 for a fifth and subsequent offense.
- School district required to provide evidence of the parent's criminal negligence
- Court may, in its discretion, dismiss charge if the court finds that dismissal would be in the interest of justice because of low likelihood or recidivism or sufficient justification exists for failure to attend school
- Court that hears case will not be acting as a truancy court



Expunction

- New Art. 45.0541, Code of Criminal Procedure
- Individual who has been convicted of or has had a complaint for truancy offense under former Sec. 25.094 dismissed is entitled to have the conviction or complaint and related records expunged
- Court in which individual was convicted or complaint was dismissed must order expunction of all records including those in the possession of a school district or law enforcement agency
- Expunction order must be issued regardless of whether individual has filed a petition for expunction
- Individual released from all disabilities resulting from the conviction or complaint and the records may not be shown or made known for any purpose



School Responsibilities

- Requires a school district to initiate truancy prevention measures if a student fails to attend school without excuse on 3 or more days or parts of days within a 4-week period but does not fail to attend school for 10 or more days or parts of days within a 6-month period in the same school year
- Requires school districts to issue a warning letter to students who accrue three unexcused absences stating that the student's enrollment may be revoked if the student has more than five unexcused absences in a semester.
- A school could impose a behavior improvement plan as an alternative to revoking the enrollment of a student.
- Prescribes set of truancy prevention measures that schools would be required to impose prior to referring a student for truant conduct.



School Responsibilities (cont.)

- Cannot refer a student to truancy court if the truant conduct is the result of pregnancy, the child's being in foster care, homelessness, or being the principal earner for the student's family.
- School districts required to employ truancy prevention facilitators or designate an existing district employee to implement the truancy prevention measures.
- Texas Education Agency is required to adopt rules regarding truancy prevention facilitators, best practices for the measures, and sanctions for noncompliance by districts.
- A district may delay referral or choose not to refer at all under certain circumstances.



Other

- New \$50 court cost for truancy cases – can be used only to offset the cost of the operations of the truancy court
- Supreme Court authorized to promulgate rules for truancy court proceedings
- Signature requirements satisfied if document contains the signature of a person as captured on an electronic device or digital signature



Other

- Requires counties with two or more courts that hear truancy cases and have two or more school districts to adopt uniform truancy policies unless the county has already done so; provides composition of committee (Sec. 25.0916)
 - By 1/1/16 – Establish committee
 - By 5/1/16 – Recommend:
 - 1) uniform process for filing cases
 - 2) uniform administrative procedures
 - 3) uniform deadlines for processing cases
 - 4) local plan with strategies to address truancy
 - 5) a system for tracking and sharing information on truancy between school districts, charter schools, truancy courts, juvenile courts and juvenile probation
 - 6) changes in statutes or agency rules
 - By 12/1/17 – issue report to county judge and mayor on implementation
- Prohibits an employer from terminating the employment of a permanent employee because the employee is required to attend a truancy hearing and provides that an employee who is wrongfully terminated is entitled to reemployment, damages and attorney fees



Other

- Judicial Donation Trust Fund

- Authorizes governing body of municipality or the commissioners court of a county to establish a judicial donation trust fund account as a separate account held outside the entities treasury
- Authorizes commissioners courts to accept gifts, grants, donations, bequests, or devise of money or other property that is designated for the account
- Procedures must be adopted to receive and disburse money and establish criteria for disbursement to assist needy children or families who appear before court for truant conduct by providing money for resources and services that eliminate barriers to school attendance or that seek to prevent criminal behavior



School Responsibilities Flowchart



Court Procedures Flowchart



Resources

- Training materials
 - <http://www.txcourts.gov/publications-training/training-materials/truancy-reform.aspx>
- Truancy Prevention Measures – Best Practices (TEA to adopt 2016-17)
 - http://www.ojjdp.gov/mpg/litreviews/Truancy_Prevention.pdf
- Model Student Code of Conduct
 - <https://www.tasb.org/Services/Policy-Service/Resources/Model-Student-Code-of-Conduct.aspx>
- Model Student Handbook
 - <https://www.tasb.org/Services/Policy-Service/Resources/Model-Student-Handbook.aspx>
- Sample Uniform Truancy Plan
 - <https://sanantonio.legistar.com/LegislationDetail.aspx?ID=1801402&GUID=3F2DE2A7-32C2-47F9-B5A6-8A30484C765B>
- Forms & Instructions (school & courts)
 - http://tjctc-resources.org/forms/truancyformspdf/dir_view.asp
 - <http://gato-docs.its.txstate.edu/texas-justice-court-training-center/FY2016/Forms-Instruction-Sheet---Truancy/Forms%20Instruction%20Sheet%20-%20Truancy.pdf>



Questions?

