

PART ONE: FAILURE TO ATTEND SCHOOL

1. Operation of Schools and School Attendance.

- A. Who may be admitted to school? A person who, on the first day of September of any school year is:

- ☐ At least 5 years of age and under 21 years of age, or
- ☐ At least 21 years of age and under 26 years of age for the purpose of completing the requirements for a high school diploma.

TEX. EDUC. CODE §25.001.

- B. What are the requirements for enrollment? On enrollment, either a parent, other person with legal control, or the school district in which the child most recently attended school must furnish, among other documents:

- ☐ The child's birth certificate or some other document proving identity,
- ☐ The child's records from the school most recently attended; and
- ☐ A record showing that the child has the required immunizations.

Only the child's parent or guardian or other person with legal control of the child under a court order may enroll a child, and the school district must record the name, address, and date of birth of the person enrolling a child.

TEX. EDUC. CODE §25.002.

A student must be identified by the legal surname as it appears on a birth certificate or other identifying document suitable as proof of identity or in a court order changing the student's name.

TEX. EDUC. CODE §25.0021.

A person presenting falsified documents or records to enroll a student in a school district commits an offense of tampering with governmental record. A person using a governmental record required for enrollment to establish the residency of the student commits a Class C misdemeanor which is punishable by a fine not to exceed \$500.

TEX. PENAL CODE §37.10.

- C. Who is required to attend school? A child who is at least 6 years of age, or who is younger than 6 years of age and has previously been enrolled in first grade, and who has not yet reached the child's 18th birthday, is required to attend school. Those also required to attend school include:

- ☐ A child on enrollment in pre-kindergarten or kindergarten;
- ☐ A person in an extended year program for students identified as likely not to be promoted, or attending tutorials because of a subject grade lower than the equivalent of 70 (Sec. 29.084);
- ☐ A person assigned to an accelerated reading instruction program following a reading diagnosis (Sec. 28.006);

- ☐ A child assigned to an accelerated instruction program following failure to perform satisfactorily on an assessment instrument (Sec. 28.0211);
- ☐ A child assigned to a basic skills program (Sec. 29.086);
- ☐ A child in a summer program to complete coursework (Sec. 37.008 and Sec. 37.021).

A person who voluntarily enrolls in school or voluntarily attends school after the person's 18th birthday shall attend school each school day for the entire period of the program. Enrollment may be revoked for the remainder of the school year after the person has more than 5 unexcused absences in a semester. A person whose enrollment is revoked may be considered an unauthorized person on school district grounds. An unauthorized person who trespasses on the grounds of any school district commits a Class C misdemeanor.

The board of trustees may adopt a policy requiring a person who voluntarily enrolls in school or voluntarily attends school after the person's 18th birthday, but who is under 21 years of age, to attend school until the end of the school year. A person who violates this policy may be charged with the offense of "failure to attend school." However, a parent may not be charged with "parent contributing to nonattendance." The school district does not need to notify a parent of the consequences of failing to attend school.

TEX. EDUC. CODE §25.085.

D. Who is exempt from compulsory attendance? The following students are exempt from the compulsory attendance requirements:

- ☐ A child attending a private or parochial school with a course in good citizenship;
- ☐ A child eligible to participate in a school district's special education program (Sec. 29.003) and who cannot be appropriately served by the resident district;
- ☐ A child who has a physical or mental condition of a temporary and remediable nature that makes attendance infeasible and who holds a certificate from a qualified physician;
- ☐ A child who is expelled in a district that does not participate in a mandatory juvenile justice alternative education program;
- ☐ A child who is at least 17 years old who has a high school diploma or high school equivalency certificate, or who is attending a course to prepare for the high school equivalency examination, and:
 - (i) has the permission of the child's parent to attend the course;
 - (ii) is required by court order to attend the course;
 - (iii) has established a residence separate from the child's parent; or
 - (iv) is homeless;
- ☐ A child who is at least 16 years old and is attending a course in preparation for the high school equivalency examination if:
 - (i) a public agency has recommended the course, or a court has ordered the course; or
 - (ii) the child is enrolled in a Job Corps training program;
- ☐ A child who is at least 16 years of age and is enrolled in a Job Corps diploma program;
- ☐ A child who is enrolled in the Texas Academy of Mathematics and Science;
- ☐ A child who is enrolled in the Texas Academy of Leadership in the Humanities;
- ☐ A child who is enrolled in the Texas Academy of International Studies;

- ❑ A child who is enrolled in the Texas Academy of Mathematics and Science at the University of Texas at Brownsville; or
- ❑ A child who is exempted under another law.

TEX. EDUC. CODE §25.086.

