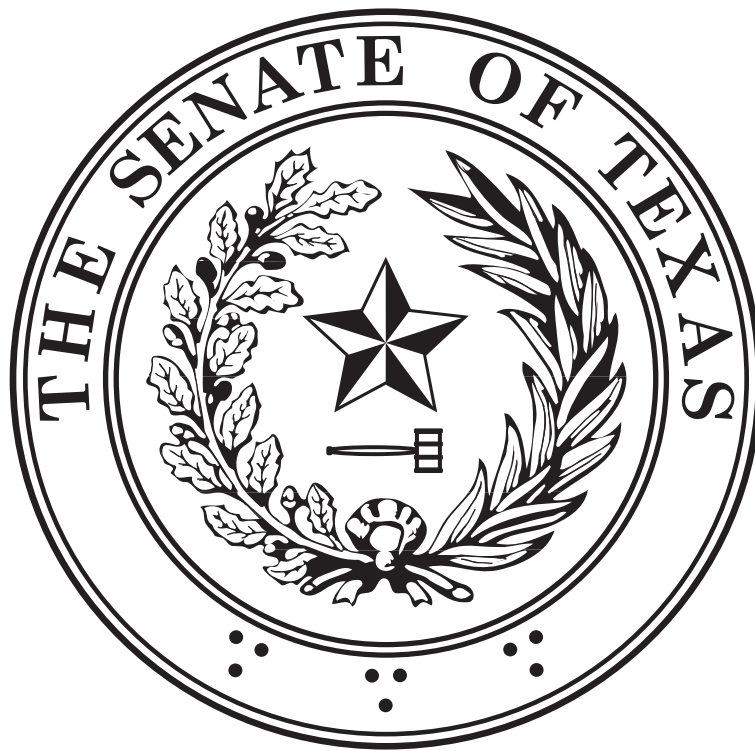


# Senate Committee on Jurisprudence

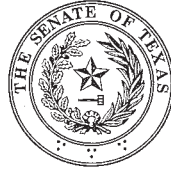
## Interim Report



Report to the 84th Legislature

December 2014

# TEXAS SENATE COMMITTEE ON JURISPRUDENCE



SENATOR ROYCE WEST  
*Chairman*

SENATOR JOSE RODRIGUEZ  
*Vice-Chairman*  
SENATOR DONNA CAMPBELL  
SENATOR JOHN CARONA  
SENATOR KELLY HANCOCK  
SENATOR KEN PAXTON

December 15, 2014

Honorable David Dewhurst  
Lieutenant Governor  
State of Texas  
State Capitol Room 2E.13  
Austin, Texas 78701

Dear Governor Dewhurst:

The Senate Committee on Jurisprudence hereby submits its report to the 84th Texas Legislature. The recommendations made herein are based on testimony offered at our interim hearings, and by input provided by the public, committee members, association and stakeholder groups, and state agencies during workgroup discussions.

The undersigned members of the committee believe this report contains recommendations that can be used during the upcoming session to successfully address the issues raised by the charges before the committee this interim.

Respectfully Submitted,

Handwritten signature of Royce West in black ink.

Senator Royce West  
Chairman

Handwritten signature of José Rodríguez in black ink.

Senator José Rodríguez  
Vice-Chairman

Handwritten signature of John Carona in black ink.

Senator Donna Campbell

Senator John Carona

Handwritten signature of Sylvia Garcia in black ink.

Senator Sylvia Garcia

Senator Kelly Hancock

Senator Ken Paxton



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## **Senate Committee on Jurisprudence - Interim Charges**

1. Monitor the implementation of Senate Bill 393 and Senate Bill 1114 and determine if any statutory changes are necessary to clarify the intent of this legislation. In addition, determine those school districts that have implemented the graduated sanctions envisioned by Senate Bill 393 and decide if any additional statutory changes are necessary to ensure that school districts are complying with its intent.
2. Monitor the implementation of statewide electronic filing as mandated by the Texas Supreme Court to determine if any additional training or resources are needed by local jurisdictions. In addition, determine those jurisdictions that have imposed the local transaction fee, as created by House Bill 2302, to determine how it is being utilized and if its continued collection is necessary.
3. Study and make recommendations on the feasibility of removing failure to attend school (Section 25.094, Texas Education Code) as a Class C misdemeanor offense and determine the feasibility of adjudicating juvenile truancy as a civil offense.
4. Study and make recommendations on the availability and application of deferred adjudication, orders for non-disclosure, and expunctions. Study extending the use of expunction of criminal records history and non-disclosures to certain qualified individuals with low-level, non-violent convictions.

**Senate Committee on Jurisprudence Report to the 84th Texas Legislature  
Executive Summary**

*Charge 1: Monitor the implementation of Senate Bill 393 and Senate Bill 1114 and determine if any statutory changes are necessary to clarify the intent of this legislation. In addition, determine those school districts that have implemented the graduated sanctions envisioned by Senate Bill 393 and decide if any additional statutory changes are necessary to ensure that school districts are complying with its intent.*

**Recommendations:**

**1.1** The statutory changes made by Senate Bill 393 and Senate Bill 1114 (83rd Legislature, 2013) should be modified during the upcoming 84th Legislative Session to reduce ambiguities, incorrect references or citations, and redundancy; however, no significant statutory changes need to be made to effectuate the intent of either bill.

**1.2** In response to the testimony provided during interim deliberations, the Senate Committee on Jurisprudence worked with the Office of Court Administration to seek input from school organizations, law enforcement, advocacy groups, and other stakeholders in order to develop training materials on the components and implementation of Senate Bill 393 and Senate Bill 1114 (83rd Legislature, 2013). Those organizations involved in school discipline and law enforcement, including state agencies and training centers, are encouraged to distribute these materials to the appropriate constituencies, including publication on appropriate websites and via social media.

**1.3** During the 83rd Legislative Interim, the Texas Legislative Council studied the use of graduated sanctions added by Senate Bill 393. The 84th Texas Legislature should consider the findings of this study – which revealed that less than half of the school district respondents utilized graduated sanctions – and make the appropriate statutory modification to Subchapter E-1, Texas Education Code to require all school districts to adopt policies that ensure the use of non-criminal, disciplinary options prior to filing complaints for Class C misdemeanor offenses.

**1.4** The changes made during the 83rd Legislative Session to Section 8.07(e), Texas Penal Code, relating to the capacity of persons at least 10 years of age but younger than 15 years of age, have proved difficult to understand across judicial jurisdictions. Additional statutory changes are necessary to clarify that the lack of capacity can be raised as a defense – creating a rebuttable presumption that a child younger than age 15 has criminal intent to commit a Class C Misdemeanor – with an exception for traffic offenses.

**1.5** During the 83rd Legislative Session, two different processes - Article 45.058, Texas Code of Criminal Procedure (Senate Bill 1114) and Section 37.146, Texas Education Code (Senate Bill 393) - were put in place to file a complaint against a child for a Class C misdemeanor, other than a traffic offense, that takes place on school property. The addition of a requirement to file a victim statement (required by Article 45.058, Texas Code of Criminal Procedure) to Section 37.146, Texas Education Code would conform these sections and create a uniform process for filing complaints for school-based offenses. Other conflicting statutory provisions should be repealed.

**1.6** Specific statutory language needs to be added to the complaint process found in Section 37.146, Texas Education Code, as added by Senate Bill 393 (83rd Legislature, 2013), that gives municipal and justice court judges the express authority to dismiss those complaints that do not comply with the requirements of this section.

**1.7** Prior to the 2015 Legislative Session, the Texas Juvenile Crime Prevention Center at Prairie View A&M University studied the use of graduated disciplinary practices within schools to determine those that are most effective in reducing the need for additional actions and court room referrals. The 84th Texas Legislature should consider the findings of this study to determine if modifications to Subchapter E-1, Texas Education Code should be made in order to provide additional, non-criminal, disciplinary options for school administrators.

**1.8** The 84th Texas Legislature – working with all appropriate stakeholders, including higher education partners, advocacy groups, judicial organizations, governmental entities, law enforcement, and education associations – should develop a process to evaluate the overall



impact that Senate Bill 393 and Senate Bill 1114 (83rd Legislature, 2013) are having on school safety and discipline for a period of at least five years. The study should review, but not be limited to, the use of divisionary programs, the number of complaints filed and arrests made on school property, graduation rates, and referrals to state juvenile entities.

***Charge 2: Monitor the implementation of statewide electronic filing as mandated by the Texas Supreme Court to determine if any additional training or resources are needed by local jurisdictions. In addition, determine those jurisdictions that have imposed the local transaction fee, as created by House Bill 2302, to determine how it is being utilized and if its continued collection is necessary.***

**Recommendations:**

**2.1** The continued collection of the \$2 local transaction filing fee (Section 72.031, Texas Government Code), authorized in House Bill 2302 (83rd Legislature, 2013) that enables counties to recoup a portion of the local resources expended on complying with the Supreme Court's electronic filing mandate, is necessary; however, the Office of Court Administration should develop a process, in accordance with already established requirements, by which counties report how the fee is being utilized to ensure compliance with the Legislature's intent.

**2.2** Due to the insufficient revenue generated by the electronic filing fee authorized in Subchapter I-1, Texas Government Code, the Office of Court Administration has been unable to provide technology grants to help smaller counties develop the necessary infrastructure to comply with the statewide e-filing rollout, as was initial intent of the bill creating the fee. The Office of Court Administration should provide recommendations for additional revenue options to be considered during the upcoming session, specifically targeted to help smaller jurisdictions recoup the costs of infrastructure needs consistent with the intent of House Bill 2302 (83rd Legislature, 2013).

**2.3** Many local jurisdictions are unable to procure court case management software, due to the complexity and expense of these programs, and therefore cannot realize the efficiencies – such as reduced storage, printing, and staff costs – associated with a paperless court system. The 84th

Texas Legislature, in coordination with the Office of Court Administration, should consider developing a statewide case management system to assist local governments, judicial jurisdictions, and court users realize the savings associated with a paperless court system; and additionally, offset some of the unfunded local costs incurred with the implementation of e-filing.

**2.4** In order to address ongoing issues and new concerns that may arise as the Texas Supreme Court e-filing rollout continues to smaller jurisdictions, the Judicial Committee on Information Technology – with input from the Office of Court Administration, county court clerks, attorney bar associations, local and state government filers, and other appropriate stakeholders – should prioritize reviewing the processes related to civil e-filing to ascertain if additional standardization would increase the effectiveness and efficiency of e-filing systems for civil jurisdictions.

***Charge 3: Study and make recommendations on the feasibility of removing failure to attend school (Section 25.094, Texas Education Code) as a Class C misdemeanor offense and determine the feasibility of adjudicating juvenile truancy as a civil offense.***

**Recommendations:**

**3.1** Amendment should be made to Section 25.0915, Education Code (Truancy Prevention Measures) to require school districts adopt policies establishing progressive, graduated sanctions – similar to those established in Senate Bill 393 (83rd Legislature, 2013) – prior to filing complaints for excessive school absences.

**3.2** The 84th Legislature should amend Section 25.0951, Texas Education Code – which requires that schools file complaints against students absent 10 or more days or parts of days without excuse for truancy (Section 51.03(b)(2), Texas Family Code) or failure to attend school (Section 25.094, Texas Education Code) – to provide additional latitude to delay filing complaints if intervention and truancy prevention strategies are proving successful. School districts shall adopt intervention and truancy prevention strategies as part of the student code of conduct (Section 37.001, Texas Education Code).

**3.3** There are discrepancies between the number of court referrals for truancy and failure to attend school reported by school districts to the Texas Education Agency and those reported by courts to the Office of Court Administration. The Texas Education Agency should modify existing practices to ensure that school districts are accurately reporting data regarding judicial filings for truancy and failure to attend school as part of the Public Education Information Management System (PEIMS).

**3.4** The 84th Texas Legislature should ensure that the revenue generated by Senate Bill 1419 (83rd Legislature, 2013) is maintained in its own GR-D account and no longer subject to funds consolidation. Instead of being swept for certification of the budget, all revenue collected as a result of Senate Bill 1419 should be used for its intended purpose – state and local juvenile case manager programs – and no longer diverted. The Office of Court Administration should develop additional measures in order to ensure that those local governments collecting juvenile case manager funds – under Article 102.015 or Article 102.0174, Texas Code of Criminal Procedure – are doing so in accordance with statutory mandates.

**3.5** Relevant statutory provisions granting school districts discretionary – 3 absences in a month – authority to file complaints (Sec. 25.0951(b), Texas Education Code) against students for failure to attend school (Section 25.094, Texas Education Code) in Texas criminal courts should be repealed by the 84th Texas Legislature.

**3.6** Statutory provisions relating to the prosecution of failure to attend school (Section 25.094, Texas Education Code) in Texas criminal courts should be repealed. In lieu of criminal complaints, the 84th Texas Legislature should evaluate proposals that expand the judicial jurisdictions that can be referred CINS truancy (Section 51.03(b)(2), Texas Family Code) petitions as a means to address chronic absenteeism within those schools subject to compulsory school attendance.

**3.7** The 84th Texas Legislature should modify all relevant statutes to ensure that all juvenile records, resulting from truancy (Section 51.03(b)(2), Texas Family Code) or failure to attend school (Section 25.094, Texas Education Code) judicial proceedings are expunged upon the age

of 18. Appropriate judicial authority should be granted in order to effectuate the expunction of all juvenile records in relation to truancy or failure to attend school.

*Charge 4: Study and make recommendations on the availability and application of deferred adjudication, orders for non-disclosure, and expunctions. Study extending the use of expunction of criminal records history and non-disclosures to certain qualified individuals with low-level, non-violent convictions.*

**Recommendations:**

**4.1** The 84th Texas Legislature should amend appropriate statutes to prohibit the waiver of future rights of non-disclosure or expunction by individuals accused of a crime as part of plea bargain agreements.

**4.2** Modifications need to be made to Section 411.081, Texas Government Code to clarify that all records – including those charges that were not formally adjudicated – related to the offense that gave rise to the arrest in which a defendant was placed on deferred adjudication are subject to an order of non-disclosure.

**4.3** Amendments should be made to Chapter 55, Texas Code of Criminal procedures to provide for judicial expunctions of records for those qualifying cases that result in a non-conviction or finding of innocence.



**Charge 1: Monitor the implementation of Senate Bill 393 and Senate Bill 1114 and determine if any statutory changes are necessary to clarify the intent of this legislation. In addition, determine those school districts that have implemented the graduated sanctions envisioned by Senate Bill 393 and decide if any additional statutory changes are necessary to ensure that school districts are complying with its intent.**



## **Background**

Safety on school campuses is of the utmost importance. With over 100 student-related shootings taking place on middle school and high school campuses over the past 25 years, not to mention the bloodshed at Columbine High School in Littleton, Colorado (April 1999) and Sandy Hook Elementary School in Newtown, Connecticut (December 2012), it is obvious why parents, educators, administrators, and citizens alike have sought any and all effective means to ensure a safe learning environment. Many schools, including those in Texas, have turned to armed campus police officers to protect students from violent acts. These officers, also known as school resource officers, or SROs, are not only charged with protecting children within schools, they are also in many instances looked upon by school administrators to enforce school discipline. By the 83rd Legislative Session (2013), many groups had begun to question this practice, suggesting that the use of police officers to enforce disciplinary policies was detrimental to students and introduced children to the criminal justice system for minor school-based infractions.

