JUVENILE LEGISLATIVE UPDATE WORKING HAND in HAND

83rd Legislature August 23, 2013

M. O. Campbell Center 1865 Aldine Bender Road, Houston, Texas 77032

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TRUANCY COORDINATING COMMITTEE AND HARRIS COUNTY COURT MANAGER'S OFFICE

FAILURE TO ATTEND SCHOOL PARENT CONTRIBUTING TO NONATTENDANCE AND OTHER OFFENSES COMMITTED BY JUVENILES

SOME NEW AND SOME REVIEW

Who may be admitted to school:

On September 1st:
At least 5 years of age and under 21 or
At least 21 years of age and under 26 for the purpose of completing the requirements for a high school diploma

Requirements for enrollment

- · Parent or guardian must enroll student
- School must record name, address, date of birth of person enrolling
- Student must be identified by legal surname on documents

Presenting false documents: tampering with governmental record
Using gov't record to establish residency is

Class C misdemeanor

ED 25.002; ED 25.0021; ED 37.10

Who is required to attend school:
6 years old – and younger than 18 years old
Younger than 6 and previously enrolled in 1st grade

18 year old who voluntarily enrolls or attends Enrollment revoked for 5 unexcused absences in semester Considered trespasser - Class C misdemeanor

Who is not required to attend school:

Child in private or parochial school Home schooling is private school

Child in special education program

Child infeasible because of physical or mental condition

Child who is 17 and taking GED course

Child who is 17 and has a diploma or equivalent

Child who is 16 and is attending GED course

Child who is 16 enrolled in Job Corps

Child enrolled in Tx Academy of Math and Science

Child enrolled in Tx Academy of Leadership in Humanities

Child enrolled in Tx Academy of International Studies

HB 5 Relating to public school accountability Effective 9-1-2013

Minimum Attendance for Class Credit or Final Grade

- Student in any grade from K 12 may not receive credit or final grade for a class unless attended for 90% of days class offered
- Student attending 75% but less than 90% may get credit or final grade if student completes instructional plan approved by principal

Judge must consent to credit or final grade if student is under jurisdiction of the justice court

Excused absences:

Permissive

Any acceptable cause

6-12th grade to sound Taps

11-12th grade to visit college/university - 2 days

Service as early voting clerk - 2 days (5B 553,

effective 6-14-2013

Excused absences:

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Mandatory
  Religious holy days
  Required court appearance
  To apply for citizenship
  Naturalization ceremony
  Election clerk - 2 days
  Child in custody of DFPS for services or court ordered
  visitation (SB 1404, effective 6-14-2013
  Health care for student or student's child (HB 455)
  Visit with military parent (SB 260, effective 6-14-2013)
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Peace officer serving as attendance officer: Must apply truancy prevention measures If measures fail:

File complaint against child 12 - 17 or

File complaint against parent May take student into custody with parent's permission

May take child into custody to return child to school with probable cause to believe child is in violation of compulsory attendance

Attendance officer who is not peace officer:

Must apply truancy prevention measures
If measures fail:
File complaint against child 12 - 17
and
File complaint against parent

Escort student from any location to school when requested by parent

HB 1009 Relating to School Marshals Effective 6-14-2013

SCHOOL MARSHAL

- Appointed by Trustees of ISD or governing body of open enrollment charter school
- Not more than 1 marshal per 400 students for each campus
- May carry handgun per regulations
- Must put handgun in locked, secure safe within immediate reach if duties involve contact with students
- May use only frangible ammunition
- May access handgun only when deadly force justified
- o Identity of marshal is confidential

ED 37.0811

School District must adopt Truancy Prevention Measures designed to:

- Address conduct related to truancy
- Minimize filing of complaints for failure to attend school

Court required to dismiss complaint if not accompanied by certification that measures applied and a statement as to special education services (5B 393, 5B 1114, effective 9-1-2013)

Warning notices:
Required in writing at beginning of school year

Required when child accumulates 3 absences Remind parent of duty Remind parent of possible prosecution Request a conference