- E. Minimum attendance for class credit or final grade. A student in any grade from kindergarten to grade 12, may not receive credit for a class or a final grade for the class unless the student is in attendance for at least 90 percent of the days the class is offered. A student who attends school for at least 75 percent but less than 90 percent of the days a class is offered may be given credit or a final grade for the class if the student completes an instructional plan approved by the principal.

A student who is under the jurisdiction of a court in a criminal or juvenile justice proceeding may not receive credit or a final grade without the consent of the judge presiding over the student's case.

TEX. EDUC. CODE §25.092.

- F. School day interruptions. The trustees of a school district are required to adopt and enforce a policy that limits the removal of students from class for remedial tutoring or test preparation. A student may not be removed from class for these reasons if as a result of the removal, the student would miss more than 10% of the school days on which the class is offered, unless the parent consents.

- G. Excused absences.

- (i) Permissive. A student may be excused for temporary absence resulting from any cause acceptable to the teacher, principal, or superintendent of the school in which the student is enrolled.

A student in grades 6 through 12 may be excused for the purpose of sounding "Taps" at a military honors funeral held in this State for a deceased veteran. If the student satisfactorily completes the school work missed while absent, the day of absence is counted as a day of compulsory attendance.

During the junior or senior years of high school, a student may be excused to visit an institution of higher education accredited by a generally recognized accrediting organization. The district may not excuse more than two days during the junior year and two days during the senior year for this purpose.

A school district may excuse a student from attending school for service as a student early voting clerk in an election. The absence is for a maximum of two days during the school year.

- (ii) Mandatory.

(1) A school district must excuse a student:

- (a) For observance of religious holy days, including travel;
- (b) For attending a required court appearance, including travel;
- (c) For an appearance at a governmental office to complete paperwork required with an application for citizenship, including travel; and,

- (d) For taking part in a naturalization ceremony, including travel;
 - (e) For serving as an election clerk, for no more than 2 days during the school year; or
 - (f) For participation in a court ordered activity by students in the conservatorship of the Department of Family and Protective Services;
- (2) A school district must excuse a student for a temporary absence resulting from an appointment with health care professionals for the student or the student's child if the student commences classes or returns to school on the same day of the appointment. This excuse includes the temporary absence of a student diagnosed with autism spectrum disorder on the day of the student's appointment with a health care practitioner to receive a generally recognized service for persons with autism spectrum disorder, including applied behavioral analysis, speech and occupational therapy.
- (3) A school district must excuse a student to visit with a parent, stepparent, or legal guardian who is an active duty member of the uniformed services and has been called to duty for, is on leave from, or immediately returned from continuous deployment of at least 4 months outside the locality where the parent, stepparent, or guardian regularly resides, for not more than 5 days in a school year. The absence must be taken (i) not earlier than the 60th day before the date of deployment, or (ii) not later than the 30th day after the date of return from deployment.

Where excuse is mandatory, and in the instances where the student is visiting institutions of higher education, or sounding "Taps," the student may not be penalized for that absence and shall be counted as if the student attended school for purposes of calculating the average daily attendance. If the student satisfactorily completes the school work missed while absent, the day of absence is counted as a day of compulsory attendance.

TEX. EDUC. CODE §25.087.

2. Attendance Officers.

A. Peace officer serving as attendance officer.

A peace officer serving as an attendance officer has the following powers and duties for enforcement of compulsory school attendance requirements:

- ☐ To investigate a violation of compulsory attendance requirements;
- ☐ To enforce compulsory school attendance requirements by applying truancy prevention measures, and if the measures fail, by referring a student to the juvenile court, or:
 - (i) Filing a complaint against a student who is 12 years of age or older and younger than 18 years of age, in a county, justice, or municipal court if the student has absences for 10 or more days or parts of days within a 6-month period, or 3 or more days or parts of days within a 4-week period; **or**
 - (ii) Filing a complaint against a parent in a county, justice, or municipal court for "Parent Contributing to Nonattendance;"
- ☐ To serve court-ordered legal process;
- ☐ To review attendance records for compliance by students investigated by the officer;

- ❑ To maintain an investigative record on each violation and related court action and to provide the record to the court on request;
- ❑ To make a home visit or contact the parent, but the officer may not enter a residence without permission of parent, or tenant or owner of residence, except to serve court ordered legal process on parent;
- ❑ To take a student into custody with permission of parent;
- ❑ To take a student into custody in obedience to court ordered legal process.

A peace officer who has probable cause to believe that a child is in violation of the compulsory attendance law, may take the child into custody to return the child to school.

TEX. EDUC. CODE §25.091.

School district peace officers may enforce all laws and may take a child into custody. School district peace officers may dispose of the case of a child taken into custody for a Class C misdemeanor, other than traffic:

- (i) without referral to juvenile court or filing a charge in justice court if the juvenile board has adopted guidelines for this disposition;
- (ii) by referral to a first offender program, if the juvenile board establishes a first offender program.