## **Juvenile Courts:**

Juvenile offenders<sup>1</sup> in Texas can be adjudicated through either juvenile courts or adult criminal courts. Title 3, Texas Family Code, which was enacted in 1973, sets out processes related to juvenile offenders. Juvenile boards, which are established in each county, designate either a district court, county court, or county court at law as a the juvenile court for the region.<sup>2</sup> These courts have jurisdiction over delinquent conduct or conduct in need of supervision (CINS). In the broadest context, delinquent conduct is conduct, other than traffic offenses, that violates a criminal law of Texas or the United States and is punishable by jail time.<sup>3</sup> Delinquent conduct can also include: (1) contempt of municipal or justice court orders, as well as county court orders that only impose a fine; (2) intoxication offenses, including intoxication manslaughter; and (3) driving or boating while intoxicated on the third or subsequent occurrence.<sup>4</sup> CINS is conduct, other than traffic offenses, that violates fine-only misdemeanors offenses in the Texas Penal

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<sup>1</sup> "Child" is defined in Section 51.02, Texas Family Code as a person older than ten and younger than 17 years of age.

<sup>2</sup> Section 51.04, Texas Family Code.

<sup>3</sup> Section 51.03(a)(1).

<sup>4</sup> Section 51.03(a)(2) - (4).



Code, or ordinances of a political subdivision.<sup>5</sup> It also includes public intoxication, truancy, running away, inhalant abuse, expulsion from school, contempt of court-ordered completion of at-risk services, prostitution, or sexting.<sup>6</sup> According to the Office of Court Administration, only 230 CINS petitions were filed statewide in fiscal year 2013, indicating that the use of CINS has become almost obsolete as a means to address juvenile misbehaviors.<sup>7</sup>

The juvenile system places an emphasis on rehabilitation, instead of punitive punishments such as fines or incarceration. This is evidenced by Chapter 59, Texas Family Code, which puts in place a "progressive sanctions model." This model provides for punishments that correspond to the seriousness of each offender's current offense, prior delinquent history, special treatment or needs, and effectiveness of prior interventions. Progressive sanctions start with the least amount of intervention or sanctions possible, and become more intensive or serious as necessary.<sup>8</sup> Under the juvenile system, children alleged to have committed delinquent conduct or CINS can be dealt with informally, such as by conference with the child or child's parent or guardian, or by referral to a family services agency or state program for children at-risk.<sup>9</sup> Disposition can also include referral to a "first offender" program.<sup>10</sup> Juveniles found to have committed delinquent conduct can be: (1) placed on probation until the age of 18; (2) sent to the Texas Juvenile Justice Department (TJJD) with an indeterminate sentence, in which TJJD processes determine length of stay; or (3) sent to TJJD with a determinate sentence and then transferred to an adult prison, if unable to complete their sentence before 19 years of age.<sup>11</sup>

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<sup>5</sup> Section 51.03(b)(1), Texas Family Code.

<sup>6</sup> Section 51.03(b)(2) - (8).

<sup>7</sup> David Slayton, Office of Court Administration. September 16, 2014. Email to the author. On file.

<sup>8</sup> Texas Juvenile Justice Department. *Overview of the Juvenile Justice System in Texas*. Web. August 1, 2014. <<http://www.tjjd.texas.gov/about/overview.aspx>>.

<sup>9</sup> Section 52.03(c).

<sup>10</sup> Section 52.031.

<sup>11</sup> Texas Juvenile Justice Department. *Overview of the Juvenile Justice System in Texas*. Web. August 1, 2014. <<http://www.tjjd.texas.gov/about/overview.aspx>>.

## **Municipal and Justice Courts:**

As it relates to juveniles, municipal and justice courts have jurisdiction over fine-only Class C misdemeanors.<sup>12</sup> The most commonly known of these are traffic, alcohol, and tobacco violations, or violations of municipal curfew ordinances. Lesser known Class C misdemeanor offenses include failure to attend school<sup>13</sup> and certain offenses on school property, such as disorderly conduct,<sup>14</sup> disruption of class,<sup>15</sup> and disruption of transportation.<sup>16</sup> Examples of conduct resulting in charges for these offenses can include emitting too much noise, enticing a student away from class, preventing or attempting to prevent a student from attending class, or entering a classroom without permission and disrupting activities.<sup>17</sup>

Prior to September 1, 2013, law enforcement officers – including school resource officers – had the authority to issue citations to students alleged to have committed school-based Class C misdemeanor offenses, which were prosecuted in municipal and justice courts. Once a citation was issued or a complaint filed, judges had fairly broad discretion to defer sentencing and order counseling or youth intervention programs, or refer to other services aimed at assisting the child through non-punitive means.<sup>18</sup> However, since school-based misdemeanor offenses fall under the same statutory punishment guidelines as all other Class C misdemeanor offenses, juveniles found guilty can also be fined up to \$500.<sup>19</sup> Failure to obey a judge's order or pay a fine can result in a juvenile being charged with contempt of court – also punishable by a fine not to exceed \$500 or suspension of a driver's license.<sup>20</sup> Failure to comply with a municipal or justice court order can also result in the juvenile being referred to the juvenile justice system.<sup>21</sup> According to some estimates, *over 275,000 non-traffic citations* were issued to juveniles on

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<sup>12</sup> Article 4.14 and Article 4.11, Texas Code of Criminal Procedure.

<sup>13</sup> Section 25.094, Texas Education Code.

<sup>14</sup> Section 42.01, Texas Penal Code.

<sup>15</sup> Section 37.124, Texas Education Code.

<sup>16</sup> Section 37.126.

<sup>17</sup> Moll, Jeanette, and Henry Joel Simmons. *Expelling Zero-Tolerance: Reforming Texas School Discipline for Good*. Texas Public Policy Foundation, Center for Effective Justice, August 2012. Print.

<sup>18</sup> Section 45.051, Texas Code of Criminal Procedure.

<sup>19</sup> Sec. 12.23, Texas Penal Code.

<sup>20</sup> Section 45.050(c), Texas Code of Criminal Procedure.

<sup>21</sup> Section 51.03(a)(2), Texas Family Code.

school campuses in Texas each year prior to 2013.<sup>22</sup> In that year, the 83rd Texas Legislature enacted Senate Bill 393 and Senate Bill 1114.

### **School Offenses Questioned:**

While it is commonly known that juvenile traffic, alcohol, or tobacco violations are adjudicated through the adult municipal and justice courts, it is unclear the extent to which the general public knew that juvenile misbehaviors on school campuses were handled in this manner prior to the legislative reforms of 2013. Anecdotal evidence suggests that many, including even those teachers that called for intervention as a result of specific student behavior, did not know that children were being criminally prosecuted. It wasn't until advocacy groups began calling for reform that the impacts of school-based citations fully materialized.

In 2007, Texas Appleseed published the first in a series of reports on the "school-to-prison" pipeline – a term used nationally to refer to disciplinary policies and practices that divert children from classrooms into juvenile and criminal justice systems. While not the first, or only, group to propose that certain school disciplinary practices were having a negative effect on children by subjecting them to the criminal justice system, Texas Appleseed was the first to chronicle the impact school-based ticketing and arrest were having on this phenomenon. Published in 2010, the third in this series of reports used data, obtained through open records requests, for the five-year time period between the 2000-01 and 2006-07 school years to document instances of student ticketing and arrest.<sup>23</sup> A follow-up study, adding data from subsequent school years was released in 2012. Some of the conclusions reached indicated:

- Ticketing of juveniles in public schools had increased substantially, contrary to an overall drop in juvenile crime.
- Most tickets were for nonviolent offenses – disruption of class, disruption of transportation, disorderly conduct, or curfew violations.
- African-American, and to a lesser extent Hispanic students were disproportionately represented. Students with disabilities were overly represented.

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<sup>22</sup> Texas Appleseed. *Texas' School-to-Prison Pipeline: Ticketing, Arrest & Use of Force in Schools*. Texas Appleseed, December 2010. Web. August 1, 2014. < [http://www.texasappleseed.net/images/stories/reports/Ticketing\\_Booklet\\_web.pdf](http://www.texasappleseed.net/images/stories/reports/Ticketing_Booklet_web.pdf)>.

<sup>23</sup> *Ibid.*

- Where the child attended school, and not the offense, was the most important factor in determining if the child would be ticketed or arrested.<sup>24</sup>

Another study, conducted by the Texas Public Policy Foundation (TPPF) in August 2012, reviewed the overall effectiveness of school disciplinary measures, and called into question the effectiveness of "zero-tolerance" policies.<sup>25</sup> These policies – enacted during school reforms over a decade earlier<sup>26</sup> – gave school districts the ability to establish a code of conduct outlining the circumstances that would trigger a student's removal from the classroom, placement in a Disciplinary Alternative Education Program, suspension, or expulsion.<sup>27</sup> The TPPF study noted a negative correlation between "zero-tolerance" and safer schools. It also suggested that other models, such as those establishing a tiered or graduated approach to addressing misbehaviors, were more effective.

The Texas judiciary was also stressing concerns that adolescent misbehaviors were being overly criminalized. In the 2011 State of Judiciary speech, Chief Justice Wallace Jefferson asserted that "criminal records close doors to opportunities that less punitive intervention would keep open."<sup>28</sup> However, few changes were made during the 82nd Legislative Session (2011) to address school-based ticketing. In 2012, as head of the Texas Judicial Council – the policy-making body of the state judiciary – Chief Justice Jefferson assigned a Juvenile Justice Committee to:

"Assess the impact of school discipline and school-based policing on referrals to the municipal, justice, and juvenile courts and identify judicial policies or initiatives that work to reduce referrals without having a negative impact on school safety; limit recidivism; and preserve judicial resources for students who are in need of this type of intervention."<sup>29</sup>

<sup>24</sup> Texas Appleseed. *Ticketing and Arrest Update*. Web. August 1, 2014. <[http://www.texasappleseed.net/index.php?option=com\\_docman&task=doc\\_download&gid=938&Itemid=>](http://www.texasappleseed.net/index.php?option=com_docman&task=doc_download&gid=938&Itemid=>).

<sup>25</sup> Moll, Jeanette, and Henry Joel Simmons. *Expelling Zero-Tolerance: Reforming Texas School Discipline for Good*. Texas Public Policy Foundation, Center for Effective Justice, August 2012. Print.

<sup>26</sup> Senate Bill 1, 74th Legislature, Regular Session (1995).

<sup>27</sup> Section 37.001, Texas Education Code.

<sup>28</sup> Chief Justice Wallace B. Jefferson. "State of the Judiciary." 82nd Texas Legislature. Texas House of Representatives Chamber, Austin. February 23, 2011. Transcript.

<sup>29</sup> Texas Judicial Council. *Juvenile Justice Committee Subcommittee on Legislation Report*. August 31, 2012. Print. On file.

Following a year-long study, the Juvenile Justice Committee developed recommendations for legislation to be considered by the 83rd Texas Legislature. These were adopted by the Texas Judicial Council on November 9, 2012,<sup>30</sup> and included specific statutory changes to:

- Authorize local governments to use juvenile case managers prior to filing cases, similar to "deferred prosecution" provisions in the Texas Family Code that allow for cases to be disposed of without referral to juvenile courts.
- Make courts the last, instead of the first, venue for school discipline by creating a "rebuttable presumption" that children younger than 15 years of age do not have criminal intent to commit Class C misdemeanors, other than traffic offenses.
- Make age, instead of grade level, a *prima facie* element to the offense of disruption of class, disruption of transportation, and disorderly conduct.
- Create parity between policies in the juvenile courts and those in local trial courts, including provisions related to confidentiality and the ability of judges to waive courts costs and fines due to indigence.<sup>31</sup>

The Texas Judicial Council also adopted the Juvenile Justice Committee's recommendations for additional statutory language specifically related to the use of citations for school-related matters. While recognizing that municipal and justice courts provide a "rapid, cost-effective means of adjudicating cases," the committee's report noted that this alone "hardly make these courts the ideal venues for cases involving children."<sup>32</sup> Legislative proposals encompassed: (1) prohibiting the use of citations at public schools; (2) creating a system of enhanced complaints and authorizing local prosecutors to develop rules regarding filings; and (3) requiring that schools attempt to address behaviors, previously referred to the judicial system, through progressive disciplinary sanctions.<sup>33</sup>

With minimal exception, these legislative recommendations were filed and passed into law in their entirety by the 83rd Texas Legislature as Senate Bill 393. This bill, as well as Senate Bill

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<sup>30</sup> See Appendix A for a copy of the Texas Judicial Council resolution.

<sup>31</sup> Texas Judicial Council. *Juvenile Justice Committee Subcommittee on Legislation Report*. August 31, 2012. Print. On file.

<sup>32</sup> *Ibid.*

<sup>33</sup> *Ibid.*

1114 (also passed in 2013), are summarized in bulleted format in the following sections. The engrossed versions of these bills are included in Appendices B and C.

**Senate Bill 393 - Author: Senator West/ Sponsor: Rep. Tryon Lewis:**

- Gives municipal and justice court judges discretion to allow a defendant, who is a child, to choose to dispense with court costs and fines by performing community service or receiving tutoring.
- Authorizes judicial waiver of municipal and justice court fines and court costs for children in the same manner as indigent defendants.
- Restricts the release of juvenile records in relation to fine-only Class C misdemeanor offenses adjudicated in municipal and justice courts to include those juveniles, who received deferred disposition, in addition to those convicted.
- Allows the use of juvenile case managers in municipal and justice courts without a formal court order and expressly authorizes case managers to provide intervention and prevention services prior to cases being filed.
- Requires that a court dismiss a complaint against an individual for failure to attend school if the complaint or referral does not comply with statutory requirements.
- Modifies disruption of class, disruption of transportation, and certain disorderly conduct offenses to be applicable based on age (12 years old) instead of grade level (6th grade).
- Adds new Subchapter E-1 to the Education Code:
  - Prohibits the issuance of citations for "school offenses" defined as Class C misdemeanors, other than traffic offenses, that take place on property under the jurisdiction of the school. Expressly allows law enforcement to take a child into custody for these offenses under provisions in the Texas Family Code.
  - Establishes permissive graduated sanctions for disruption of class, disruption of transportation, and certain disorderly conduct offenses applicable only to those school districts that hire police officers. Sanctions are: (1) warning letters; (2) behavior contacts; (3) school-based community service; and (4) referral to counseling, community-based services, or other in-school or out-of-school services.

- Authorizes school districts to file criminal complaints against students for school offenses, as defined. Complaints must meet certain requirements as outlined in the Texas Code of Criminal Procedure, and must also be accompanied by a statement stating if the child is eligible for special services and the graduated sanctions imposed, if applicable. Prosecutors are authorized to adopt rules regarding probable cause.
- Adds Class C misdemeanors, other than traffic offenses, to the list of offenses that a local juvenile board can authorize law enforcement to dispose of without referral to a court; and adds Class C misdemeanors, other than traffic offenses, to the list of offenses that can be disposed of by first offender programs.
- Prohibits the prosecution of children under the age of 10 years old for fine-only Class C misdemeanor offenses or the offenses of a political subdivision.
- Creates a rebuttable presumption that juveniles between the ages of ten and 15 have the capacity to commit fine-only Class C misdemeanor offenses or offenses of a political subdivision, except for curfew violations. This can be refuted if the prosecutor proves that the child had sufficient capacity to understand the conduct engaged in was wrong.
- Gives standing to prosecutors, defendants, parents, and courts – on their own motion – to question whether probable cause exists to believe a juvenile, including those with mental illness or a developmental disability, has capacity to understand proceedings or the wrongfulness of their actions. Requires municipal and justice courts to waive jurisdiction and refer a child to juvenile court if a previously filed complaint was dismissed because it was determined that the child lacked capacity.

**Senate Bill 1114 - Author: Senator Whitmire/ Sponsor: Rep. Herrero:**

- Requires that if an officer issues a citation or files a complaint under Article 45.018, Texas Code of Criminal Procedure for conduct by a child 12 years of age or older that is alleged to have occurred on school property or on a vehicle owned or operated by a county or independent school district, it must be accompanied by: (1) an offense report; (2) a statement by a witness to the alleged conduct; and (3) a statement by a victim of the alleged conduct, if any. A prosecutor cannot proceed unless an officer complies with these requirements.

