

PART THREE: PARENT CONTRIBUTING TO NONATTENDANCE

1. Warning Notices.

Warning notices to parents or persons standing in parental relation to a student are required at the beginning of the school year, and again when a student has accumulated 3 absences.

- A. At the beginning of the school year. A school district shall notify the 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 6-month period in the same school year, or on 3 or more days or parts of days within a 4-week period, the parent is subject to prosecution for “parent contributing to nonattendance,” and the student is subject to prosecution for “failure to attend school.”
- B. When the student has 3 absences. The school district shall notify a parent if the student has been absent without excuse, on 3 days or parts of days within a 4-week period.

This notice must:

- (i) Inform the parent that:
- It is the parent’s duty to monitor and require the student to attend school, and
- The parent is subject to prosecution for “parent contributing to nonattendance;” and
- (ii) Request a conference between school officials and the parent.

TEX. EDUC. CODE §25.095.

2. School District Complaint or Referral for Failure to Attend School.

- A. Truancy Prevention Measures; Referral and Filing Requirement. A school district is required to adopt truancy prevention measures designed to:
- ☐ address student conduct related to truancy in the school setting;
 - ☐ minimize the need for referrals to juvenile court for excessive unexcused absences; and
 - ☐ minimize the filing of complaints in county, justice, and municipal courts alleging “failure to attend school.”
- B. Mandatory action against student by school district. If a student fails to attend school without excuse on 10 or more days or parts of days within a 6-month period in the same school year, the school district must, within 10 school days of the 10th absence:
- (i) File a complaint against the student who is 12 years of age or older and younger than 18 years of age, for “failure to attend school;” against the student’s parent for “parent contributing to nonattendance,” or both; or
- (ii) Refer the student who is 10 years of age or older to a juvenile court for conduct indicating a need for supervision for the unexcused absences.

A court is required to dismiss a complaint that is not filed or a referral that is not made within 10 school days of the student's 10th absence.

- C. Permissive action against student by school district. When a student fails to attend school without excuse on 3 or more days or parts of days within a 4-week period, the school district may:

- (i) File a complaint against the student who is 12 years of age or older and younger than 18 years of age, for "failure to attend school," against the student's parent for "parent contributing to nonattendance," or both; or
- (ii) Refer the student who is 10 years of age or older to a juvenile court for conduct indicating a need for supervision.

TEX. EDUC. CODE §25.0951.

3. **Parent Contributing to Nonattendance.**

- A. Offense. If a warning was issued at the beginning of the school year notifying the parent that if the child 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 that the parent is subject to prosecution, and the parent, with criminal negligence fails to require the child to attend school, and the child has accumulated absences 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, the parent commits an offense. This offense is a Class C misdemeanor punishable by a fine not to exceed \$500.00. Each day the child remains out of school may constitute a separate offense.

TEX. EDUC. CODE §25.093.

- B. Criminal negligence. A person acts with criminal negligence, or is criminally negligent, with respect to circumstances surrounding his conduct or the result of his conduct when the person ought to be aware of a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of such a nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the actor's standpoint.

TEX. PENAL CODE §6.03.

- C. Venue. "Parent contributing to nonattendance" offenses may be prosecuted in:
- (1) The constitutional county court, if the county has a population of 2 million or more;
 - (2) The justice court of any precinct in which the parent resides or in which the school is located; or
 - (3) A municipal court in the municipality in which the parent resides or in which the school is located.

TEX. EDUC. CODE §25.093.

- D. Affirmative defense. It is an affirmative defense to prosecution for "parent contributing to nonattendance" that one or more of the absences required to be proven:
- (i) was excused by a school official; or

- (ii) should be excused by the court;

The burden is on the defendant to show by a preponderance of the evidence that the absence has been or should be excused.

A decision by the court to excuse an absence for purposes of the prosecution of the offense of “failure to attend school” does not affect the ability of the school district to determine whether to excuse the absence for another purpose.

TEX. EDUC. CODE §25.093.

- E. Allowable orders. The court granting a parent a suspension of sentence and deferral of disposition may require the parent to provide personal services to a charitable or educational institution as a condition of the deferral.

The court may also order the 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 students’ unexcused absences and in developing strategies for resolving those problems, if such a program is available.

TEX. EDUC. CODE §25.093

- F. Dispositional procedures. Dispositional procedures applicable to “parent contributing to nonattendance” include:

- (i) TEX. CRIM. PROC. CODE §45.051, which allows the court to suspend the sentence and defer final disposition;
- (ii) TEX. CRIM. PROC. CODE §45.041, which sets out the requirements of a judgment; and
- (iii) TEX. GOV’T. CODE §21.002, which sets out the punishment for contempt;

- G. Punishment. The punishment for “parent contributing to nonattendance” is a fine not to exceed \$500.00.