School district peace officers may provide assistance to other law enforcement agencies, and under a contract between the school district and a political subdivision, may extend their jurisdiction to include all territory in the political subdivision.

TEX. FAM. CODE §52.03; TEX. FAM. CODE §52.031; TEX. EDUC. CODE §37.081.

B. Attendance officer who is not a peace officer.

An attendance officer who is not a peace officer has the following powers and duties for enforcement of compulsory school attendance requirements:

- ❑ To investigate each case of violation of compulsory attendance requirements referred to the officer;
- ❑ To enforce compulsory school attendance requirements by applying truancy prevention measures that address student conduct related to truancy, and if the measures fail, by referring a student to the juvenile court, or:
 - (i) Filing a complaint against a student who is 12 years of age or older and younger than 18 years of age, in a county, justice, or municipal court if the student has absences for 10 or more days or parts of days within a 6-month period or 3 or more days or parts of days within a 4-week period; **and**
 - (ii) Filing a complaint against a parent in a county, justice, or municipal court for “Parent Contributing to Nonattendance;”
- ❑ To monitor school attendance compliance by each student investigated;
- ❑ To maintain an investigative record on each violation and related court action and to provide the record to the court on request;
- ❑ To make a home visit or contact the parent, but the officer may not enter a residence without permission of the parent, or owner or tenant of residence;
- ❑ To escort a student from any location to a school, at the request of a parent;
- ❑ To contact a district police officer or other peace officer to serve court ordered legal process.

TEX. EDUC. CODE §25.091.

- C. School Marshal. The trustees of a school district or governing body of an open enrollment charter school may appoint not more than one (1) school marshal per 400 students in average daily attendance for each campus. A school marshal may carry or possess a handgun on the premises of a school, but only at a specific school in accordance with written regulations adopted by the trustees or governing body. If the primary duty of the school marshal involves regular, direct contact with students, the marshal may not carry a handgun, but must place it in a locked and secured safe within the marshal's immediate reach when conducting the marshal's primary duty; the marshal's handgun may be loaded only with frangible ammunition designed to disintegrate on impact. The marshal may access the handgun only under circumstances that would justify the use of deadly force. The identity of the school marshal is confidential.

TEX. EDUC. CODE §37.0811.

- D. 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."

TEX. EDUC. CODE §25.0915.

3. **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.

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

A. 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.

It is the consensus that it is not permissible to issue a citation for the offense of “failure to attend school.

B. 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.

A court is required to dismiss a complaint made by a school district that is not made in compliance with these requirements.

TEX. EDUC. CODE §25.0915.

5. Case Manager Program.

A justice court, with the approval of commissioners court, may employ a case manager to provide services in cases involving juvenile offenders who are before the court or who, with the consent of the juvenile and the juvenile’s parents or guardians, are referred to a court by a school administrator prior to a case being filed, for misconduct that would otherwise be within the court’s statutory powers. A juvenile case manager will assist the court in administering the court’s juvenile docket and in supervising the court’s orders in juvenile cases. A juvenile case manager may (i) provide 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. Priority is given to juveniles charged with “failure to attend school” and parents charged with “parent contributing to nonattendance.”

Case managers are governed by a code of ethics adopted by commissioners court and also by rules providing for educational pre-service and in-service training standards, and training in:

- ☐ The role of the case manager;
- ☐ Case planning and management;
- ☐ Procedural and substantive law;
- ☐ Courtroom proceedings and presentation;
- ☐ Services to at-risk youth;
- ☐ Local programs and services and methods for accessing those programs; and
- ☐ Detecting and preventing abuse, exploitation, and neglect of juveniles.

Commissioners court must, periodically, review the juvenile case managers to ensure the implementation of the rules.

The juvenile case manager must report to the judge any information or recommendations relevant to assisting the judge in making decisions that are in the best interest of the child, and the judge who is assigned to the case is required to consult with the juvenile case manager who is supervising the case regarding:

- ☐ the child's home environment;
- ☐ the child's developmental, psychological, and educational status;
- ☐ the child's previous interaction with the justice system; and
- ☐ any sanctions available to the court that would be in the best interest of the child.

TEX. CRIM. PROC. CODE §45.056.

The Harris County Justice Courts are served by juvenile case managers. The Harris County Commissioners Court has required a defendant convicted of a fine-only misdemeanor offense in the Harris County Justice Courts to pay a juvenile case manager fee not to exceed \$5 as a cost of court.

TEX. CRIM. PROC. CODE §102.0174.

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 for the truancy prevention and diversion fund. The County may retain 50% of the funds collected for the purpose of operating or establishing a juvenile case manager program.