- Prohibits law enforcement officers from issuing citations or filing complaints for conduct by a child 12 years of age or younger that is alleged to have occurred on school property or on a vehicle owned or operated by a county or independent school district.
- Requires that a court dismiss a complaint against an individual for failure to attend school if the complaint or referral does not comply with statutory requirements.
- Amends existing statutory language regarding the elements of a school's code of conduct to require that these also address vehicles owned and operated by a school district.
- Amends existing statutory language regarding the duties of school district police officers and security personnel to: (1) add that an officer can take a child into custody for an offense under the jurisdiction of municipal and justice courts; (2) remove requirements that officers perform "administrative" duties; and (3) remove the requirement that officers be accountable to the "superintendent's designee."
- Prohibits the issuance of warrants for offenses under the Texas Education Code committed while the child was under the age of 17.
- Modifies the applicability of the offenses of disruption of class and disruption of transportation to provide that they do not apply to a person "enrolled" in primary or secondary school.
- Adds Class C misdemeanors, other than traffic offenses, to the list of offenses that a local juvenile board can authorize law enforcement to dispose of without referral to a court; and adds Class C misdemeanors, other than traffic offenses, to the list of offenses that can be disposed of by first offender programs.
- Amends the statutory definition of "public place" as it pertains to the offense of disorderly conduct to include public school campuses or the school grounds on which a public school is located.

### **Issues**

The cumulative effect of passing both Senate Bill 393 and Senate Bill 1114 has been significantly fewer citations issued during the 2013-14 school year, especially for the offenses of disruption of class and disruption of transportation. The Office of Court Administration (OCA), provided information to support these claims. A complete analysis can be found in Appendix D. Summary data is included in Table 1.A.



**Table 1.A.**

<b>Justice and Municipal Court Filings: Comparison Fiscal Years (FY) 2013 and 2014</b>			
<b>Case Type</b>	<b>FY 2013</b>	<b>FY 2014</b>	<b>% Change</b>
Education Code Violations	7,866	1,365	-82.65%
Penal Code Violations*	566,148	489,387	-13.56%
Other State Law Criminal Violations*	603,281	533,282	-11.60%
Failure to Attend School Violations	74,153	63,332	-14.59%
All Other Juvenile Filings	60,348	25,324	-58.04%
<i>*The total number of Penal Code Violations and Other State Law Criminal Violations include adult filings as well. However, no change in the law was made to other offenses in this category.</i>			

Data provided by the Office of Court Administration as of October 1, 2014

Although statistics indicate the passage of Senate Bill 393 and Senate Bill 1114 are having the desired effect in reducing the number of student citations for Class C misdemeanor offenses, the Jurisprudence Committee interim hearing on this charge highlighted that not all stakeholder groups were supportive of this reality or the changes made by these bills. It also reinforced some of the initial concerns that were expressed when two different bills – both addressing school offenses – were passed into law. These included concerns that long-held rules and legislative precedent would dictate that one bill would prevail over the other. Secondly, that implementation of separate bills would be impossible for school districts because changes put in place by one bill in one section of code could be negated or modified by the other bill's language. In the first instance, concerns were alleviated. Since the language added by Senate Bill 393 and Senate Bill 1114 did not overtly conflict, existing law dictates that it must be harmonized and "equal effect" be given to each bill.<sup>34</sup>

The second concern posed the bigger problem. When read together, Senate Bill 393 and Senate Bill 1114 provide a framework to remove all fine-only Class C misdemeanor citations, with the exception of traffic offenses, from school campuses. Although each does so in a different

<sup>34</sup> Sec. 311.025(b), Texas Government Code.

manner, these are not at cross-purposes. Each bill also establishes specific processes to be used by law enforcement and school districts to seek court intervention. While different, these can also be reconciled. Testimony on this charge quickly revealed that while the bills could be harmonized in a legal sense, the interpretations of specific provisions within the statutes were causing considerable confusion. It also illustrated that a lot of misinformation had been disseminated.

The language passed in both bills provides additional options for schools and law enforcement to intervene and address student misbehavior, but these provisions went mostly unmentioned as school officials and law enforcement testified, to varying degrees, that Senate Bill 393 precluded school districts from addressing serious or violent misbehaviors. One principal testified that certain offenses, such as fighting, warranted both school and legal consequences, noting that the latter was no longer an option.<sup>35</sup> Another commented that under Senate Bill 393, police officers could no longer "pursue criminal charges."<sup>36</sup> Additionally, law enforcement representatives noted concerns that the new probable cause requirements under Senate Bill 393 required officers to leave school campuses to file criminal complaints in person, and that some programs that had been previously used by law enforcement to divert students into counseling or other non-courtroom interventions could no longer be utilized.<sup>37</sup> Questioning by the committee revealed that school principals had been advised incorrectly. Specific provisions of Senate Bill 393 expressly allow school districts to file complaints for school offenses or take juveniles into custody.<sup>38</sup> Assertions regarding the removal of law enforcement's diversionary role also proved to be inaccurate. Senate Bill 393 and Senate Bill 1114 increased the ability of courts and law enforcement to use first offender programs.

Testimony clearly indicated a need to correct the misperceptions of school officials and some law enforcement officers; and to a greater extent, revealed the need for training on the new

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<sup>35</sup> Written testimony submitted by Jeff Gasaway, 5A High School Principal at Senate Committee on Jurisprudence hearing June 3, 2014. On file.

<sup>36</sup> Written testimony submitted by Scott G. McKenzie, Ed.D., Texas Association of Secondary School Principals at Senate Committee on Jurisprudence hearing June 3, 2014. On file.

<sup>37</sup> Senate Committee on Jurisprudence hearing, June 3, 2014 (statement of Lon Craft, Texas Municipal Police Association).

<sup>38</sup> Section 37.145 and Section 37.142 (b), Texas Education Code.

classroom disciplinary structure that Senate Bill 393 and Senate Bill 1114 envisioned. It appeared as if school officials were largely unaware of the disciplinary options available to them, especially those interventions and best-practices specifically envisioned by Texas Judicial Council, such as graduated sanctions, use of juvenile case managers, or referral to first offender programs. The Office of Court Administration, in consultation with committee staff and appropriate stakeholders, was directed to develop a "gold standard" training for the 2014-15 school year. Documents associated with the training can be found in Appendix E.<sup>39</sup>

### **Confidentiality of Records:**

Civil and criminal court records are required to be open and subject to public scrutiny; however, protections do exist for the records of juveniles. Juvenile records are confidential, except under specific circumstances. Existing statute provides a means, pursuant to a court order, to provide records to "any other person, agency, or institution having a legitimate interest in the proceeding or in the work of the court."<sup>40</sup> This gives interested parties, judges, and juvenile justice agencies the ability to gain access to juvenile records for specific reasons.

In 2011, legislation passed to prohibit the disclosure of records associated with juveniles "convicted" in municipal and justice courts.<sup>41</sup> Unfortunately, this bill was silent regarding the records of juveniles placed on deferred adjudication, or whose cases had been dismissed. Language from Senate Bill 394, which was filed to correct this oversight, was also included in Senate Bill 393. Immediately, questions arose as to how this language could be reconciled with House Bill 528 – another bill addressing confidentiality that passed into law in 2013.<sup>42</sup> House Bill 528 prohibits the release of juvenile records upon the filing of "charges." An Attorney General's opinion was requested and settled all questions regarding which bill – Senate Bill 393 or House Bill 528 – prevailed. In summary, it provided that since the "conditions of the House

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<sup>39</sup> All training materials, including narrative, can be found at <http://www.txcourts.gov/oca/strtm/strtm-home.asp>.

<sup>40</sup> Section 58.005(a)(7) and Section 58.007(b)(5), Texas Family Code.

<sup>41</sup> House Bill 961, 82nd Legislature, Regular Session (2011).

<sup>42</sup> A copy of House Bill 528 is provided in Appendix F.

Bill [528] includes both of the conditions of the Senate Bills [393 and 394]" that a court would be in compliance with the law if it made records confidential as required by House Bill 528.<sup>43</sup>

### **Rebuttable Presumption:**

As noted in earlier paragraphs, one of the specific statutory recommendations codified in Senate Bill 393 dealt with "capacity," or the fundamental ability to be legally accountable for one's actions. Its intent was to make courts the last, instead of the first, venue for school disciplinary matters, and to create additional parity between the punishments levied against juveniles in the criminal justice system and those in juvenile courts. Certain aspects of the law resulted in more juveniles, under the age of 15, being adjudicated in adult municipal and justice criminal courts for fine-only Class C misdemeanors than those adjudicated in juvenile court for "more serious offenses."<sup>44</sup> The suggested legislative remedy for this was to create a rebuttable presumption that juveniles between the ages of ten and 15 do not have the capacity, and therefore do not have the intent, to commit certain criminal acts. Language was contemplated to be similar to other statutory defenses, such as insanity, mistake of fact, mistake of law, intoxication, duress, and entrapment.

Senate Bill 393 added new Section 8.07(e) to the Texas Penal Code. While this language was intended to be similar to the other defenses – that the defense can be raised for consideration – it has proven problematic. Witness testimony suggested that some justice court judges are interpreting this section as prohibiting them from proceeding with a complaint against a child below the age of 15, unless the complaint is accompanied by proof of the juvenile's capacity.<sup>45</sup> Representatives from the Texas Justice Court Training Center noted uncertainty as to how to advise judges on proceeding with these cases, even stating that some judges are uncomfortable with taking the plea of juveniles in these instances.

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<sup>43</sup> Texas Attorney General Opinion GA-1035 (2014).

<sup>44</sup> Texas Judicial Council. *Juvenile Justice Committee Subcommittee on Legislation Report*. August 31, 2012. Print. On file.

<sup>45</sup> Senate Committee on Jurisprudence hearing, June 3, 2014 (statement of Thea Whalen, Texas Justice Court Training Center).

### **Complaint Process:**

One area where Senate Bill 393 and Senate Bill 1114 were notably different, at least in regards to bill drafting, was in sections outlining the requirements interested parties must meet to pursue criminal complaints. While Senate Bill 393 removes the ability to issue citations for school offenses, it provides a means to file criminal complaints against juveniles, and outlines specific requirements for doing so. Senate Bill 1114 adds additional criteria to what must be contained in a complaint against a child for an offense that is alleged to have occurred on school property or school-owned vehicles. A detailed description is provided in the following sections.

Senate Bill 393 adds new sections to the Texas Education Code, which build upon the existing filing requirements for complaints in municipal and justice courts found in the Texas Code of Criminal Procedure. It also authorizes local prosecutors to establish rules considered necessary to determine probable cause or whether allegations are legally sufficient. A complaint alleging a school offense must:

- 1) Be in writing;
- 2) Commence “In the name and by the authority of the State of Texas;” State the name of the accused, if known, or if unknown, include a reasonably definite description of the accused;
- 3) Show that the accused has committed an offense against the law of this state, or state that the affiant has good reason to believe and does believe that the accused has committed an offense against the law of this state;
- 4) State the date the offense was committed as definitely as the affiant is able to provide;
- 5) Bear the signature or mark of the affiant;
- 6) Conclude with the words “against the peace and dignity of the State” and, if the offense charged is an offense only under a municipal ordinance, it may also conclude with the words “contrary to the said ordinance”;
- 7) Allege that the offense was committed in the county in which the complaint is made (if filed in justice court);
- 8) Allege that the offense was committed in the territorial limits of the municipality in which the complaint is made (if filed in municipal court);

- 9) Be sworn to by a person who has personal knowledge of the underlying facts giving rise to probable cause to believe that an offense has been committed; and
- 10) Be accompanied by a statement from a school employee stating:
  - a. Whether the child is eligible for or receives special services under Chapter 29; Subchapter A, Texas Education Code; and
  - b. The graduated sanctions, if required under Section 37.144, Texas Education Code that were imposed on the child before the complaint was filed.

Senate Bill 1114 adds new language to Article 45.058, Texas Code of Criminal Procedure, which is the section of law that contains the general provisions regarding taking juveniles into custody. It requires that citations or complaints filed under Article 45.018, Texas Code of Criminal Procedure "for conduct by a child 12 years of age or older that is alleged to have occurred on school property or on a vehicle owned or operated by a county or independent school district" to be accompanied by:

- 1) An offense report;
- 2) A statement by a witness to the alleged conduct; and
- 3) A statement by a victim of the alleged conduct, if any.

Upon initial reading, these provisions may appear to be vastly different, but on further inspection, they are quite similar. All of the requirements under Senate Bill 393, with the exception of documentation of special needs or the graduated sanctions used, are specifically required under Senate Bill 1114 or referenced by the bill as the prerequisites of a complaint filed under Article 45.018, Texas Code of Criminal Procedure. Similarly, the only requirement contained in Senate Bill 1114 that is not contained in Senate Bill 393 is the requirement for a victim statement, if any. Even with these similarities noted, witnesses at the hearing still requested that these sections be consolidated into a uniform process. It was noted that law enforcement officers are having difficulty interpreting the different statutes.<sup>46</sup> In addition, it was suggested that language be added to explicitly grant municipal and justice courts the ability to dismiss complaints that do not comply with these requirements.<sup>47</sup> Although Senate Bill 1114

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<sup>46</sup> Senate Committee on Jurisprudence hearing, June 3, 2014 (statement of Lon Craft, Texas Municipal Police Association).

<sup>47</sup> Senate Committee on Jurisprudence hearing, June 3, 2014 (statement of Thea Whalen, Texas Justice Court Training Center).

provides that a prosecutor cannot proceed unless an officer complies with the requirements it outlines for a complaint, it is silent regarding the actions of the court. Senate Bill 393 does not contain language authorizing a judge to dismiss complaints for the lack of required elements.

### **Graduated Sanctions:**

Senate Bill 393 adds a new subchapter to the Texas Education Code as a means to provide schools with non-criminal options to address misbehaviors on campus. It outlines one of the core recommendations of Juvenile Justice Committee by eliminating the use of citations for school offenses, initiating the process for enhanced complaints, and creating a system of progressive disciplinary measures for schools to use prior to pursuing criminal charges. The latter are referred to as "graduated sanctions." Senate Bill 393 is explicit that graduated sanctions include: (1) warning letters; (2) behavior contacts; (3) school-based community service; and (4) referral to counseling, community-based services, or other in-school or out-of school services. These recommendations built upon recognized best practices.

A report published by the Texas Public Policy Foundation in August 2012 provides a detailed account of programs in Clayton County, Georgia and Jefferson County, Alabama, as well as those used by the Waco Independent School District that utilize tiered or progressive disciplinary policies to address misbehaviors on school campuses that have proven successful in improving classroom behaviors and attendance, as well as reducing court referrals.<sup>48</sup> A Prairie View A&M University study specifically requested by the Jurisprudence Committee also suggests that tiered processes provide for "consistent proactive management" of student misbehaviors and are "well-ordered processes that hold students accountable."<sup>49</sup> This study also identifies that best practices include "school-wide methods of discipline that emphasize equity and continuous improvement."<sup>50</sup>

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<sup>48</sup> Moll, Jeanette, and Henry Joel Simmons. *Expelling Zero-Tolerance: Reforming Texas School Discipline for Good*. Texas Public Policy Foundation, Center for Effective Justice, August 2012. Print.

<sup>49</sup> *Best Practices in School Discipline to Address Rather than Criminalize Misbehavior*. Texas Juvenile Crime Prevention Center, College of Juvenile Justice and Psychology, Prairie View A&M University, 2014. Print.

<sup>50</sup> *Ibid.*

While the filed version of Senate Bill 393 mandated that school districts with school resource officers utilize these measures prior to filing a complaint against a student, an amendment in the House of Representatives modified the language of the bill to make them permissive. Concerns were expressed regarding the mandatory nature of sanctions in the bill, as filed, by school boards.<sup>51</sup> Since the use of graduated sanctions is permissive, it is very difficult to ascertain how widely utilized they are. No state agency is required to keep this data.<sup>52</sup> In order to comply with the language in the interim charge, the Senate Jurisprudence Committee requested the Texas Legislative Council develop a survey to gather this information. The survey revealed less than 30 percent of school districts have implemented the graduated sanctions envisioned by Senate Bill 393.<sup>53</sup> While this survey does not provide a complete analysis of the use of graduated sanctions by school districts, it calls into question whether additional legislative changes are needed to make the disciplinary measures in Senate Bill 393 – warning letters, behavior contracts, school-based community service, and referral to counseling or other services – mandatory. A copy of the Texas Legislative Council survey can be found in Appendix G.