Mandatory action:

Absent 10 or more days/6 month period in same school year:

Must file "failure to attend school" within 10 days of the 10th absence and/or File "parent contributing to nonattendance"

Court required to dismiss complaint that is not filed within 10 school days of the 10th absence

Permissive action:

nonattendance"

Absent 3 or more days or parts of days in 4 week period:

May file "failure to attend school" and/or May File "parent contributing to

5B 393, 5B 1419, and HB 1093 CASE MANAGER PROGRAM

Court may employ case manager:

· To provide services to juveniles before the court

With consent, to provide services prior to case being filed

Prevention services to at risk child

Intervention services for misconduct before case filed

To assist in administering juvenile docket

Governed by Code of Ethics

Rules for educational pre-service and in-service training

Periodic review by commissioners court

Case manager reports information to assist judge

Judge required to consult with case manager

CP 45.056

CASE MANAGER PROGRAM

Harris County Commissioners Court requires defendant convicted of fine-only misdemeanor in justice court to pay juvenile case manager fee not to exceed \$5 as cost of court

5B 1419, effective 9-1-2013 TRUANCY PREVENTION AND DIVERSION FUND (cost implemented 1-1-2014)

A person convicted in a justice court of an offense, other than an offense relating to a pedestrian or the parking of a motor vehicle, is required to pay a \$2 court cost to fund

County may retain 50% of the funds for purpose of operating or establishing a juvenile case manager program

CP 102.0174; CP 102.015

FAILURE TO ATTEND SCHOOL Offense:

Individual 12 years of age and younger than 18 years of age Required to attend school Fails to attend school:

- on 10 or more days or parts of days within
 6-month period in same school year, or
- on 3 or more days or parts of days within
 4-week period

On filing the complaint:

Submit affidavit of probable cause Submit statement from school:

- certifying school applied truancy prevention measures
- certifying measures failed to address attendance
- specifying if student eligible for or receives special education services

(5B 393) Court required to dismiss complaint that is not accompanied by required certifications

JURISDICTIONAL LIMITATIONS

Unless the court has implemented a juvenile case manager program, the court <u>must</u> waive jurisdiction if child has two prior convictions for fine only misdemeanors, other than traffic

If the court has implemented a juvenile case manager program, the court <u>may</u> waive original jurisdiction

If the court or another court has dismissed a complaint for lack of capacity, the court must waive original jurisdiction (5B 393)

FA 51.08

REPORTING REQUIREMENTS

Court must notify juvenile court of the pending complaint

Court must notify juvenile court of final disposition

FA 51.08;

5B 393 CAPACITY TO COMMIT OFFENSE Presumption:

Person 10 years of age but younger than 15 years of age is incapable of committing a misdemeanor punishable by fine-only, other than an offense under a juvenile curfew order

To refute presumption:
Prosecutor must prove to court by
preponderance of evidence that child had
sufficient capacity to understand conduct was
wrong at time committed (not that child knew
act was a crime or legal consequences)

PE 8.07

5B 393 DISMISSAL FOR LACK OF CAPACITY

On court's own motion
On motion of prosecutor
On motion of defendant or parent

Notice to state

Court must dismiss case if court determines there is probable cause to believe child:

- lacks capacity to understand criminal proceedings or assist in defense, or
- lacks substantial capacity to appreciate wrongfulness of conduct or to conform conduct to law

Venue:

Justice Court in any precinct in the county in which the individual resides or in which the school located

Municipal court in city in which the individual resides or in which school located

Affirmative defenses:

One or more absences alleged:
Were excused by school official
Were excused by court
Were involuntary
But only if there is an insufficient number of
unexcused absences remaining to constitute an
offense

Court's decision to excuse does not affect ability of school to determine whether to excuse for another purpose

SECURING APPEARANCE

(SB 1114, applies to offense committed before, on or after 9-1-2013)

ARREST: Warrant may not be issued for arrest of a person for a Class C misdemeanor under the Education Code committed when the person was younger than 17 years of age ED 37.085