TEX. CRIM. PROC. CODE §102.015

6. **Failure to Attend School.**

A. Offense. An individual commits the offense of “failure to attend school,” if the individual:

- (i) is 12 years of age or older and younger than 18 years of age;
- (ii) is required to attend school, and
- (iii) fails to attend 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 offense of “failure to attend school” is a Class C misdemeanor.

TEX. EDUC. CODE §25.094.

B. Requirements at time of filing. Each complaint alleging a failure to attend school or each referral made for this conduct, must be accompanied by an affidavit of probable cause, and a statement from the student’s school:

- ☐ certifying that the school applied the school’s truancy prevention measures,
- ☐ certifying that the truancy prevention measures failed meaningfully to address the student’s school attendance, and
- ☐ specifying whether the student is eligible for or receives special education services.

A court must dismiss a complaint or referral made by school district that is not accompanied by the required certifications.

TEX. EDUC. CODE §25.0915.

- C. Jurisdictional limitations. Unless a court has implemented a juvenile case manager program, the court shall waive its original jurisdiction and refer a child to juvenile court if the child has previously been convicted of:

- (i) Two or more misdemeanors punishable by fine only, other than a traffic offense;
- (ii) Two or more violations of a penal ordinance of a political subdivision, other than a traffic offense; or
- (iii) One or more of a misdemeanor punishable by fine only or violation of a penal ordinance of a political subdivision, other than a traffic offense.

A court that has implemented a juvenile case manager program may, but is not required to waive its original jurisdiction.'

A court must waive original jurisdiction if the court or another court has previously dismissed a complaint against a child for lack of capacity under Texas Penal Code Sec. 8.08.

- D. Reporting requirements. A court in which a complaint is pending against a child must notify the juvenile court of the pending complaint and must also furnish the juvenile court a copy of the final disposition of any matter for which the court has not waived its original jurisdiction.

TEX. FAM. CODE §51.08.

"Child" means a person who is: (A) 10 years of age or older and under 17 years of age; or (B) 17 years of age or older and under 18 years of age who is alleged or found to have engaged in delinquent conduct or conduct indicating a need for supervision as a result of acts committed before becoming 17 years of age.

TEX. FAM. CODE §51.02.

- E. Capacity to commit an offense. A person who is at least 10 years of age but younger than 15 years of age is presumed incapable of committing a misdemeanor punishable by fine only – other than an offense under a juvenile curfew order.

This presumption may be refuted if the prosecuting attorney proves to the court by a preponderance of the evidence, that the child had sufficient capacity to understand that the conduct engaged in was wrong at the time it was committed. The prosecution is not required to prove that the actor knew that the act was a crime or knew the legal consequences of the offense when the act was committed.

TEX. PENAL CODE §8.07.

- F. Dismissal under Sec. 8.08, Texas Penal Code. On the court's own motion, or on motion by the prosecuting attorney, on motion by the defendant, or by a person standing in parental relation to the defendant, and after notice to the state, a justice court must determine whether probable cause exists to believe that a child charged with a misdemeanor punishable by fine only (1) lacks the capacity to understand the proceedings in criminal court or to assist in the child's defense and is unfit to proceed; or (2) lacks substantial capacity either to appreciate the wrongfulness of the child's own conduct or to conform the conduct to the requirements of the law. If a court determines that probable cause exists for this finding, the case must be dismissed.

TEX. PENAL CODE §8.08.

A court must waive its jurisdiction for a complaint against a child alleging a violation of a misdemeanor offense punishable by fine only, other than a traffic offense, and refer the child to juvenile court if the court or another court has previously dismissed a complaint against the child because the child:

- (1) lacked the capacity to understand the proceedings in criminal court or to assist in the child's own defense and was unfit to proceed; or
- (2) lacked substantial capacity either to appreciate the wrongfulness of the child's own conduct or to conform the child's conduct to the requirements of the law.

TEX. FAM. CODE §51.08.

G. Venue. "Failure to attend school" offenses may be prosecuted in:

- (1) The constitutional county court, if the county has a population of 1.75 million or more;
- (2) A justice court of any precinct in the county in which the individual resides or in which the school is located; or
- (3) A municipal court in the municipality in which the individual resides or in which the school is located.

TEX. EDUC. CODE §25.094.

H. Affirmative defenses. It is an affirmative defense to prosecution for "failure to attend school" that one or more of the absences required to be proven (i) were excused by a school official, (ii) were excused by the court, or (iii) were involuntary; but only if there is an insufficient number of unexcused or voluntary absences remaining to constitute an offense.

The burden is on the defendant 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 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 §25.094.

7. Securing Appearance.

A. Arrest. A child may be taken into custody pursuant to the laws of arrest.

TEX. FAM. CODE §52.01.

However, a warrant may not be issued for the arrest of a person for a Class C misdemeanor under the Education Code committed when the person was younger than 17 years of age.