#### **Other Clarification:**

As can reasonably be expected when two distinctly different legislative proposals – each with a different author and a different Senate and House of Representatives committee track – pass into law, the language in Senate Bill 393 and Senate Bill 1114 does conflict to some degree. While the dissimilar language does not hinder the ability to implement both bills, it does complicate the interpretation of law, and has caused confusion for educators, administrators, and law enforcement. Some of the more troublesome conflicts have been discussed in the preceding paragraphs. Although not an exhaustive list, Table 1.B highlights a few other areas where statute may need to be clarified.

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<sup>51</sup> Staff, Texas Association of School Boards. March 6, 2013. Email to the author. On file.

<sup>52</sup> Staff, Texas Education Agency. July 7, 2014. Email to the author. On file.

<sup>53</sup> Texas Legislative Council, September 11, 2014. Memo to the author. On file.



**Table 1.B.**

<b>SENATE BILL 393</b>	<b>SENATE BILL 1114</b>
Section 37.144, Education Code, refers to the imposition of graduated sanctions prior to filing a complaint for disruption of class (Sec. 37.124, Education Code) and disruption of transportation (Section 37.126, Education Code).	Eliminates the offenses of disruption of class (Sec. 37.124, Education Code) and disruption of transportation (Section 37.126 Education Code) for primary and secondary school students enrolled in the school.
Definition of "school offense" in Section 37.141 (2), Education Code, uses "property under the control and jurisdiction of a school district."	In reference to Disorderly Conduct (Section 42.01, Penal Code), defines the term "public place" to include "a public school campus or the school grounds on which a public school is located."
Prohibits citations on school property (Section 37.143, Education Code).	Refers to a "citation" on school property (Section 45.058, Code of Criminal Procedure).
"School offense" is defined (Section 37.141 (2), Education Code) as "an offense committed by a child enrolled in a public school that is a Class C misdemeanor other than a traffic offense and that is committed on property under the control and jurisdiction of a school district." Does not make a distinction between summer school and the regular school year.	Prohibits charging students (Article 45.058, Code of Criminal Procedure) with "disruption of class" and "disruption of transportation." Still can charge non-students outside of the regular school year.

Provided by the Office of Court Administration as part of workgroup discussions

### **Committee Hearing**

The Senate Committee on Jurisprudence took invited and public testimony on this charge on June 3, 2014 in Austin.<sup>54</sup> The Office of Court Administration (OCA) provided the committee with data regarding the number of complaints filed for Class C misdemeanors on school campuses and discussed that these have dropped significantly, particularly for the offenses of disruption of class and disruption of transportation, since Senate Bill 393 and Senate Bill 1114 took effect on September 1, 2013. OCA also discussed some of the concerns that have been raised since the bills were passed, specifically noting that some groups initially expressed confusion on how to implement two vastly different bills on the same subject matter. Additional witnesses – including school administrators, representatives from education and law enforcement associations, judicial education centers, and advocates – echoed these sentiments. The committee

<sup>54</sup> A video of the June 3, 2014 hearing can be accessed at <http://www.senate.state.tx.us/75r/senate/commit/c550/c550.htm>.

also heard testimony from school principals expressing concerns regarding the inability to issue citations for fighting and other forms of mutual combat. Law enforcement representatives stated that the inconsistent processes now required to file complaints have proved problematic. Individuals representing specific judicial jurisdictions focused their comments on how clarification of the sections regarding capacity would help judges understand the intent of these sections. Since numerous witnesses either expressed confusion regarding the disciplinary options that are still available after the passage of Senate Bill 393 and Senate Bill 1114, or were entirely unaware that certain enforcement actions are still permitted under the new legislation, committee members requested that a workgroup be created to develop a training document for school administrators and law enforcement.

The Senate Bill 393/ Senate Bill 1114 workgroup – comprised of teacher groups, school board and school administrator associations, representatives from law enforcement, judicial training centers, advocacy organizations, state agency representatives, and Senate staff – met on July 7, 2014 and July 30, 2014. At the first meeting, the workgroup reviewed all of the comments and concerns raised at the June 3rd hearing, and in many instances, OCA corrected the misinformation, especially as it related to the ability to use complaints as an alternative to citations. The workgroup then focused on discussing the appropriate topics for inclusion in the training documents, as well as the specific audiences that would benefit from these materials. The Office of Court Administration was charged with developing a draft document, which was distributed to all workgroup members for comment on July 22, 2014.

The second workgroup meeting focused primarily on reviewing the draft training materials and taking specific suggestions from all present regarding the need for changes or clarification. The meeting also provided a forum to seek input on specific areas where statutory changes may be necessary to clarify the intent of Senate Bill 393 and Senate Bill 1114, and where ambiguous and incorrect references should be conformed to provide a uniform framework for school administrators, law enforcement, and courts. The workgroup changes were incorporated into a final "gold standard" training document that includes both a PowerPoint to be used as a teaching aide and a narrated version that is available on several state agency and advocacy organization websites. See Appendix E for the documents associated with the training.

## **Recommendations**

**1.1** The statutory changes made by Senate Bill 393 and Senate Bill 1114 (83rd Legislature, 2013) should be modified during the upcoming 84th Legislative Session to reduce ambiguities, incorrect references or citations, and redundancy; however, no significant statutory changes need to be made to effectuate the intent of either bill.

**1.2** In response to the testimony provided during interim deliberations, the Senate Committee on Jurisprudence worked with the Office of Court Administration to seek input from school organizations, law enforcement, advocacy groups, and other stakeholders in order to develop training materials on the components and implementation of Senate Bill 393 and Senate Bill 1114 (83rd Legislature, 2013). Those organizations involved in school discipline and law enforcement, including state agencies and training centers, are encouraged to distribute these materials to the appropriate constituencies, including publication on appropriate websites and via social media.

**1.3** During the 83rd Legislative Interim, the Texas Legislative Council studied the use of graduated sanctions added by Senate Bill 393. The 84th Texas Legislature should consider the findings of this study – which revealed that less than half of the school district respondents utilized graduated sanctions – and make the appropriate statutory modification to Subchapter E-1, Texas Education Code to require all school districts to adopt policies that ensure the use of non-criminal, disciplinary options prior to filing complaints for Class C misdemeanor offenses.

**1.4** The changes made during the 83rd Legislative Session to Section 8.07(e), Texas Penal Code, relating to the capacity of persons at least 10 years of age but younger than 15 years of age, have proved difficult to understand across judicial jurisdictions. Additional statutory changes are necessary to clarify that the lack of capacity can be raised as a defense – creating a rebuttable presumption that a child younger than age 15 has criminal intent to commit a Class C Misdemeanor – with an exception for traffic offenses.

**1.5** During the 83rd Legislative Session, two different processes - Article 45.058, Texas Code of Criminal Procedure (Senate Bill 1114) and Section 37.146, Texas Education Code (Senate Bill

393) - were put in place to file a complaint against a child for a Class C misdemeanor, other than a traffic offense, that takes place on school property. The addition of a requirement to file a victim statement (required by Article 45.058, Texas Code of Criminal Procedure) to Section 37.146, Texas Education Code would conform these sections and create a uniform process for filing complaints for school-based offenses. Other conflicting statutory provisions should be repealed.

**1.6** Specific statutory language needs to be added to the complaint process found in Section 37.146, Texas Education Code, as added by Senate Bill 393 (83rd Legislature, 2013), that gives municipal and justice court judges the express authority to dismiss those complaints that do not comply with the requirements of this section.

**1.7** Prior to the 2015 Legislative Session, the Texas Juvenile Crime Prevention Center at Prairie View A&M University studied the use of graduated disciplinary practices within schools to determine those that are most effective in reducing the need for additional actions and court room referrals. The 84th Texas Legislature should consider the findings of this study to determine if modifications to Subchapter E-1, Texas Education Code should be made in order to provide additional, non-criminal, disciplinary options for school administrators.

**1.8** The 84th Texas Legislature – working with all appropriate stakeholders, including higher education partners, advocacy groups, judicial organizations, governmental entities, law enforcement, and education associations – should develop a process to evaluate the overall impact that Senate Bill 393 and Senate Bill 1114 (83rd Legislature, 2013) are having on school safety and discipline for a period of at least five years. The study should review, but not be limited to, the use of diversionary programs, the number of complaints filed and arrests made on school property, graduation rates, and referrals to state juvenile entities.



**Charge 2: Monitor the implementation of statewide electronic filing as mandated by the Texas Supreme Court to determine if any additional training or resources are needed by local jurisdictions. In addition, determine those jurisdictions that have imposed the local transaction fee, as created by House Bill 2302, to determine how it is being utilized and if its continued collection is necessary.**



## **Background**

Electronic filing or "e-filing" systems, which allow attorneys and other court users to submit documents through electronic means, have become commonplace across the country. As of 2012, 23 states had mandated e-filing to varying degrees.<sup>55</sup> The initiation of e-filing in Texas began in 1995 when the district court in Jefferson County contracted with a vendor to transmit documents from court filer to court clerk as a means to handle the large volume of multi-party lawsuits that were being filed; Montgomery County followed a similar course in 1997.<sup>56</sup> Statewide efforts began in January 2003 when the Texas Supreme Court launched a pilot project through the state's existing TexasOnline (later renamed Texas.gov) Internet portal.<sup>57</sup> This project was a joint collaborative between local governments, the Judicial Committee on Information Technology (JCIT), the Office of Court Administration (OCA), and the Texas Online Authority.

The pilot project allowed attorneys and other filers to utilize any Electronic Filing Service Provider (EFSP) to electronically transmit documents to TexasOnline, which served as the state's Electronic Filing Manager (EFM). TexasOnline would then electronically transmit documents to participating county and district court clerks. Users paid a per-document transaction fee to TexasOnline, as well as "convenience fee," which provided a means for local governments to recoup costs associated with accepting electronic filings. By April 2004, the pilot project had achieved most of the metrics and performance objectives identified by the Texas Supreme Court.<sup>58</sup> Numerous judicial jurisdictions – including courts of appeal, district courts, county courts, and justice courts – voluntarily transitioned from paper to electronic filings in subsequent years.

By the end of 2011, the Texas Supreme Court had begun to take additional steps to formalize statewide electronic filing. On December 8, 2011, stakeholder comments were sought on the implementation of a mandatory statewide system. The Judicial Committee on Information Technology – in the role of the state's advisory authority on judicial information technology

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<sup>55</sup> Supreme Court Order - Misc. Dkt. No. 12-9208.

<sup>56</sup> Vogel, Peter, and Mike Griffith. *Electronic Court Filing: The Texas Model*. Texas Judicial Committee on Information Technology. Web. July 1, 2014 <<http://www.courts.state.tx.us/jcit/efiling/pdf/TheTexasModel.pdf>>.

<sup>57</sup> *Ibid.*

<sup>58</sup> *Ibid.*



standards – formally recommended that the Texas Supreme Court "mandate a statewide, uniform system of e-filing for all courts" shortly thereafter.<sup>59</sup>

While these developments set in motion a mandatory statewide electronic filing system, additional actions were still needed to ensure the transmission of documents from court user to court clerk. The previous contract – established under Texas.gov – expired in August 2012, and without the statewide framework to transmit documents, courts would be forced to select from a variety of vendors, all with potentially proprietary systems and different transmission requirements. The Office of Court Administration, on behalf of the judiciary, assumed responsibility and a contract was signed for the "eFileTexas" system on November 8, 2012.<sup>60</sup>

Under eFileTexas, a single vendor replaced Texas.gov as the state's EFM, responsible for transmitting documents from electronic filing service providers to county clerks. Similar to the previous system, EFSP's would still be chosen by attorneys and court users, except that attorneys under the new model would be required to choose from a list of vendors certified by OCA. To fund this contract, a fee was charged each time a document was electronically filed with eFileTexas, similar to the Texas.gov model. While this new EFM was projected to dramatically reduce the cost of e-filing over the previous one, it still did not address the per-document fee structure – a concern expressed by stakeholders. It was equated to a "toll-road" approach to judicial filings, since it required a user fee to be paid every time an attorney filed any document associated with a case. Additional information on the initial version of eFileTexas (using the previous name of "TexFile") can be found in Appendix H.

At a meeting on November 9, 2012, the Texas Judicial Council – the policy-making body of the state judiciary – addressed this concern by adopting a resolution requesting that the 83rd Texas Legislature consider establishing a per-case fee structure to fund technology in civil cases, and appropriate this revenue to the Office of Court Administration to fund implementation of statewide e-filing. See Appendix I for a copy of the resolution. Two more distinct acts put in place statewide electronic filing and its current fee structure – an official order of the Texas

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<sup>59</sup> Supreme Court Order - Misc. Dkt. No. 12-9208.

<sup>60</sup> David Slayton, Office of Court Administration. November 13, 2014. Email to the author. On file.

Supreme Court mandating e-filing and House Bill 2302, which established the funding mechanism.

On December 11, 2012, the Texas Supreme Court officially mandated statewide electronic filing for all civil cases, including family and probate cases, in appellate courts, district courts, statutory county courts, constitutional county courts, and statutory probate courts as determined by a schedule based upon the counties' 2010 Federal Census population.

- a. Courts in counties with a population of 500,000 or more - January 1, 2014.
- b. Courts in counties with a population of 200,000 to 499,999 - July 1, 2014.
- c. Courts in counties with a population of 100,000 to 199,999 - January 1, 2015.
- d. Courts in counties with a population of 50,000 to 99,999 - July 1, 2015.
- e. Courts in counties with a population of 20,000 to 49,999 - January 1, 2016.
- f. Courts in counties with a population less than 20,000 - July 1, 2016.<sup>61</sup>

House Bill 2302, which was filed on March 4, 2013, put in place the statutory framework necessary to implement the Texas Judicial Council recommendation.<sup>62</sup> After much discussion – including debates on the appropriate fee amount to be charged for filing documents in each different judicial jurisdiction, and the necessity of an additional fee to allow local governments to recoup some of the costs spent on implementing the e-filing mandate – House Bill 2302 was signed into law by the Governor on June 14, 2013, and became effective on September 1, 2013. This bill was an integral part to the statewide e-filing mandate because it abolished the *per-document* or "toll-road" model and established a single *per-case* filing fee. A copy of House Bill 2302 can be found in Appendix K.

**House Bill 2302 - Author: Rep. Todd Hunter/ Sponsor: Senator West:**

- Creates the Statewide Electronic Filing System Fund to be distributed by OCA to counties as grants to assist with additional resources necessary to implement e-filing.
- Establishes an additional \$20 filing fee in the Texas Supreme Court, courts of appeal, district court, county court, statutory county court, or statutory probate court on civil

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<sup>61</sup> See Appendix J for Supreme Court Order - Misc. Dkt. No. 12-9208.

<sup>62</sup> Similar bills, Senate Bill 1146 and Senate Bill 1147, were filed on March 5, 2013.

actions; and an additional \$10 filing fee in justice courts to be deposited into the Statewide Electronic Filing System Fund.

- Establishes an additional \$5 court cost to be paid on a conviction, defined as: (1) a judgment or sentence; (2) community supervision, deferred adjudication, or deferred disposition; or (3) court deferred final disposition of a criminal offense in district, county, or statutory county court.
- Authorizes a local government to charge a per-document fee of \$2, until September 1, 2019, if: (1) the fee is necessary to recover costs for accepting electronic payments or interfacing with the existing system; (2) the fee does not include employee costs, other than costs for directly maintaining the system; (3) the fee is approved by the local government or appellate court; and (4) the local government or appellate court certifies to OCA that the fee is necessary.