For Failure to Attend, court may issue order directing peace officer to take student into custody
ED 25.094

DUTIES OF PEACE OFFICER

On taking student into custody for failure to attend school:

Notify parent of action and reason

Release student to parent or responsible adult on promise to bring student to court
Bring student to court ED 25.094

Officer who has probable cause that child violated compulsory attendance, may take child into custody to return the child to school campus ED 25.091

May bring child to principal or designee who agrees to assume responsibility for rest of school day FA 52.02

SUMMONS FOR PARENT

Court must issue summons to parent
Direct parent personally to appear and bring
child
Warn that parent may be required to attend
class for students at risk of dropping out of
school, enforceable by contempt

Failure of parent to appear is Class C misdemeanor

CP 45.054

RIGHT TO EXPUNCTION for FTAS

Court must inform student and parent in open court, of expunction rights:
• After 18th birthday

- Only one conviction for failure to attend school
 Apply to court with \$30 fee

Court must expunge despite prior conviction:
• Student present diploma or GED before 21st birthday

Deferred disposition expunged under CP 55

CP 45.054; CP 45.055; CP 45.051

ALLOWABLE ORDERS:

- Attend school without unexcused absences
- Attend prep class for GED if court determines student is too old to do well in classroom
- Student take the GED if at least 16 years old
- Attend special program: alcohol and drug abuse

alcohol and drug abuse rehabilitation counseling/self-improvement self-esteem/leadership work and job skills parenting/parental responsibility manners violence avoidance sensitivity advocacy and mentoring

- · Reasonable community service
- · Tutorial program
- Attend class for student's at risk of dropping out, with parent
- Order DPS to suspend/deny license not to exceed 365 days

ED 25.094; CP 45.054

DISMISSAL

Complaint for FTAS must be dismissed if:

- Defendant complied with conditions imposed
- · Defendant presents diploma or GED

HB 2058 Relating to high school equivalency exam Effective 6-14-2013

ED 7.111

Allows 18 year old to take high school equivalency examination online

5B 393 applies to sentencing that commences before, on or after 9-1-2013 CONVICTION

Judge may allow defendant to choose to discharge by:

- Performing community service
- Attending tutoring program
- Paying fine and costs immediately, at some later date, or at designated intervals

Election must be in writing, signed by defendant and parent

Election must be maintained as court record

Court may waive fine and costs if defendant indigent

CP 45.0491

SB 393 Senate concurred in House amendments on 5-23-2013 HB 528 Passed by Senate on 5-22-2013 (eff. 1-1-2014)

- SB 393 All records and files relating to a child who is convicted of and has satisfied the judgment for, or who has received a dismissal after deferral of disposition for a fine-only misdemeanor offense, other than traffic, including those held by law enforcement, and information stored by electronic means or otherwise from which a record or file could be generated, are confidential and may not be disclosed to the public. SB 393
- HB 528 All records and files relating to a child who is charged with, is convicted of, is found not guilty of, had a charge dismissed for, or is granted deferred disposition for a fine-only misdemeanor offense, other than traffic, including those held by law enforcement, and information stored by electronic means or otherwise from which a record or file could be generated, are confidential and may not be disclosed to the public.

PARENT CONTRIBUTING TO NONATTENDANCE

Warning issued
Parent, with <u>criminal negligence</u>, fails to require child
to attend school
Child has required number of absences
Must recite acts constituting criminal negligence

Affirmative defense:

Absence was excused by school official Absence should be excused by court

PARENT CONTRIBUTING TO NONATTENDANCE

Allowable Orders

- Provide personal services to charitable or educational institution
- Attend program for students with unexcused absences

OTHER OFFENSES COMMITTED BY JUVENILES

JURISDICTION

Court must waive jurisdiction:

- two or more fine-only misdemeanor convictions
- no case manager program

Court must waive jurisdiction over child younger than 17 years of age charged with "electronic transmission of certain visual material depicting minor"