TEX. EDUC. CODE §37.085

1. Process. Based on an affidavit of probable cause sufficient to show that an individual has failed to attend 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 court may issue an order directing a peace officer to take the individual into custody.

TEX. EDUC. CODE §25.094.

2. Duties of peace officer. A peace officer taking an individual into custody for “failure to attend school” shall:
 - (i) Promptly notify the individual’s parent, guardian, or custodian of the action and the reason for that action; and
 - (ii) Without unnecessary delay, release the individual to the individual’s parent, guardian, or custodian, or to another responsible adult if such adult promises to bring the individual to court as requested by the court; or
 - (iii) Without unnecessary delay, bring the individual to the county, justice, or municipal court.

TEX. EDUC. CODE §25.094.

3. Authority of law enforcement officers, in general. A law enforcement officer who has probable cause to believe that a child is in violation of the compulsory attendance law may take the child into custody for the purpose of returning the child to the school campus to ensure the child’s compliance with the law.

TEX. FAM. CODE §52.01.

"Law-enforcement officer" means a peace officer as defined by Article 2.12, Code of Criminal Procedure.

TEX. FAM. CODE §51.02.

A person taking a child into custody, may bring the child to the school campus to which the child is assigned if the principal, the principal’s designee, or a peace officer assigned to the campus agrees to assume responsibility for the child for the remainder of the school day. A person taking a child into custody must promptly give notice of this action and a statement of the reason for the action to the child’s parent, guardian, or custodian, and (2) the office or official designated by the juvenile board.

TEX. FAM. CODE §52.02.

B. Summons for parent.

1. “Failure to Attend School” proceedings. A court having jurisdiction of the offense of “failure to attend school” shall issue a summons to the parent of the individual charged. The summons must contain an order directing the parent to appear personally at the hearing and to bring the individual to the hearing. The summons should also warn that the parent may be required to attend a class for students at risk of dropping out of school designed for both the individual and the individual’s parent, which may be enforceable by contempt.
2. Failure of parent to appear. A parent who fails to attend a hearing after receiving a summons commits an offense, punishable as a Class C misdemeanor.

TEX. CRIM. PROC. CODE §45.054.

8. Plea by Juvenile.

The judge must take the plea of a defendant who has not had the disabilities of minority removed and is younger than 17 years old, in open court, with the defendant's parent present.

TEX. CRIM. PROC. CODE §45.0215.

9. Admonishment of expunction rights.

Notice of Right to Expunction. On commencement of proceedings for "failure to attend school," the judge must inform the individual and the individual's parent, in open court, of the individual's expunction rights under certain circumstances. The judge must also provide a copy of TEX. CRIM. PROC. CODE §45.055.

TEX. CRIM. PROC. CODE §45.054.

An individual with only one conviction for "failure to attend school" may, after the individual's 18th birthday, apply to the court in which the individual was convicted to have the conviction and records relating to the conviction expunged. The court is required to expunge a conviction for "failure to attend school" regardless of whether the individual has previously been convicted if the individual complied with the conditions imposed under the procedures for "failure to attend school" cases, or if, before the individual's 21st birthday, the individual presents proof that the individual obtained a high school diploma or high school equivalency certificate. A fee of \$30 is required.

TEX. CRIM. PROC. CODE §45.055.

A. Allowable orders. On a finding that the individual has committed the offense of "failure to attend school," the Court may enter an order that includes one or more of the requirements listed in TEX. CRIM. PROC. CODE §45.054:

- (i) That the individual attend school without unexcused absences;
- (ii) That the individual attend a preparatory class for the high school equivalency examination, if the court determines that the individual is too old to do well in a formal classroom environment;
- (iii) That the individual take the high school equivalency examination if the individual is at least 16 years old;
- (iv) That the individual attend a special program in the best interest of the individual, including:
 - (a) an alcohol and drug abuse program;
 - (b) a rehabilitation program;
 - (c) a counseling program, including self-improvement;
 - (d) training in self-esteem and leadership
 - (e) training in work and job skills;
 - (f) training in parenting and parental responsibility;
 - (g) training in manners;
 - (h) training in violence avoidance;
 - (i) sensitivity training;
 - (j) training in advocacy and mentoring;
- (v) That the individual complete reasonable community service;

- (vi) That the individual participate in a tutorial program covering subjects in which the student is enrolled, offered by the school which the student attends; and
- (vii) That the individual and the individual's parent attend a class for students at risk of dropping out of school.

An order may not require a student to attend a juvenile justice alternative education program.

Additionally, the court may order the Department of Public Safety to suspend the individual's driver's license or permit, or to deny the issuance of a license or permit for a specified period, not to exceed 365 days.