4. Disposition, in Particular.

- A. Suspension of Sentence and Deferral of Final Disposition. Under this procedure, on a plea of guilty or no contest, or on a finding of guilt, the court will defer further proceedings for up to 180 days and place the parent on probation. The judge may impose any reasonable condition of probation, including that the parent provide personal services to a charitable or educational institution and that the parent attend a program for parents of students with unexcused absences, if such a program is available. In issuing the order of deferral, the judge may impose a special expense fee in an amount not to exceed the amount of the fine that could be imposed on the defendant as punishment for the offense.

If the parent successfully complies with the conditions of probation, the complaint is dismissed.

If the parent, within the deferral period, does not present evidence of compliance with the terms of probation, the judge must notify the parent in writing of the failure, and require the parent to appear and show cause why the order deferring the proceedings should not be revoked. On a showing of good cause, the judge may allow an additional period during which the parent may present evidence of compliance with the requirements of probation.

If the defendant does not appear at the show cause hearing, or if the defendant does not present evidence of compliance with the terms of probation by the conclusion of any additional period allowed the defendant, the court will impose the fine, constituting a conviction.

- ☐ Require payment of court costs, find defendant unable to pay court costs, allow defendant enter into an agreement for payment of costs in installment during the period of probation, or require an eligible defendant to discharge costs by performing community service.
- ☐ On a plea of guilty or no contest, or on a finding of guilt, determine the fine amount, defer further proceedings and place the defendant on probation for a period not to exceed 180 days.
- ☐ Impose a special expense fee on the defendant in an amount not to exceed the amount of the fine that could be imposed on the defendant as punishment for the offense, and collect at any time before the period of probation ends.
- ☐ Impose conditions reasonably related to the offense, which may include:
 - Post a bond in the amount of the fine assessed to secure payment of the fine;
 - Submit to professional counseling;
 - Submit to diagnostic testing for alcohol or a controlled substance or drug;
 - Submit to a psychosocial assessment;
 - Participate in an alcohol or drug abuse treatment or education program;
 - Pay the costs of any diagnostic testing, psychosocial assessment, or participation in a treatment or education program;
 - Require the individual to provide personal services to a charitable or educational institution;
 - Require the individual to attend a program for parents of students with unexcused absences;
- ☐ Require the defendant to appear prior to the conclusion of the deferral period to present satisfactory evidence of compliance.
- ☐ On compliance, dismiss complaint and enter dismissal on docket; a special expense not to exceed the amount of the fine assessed may be imposed.
- ☐ If the defendant fails to present evidence of compliance:
 - Mail notice to defendant at address on file with the court or appearing on the notice to appear;
 - Require defendant to appear at a specific time and place to show cause why the order deferring disposition should not be revoked.
- ☐ If defendant shows good cause, allow an additional period within which the defendant may present evidence of compliance.
- ☐ If defendant fails to appear on the date of the show cause hearing, or if defendant fails to present evidence of compliance at the conclusion of the additional period, impose the fine assessed or a lesser fine.

TEX. CRIM. PROC. CODE §45.051.

B. Judgment. On a plea of guilty or no contest, or on a finding of guilt, the judge will assess a fine, and direct the satisfaction of the judgment.

- ☐ Enter judgment for fine and court costs.
- ☐ Direct payment of judgment immediately, at a later date, or in installments.
- ☐ If it is determined that the defendant is unable to immediately pay the fine and costs, allow defendant to pay fine and costs in specified portions at designated intervals.
- ☐ If defendant fails to pay a previously assessed fine or costs, or is determined to have insufficient resources or income to pay a fine or costs, direct the discharge of the judgment by performing community service or tutoring. A defendant is considered to have discharged not less than \$50 of fines or costs for each 8 hours of community service or tutoring performed;
- ☐ *(Optional)* Enter additional orders:
 - Require the individual to provide personal services to a charitable or educational institution;
 - Require the individual to attend a program for parents of students with unexcused absences;

TEX. CRIM. PROC. CODE §45.041 and TEX. CRIM. PROC. CODE §45.049.

C. Motion for New Trial and Appeal. A motion for a new trial must be made within 5 days after the rendition of judgment, and not afterwards.

TEX. CRIM. PROC. CODE §45.037.

The filing of an appeal bond perfects the appeal. The amount of a bail bond may not be less than two times the amount of the fine and costs adjudged against the defendant, payable to the State of Texas. The appeal bond is conditioned that the defendant make the defendant's personal appearance before the county criminal courts at law and remain there from day to day to answer in the cause in that court.

TEX. CRIM. PROC. CODE §45.0425