If court or another court previously dismissed a complaint for lack of capacity under PE 8.08

FA 51.08

OTHER OFFENSES COMMITTED BY JUVENILES

REPORTING

Court must notify juvenile court of pending complaint and of final disposition

CAPACITY TO COMMIT OFFENSE

Presumption that child 10 - 14 years of age cannot commit a fine only misdemeanor - other than juvenile curfew offense

FA 51.08

OTHER OFFENSES COMMITTED BY JUVENILES

(SB 393) SCHOOL OFFENSE

- · Class C misdemeanor, other than traffic
- · Committed by child enrolled in public school
- Committed on property under control of ISD ED 37.141

Peace officer may not issue a citation to a child enrolled in a public school for a Class C misdemeanor committed on property under control of ISD, other than traffic ED 37.143

Provisions control over any other law applied to an offense committed on school property

(5B 1114) Peace officer may not issue a citation or file a complaint for conduct by a child younger than 12 years of age that occurred on school property or a vehicle owned or operated by county or ISD

Peace officer may not issue a field release citation in place of taking a child into custody for a fine-only offense committed by a child younger than 12 years on school property or a vehicle owned by county or ISD

(5B 1114) SCHOOL OFFENSE

Peace officer who files a complaint for conduct committed by a child 12 years of age or older that occurred on school property or on a vehicle owed or operated by county or ISD, must submit:

- offense report
- a statement by a witness to the conduct
- · a statement by a victim of the conduct, if any

The prosecuting attorney may not proceed to try an offense unless the peace officer has provided the documents

CP 45.058

(SB 393) COMPLAINT FOR SCHOOL OFFENSE

Must be sworn to be a person with <u>personal knowledge</u> of the facts giving rise to probable cause

Must be accompanied by statement from school employee stating if child eligible or receiving special services

(5B 393) PROSECUTING ATTORNEY

A prosecuting attorney may adopt rules for filing of complaints for school offenses

- · in order to determine probable cause
- to review circumstances and allegations in complaint
- · to see that justice is done

(SB 393) GRADUATED SANCTIONS

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ISD that commissions peace officers may develop
graduated sanctions before complaint filed for:
      disorderly conduct (a)(1)(2)(3)(4)(5)
      disruption of class
      disruption of transportation
May require:
      warning letter to child/parent
      behavior contract signed by child/parent
      referral to counseling/other services
      performance of school-based community service
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DISORDERLY CONDUCT, DISRUPT CLASS/TRANSP

For Disrupt transportation
Disrupt Class
Disorderly conduct
(a)(1) abusive language
(a)(2) offensive gesture
(a)(3) unreasonable odor
(a)(4) threat
(a)(5) unreasonable noise

the graduated sanctions, if any, that were imposed before complaint filed

(Graduated sanctions are not required for (a)(6) fighting)

DISORDERLY CONDUCT

- (a)(1) abusive language
- (a)(2) offensive gesture
- (a)(3) unreasonable odor
- (a)(5) unreasonable noise
- (a)(6) fight with another

Elements of offense do not apply to a student younger than 12 years of age and the conduct occurred at a public school campus during regular school hours

(Elements of offense does apply to (a)(4) threat)

"Public place" includes a public school campus or school grounds
PE 42.01

DISRUPTION OF CLASS

Except a person younger than 12 years of age, a person commits an offense if the person intentionally disrupts the conduct of classes or other school activities on school property or on public property within 500 feet of school property.

SB 393, Senate concurred May 23, 2013

• A person other than a primary or secondary grade student enrolled in the school, commits an offense if the person intentionally disrupts the conduct of classes or other school activities on school property or on public property within 500 feet of school property. It is an exception that, at the time the person engaged in conduct prohibited under that subsection, the person was a student in the sixth grade or a lower grade level.