TEX. EDUC. CODE §25.094

B. Dispositional procedures. A court is required, except as otherwise provided, to use the procedures and exercise the powers authorized by Chapter 45, Code of Criminal Procedure. Dispositional procedures authorized by Chapter 45 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 §45.052, which allows the court to dismiss the charge on completion of a teen court program;
- (iii) TEX. CRIM. PROC. CODE §45.054, which sets out certain orders that a court may enter in "Failure to Attend School" proceedings and the authority of the court to order the Department of Public Safety to suspend the driver's license or permit of the individual, or if the individual does not have a license or permit, to deny the issuance of a license or permit, for a period not to exceed 365 days;
- (iv) TEX. CRIM. PROC. CODE §45.041, which sets out the requirements of a judgment;
- (v) TEX. CRIM. PROC. CODE §45.050, which sets out the procedures for contempt;
- (vi) TEX. CRIM. PROC. CODE §45.055, which sets out the criteria for expunction of not more than one conviction for "failure to attend school;"
- (vii) TEX. CRIM. PROC. CODE §45.060, which sets out the individual's continuing obligation to appear to answer for the offense upon reaching 17 years of age.

10. Dismissal and Conviction.

A. Dismissal. A complaint for "failure to attend school" must be dismissed if:

- ☐ the court finds that the defendant has successfully complied with the conditions imposed on the defendant; or
- ☐ the defendant presents proof that the defendant has obtained a high school diploma or a high school equivalency certificate.

- B. Conviction. 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. The judgment shall be that the defendant pay the amount of the fine and costs to the state.

At the time of conviction, the judge may allow a defendant who is a child to elect to discharge the fine and costs by (i) performing community service or attending a tutoring program, or (ii) paying the fine and costs when sentence is pronounced, paying the fine and costs at some later date, or paying a portion of the fine and costs at designated intervals.

The election by a defendant who is a child of the manner of discharging the fine and costs must be made in writing, and signed by the defendant and the defendant's parent, guardian, or managing conservator, if present. The written election is a court record which must be maintained by the court.

TEX. CRIM. PROC. CODE §45.041.

If the defendant was a child at the time the offense was committed and discharging the fine and costs in any manner would impose an undue hardship on the defendant, the court may waive payment of a fine or costs imposed on a defendant who defaults in payment.

TEX. CRIM. PROC. CODE §45.0491.

- ☐ Enter judgment for fine and court costs.
- ☐ Allow defendant to elect method of discharging judgment, and maintain written and signed copy of election.
- ☐ As elected, direct payment of judgment immediately, at a later date, or in installments, or direct discharge of judgment by performing no more than 200 hours of community service, or attending a tutoring program. A defendant attending a tutorial program is considered to have discharged not less than \$50 of fines or costs for each 8 hours of tutoring.
- ☐ The fine and costs may be waived for a defendant who is indigent and unable to perform community service work.

TEX. CRIM. PROC. CODE §45.041; TEX. CRIM. PROC. CODE §45.0491; and TEX. CRIM. PROC. CODE §45.0492.

The court may also enter an order directing the Department of Public Safety to suspend the driver's license or permit, or to deny the issuance of a license or permit for a specified period, not to exceed 365 days.

If the individual presents to the court proof that the individual has obtained a high school diploma or a high school equivalency certificate, the case will be dismissed. The court may waive or reduce a fee or court cost.

TEX. CRIM. PROC. CODE §45.054.

- 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.

11. Expunction.

- A. Procedure for expunction. An individual who has reached 18 years of age, and who has been convicted of not more than one offense of "failure to attend school," may apply to the court in which the individual was convicted to have the conviction and records relating to the conviction expunged.

The applicant must submit a written request, under oath, which states that the applicant has not been convicted of more than one time for the offense of "failure to attend school."

- ☐ At the time of filing, applicant pays a \$30 fee to defray costs of notifying state agencies of the order of expunction.
- ☐ If no facts are in doubt, the court may expunge the conviction without a hearing.
- ☐ If facts are in doubt, the court may order a hearing on the application.
- ☐ Court informs applicant of decision.
- ☐ If the court finds that the applicant has not been convicted of more than one violation of TEX. EDUC. CODE §25.094, the court orders the conviction, together with all complaints, verdicts, sentences, and other documents relating to the offense, including those in the possession of a school district or law enforcement agency, to be expunged from the applicant's record.

The court must expunge a conviction for "failure to attend school" and records relating to the conviction, regardless of whether there has been a previous conviction:

- ☐ if the court finds that the defendant has successfully complied with the conditions imposed under the procedures for "failure to attend school" cases, or
- ☐ if before the defendant's 21st birthday, the defendant presents to the court proof that the defendant has obtained a high school diploma or a high school equivalency certificate.

- B. Effect of expunction. After entry of an expunction order, the conviction, together with all complaints, verdicts, sentences, and other documents relating to the offense, including any documents in the possession of a school district or law enforcement agency, are to be expunged. After entry of an expunction order, the applicant is released from all disabilities resulting from the conviction, and the conviction may not be shown or made known for any purpose.