### **Issues**

The shift from voluntary electronic filing to a mandatory system represented a huge process change for court users, court clerks, and judges. Although only ten counties were mandated to implement electronic filing as of the June 3rd hearing on this charge, these counties represent the vast majority of the state's population. The experiences of stakeholders in regards to e-filing in these areas highlighted several topics that warrant additional discussion.

### **Utilization of Local Government Transaction Fee:**

In addition to establishing the statewide electronic filing system, House Bill 2302 also authorized local governments and appellate courts to collect a \$2 per-document e-filing transaction fee to recover the costs associated with accepting electronic filings or interfacing with the state's eFileTexas portal.<sup>63</sup> This fee can only be collected for certain purposes and must be approved by the governing body or appellate court in which it is being charged. Those local governments and appellate courts collecting the fee must annually certify to the Office of Court Administration (OCA) whether collection is still necessary to recoup the costs associated with implementing electronic filing. The collection and utilization of the local government transaction fee varies

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<sup>63</sup> Section 72.031, Texas Government Code.

greatly statewide. Of the five most populous counties in Texas, not all impose it – with Dallas County and Travis County notably opting to forgo collection.<sup>64</sup> Reasons given for not collecting the fee differ. Some jurisdictions, like Dallas County, have determined that the cost savings realized from a "paperless court" environment are enough to recoup the costs of expenditures associated with implementing e-filing.<sup>65</sup> In other jurisdictions, particularly those with fewer case filings, court clerks contend that the documentation required to collect the fee is too arduous and time consuming when compared to the minimal amount of revenue the fee generates.<sup>66</sup>

**Table 2.A.**

<b>Revenue Collected from \$2 Local Transaction Fee: Counties with a Population Greater than 500,000</b>		
	<b>Number of Case Filings</b>	<b>Revenue Generated</b>
El Paso	21563	\$0
Travis *	52177	\$62
Dallas *	114727	\$184
Denton	29818	\$27,450
Fort Bend	43177	\$84,120
Collin	59422	\$113,414
Bexar	92627	\$142,148
Hidalgo	113371	\$216,306
Tarrant	150048	\$298,726
Harris	449044	\$878,220
<i>* Travis County and Dallas County have waived collection of the \$2 local transaction fee.</i>		

Data Collected by the Office of Court Administration from September 1, 2013 - September 30, 2014

<sup>64</sup> Written testimony submitted by David Slayton, Office of Court Administration at Senate Committee on Jurisprudence hearing June 3, 2014. On file.

<sup>65</sup> Senate Committee on Jurisprudence hearing, June 3, 2014 (statement of David Slayton, Office of Court Administration).

<sup>66</sup> Senate Committee on Jurisprudence hearing, June 3, 2014 (statement of Sheri Woodfin, County and District Clerks Association of Texas).

**Table 2.B.**

<b>Revenue Collected from \$2 Local Transaction Fee: Counties with a Population Less than 20,000</b>		
	<b>Number of Case Filings</b>	<b>Revenue Generated</b>
Fisher	5	\$0
Franklin	20	\$0
Pecos	5	\$0
Sherman	19	\$38
Upton	38	\$76
Goliad	147	\$294
Brooks	281	\$540
Jackson	439	\$858

Data Collected by the Office of Court Administration from September 1, 2013 - September 30, 2014

As Table 2.A and 2.B demonstrate, the \$2 local government transaction fee is helping larger counties recover some expenses, but it will never generate adequate revenue for smaller counties to recoup costs associated with integration with eFileTexas or converting to a paperless environment. For example, in a "low volume" court that averages approximately 50 filings a month, the amount generated by the fee is only \$100.<sup>67</sup> Fortunately, this reality was expected. In discussions during the 83rd Legislative Session (2013), consideration was given to providing revenue in the form of grants from the Statewide Electronic Filing System fund to those jurisdictions in need of hardware or software upgrades to accept electronically filed documents. Different from the \$2 local government transaction fee, the Statewide Electronic Filing System fund is comprised of money collected from the per-case filing fee imposed in civil courts, as well as the additional \$5 court cost on convictions in criminal courts, established by House Bill 2302.

Unfortunately, the revenue generated for the Statewide Electronic Filing System fund has not met the amount that was originally estimated, resulting in a projected shortfall of approximately \$4.9 million between Fiscal Year (FY) 2014 and FY 2017.<sup>68</sup> The Office of Court Administration is looking to the 84th Texas Legislature to help close this gap. The FY 2016-17 Legislative Appropriations Request for OCA includes an exceptional item to provide funding through grants to "less populous counties" to cover the "purchase of computing equipment, configuration of

<sup>67</sup> Written testimony submitted by Sheri Woodfin, County and District Clerks Association of Texas at Senate Committee on Jurisprudence hearing June 3, 2014. On file.

<sup>68</sup> David Slayton, Office of Court Administration. July 29, 2014. Email to the author. On file.

existing systems and/or purchase of software to facilitate a seamless interaction between the E-Filing systems and local case management software."<sup>69</sup> An additional option to generate adequate revenue for the Statewide Electronic Filing System fund would be to statutorily raise the existing per-case filing fees for the Texas Supreme Court, courts of appeal, district courts, county courts, statutory county courts, statutory probate courts, and justice courts by an amount deemed appropriate.

### **Need for Standardization:**

The e-filing experience for lawyers and other court users has been mixed, and greatly depends on the jurisdiction or county in which the filing takes place. At the Jurisprudence hearing, witnesses representing attorney organizations testified that while there have been some "great successes" with electronic filing and "appreciated efficiency and reduction in paper," users have still experienced difficulties.<sup>70</sup> Common concerns expressed regarding e-filing include: (1) inconsistent rules and procedures across jurisdictions; (2) delays in submission of documents to the courts; (3) absence of reliable electronic notifications; and (4) general frustration that systems are not "user friendly."<sup>71</sup> A lot of the variations experienced by attorneys across jurisdictions stem from the decentralized nature of the Texas judicial system, as well as the autonomy of the offices of county and district clerk.

County clerks are elected for four-year terms, and are responsible for a multitude of tasks, including the administration of county courts and county courts at law, county records, vital statistics, marriage licenses, and elections. District clerks also serve four-year terms and provide support for each district court in a county. In very small counties, a single person can serve in both rolls. As it relates to the role of court administrator, the Texas Supreme Court e-filing mandate dramatically altered one aspect of these duties. Electronic filing simply "replaces

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<sup>69</sup> Office of Court Administration. *Legislative Appropriations Request for Fiscal Years 2016 and 2017*. Submitted to the Governor's Office of Budget, Planning and Policy and the Legislative Budget Board. August 4, 2014. Print.

<sup>70</sup> Written testimony submitted by Laura Tamez, Texas Trial Lawyers Association at Senate Committee on Jurisprudence hearing June 3, 2014. On file.

<sup>71</sup> Written testimony submitted by Pamela Madere, Texas Association of Defense Counsel at Senate Committee on Jurisprudence hearing June 3, 2014. On file.

someone filing a document in person at the clerk's office in person or by first class mail."<sup>72</sup> Other duties, such as determining if the document meets established filing criteria, are still up to the discretion of the clerk. E-filing has complicated the performance of this important duty.

The Texas Supreme Court, through the adoption of an amendment to the Texas Rules of Civil Procedure and Texas Rules for Appellate Procedures,<sup>73</sup> provided guidance to county and district clerks on how to accept documents filed electronically, but even after doing so, testimony at the hearing on this charge revealed that inconsistencies still existed. It was noted that county and district clerks, in certain instances, are unfamiliar with how "exacting" to be when accepting electronic filings because established parameters and local rules for paper documents are not applicable to electronic submissions.<sup>74</sup> It can be surmised from testimony, as well as through comments made as part of workgroup deliberations, that a lot of the apprehension expressed by attorneys in regards to e-filing was the result of inconsistencies in how documents were being processed by different judicial jurisdictions.

The Judicial Committee on Information Technology (JCIT) worked with county and district clerks to help alleviate some of these concerns. On March 21, 2014, JCIT announced specific guidelines for clerks to use to code judicial proceedings.<sup>75</sup> These became effective 60 days following publication. In this document, JCIT established statewide "standard filing configurations" for use in district, county courts at law, probate, and county courts; and required specific codes to be used to categorize filing types for all civil cases, including the Child Support Division of the Office of Attorney General, family and juvenile, probate and mental health, and multi-district litigation cases. These guidelines also address when documents should be returned for correction to attorneys and those documents that are not automatically deemed accepted upon filing. As the statewide implementation of e-filing continues, it is likely that the JCIT will continue to propose changes that could be adopted by the Texas Supreme Court as part of the ongoing review of e-filing rules and procedures.

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<sup>72</sup> Written testimony submitted by Sheri Woodfin, County and District Clerks Association of Texas at Senate Committee on Jurisprudence hearing June 3, 2014. On file.

<sup>73</sup> Copies of these documents can be found at <http://www.supreme.courts.state.tx.us>.

<sup>74</sup> Senate Committee on Jurisprudence hearing, June 3, 2014 (statement of Chief Justice Nathan Hecht, Texas Supreme Court).

<sup>75</sup> Additional information, including specific guidelines, can be found at <http://www.courts.state.tx.us/jcit/>.

### **"Paperless" Courts:**

A survey conducted by the County and District Clerk's Association of Texas prior to the Senate Jurisprudence hearing revealed that an overwhelming number of county courts will not have paperless environments even after e-filing is implemented.<sup>76</sup> As previously discussed, e-filing is only a mechanism to get documents from court user to the court clerk. Electronic filing does not address what happens after a document is filed or how information regarding each specific case is transmitted from the clerk's office to the judge or other judicial offices. One prominent concern is that some judges continue to require that all court filings, including supporting materials, be printed and provided to them. An August 2014 article in *Texas Lawyer* not only provides specific examples of judges in numerous counties that insist on having printed documents, it also discusses how local government costs have risen to accommodate additional expenses for toner and paper since attorneys are no longer required to provide printed copies of case filings and other related documents.<sup>77</sup> Clerks with multiple judges within the same judicial jurisdiction can even be faced with printing out documents for some judges, while housing documents online for others.<sup>78</sup>

Another impediment to paperless courts is the extent to which an automated case management system is used. Courts utilize case management to track the lifecycle of cases from the time the initiating documents are filed with the court, through trial processes and other judicial proceedings, until finally a disposition is reached and the case record is archived. The amount of automation in this process varies greatly from county to county, and can even be different between courts within the same jurisdiction. A June 2014 study by the Office of Court Administration found that only 68 counties in Texas (half of the counties with a population less than 20,000 that will be expected to initiate e-filing in July 2016) have an automated case management system for their district, county, or justice courts.<sup>79</sup> Cost savings from e-filing cannot be realized until courts move away from all paper documents. If a court does not have a

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<sup>76</sup> Written testimony submitted by Sheri Woodfin, County and District Clerks Association of Texas at Senate Committee on Jurisprudence hearing June 3, 2014. On file.

<sup>77</sup> Morris, Angela. "Paying the Price of E-Filing: E-Filing Mandate Spurs Spending on Tech Upgrades-and Paper." *Texas Lawyer*. August 18, 2014. Web. <<http://www.texaslawyer.com/id=1202666894813/Paying-the-Price-of-EFiling-EFiling-Mandate-Spurs-Spending-on-Tech-Upgradesand-Paper?slreturn=20141013164951>>.

<sup>78</sup> *Ibid.*

<sup>79</sup> David Slayton, Office of Court Administration. July 29, 2014. Email to the author. On file.



case management system, substantial savings cannot be achieved. The Office of Court Administration is encouraging the 84th Texas Legislature to take action in order to assist further automation of court processes. The OCA Legislative Appropriations Request for the FY 2016-17 biennium includes an exceptional item request for funding to establish a uniform case management system for counties with populations below 20,000."<sup>80</sup>

### **Committee Hearing**

The Senate Committee on Jurisprudence took invited and public testimony on this charge on June 3, 2014 in Austin.<sup>81</sup> At the hearing, the committee heard testimony from Texas Supreme Court Chief Justice Nathan Hecht regarding the benefits of e-filing, such as the elimination of paper storage and copying expenses, and improved public access to court information. The Office of Court Administration (OCA) provided an overview on the implementation of the statewide e-filing mandate, including a discussion of the rollout schedule and some of the challenges ahead for less populous counties. Testimony from the Judicial Committee on Information Technology focused on efforts to standardize filing codes and other data collection processes across judicial jurisdictions.

Local government witnesses, including county and district clerk representatives, discussed the necessity of the local option fee passed in House Bill 2302. Information was provided that some counties have heavily relied on this fee to digitize records, while other local officials opted not to collect it because the cost savings associated with e-filing offset the costs of the infrastructure changes, or documentation requirements proved too arduous for the amount of revenue generated. The county and district clerk witness also provided the committee with some particular concerns that have been raised in small, rural jurisdictions, including the lack information technology staff and hardware. Civil bar associations were also invited to testify and primarily focused comments on specific examples of problems their members have experienced, such as rejected documents and untimely notices. The committee decided to create a workgroup

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<sup>80</sup> Office of Court Administration. *Legislative Appropriations Request for Fiscal Years 2016 and 2017*. Submitted to the Governor's Office of Budget, Planning and Policy and the Legislative Budget Board. August 4, 2014. Print.

<sup>81</sup> A video of the June 3, 2014 hearing can be accessed at <http://www.senate.state.tx.us/75r/senate/commit/c550/c550.htm>.

to evaluate whether additional legislative changes are needed to assist with the statewide rollout of e-filing.

The E-Filing workgroup – comprised of staff from OCA and the Office of the Attorney General, county government representatives, county and district clerks, attorney bar associations, and Senate staff – met on July 30, 2014. The meeting focused on the Office of Court Administration's ongoing e-filing implementation efforts, and was an open forum for those stakeholders in attendance to outline specific concerns. The workgroup discussed the lack of uniform processes across judicial jurisdictions and provided examples of specific issues associated with individual county offices; however, participants acknowledged that these types of problems should be expected as part of any rollout of similar magnitude and were content to deal with them on a case-by-case basis.

The general consensus was that additional resources, both in terms of professional development and training, as well as monetary assistance for infrastructure, will be needed as the e-filing mandate continues to be rolled out to smaller counties. In addition, the workgroup noted that further standardization of court processes by the Texas Supreme Court, the Judicial Committee on Information Technology, and OCA would be welcome; however, since these entities already have a mechanism for stakeholders to provide input, no other workgroup meetings were scheduled.

### **Recommendations**

**2.1** The continued collection of the \$2 local transaction filing fee (Section 72.031, Texas Government Code), authorized in House Bill 2302 (83rd Legislature, 2013) that enables counties to recoup a portion of the local resources expended on complying with the Supreme Court's electronic filing mandate, is necessary; however, the Office of Court Administration should develop a process, in accordance with already established requirements, by which counties report how the fee is being utilized to ensure compliance with the Legislature's intent.

**2.2** Due to the insufficient revenue generated by the electronic filing fee authorized in Subchapter I-1, Texas Government Code, the Office of Court Administration has been unable to

provide technology grants to help smaller counties develop the necessary infrastructure to comply with the statewide e-filing rollout, as was initial intent of the bill creating the fee. The Office of Court Administration should provide recommendations for additional revenue options to be considered during the upcoming session, specifically targeted to help smaller jurisdictions recoup the costs of infrastructure needs consistent with the intent of House Bill 2302 (83rd Legislature, 2013).

**2.3** Many local jurisdictions are unable to procure court case management software, due to the complexity and expense of these programs, and therefore cannot realize the efficiencies – such as reduced storage, printing, and staff costs – associated with a paperless court system. The 84th Texas Legislature, in coordination with the Office of Court Administration, should consider developing a statewide case management system to assist local governments, judicial jurisdictions, and court users realize the savings associated with a paperless court system; and additionally, offset some of the unfunded local costs incurred with the implementation of e-filing.