58 1114, Passed House May 20, 2013

SCHOOL OFFENSE DISRUPTION OF CLASS

- "Disrupting the conduct of classes or other school activities" includes:
- (A) emitting noise of an intensity that prevents or hinders classroom instruction;
- (B) enticing or attempting to entice a student away from a class or other school activity that the student is required to attend;
- (C) preventing or attempting to prevent a student from attending a class or other school activity that the student is required to attend; and
- (D) entering a classroom without the consent of either the principal or the teacher and, through either acts of misconduct or the use of loud or profane language, disrupting class activities.
- "Public property" includes a street, highway, alley, public park, or sidewalk.
- "School property" includes a public school campus or school grounds on which a public school is located and any grounds or buildings used by a school for an assembly or other school-sponsored activity.

DISRUPTION OF TRANSPORTATION

- Except a person younger than 12 years of age, a person other than a primary or secondary grade student commits an offense if the person intentionally disrupts, prevents, or interferes with the transportation of children (i) to or from school on a school vehicle or (ii) to or from an activity sponsored by a school on a school vehicle.
- SB 393 Senate concurred on May 23, 2013
- A person other than a primary or secondary grade student commits an offense if the person intentionally disrupts, prevents, or interferes with the transportation of children (i) to or from school on a school vehicle or (ii) to or from an activity sponsored by a school on a school vehicle.
- It is an exception that, at the time the person engaged in conduct prohibited under that subsection, the person was a student in the sixth grade or a lower grade level.
- SB 1114 Passed the House on May 20, 2013.

A bus driver transporting students to or from school or school activity may send student to principal's office to maintain effective discipline on bus;

<u>Principal must employ appropriate discipline management techniques consistent</u> with code of conduct

SB 1541, Effective 6-14-2013 ED 37.0022

COMPLAINTS AND PROBABLE CAUSE AFFIDAVITS

- AFFIDAVIT FOR PROBABLE CAUSE:
- SCHOOL OFFENSE FILED BY PEACE OFFICER
- Instructions: Complaint and Affidavit of Probable Cause must be made by a person who has personal knowledge
- Person must also submit a statement from a school employee stating whether the Defendant is eligible for or receives special services for students with disabilities

- AFFIDAVIT FOR PROBABLE CAUSE:
- FILED BY SCHOOL EMPLOYEE

- Instructions: A police officer must submit to the court (i)
 the offense report, (ii) a statement by a witness to the
 alleged conduct, and (iii) a statement by a victim. Tex.
 Code Crim. Proc. Art. 45.058
- The officer must also submit a statement from a school employee stating whether the Defendant is eligible for or receives special services for students with disabilities. Tex. Educ. Code 37.146

FAIL TO ATTEND SCHOOL - COMPLAINT

Affiant has good rea	ison to believe and	does believe and charge					
that	_, on or about	, and before the making					
and filing of this Complaint, in Harris County, Texas, did then and							
there intentionally and knowingly fail to attend school on,							
		, and said defendant is a					
child 12 years of age or older and younger than 18 years of age,							
who is required by law to attend school.							

FAIL TO ATTEND SCHOOL - PROBABLE CAUSE

- ______, ("child") whose date of birth is ______, is a child who is 12 years of age or older and younger than 18 years of age and who is required to attend school under Section 25.085 of the Texas Education Code, and who is enrolled in _____ School, within the District. The School is within Harris County, Texas.
- Affiant examined the records of the School District.
- The records reflect that the District adopted truancy prevention measures and on or about _____; the School applied those truancy prevention measures to the child; those measures did not meaningfully address the child's school attendance as evidence by the child's continued absences.
- The records reflect that child was absent on the following days in the same school year: (indicate 3 or more days or parts of days in a 4 week period, or 10 or more days or parts of days in a 6 month period in the same school year)
- and that no reason for the child's absences was provided to the School; and that no school official excused the absences.
- Affiant investigated the circumstances of the child and found that: (state only facts, and not conclusions, which show the circumstances of the offense; and if the defendant is younger than 15 years of age, describe how defendant has sufficient capacity to understand that these actions were wrong):
- Defendant ② is eligible ② is not eligible ② receives special services for students with disabilities.