TEX. CRIM. PROC. CODE §45.055.

- C. Other applicability; deferred disposition. The records relating to a defendant who successfully completes deferred disposition may be expunged under Chapter 55 of the Code of Criminal Procedure.

12. Violation of Judgment or Judgment and Additional Orders under Circumstances Constituting Contempt – “Failure to Attend School” Offenses.

- A. Failure to pay fine or comply with additional orders. Either the defendant’s failure to pay the fine and costs, or to discharge the fine and costs by performing community service work or attending a tutoring program, or the violation of orders imposed in connection with the judgment may be enforced by contempt or by a referral to the juvenile court for delinquent conduct.

If the individual fails to obey an order of the court, after notice and an opportunity to be heard, the court may:

- (1) Refer the individual to the juvenile court for delinquent conduct for violating a lawful order of the court, if the individual is under 17 years old; or
- (2) Retain jurisdiction, hold the child in contempt, and order either or both of the following:
 - (i) That the contemnor pay a fine not to exceed \$500; or
 - (ii) That the Department of Public Safety suspend the contemnor’s driver’s license or permit, or deny the issuance of a license or permit until the contemnor fully complies with the orders of the court.

TEX. CRIM. PROC. CODE §45.050.

- B. Suspension of sentence and deferral of disposition. The violation of an order suspending sentence and deferring disposition under TEX. CRIM. PROC. CODE §45.051 requires the defendant to appear to show cause why the deferred disposition order should not be revoked. Failure to comply results in an adjudication. Following adjudication, the court may impose additional orders as authorized by TEX. CRIM. PROC. CODE §45.054.

- C. Judgment or judgment and additional orders under TEX. CRIM. PROC. CODE §45.054, “Failure to Attend School” offenses.

1. Enforcement of Order by Contempt. If a defendant who is a child fails to satisfy the fine and costs as the court directed, either by payment of the fine and costs or by performing community service to discharge the judgment, or if the court believes that an individual convicted of “failure to attend school” has violated an order that includes one or more of the requirements listed in TEX. CRIM. PROC. CODE §45.054, the court may proceed as authorized by TEX. CRIM. PROC. CODE §45.050, to:
 - (i) Hold the child in contempt; or
 - (ii) If the individual is under 17 years old, refer the individual to juvenile court for delinquent conduct.
2. Age of defendant. The court may hold the defendant in contempt:
 - (i) if the defendant is under 17 years old at the time the defendant failed to obey the court’s order; or
 - (ii) if the defendant failed to obey the court’s order while younger than 17, but contempt proceedings could not be held before the defendant’s 17th birthday; or

- (iii) if the defendant was convicted of “failure to attend school” before the defendant’s 17th birthday, but was 17 years of age or older at the time of the contemptuous behavior.

TEX. CRIM. PROC. CODE §45.050.

D. Enforcement of Orders.

1. Contempt.

- A. Specificity. The court’s orders must be in writing, and state what is required of the defendant in clear and specific terms.
- B. Notice and Hearing. Violation of the court’s orders is classified as “constructive” or “indirect” contempt because the defendant’s conduct occurs outside the presence of the court. Due process requires that the defendant who is to be held in constructive contempt must be given notice of the charges and an opportunity to defend against those charges.
 - ☐ Prepare a show cause order describing the acts alleged to have been committed by the defendant in violation of the court’s order and setting a hearing date;
 - ☐ Issue precept and personally serve defendant with the show cause order within a reasonable time before the hearing;
 - ☐ Issue a writ of attachment if the defendant fails to appear for the hearing; the court may not proceed with a show cause hearing in the absence of the defendant;
 - ☐ Hold the hearing to determine whether the defendant did, in fact, violate the court’s order in the particulars described by the show cause order.

2. Punishment. If the court finds that the defendant violated the court’s order, the court may impose punishment of either or both (i) a fine not to exceed \$500, or (ii) suspension of or denial of the issuance of the defendant’s driver’s license or permit by the Department of Public Safety until the defendant fully complies with the orders of the court.

- ☐ If the court finds that the defendant violated the court’s order, prepare a written order:
 - finding the defendant in contempt,
 - stating in what way the order was violated, and
 - reciting the defendant’s punishment of either or both (i) a fine not to exceed \$500, or (ii) suspension of or denial of the issuance of the defendant’s driver’s license or permit by the Department of Public Safety until the defendant fully complies with the orders of the court.

3. Referral to Juvenile Court for delinquent conduct. In order to support the defendant’s referral to the juvenile court for delinquent conduct, it is suggested that the procedural requirements for contempt be followed in making a finding that the defendant has violated the court’s order.