**2.4** In order to address ongoing issues and new concerns that may arise as the Texas Supreme Court e-filing rollout continues to smaller jurisdictions, the Judicial Committee on Information Technology – with input from the Office of Court Administration, county court clerks, attorney bar associations, local and state government filers, and other appropriate stakeholders – should prioritize reviewing the processes related to civil e-filing to ascertain if additional standardization would increase the effectiveness and efficiency of e-filing systems for civil jurisdictions.

**Charge 3: Study and make recommendations on the feasibility of removing failure to attend school (Section 25.094, Texas Education Code) as a Class C misdemeanor offense and determine the feasibility of adjudicating juvenile truancy as a civil offense.**



## **Background**

Over the past several decades, numerous studies have identified the correlation between a child's school attendance record and the likelihood of that child graduating from high school or attending college. One of these entitled *The Importance of Being in School: A Report on Absenteeism in the Nation's Public Schools*, published in May 2012 by Johns Hopkins University, discusses the prevalence of "chronic absenteeism" in the United States and the impact it has on a student's academic success.<sup>82</sup> This article reveals that an estimated 5 million to 7.5 million students are "chronically absent" – defined as ten or more absences during a school year.<sup>83</sup> The study also reports that these students are much less likely to receive high school diplomas than the national average – 64 percent of chronically absent students graduate, compared to 86 percent of all other high school students.<sup>84</sup> Chronically absent students are also considerably less likely to attend post-secondary schools.<sup>85</sup> Statistics such as these have prompted policymakers to enact numerous proposals focused on reducing student absences, improving school attendance, and funding services related to drop-out prevention. More extreme measures have also been passed into law. Texas is one of only two states to file criminal sanctions for unexcused absences. During the legislative interim, the Senate Committee on Jurisprudence was charged with reviewing state policies associated with failure to attend school (Section 25.094, Texas Education Code) – the process by which adult criminal courts are used to address chronic absenteeism.

### **Compulsory School Attendance:**

School attendance is required for children in Texas from six years old until the age of 18. Statutory attendance policies and acceptable exemptions – such as attending a private or parochial school, or a physical or mental condition that makes attendance infeasible – are outlined in the Texas Education Code.<sup>86</sup> Generally, students in attendance less than 90 percent of

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<sup>82</sup> Balfanz, Robert, and Vaughan Byrnes. *The Importance of Being in School: A Report on Absenteeism in the Nation's Public Schools*. Johns Hopkins University, School of Education, Center for Social Organization of Schools, May 2012. Web. <[http://new.every1graduates.org/wp-content/uploads/2012/05/FINALChronicAbsenteeismReport\\_May16.pdf](http://new.every1graduates.org/wp-content/uploads/2012/05/FINALChronicAbsenteeismReport_May16.pdf)>.

<sup>83</sup> *Ibid.*

<sup>84</sup> *Ibid.*

<sup>85</sup> Johns Hopkins, *Importance*, Chart 9. Student with greater than 10 absences have only a 53 percent chance of enrolling in post-secondary school, compared to 74 percent of all students.

<sup>86</sup> Sections 25.085 and 25.086, Texas Education Code.

school days cannot be given credit or a final grade for a class; however, the law accommodates those students with greater than the number of acceptable absences under specific circumstances.<sup>87</sup> Students 18 years or older, who voluntarily enroll in school, are expected to remain through the course of instruction but are not subject to compulsory school attendance laws.<sup>88</sup>

Since 2003, the State of Texas has taken a more proactive approach in helping students achieve academic success. Additional efforts have focused on dropout prevention, high school completion, and college and career readiness. Legislative measures have instructed the Texas Education Agency (TEA) to take on a greater role developing effective graduation strategies, and provided additional funding for High School Completion and Success programs. TEA now serves as the state's clearinghouse for national best practices and closely monitors those school districts with high absentee rates.<sup>89</sup> State law also requires school districts to adopt "truancy prevention measures" – designed to address excessive absences within the school setting.<sup>90</sup> School attendance officers (commonly known as truancy officers) or local law enforcement can be utilized to carry out prevention measures, promote school attendance, and enforce compulsory school attendance policies both on and off campus.<sup>91</sup> While middle schools and high schools in Texas are *authorized* to address chronic absenteeism in many ways, once a student receives a certain number of unexcused absences, state law *mandates* that school districts take action through either the juvenile justice or criminal justice system.

State statute requires school districts to file complaints against students over the age of 12 and younger than 18 for violations of compulsory attendance policies. Unless they fall under specific statutory exemptions, students who are absent 10 or more days in a six month period must be filed upon for the criminal offense of "failure to attend school" or the civil offense of

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<sup>87</sup> Section 25.092, Texas Education Code.

<sup>88</sup> Texas Attorney General Opinion GA-946 (2012).

<sup>89</sup> A complete list of legislation regarding dropout prevention, prepared by the Texas Education Agency, can be found in Appendix L. Found at [http://www.tea.state.tx.us/index4.aspx?id=3505&menu\\_id=2147483659](http://www.tea.state.tx.us/index4.aspx?id=3505&menu_id=2147483659).

<sup>90</sup> Section 25.0915.

<sup>91</sup> Section 25.091.

"truancy."<sup>92</sup> Students, who are absent three or more days in four weeks, may be filed against for the same offenses.<sup>93</sup> It is important to note that while schools do not have latitude in regards to filing charges, state law does provide discretion regarding which offense – failure to attend school or truancy – is filed.

### **Failure to Attend School versus Truancy:**

Failure to attend school (FTAS) is a Class C misdemeanor offense prosecuted in municipal court, justice court, or, in some instances, county court.<sup>94</sup> Truancy has the same criteria, in respect to the number of unexcused absences, but is filed as a civil "CINS" offense in the juvenile court system.<sup>95</sup> A CINS or "conduct in need of supervision" offense recognizes that children do not possess the same level of legal responsibility as adults. Courts determine *disposition* instead of *punishment*, and *petitions* instead of *indictments*. Under the juvenile system, truancy can be dealt with informally, such as by conference with the child or child's parent or guardian; by referral to a family services agency or state program for children at-risk; or by referral to a "first offender" program.<sup>96</sup> Law enforcement officers can take juveniles into custody for CINS offenses.<sup>97</sup>

Unlike truancy, failure to attend school is a criminal offense. So while these cases can also be disposed of informally – through counseling and mentoring, work and life skills training, or other non-punitive means – students found guilty of FTAS potentially face all of the criminal repercussions of Class C misdemeanor convictions, including being fined up to \$500.<sup>98</sup> Failure to obey a judge's order to attend required programs, adhere to court-ordered stipulations, or pay fines or court costs can result in a juvenile being charged with contempt of court – also punishable by a fine not to exceed \$500 or suspension of a driver's license.<sup>99</sup> It can also result in

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<sup>92</sup> Section 25.0951(a).

<sup>93</sup> Section 25.0951(b), Texas Education Code.

<sup>94</sup> Dallas County and Fort Bend County operate specialized truancy courts.

<sup>95</sup> Section 51.03(b)(2), Texas Family Code.

<sup>96</sup> Section 52.03(c) and Section 52.031.

<sup>97</sup> Section 52.01.

<sup>98</sup> Section 12.23, Texas Penal Code.

<sup>99</sup> Section 45.050(c), Texas Code of Criminal Procedure.



the juvenile being referred to the juvenile justice system (which is where the case would have been initiated if filed as truancy) for the elevated offense of "delinquent conduct"<sup>100</sup> or even jailed under certain circumstances.<sup>101</sup> Data suggests that school districts across Texas overwhelmingly utilize the criminal offense of failure to attend school, and not the civil offense of truancy, to address student absenteeism. Table 3.A provides additional information.

**Table 3.A.**

<b>Comparison of Truancy and Failure to Attend School Filings</b>			
<b>Fiscal Year (FY)</b>	<b>CINS Petitions** (Truancy)</b>	<b>Failure to Attend School</b>	<b>Parent Contributing to Non-Attendance</b>
FY 09	923	20,744*	7,680*
FY 10	893	18,252*	6,499*
FY 11	560	23,449*	5,785*
FY 12	561	81,357	62,596
FY 13	501	80,807	71,201
FY 14	594	65,585	67,298
* Data does not include Justice of the Peace courts.			
**Total number of CINS petitions, including truancy.			

Data provided by the Office of Court Administration as of October 1, 2014

### **Legislative Initiatives:**

Over the past few legislative sessions, some lawmakers have questioned whether the existing policies regarding failure to attend school and truancy provide an appropriate solution to chronic absenteeism. Generally, changes have focused on ways to limit court involvement, such as truancy prevention measures and diversionary alternatives. While not an exhaustive list, the following bulleted sections discuss a few of the most impactful legislative initiatives in the past few sessions. The engrossed copies of these bills can be found in Appendices M-P.<sup>102</sup> All of these proposals passed into law, with the notable exception of Senate Bill 1234, which was vetoed by the Governor.<sup>103</sup>

<sup>100</sup> Section 51.03(a)(2), Texas Family Code.

<sup>101</sup> Article 45.050, Texas Code of Criminal Procedure.

<sup>102</sup> A copy of Senate Bill 393 can be found in Appendix B.

<sup>103</sup> Veto proclamation can be found in Appendix O.

**Senate Bill 1489 (82nd Session, 2011) - Author: Senator Whitmire/ Sponsor: Rep. Madden:**

- Limits the applicability of failure to attend school to individuals older than 12 and younger than 18 years of age.
- Limits the applicability of truancy to: (1) children 10 years or older, (2) who were alleged to have committed the offense before the age of 18, and (3) are subject to compulsory school attendance.
- Provides that a judicial order for truancy cannot exceed 180 days or the length of the school year – whichever is longer – and expires at age 18. Allows dispositional orders to be modified by a juvenile court at any time within these timeframes.
- Requires county, justice, and municipal courts to dismiss complaints against individuals for failure to attend school if the individual has: (1) successfully complied with all court orders; or (2) graduated from high school or obtained a high school equivalency certificate.
- Authorizes county, justice, and municipal courts to waive or reduce any fees or court costs previously imposed against individuals for failure to attend school.
- Requires expunction of records if the individual: (1) complied with all court-ordered sanctions; or (2) prior to the age of 21, presents the court with proof of a high school diploma or high school equivalency certificate.
- Prohibits municipal and county governments from creating a juvenile case manager fund or imposing fees if they do not employ a case manager.
- Requires school districts to adopt truancy preventions measures, and requires schools to certify those truancy prevention measures used and any special services the student is eligible to receive as part of complaint filings.
- Grants county, municipal, and justice courts access to certain juvenile criminal history information maintained as part of the juvenile justice information system.

**Senate Bill 393 (83rd Session, 2013) - Author: Senator West/ Sponsor: Rep. Tryon Lewis and Senate Bill 1114 (83rd Session, 2013) - Author: Senator Whitmire/ Sponsor: Rep. Herrero:**

- Requires jurisdictional courts to dismiss school district complaints for failure to attend school if they do not provide: (1) a certification of the truancy prevention measures attempted and reasons for failure; and (2) whether the student is eligible to receive special education services.
- Since it is a Class C misdemeanor, failure to attend school is included in those offenses that: (1) a local juvenile board can authorize law enforcement to dispose of without referral to a court; (2) can be disposed of by first offender programs; and (3) can be dismissed when probable cause exists that the juvenile lacks capacity.

**House Bill 1479 (83rd Session, 2013) - Author: Rep. Villarreal/ Sponsor: Senator Van de Putte:**

- Creates a pilot program in Bexar County to establish uniform truancy policies, and requires a report by December 1, 2015 on the program's implementation.
  - Establishes a committee composed of appointed members representing courts, schools, prosecutors, legislators, and the general public by September 1, 2013.
  - Requires the committee to recommend uniform: (1) processes for filing truancy complaints; (2) administrative procedures; and (3) processing deadlines by September 1, 2014. In addition to these, the committee is required to recommend effective prevention, intervention, and diversionary programs; and establish a system for tracking truancy information and sharing between school districts.

**Senate Bill 1234 (83rd Session, 2013) - Author: Senator Whitmire/ Sponsor: Rep. Price:**

- Modifies existing statute related to expunction by obtaining a high school equivalency certificate to specifically require that certificates comply with State Board of Education exams.
- Modifies statute related to joint employment of juvenile case managers between certain entities to also allow these entities to "jointly contribute" to the costs of a case manager. Removes school districts from those governmental entities authorized to participate.

- Modifies school district authority relating to voluntary enrollment to: (1) prohibit the revocation of enrollment on a day the individual is present at school; (2) require a warning letter following the third unexcused absence; and (3) allow the use of a behavior plan as an alternative to revoking enrollment.
- Adds the following as voluntary options for truancy prevention measures: (1) warning letters; (2) behavior contacts; (3) school-based community service; and (4) referral to counseling, community-based services, or other in-school or out-of school services. Also requires truancy preventions measures "before" a student has more than 10 absences in a six month period.
- Requires school districts to hire either a "truancy prevention facilitator" or appoint an employee to be responsible for truancy prevention measures.
- Requires Bexar County to adopt uniform truancy policies with input from state and local elected officials (language included in House Bill 1479);
- Modifies failure to attend school to remove "Class C" and caps fines to \$100 for the first violation, \$200 for second, \$300 for third, \$400 for fourth, and \$500 for fifth and subsequent violations.
- Requires that school districts provide proof that both the student and parent contributed to the student's absences prior to filing complaints for parent contributing to non-attendance.

**Senate Bill 1419 (83rd Session, 2013) - Author: Senator West/ Sponsor: Rep. Tryon Lewis:**

- Allows the use of juvenile case managers in municipal and justice courts without a formal court order and expressly authorizes case managers to provide intervention and prevention services prior to cases being filed.
- Adds \$2 to the cost of a conviction in municipal and justice courts to fund juvenile case manager (JCM) programs. If a city or county already has a JCM program, the \$2 will be split between the local government and the state. If a local government does not already have a JCM program, the entire \$2 will be directed to the Governor's Criminal Justice Division to be distributed as grants for truancy prevention programs.

## **Issues**

The punishment imposed on juveniles accused of failure to attend school (FTAS) varies greatly statewide. Unlike most other Class C misdemeanor offenses – the vast majority being traffic tickets, which tend to have penalties based on a standardized fine schedule – the most notable factor in determining the punishment for FTAS is where the student resides and where the school district is located. In areas with well-developed school-based interventions or court-based diversionary programs, students likely receive services to address their absenteeism without ever having to pay a fine or appear before a judge. Complaints are dismissed and the child returns to the classroom. While in other areas of the state, students are taken into custody, brought before a judge, and subjected to stiff monetary penalties – or even jailed when they fail to comply with court-ordered sanctions. Students in these instances face life-long and potentially devastating criminal repercussions.

These repercussions were the impetus for the Senate Jurisprudence Committee requesting a specific interim charge to review the removal of failure to attend school from statute. While not specially required by the language of the charge, this report will also briefly discuss alternatives to replace it. A study without such a consideration would be incomplete. Also relevant for examination is whether certain non-judicial processes should be changed if criminal charges were no longer an option. Witness testimony touched on a few of these topics at the October 23rd hearing on this charge. Overwhelmingly though, witness testimony focused on the removal of criminal sanctions for attendance violations, and suggested that criminal penalties be replaced by a continuum, whereby most students would receive the appropriate level of services and supports to get them back in school without the need to appear before a judge, thus leaving court referral as the last resort for only those students who fail to respond to school-based interventions.