ASSAULT - COMPLAINT

Affiant has good reason to believe and does believe and charge				
that on or about, and before the				
that on or about, and before the making and filing of this Complaint, in Harris County, Texas, at				
, on property under the control and jurisdiction of the				
Independent School District, Defendant, a child, who				
is years of age and enrolled in Public School, did				
then and there, intentionally and knowingly				

ASSAULT - PROBABLE CAUSE

 On or about, in a location in Justice of the Peace Precinct, Harris 				
	County, Texas, Defendant,	, did then and there		

- regarded as offensive and provocative.
 I am an employee of the _____ Independent School District. I have reviewed the District's records which show that Defendant is enrolled in the _____ Public
 - School and that Defendant is _____ years of old. Defendant's conduct occurred on property under the control and jurisdiction of the School District at _____
- My belief is based on the following facts of which I have personal knowledge (state only facts, and not conclusions, describing when the offense occurred, the facts and circumstances which show how the offense was committed, and how the person accused is known to you, or was identified by you; if the defendant is younger than 15 years of age, describe how defendant has sufficient capacity to understand that these actions were wrong):
- Defendant _ is eligible _ is not eligible _ receives special services for students with disabilities.

DISORDERLY CONDUCT (FIGHT WITH ANOTHER) - COMPLAINT

•	Affiant has good reason to believe and does believe and cha				
	that on or about, and	before the making and filing			
	of this Complaint, in Harris County, Texas, at,				
	public school campus within the	School District and a			
	public place, Defendant,	, a child who is			
	years of age and enrolled in	Public School, did then			
	and there, intentionally and know	vingly fight with			

DISORDERLY CONDUCT (FIGHT WITH ANOTHER)- PROBABLE CAUSE

•	On or about,	in a location in Justice of	of the Peace Precind	ct, Harris
		, a public school		
	District and a public	place, Defendant,	, a child who is	years of age and
	enrolled in	Public School, did then	and there, intentior	ally and knowingly
	fight with	I am an employee	e of the	Independent School
	District. I have review	wed the District's record	ds which show that	Defendant is enrolled
		nool and that Defendan		
		<i>,</i> on property	y under the control	and jurisdiction of
	the School District			

- My belief is based on the following facts of which I have personal knowledge (state only facts, and not conclusions, describing when the offense occurred, the facts and circumstances which show how the offense was committed, and how the person accused is known to you, or was identified by you; if the defendant is younger than 15 years of age, describe how defendant has sufficient capacity to understand that these actions were wrong):
- Defendant _ is eligible _ is not eligible _ receives special services for students with disabilities.

PUBLIC INTOXICATION - COMPLAINT

Affiant has good reason to believe and does believe and charge that on or about ______, and before the making and filing of this Complaint, in Harris County, Texas, at ______, a public school campus within the ______ School District and a public place, Defendant, ______, a child who is _____ years of age and enrolled in ______ Public School, did then and there unlawfully appear while intoxicated to the degree that the Defendant may have endangered the Defendant or another person.

PUBLIC INTOXICATION - PROBABLE CAUSE

- On or about _____, in a location in Justice of the Peace Precinct ____, Harris County, Texas, at _____, a public school campus within the _____ School District and a public place, Defendant, _____, a child who is ___ years of age and enrolled in _____ Public School, did then and there unlawfully appear while intoxicated, by the use of _____ to the degree that the Defendant may have endangered the Defendant or another person.
 I am an employee of the _____ Independent School District. I have reviewed the District's records which show that Defendant is enrolled in the ____ School and that Defendant is ____ years of old. Defendant's conduct occurred at ____, on property under the control and jurisdiction of District
- My belief is based on the following facts of which I have personal knowledge (state only facts, and not conclusions, describing when the offense occurred, the facts and circumstances which show how the offense was committed, and how the person accused is known to you, or was identified by you; if the defendant is younger than 15 years of age, describe how defendant has sufficient capacity to understand that these actions were wrong):
- Defendant _ is eligible _ is not eligible _ receives special services for students with disabilities.