- ❑ Prepare show cause order describing the acts alleged to have been committed by the defendant in violation of the court's order;
- ❑ Issue precept and personally serve defendant with show cause order within a reasonable time before the hearing;
- ❑ Issue writ of attachment if defendant fails to appear for hearing; the court may not proceed with a show cause hearing without the presence of the defendant;
- ❑ Hold a hearing to determine whether defendant did, in fact, violate the court's order in the particulars described by the show cause order;
- ❑ If the court finds that the defendant violated the court's order, prepare a written order stating in what way the court's order was violated and referring the defendant to the juvenile court.
- ❑ Local procedures require that the proposed order be submitted to the prosecuting attorney for the Juvenile Courts for review and approval prior to the entry of the order. The defendant will be taken to a juvenile processing office for processing.

13. Issuance of Capias Pro Fine to Satisfy the Judgment.

If a defendant fails to satisfy the judgment for fine and costs as required by the court, the court may issue a capias pro fine ordering the arrest of the defendant to be brought before the court. A capias pro fine may issue only if:

- (i) The defendant is 17 years of age or older;
- (ii) The court finds that the issuance of the capias pro fine is justified considering (a) the defendant's sophistication and maturity, (b) the defendant's criminal record and history, and (c) the likelihood of securing the discharge of the judgment through the use of other procedures; and
- (iii) The court has proceeded under TEX. CRIM. PROC. CODE §45.050 to compel the defendant to discharge the judgment.

TEX. CRIM. PROC. CODE §45.045.

14. Unadjudicated Children Now Adults.

- A. Notice of continuing obligation to appear. If the court has used all available procedures to secure the defendant's appearance to answer the charge of "failure to attend school," but the defendant has failed to appear, then, on or after the defendant's 17th birthday, the court may issue a notice of continuing obligation to appear. The notice may be delivered to the defendant by personal service or mailed to the defendant at the defendant's last known address.
- B. Content of notice. The notice must order the defendant to appear at a designated time, place, and date to answer the charge. The notice must contain the following statement in boldfaced type or capital letters:

WARNING: COURT RECORDS REVEAL THAT BEFORE YOUR 17TH BIRTHDAY YOU WERE ACCUSED OF A CRIMINAL OFFENSE AND HAVE FAILED TO MAKE AN APPEARANCE OR ENTER A PLEA IN THIS MATTER. AS AN ADULT, YOU ARE NOTIFIED THAT YOU HAVE A CONTINUING OBLIGATION TO APPEAR IN THIS CASE. FAILURE

TO APPEAR AS REQUIRED BY THIS NOTICE MAY BE AN ADDITIONAL CRIMINAL OFFENSE AND RESULT IN A WARRANT BEING ISSUED FOR YOUR ARREST.

- C. Failure to appear. Failure to appear as ordered by the Notice of Continuing Obligation is a Class C misdemeanor. It is an affirmative defense that the defendant did not receive the notice.
- D. Arrest. The defendant's failure to appear as required by the Notice of Continuing Obligation may result the filing of an offense, "violate notice of continuing obligation to appear," and the issuance of a warrant ordering the arrest of the defendant on that charge. Since the failure to appear in response to a Notice of Continuing Obligation is an offense committed by the defendant, now an adult, the defendant may be taken into secured custody on arrest.

An individual may not be taken into secured custody for offense alleged to have occurred before the individual's 17th birthday.

TEX. CRIM. PROC. CODE §45.060.

15. Confidential Records Related to the Conviction of a Child.

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.¹

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.²

Information may be viewed by

- (1) judges or court staff;
- (2) a criminal justice agency for a criminal justice purpose, as those terms are defined by Section 411.082, Government Code;
- (3) the Department of Public Safety;
- (4) an attorney for a party to the proceeding;
- (5) the child defendant; or
- (6) the defendant's parent, guardian, or managing conservator

A "criminal justice agency" means:

¹ SB 393, 83rd Legislature. If amendments to the same statute are enacted at the same session of the legislature, one amendment without reference to another, the amendments shall be harmonized, if possible, so that effect may be given to each. If the amendments are irreconcilable, the latest in date of enactment prevails. The date of enactment is the date on which the last legislative vote is taken on the bill enacting the statute. The Senate concurred in House amendments on May 23, 2013. This bill is effective on 9-1-2013.

² HB 528, 83rd Legislature. HB 528 was passed by the Senate on May 22, 2013. This bill is effective on 1-1-2014.

- (A) a federal or state agency that is engaged in the administration of criminal justice under a statute or executive order and that allocates a substantial portion of its annual budget to the administration of criminal justice; or
- (B) a nongovernmental railroad or campus police department that has obtained an originating agency identifier from the Federal Bureau of Investigation.

TEX. CRIM. PROC. CODE §45.0217.