### **Use of Non-Judicial Resources:**

Schools and teachers often serve as society's safety net by recognizing children in need of social services. In many instances, it is in the school setting that a child's developmental or cognitive disability is identified, and it is often the astute teacher that first notices the signs of emotional or physical abuse. Today, school administrators, teachers, and ancillary staff are often looked upon

to provide services and supports beyond academics. When the school counselor's focus is on college readiness and test administration, other personnel act in the counselor's role. Other times, school law enforcement or attendance officers are expected to fill this void. As it relates to the committee's charge, it is important to review the role these individuals play in the continuum of services that help return chronically absent children to the classroom. While it is not the intent of this report to mandate effective truancy prevention strategies or assign specific duties to personnel, any evaluation of court processes must begin by reviewing existing school-based actions as the precursor to court referral for failure to attend school.

According to the Johns Hopkins University study *The Importance of Being in School: A Report on Absenteeism on the Nation's Public Schools*, students who miss school can be divided into broad categories:

- Students who **cannot** attend school for reasons such as illness, family or work responsibilities, housing instability, or involvement with the juvenile justice system.
- Students who **will not** attend school due to unsafe conditions, such as bullying or harassment.
- Students who **do not** attend school because they, or their parents, do not see the value in it or are not stopped from missing school..<sup>104</sup>

Opinions on the success of court intervention in addressing these factors are vastly different. School principals assert that court involvement is "the hammer" that motivates students, and parents alike, to participate in programs designed to address truancy. Advocates suggest that many of the reasons students are truant are social in nature and can be remedied within the school setting without costly judicial proceedings. Regardless of opinion on the need for judicial involvement to motivate students, the simple fact is adjudicating students for FTAS uses taxpayer-funded court resources to address school behaviors. Recognizing this, state statute was amended in 2011 to require that school districts attempt to determine the root cause of truancy before taking legal actions. Schools are required to undertake truancy prevention measures prior

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<sup>104</sup> Balfanz, Robert, and Vaughan Byrnes. *The Importance of Being in School: A Report on Absenteeism in the Nation's Public Schools*. Johns Hopkins University, School of Education, Center for Social Organization of Schools, May 2012. Web. <[http://new.every1graduates.org/wp-content/uploads/2012/05/FINALChronicAbsenteeismReport\\_May16.pdf](http://new.every1graduates.org/wp-content/uploads/2012/05/FINALChronicAbsenteeismReport_May16.pdf)>.

to filing complaints; however, schools are given discretion as to the type of interventions these entail. Section 25.0915, Texas Education Code only requires that prevention measures "address student conduct related to truancy in the school setting" and "minimize the need for referral" to court. According to school board representatives, most truancy prevention measures in today's schools are "generic, school wide campaigns, not individualized inquiries into the root causes of truancy."<sup>105</sup> Attempts were made during the 2013 Legislative Session to provide additional guidance. Senate Bill 1234 (which was vetoed), proposed graduated sanctions – identical to those found in Senate Bill 393.<sup>106</sup> – as *suggested* truancy prevention measures. Similar statutory changes were recommended during the hearing on this charge, as one witness asserted that the use of graduated sanctions would require schools to attempt "evidence-based interventions" prior to filing charges.<sup>107</sup> Sanctions could include, but are not limited to, warning letters, behavior contacts, school-based community service, and referral to community-based or in-school counseling. Tiered supports, such as these, emphasize both "equity and continuous improvement" and focus on the "whole student" approach – fully addressing both cognitive as well as non-cognitive skills."<sup>108</sup> Identified best-practices in reducing the need for court referrals utilize this two-level approach.<sup>109</sup>

Testimony revealed that school administrators, judges, and advocates alike support non-punitive, non-judicial intervention, such as graduated sanctions, prior to filing FTAS complaints. School-based interventions have proven successful in building relationships with families in order to help students get back into school. Studies suggest that at times these are of particular importance because far too often parents are unaware their child is skipping school. In a report by the non-profit *Get Schooled*, which obtained data by interviewing over 500 students, almost 42 percent of

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<sup>105</sup> Written testimony submitted by Joy Baskin, Texas Association of School Boards at Senate Committee on Jurisprudence hearing October 23, 2014. On file.

<sup>106</sup> A summary of Senate Bill 393, 83rd Legislative Session (2013) can be found on page 9 of this report.

<sup>107</sup> Written testimony submitted by Derek Cohen, Texas Public Policy Foundation at Senate Committee on Jurisprudence hearing October 23, 2014. On file.

<sup>108</sup> *Best Practices in School Discipline to Address Rather than Criminalize Misbehavior*. Texas Juvenile Crime Prevention Center, College of Juvenile Justice and Psychology, Prairie View A&M University, 2014. Print. On file.

<sup>109</sup> *Ibid.*

students said their parents "never" or "rarely" know when they skip school.<sup>110</sup> Yet, questions remain as to how best assist students missing school due to no fault of their own.

Many times students with excessive absences are facing bullying, mental or cognitive disabilities, lack of clothing or transportation, or other situational impairments. School administrators indicate that successful interventions for these students are "broad-based collaborations, family involvement, meaningful incentives, involvement of community resources, alternative education programs, mentoring, and behavior programs."<sup>111</sup> Determining the root cause of truancy – whether it be economic hardship, mental health or substance abuse, or academic needs – is not an easy task. Even once this finding occurs, providing services may still prove difficult. School board representatives assert that in order "for an individualized inquiry to translate into improved school attendance, local officials need community-based support services for families in need."<sup>112</sup> Schools may also need additional time to identify and provide effective supports and services.

### **Mandatory Filing Requirements:**

Current law requires schools to file complaints for failure to attend school or truancy after 10 or more absences in six months. Typically, schools send out warning notices to parents after three absences in a four week period, but they have limited options available if warning letters, e-mails, or phone calls are not responded to promptly.<sup>113</sup> This is especially true if the school does not employ school attendance officers.<sup>114</sup> Anecdotal evidence suggests that one of the reasons mandatory filing requirements were initially put in place was due to the fact that schools, prior to 2001, were waiting until students had accrued "hundreds of absences" before complaints were

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<sup>110</sup> *Skipping to Nowhere*. Get Schooled, August 2012. Web.

<[https://ct.global.ssl.fastly.net/media/W1siZiIsIjIwMTQvMDgvMTgvMmEwaXYxMHP6cl9Ta2lwcGluZ1RvTm93aGVyZV9lYXJ0X1Jlc2VhcmNoX3JlcG9ydF9maW5hbC5wZGYiXV0/SkippingToNowhere\\_Hart\\_Research\\_report\\_final.pdf.pdf?sha=2f5bf227](https://ct.global.ssl.fastly.net/media/W1siZiIsIjIwMTQvMDgvMTgvMmEwaXYxMHP6cl9Ta2lwcGluZ1RvTm93aGVyZV9lYXJ0X1Jlc2VhcmNoX3JlcG9ydF9maW5hbC5wZGYiXV0/SkippingToNowhere_Hart_Research_report_final.pdf.pdf?sha=2f5bf227)>.

<sup>111</sup> Written testimony submitted by Christopher Coy, Texas Association of Secondary School Principals at Senate Committee on Jurisprudence hearing October 23, 2014. On file.

<sup>112</sup> Written testimony submitted by Joy Baskin, Texas Association of School Boards at Senate Committee on Jurisprudence hearing October 23, 2014. On file.

<sup>113</sup> Senate Committee on Jurisprudence hearing, October 23, 2014 (statement of Joy Baskin, Association of School Boards).

<sup>114</sup> *Ibid*.



being filed.<sup>115</sup> At that point, the student had already missed too much school to get credit for class. As a result, Senate Bill 1432 passed establishing the current mandatory filing timeframes.<sup>116</sup> Certain witnesses, including judges and school officials, asserted that it may be appropriate to extend timeframes for schools to file FTAS or truancy complaints beyond those currently required in order to give schools more time to work with students, who may be receptive to interventions. These sentiments were echoed during workgroup discussions as some school representatives suggested existing policies in their district wait beyond those mandated by statute, and have proven successful.

Workgroup discussions also called into question the appropriateness of discretionary filings for FTAS or truancy. If a complaint is filed after only a month, logic dictates that referral to criminal court *is* the attempted intervention. Of the 323 districts (Texas has over 1000 school districts) that reported data to the Texas Education Agency for the 2012-13 school year, 22 percent reported that all filings were based on three absences in one month, and over 60 percent reported that at least one FTAS complaint was based on the same criteria.<sup>117</sup> This data indicates that far too many school districts are choosing to pursue criminal charges under the discretionary option, and due to the short timeframe involved, are not attempting nationally recognized best practices for addressing chronic absenteeism. A report published by the National Center for School Engagement identifies these as having:

- Parental/guardian or family support.
- A continuum of supports, including incentives or consequences for good and bad attendance.
- Collaboration amount law enforcement, mental health workers, mentors, social service providers, and educators.

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<sup>115</sup> Senate Committee on Jurisprudence hearing, October 23, 2014 (statement of Judge Reinaldo Chavez, Dallas County Consolidated Truancy Court).

<sup>116</sup> Bill information can be found at <http://tlis/BillLookup/BillTextViewer.aspx?BillUrl=/tlisdocs/77R/billtext/html/SB01432F.htm>.

<sup>117</sup> Written testimony submitted by Mary Mergler, Texas Appleseed at Senate Committee on Jurisprudence hearing October 23, 2014. On file.

- Concrete goals, accompanied by good record keeping and on-going evaluations of the student's success.<sup>118</sup>

### **Juvenile Case Managers:**

Case management prioritizes the specific services an individual needs to overcome adversity. As it relates to court processes, case management assists courts with administering their docket. Used primarily to assist juveniles in municipal and justice courts in Texas, case managers help judges "make decisions that are in the best interest of the child."<sup>119</sup> Legislation initially drafted by University of Texas Professor Robert O. Dawson brought the concept of juvenile case managers (JCMs) to the forefront in 2001, as municipal and justice courts were being looked upon to take a more prominent role in the adjudication of juvenile offenses.<sup>120</sup> Two bills – both larger initiatives aimed at easing burdens on the juvenile justice system – were passed, allowing for the use of JCMs for the first time. Senate Bill 1432 authorized local governments, courts, and school districts to employ or jointly employ "truancy case managers," and enabled these entities to seek cost reimbursement from the Governor's Office.<sup>121</sup> Additionally, House Bill 1118 specifically authorized municipal and justice courts to employ case managers, but instead of allowing for their use only in truancy cases, this bill allows JCMs to assist in all juvenile matters.<sup>122</sup> In 2003, legislation was passed to consolidate these statutes; however, without a guaranteed revenue source, these programs were scarce until 2005. House Bill 1575 – also a larger juvenile justice measure – allows local governments, with juvenile case manager programs, to charge an additional \$5 cost on municipal and justice court convictions and specifically instructed that JCM funds be used in relation to failure to attend school cases.<sup>123</sup>

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<sup>118</sup> National Center for School Engagement. Web. October 1, 2014.  
<<http://www.schoolengagement.org/truancypreventionregistry/admin/resources/resources/40.pdf>>.

<sup>119</sup> Texas Municipal Courts Education Center. *JCM FAQs*. Web. November 1, 2014.  
<[http://www.tmcec.com/programs/jcm/jcm\\_faqs/](http://www.tmcec.com/programs/jcm/jcm_faqs/)>.

<sup>120</sup> Turner, Ryan Kellus. *Juvenile Case Managers in Texas: The First Decade*. The Recorder: The Journal of the Texas Municipal Courts Association, March 2012. Web.  
<<http://tmcec.com/public/files/File/The%20Recorder/2012/Recorder%20Vol.%2021%20No%202.pdf>>.

<sup>121</sup> Bill information can be found at  
<<http://tlis/BillLookup/BillTextViewer.aspx?BillUrl=/tlisdocs/77R/billtext/html/SB01432F.htm>>.

<sup>122</sup> Bill information can be found at  
<<http://tlis/BillLookup/BillTextViewer.aspx?BillUrl=/tlisdocs/77R/billtext/html/HB01118F.htm>>.

<sup>123</sup> Bill information can be found at  
<<http://tlis/tlisdocs/79R/billtext/pdf/HB01575F.pdf?lastUpdate=2005052800000#navpanes=0>>.

Prior to 2013, juvenile case managers could only become involved or provide services *after* a court complaint was filed.

Recognizing the need for interventions *prior* to court referrals – in the context of all juvenile school offenses and not just attendance matters – lawmakers in 2013 passed Senate Bill 393, which provided a means for schools and other entities to utilize juvenile case managers before complaints are filed. During the same session, Senate Bill 1419 was also passed to provide additional revenue for these programs.<sup>124</sup> This bill added \$2 to the cost of a conviction in municipal and justice courts, with the proceeds split between the local government and the state if a JCM program was already in place. If the local JCM program was not in existence, the entire \$2 was directed to the Governor's Criminal Justice Division for distribution as truancy prevention grants. The money was to be targeted to smaller, rural areas, which are unable to generate revenue locally due to a low volume of convictions. Unfortunately, budgetary processes – whereby those funds that are not exclusively exempted are utilized to certify the budget – have hindered the pool of money generated by Senate Bill 1419 from being provided to the Office of the Governor for distribution. Providing resources, such as those already envisioned in Senate Bill 1419, may incentivize more local juvenile case manager programs without imposing new fees or passing additional laws.

The overwhelming consensus at the October 23rd hearing was that juvenile case manager programs have proven successful, as numerous witnesses testified about the benefits these programs provide. The City of Houston operates the largest JCM program in the state, with approximately 19 case managers, and provides campus-based and court-based services that focus on rehabilitation instead of punitive measures.<sup>125</sup> Since 2009, the program has had over 4000 referrals from 22 campuses, and during the past two school years has accomplished a 99 percent compliance rate, with less than one percent of students referred to court for failure to attend school.<sup>126</sup> Another local program administered by Judge Susan Stegg, Justice of the Peace in

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<sup>124</sup> A copy of Senate Bill 1419 can be found in Appendix P.

<sup>125</sup> Senate Committee on Jurisprudence hearing, October 23, 2014 (statement of Catherine Summers, Houston Municipal Courts Department).

<sup>126</sup> *Ibid.*

Travis County, utilizes social work candidates from the University of Texas and Texas State University – overseen by a senior juvenile case manager – to provide supports and services, including weekly monitoring visits and participation in counseling sessions.<sup>127</sup> Exit data between August 2011 and June 2013 indicates that 56 percent of students successfully completed the program, and another eight percent exited the program because they either received a high school diploma or GED.<sup>128</sup> Juvenile case manager programs also result in improved attendance. Judge David Cobos, Justice of the Peace in Midland County and designated Midland ISD "truancy judge," received a grant in 1999 to create one of the state's first case manager programs.<sup>129</sup> The Justice Court Alternative Sentencing/ Teen Leadership program has had a positive impact decreasing dropout rates from 16.1 percent in 2007 to 9.9 percent in 2012.<sup>130</sup>

### **Use of Criminal Complaints:**

The ability to file criminal charges against a student for excessive absences was added to statute in 1993. House Bill 681 made changes to "permit a juvenile court to generally waive jurisdiction" on truancy cases, and "grant[ed] further enforcement powers to a JP" including "making the failure to attend a Class C misdemeanor."<sup>131</sup> No change was made at that time to remove the ability of schools to file CINS truancy petitions. It can only be surmised – since no precise explanation exists – that the intent of the Texas Legislature was to give local jurisdictions the option whether to use the juvenile or criminal statute. Within the same timeframe, statute was also amended to transfer all Class C misdemeanor cases involving juveniles to municipal and justice courts.<sup>132</sup> This included civil CINS truancy cases, which could be transferred from juvenile courts to municipal and justice courts with permission.

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<sup>127</sup> Written testimony submitted by Judge Susan Steeg, Travis County, Justice of the Peace, Pct. 3 at Senate Committee on Jurisprudence hearing October 23, 2014. On file.

<sup>128</sup> *Ibid.*

<sup>129</sup> Written testimony submitted by Judge David Cobos, Justice of the Peace and Constables Association of Texas at Senate Committee on Jurisprudence hearing October 23, 2014. On file.

<sup>130</sup> *Ibid.*

<sup>131</sup> Bill Analysis, House Bill 681, 73rd Regular Session (1993). Found at <<http://www.lrl.state.tx.us/legis/billSearch/text.cfm?legSession=73-0&billtypeDetail=HB&billNumberDetail=681&billSuffixDetail=&startRow=1&IDlist=&unClicklist=&number=100>>.

<sup>132</sup> Turner, Ryan Kellus. School Attendance Issues in Municipal and Justice Court. Presented to Juvenile Law Conference, February 28, 2002. Web. <<http://www.juvenilelaw.org/Articles/SchoolAttendanceIssues.pdf>>.

Prior to 2001, the scenario existed whereby municipal, justice, and certain county courts could adjudicate school attendance offenses as CINS truancy – a civil matter – or failure to attend school – a criminal matter.<sup>133</sup> Following an interim workgroup of the Senate Education Committee, Senate Bill 1432 was passed mandating that schools re-file CINS truancy cases as separate failure to attend school cases.<sup>134</sup> It was deemed inappropriate, at that time, to require judges in municipal, justice, and certain county courts to learn both criminal and civil procedures.<sup>135</sup> Today, juvenile courts have exclusive jurisdiction over failure to attend school but rarely adjudicate these cases. In counties with a population greater than 100,000, juvenile courts can waive jurisdiction and transfer cases to municipal and justice courts – this is happening in almost every county in Texas.<sup>136</sup> School attendance violations are almost exclusively addressed in adult criminal courts. Table 3.A, provided in a previous section, supports this analysis. A diagram of court jurisdictions for CINS truancy and failure to attend school can be found in Appendix Q.

In recent years, the practice of filing criminal charges for excessive absences has drawn increased scrutiny. Lawmakers, judges, and advocates have questioned whether criminal sanctions should be levied against students for missing school. Negative media attention has also focused on several cases. Lawsuits against two populous Texas counties were also filed alleging civil rights violations for practices resulting in students serving jail time. While the examples provided in the following bulleted sections may be viewed by some as the extreme end of the spectrum, the fact that they exist at all likely bolsters claims that the existing system is broken.

- In July 2010, the American Civil Liberties Union (ACLU) of Texas filed suit on behalf of two teens in Hidalgo County – one who was jailed for 18 days for failure to pay \$1000, and one who was jailed for 100 days for failure to pay \$10,000 – in fines assessed for failure to attend school. The ACLU lawsuit, which was upheld by a U.S. District Court,

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<sup>133</sup> Turner, Ryan Kellus. School Attendance Issues in Municipal and Justice Court. Presented to Juvenile Law Conference, February 28, 2002. Web. <<http://www.juvenilelaw.org/Articles/SchoolAttendanceIssues.pdf>>.

<sup>134</sup> *Ibid.*

<sup>135</sup> Senate Committee on Jurisprudence hearing, October 23, 2014 (statement of Ryan Kellus Turner, Texas Municipal Courts Education Center).

<sup>136</sup> Senate Committee on Jurisprudence hearing, October 23, 2014 (statement of David Slayton, Office of Court Administration).

alleged that at no point had the justice of the peace in either case made a determination of the individual's ability to pay fines or provided alternative statutory means to address payment, such as community service or payment plans, before ordering the individuals to go to jail. The lawsuit also alleged that prior to 2009, 150 teens had served jail time in Hidalgo County for non-payment of fines.<sup>137</sup>

- In May 2012, an 11th grade student was ordered to pay a \$100 fine and jailed for 24 hours in Montgomery County for contempt of court for additional absences following a FTAS charge. Although contempt proceedings were dismissed, the case brought national attention to the fact that a 17 year old honors student, who was working two jobs to support her siblings following her parent's divorce, could be jailed for missing too much school.<sup>138</sup>
- In June 2013, Texas Appleseed, Disability Rights Texas, and the National Center for Youth Law filed suit on behalf of students in the Dallas, Garland, Mesquite, and Richardson school districts adjudicated for failure to attend school in the Dallas County Consolidated Truancy Court. The lawsuit alleges that this court prosecutes the highest number of students – more than 36,000 in 2012 – and does so through a system that, among other allegations, automatically “pushes” students to court using a computerized system, does not provide access to an attorney or advocate, coerces youth into “guilty” pleas, and takes children into handcuffed custody to the county's juvenile detention center.<sup>139</sup> Data compiled by Texas Appleseed indicates that in the 2012-13 school year, approximately 5000 warrants were issued and over 1700 served.<sup>140</sup> Additionally, 270 youths were placed into direct contact with the Dallas County Juvenile Department and

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<sup>137</sup> Press Release. American Civil Liberties Union of Texas. July 27, 2010. Web. <<http://www.aclutx.org/documents/truancycasebackground.pdf>>.

<sup>138</sup> "Texas honor student jailed for truancy likely spent night with 'hard-care' criminals." Fox News. May 29, 2012. Web. <<http://www.foxnews.com/us/2012/05/28/texas-honor-student-jailed-for-missing-too-much-school/>>.

<sup>139</sup> Letter to United States Department of Justice from Disability Rights Texas, Texas Appleseed, and National Center for Youth Law. Print. On file.

<sup>140</sup> Fowler, Deborah. *Criminalization of Truancy in Texas: Prosecution of "Failure to Attend School" in Adult Criminal Courts*. Texas Appleseed. Web. October 1, 2014. <[http://texasappleseed.net/index.php?option=com\\_docman&task=doc\\_download&gid=934&Itemid=>](http://texasappleseed.net/index.php?option=com_docman&task=doc_download&gid=934&Itemid=>).

another 67 students were jailed or detained.<sup>141</sup> The complaint is still under investigation by the U.S. Department of Education and the U.S. Department of Justice.

Critics point to the fact that the juvenile system was specifically put in place to avoid the types of punitive punishments these stories exemplify, and that the use of criminal courts to adjudicate children inherently lead to these types of scenarios. Truancy courts have been referred to as the "traffic courts of public education."<sup>142</sup> While certainly not true of all courts, the fact remains that the primary punishment for failure to attend school – similar to a traffic ticket – is a fine. These penalties are contrary to conventional wisdom, which is that children – because they are not able to earn a living or be lawfully employed – are indigent. While some judges note that punitive fines may occasionally serve as a deterrent to some students – those that voluntarily miss school – they only serve as greater impediments to school attendance for students facing social, mental health, illness, or economic difficulties.<sup>143</sup>

### **Lack of Juvenile Protections:**

The juvenile system affords many protections against the punitive punishments found in adult criminal courts. These include, but are not limited to, confidentiality protections and court-appointed lawyers. Although the requirement to provide counsel has long been established as part of judicial proceedings, House Bill 1318, which passed in 2013, now requires that juvenile courts appoint counsel within a reasonable time prior to the first detention hearing.<sup>144</sup> This is not the case for juveniles facing charges for excessive absences. Children accused of failure to attend school are not afforded a lawyer in municipal and justices courts, thus many often plead "guilty" or "no contest" without the advice of counsel.<sup>145</sup> Also, while state statutes have been

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<sup>141</sup> Fowler, Deborah. *Criminalization of Truancy in Texas: Prosecution of "Failure to Attend School" in Adult Criminal Courts*. Texas Appleseed. Web. October 1, 2014.  
<[http://texasappleseed.net/index.php?option=com\\_docman&task=doc\\_download&gid=934&Itemid=>](http://texasappleseed.net/index.php?option=com_docman&task=doc_download&gid=934&Itemid=>).

<sup>142</sup> Fuentes, Annette. *The Truancy Trap*. The Atlantic. September 5, 2012. Web.  
<<http://www.theatlantic.com/national/archive/2012/09/the-truancy-trap/261937/>>.

<sup>143</sup> Senate Committee on Jurisprudence hearing, June 3, 2014 (statement of Judge John Bull, City of San Antonio Truancy Committee).

<sup>144</sup> Bill information can be found at  
<<http://tlis/tlisdocs/83R/billtext/pdf/HB01318F.pdf?lastUpdate=20130521203106#navpanes=0>>.

<sup>145</sup> Written testimony submitted by Mary Mergler, Texas Appleseed at Senate Committee on Jurisprudence hearing October 23, 2014. On file.

amended to afford juveniles in municipal and justice courts additional confidentiality protections upon charges being filed, many advocates suggest these protections are still inadequate. Article 45.055, Texas Code of Criminal Procedure allows individuals, upon the age of 18, to apply for an expunction of records pertaining to failure to attend school if they have only been convicted once. Additionally, judges are required to provide an automatic expunction of records, regardless of conviction, if the individual as complied with all court orders and has either graduated from high school or received an equivalency certificate, before 21 years of age. Unfortunately, expunctions and orders of non-disclosure can be cumbersome and costly. Most students "do not file the paperwork" in order to have their records destroyed or seek confidentiality protections once they comply with court ordered sanctions.<sup>146</sup>

### **Criminal versus Civil Proceedings:**

It is important to note that many courts and schools do not rely on criminal charges as their first measure of intervention. The workgroup process revealed many examples of judges and school administrators who agreed that criminal penalties should be the last resort. However, many schools assert that court sanctions are necessary. Schools surveyed by the Texas Association of School Boards suggested a consensus that "going before a judge" is beneficial in some instances.<sup>147</sup> School representatives testified they need "the hammer" to motivate students when they do not respond to other interventions.<sup>148</sup> Judges echoed this sentiment.<sup>149</sup>

Keeping this in mind, alternatives were suggested by the committee whereby those courts with existing jurisdiction over failure to attend school – municipal, justice, and certain county courts – would be given jurisdiction over CINS truancy cases. Schools would still have a chance for judicial remedy but juveniles would no longer be subject to the punitive sanctions that accompany criminal proceedings. Certain witnesses cautioned that these proposals could revert

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<sup>146</sup> Senate Committee on Jurisprudence hearing, October 23, 2014 (statement of Judge Reinaldo Chavez, Dallas County Consolidated Truancy Court).

<sup>147</sup> Senate Committee on Jurisprudence hearing, October 23, 2014 (statement of Joy Baskin, Texas Association of School Boards).

<sup>148</sup> Senate Committee on Jurisprudence hearing, October 23, 2014 (statement of Christopher Coy, Texas Association of Secondary School Principals).

<sup>149</sup> Senate Committee on Jurisprudence hearing, October 23, 2014 (statement of Judge David Cobos, Justice of the Peace and Constables Association of Texas).



some judicial functions to the way they were prior to 2001, when the Legislature decided it was in the best interest of the state to remove civil attendance proceedings from the jurisdiction of municipal and justice courts.<sup>150</sup> In addition, "[m]unicipal judges and justices of the peace may oppose moving away from a criminal adjudication model unless a civil adjudication model encompasses meaningful consequences for noncompliance with school attendance orders."<sup>151</sup>

### **Other States:**

The bottom line is that a drop in attendance costs schools money because districts receive an allotment of state funds based on the average daily attendance in the classroom. Excessive absences jeopardize these funds. When attendance at San Antonio's three largest school districts dropped to 57 percent, single-day attendance losses cost those districts between \$500,000 and \$1.4 million.<sup>152</sup> Regardless of this fact, strong evidence suggests that policy-makers are interested in changing or eliminating criminal sanctions for school-related matters. This is evidenced by acts during the 83rd Legislative Session (2013), which saw bills requiring school-based alternatives for certain behaviors once deemed criminal in nature. If failure to attend school is removed from statute when the Texas Legislature convenes in 2015, additional consideration may need to be given to arguments that suggest court intervention – whether civil or criminal – are beneficial in limited instances. Left with nothing other than anecdotal stories regarding the best approach to address chronic absenteeism, members of the Senate Jurisprudence Committee requested additional data to make an informed decision.

Quite a few questions at the Senate Jurisprudence hearing focused on how other states address truancy. Comparison data between those states that adjudicate truancy as a civil matter and those that use criminal sanctions was also specifically requested. Unfortunately, these comparisons are difficult because Texas is only one of two states that pursues criminal prosecutions against juveniles for unexcused absences. Texas is also an outlier in truancy prosecutions, making a

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<sup>150</sup> Senate Committee on Jurisprudence hearing, October 23, 2014 (statement of Ryan Kellus Turner, Texas Municipal Courts Education Center).

<sup>151</sup> Written testimony submitted by Ryan Kellus Turner, Texas Municipal Courts Education Center at Senate Committee on Jurisprudence hearing October 23, 2014. On file.

<sup>152</sup> Padilla, Gloria. "New truancy plan should boost bottom line." San Antonio Express News. July 18, 2014. Web. <[http://www.mysanantonio.com/opinion/columnists/gloria\\_padilla/article/New-truancy-plan-should-boost-bottom-line-5631383.php](http://www.mysanantonio.com/opinion/columnists/gloria_padilla/article/New-truancy-plan-should-boost-bottom-line-5631383.php)>.

state-by-state comparison virtually impossible.<sup>153</sup> An analysis on the effectiveness of the Texas model – prosecuting failure to attend school as a criminal offense – on graduation and dropout rates is also not possible. Unfortunately, as illustrated by Table 3.B, the data needed for an effective analysis is either incomplete, inaccurately reported, or is entirely lacking.

**Table 3.B.**

<b>Comparison of Truancy Filings and Statewide Graduation/ Drop-out Rates: 1995 - 2014</b>				
<b>Class Year</b>	<b>FTAS Charges Filed (with Fine Assessed)*</b>	<b>FTAS Charges Filed **</b>	<b>Graduation Rate (Percent)</b>	<b>Drop-out Rate (Percent) †</b>
<b>1995 - 96</b>	-----	-----	74.5	12.1
<b>1996 - 97</b>	-----	-----	77.1	9.9
<b>1997 - 98</b>	-----	-----	78.7	8.9
<b>1998 - 99</b>	-----	-----	79.5	8.5
<b>1999 - 2000</b>	-----	83,678	80.7	7.2
<b>2000 - 01</b>	-----	86,026	81.1	6.2
<b>2001 - 02</b>	-----	91,716	82.8	5.0
<b>2002 - 03</b>	-----	113,191	84.2	4.5
<b>2003 - 04</b>	-----	124,251	84.6	3.9
<b>2004 - 05</b>	-----	120,010	84.0	4.3
<b>2005 - 06</b>	33,103	113,165	80.4	8.8
<b>2006 - 07</b>	38,508	119,346	78.0	11.4
<b>2007 - 08</b>	46,203	81,461	79.1	10.5
<b>2008 - 09</b>	50,194	85,565	80.6	9.4
<b>2009 - 10</b>	53,281	68,224	84.3	7.3
<b>2010 - 11</b>	46,353	83,678	85.9	6.8
<b>2011 - 12</b>	42,963	86,026	87.7	6.3
<b>2012 - 13</b>	40,080	91,716	-----	-----
<b>2013 - 14</b>	32,243	113,191	-----	-----

\* Texas Education Agency. Truancy data collected through PEIMS. Data is not available prior to No Child Left Behind Act in 2003.

\*\* Office of Court Administration. FTAS Filings in Justice and Municipal Courts. Data is not available prior to 1999; data is not available from justice courts prior to 2004.

† As a result of adoption of the national dropout definition in 2005-06, annual dropout rates for 2004-05 and prior school years are not comparable to rates for 2005-06 and beyond.

Data compiled using reports published by the Texas Education Agency and Office of Court Administration. On file.

<sup>153</sup> Written testimony submitted by Mary Mergler, Texas Applesseed at Senate Committee on Jurisprudence hearing October 23, 2014. On file.

The data needed to analyze the effectiveness of failure to attend school is maintained by different systems within different state agencies. The Office of Court Administration (OCA) maintains court filings, but as indicated, has only been collecting data from justice courts – where most FTAS cases are adjudicated – since 2004. The Texas Education Agency (TEA) tracks court filings as well but through the Public Education Information Management System or PEIMS. There are clear discrepancies between the data reported to OCA by the courts and the data reported to TEA by school districts. Also complicating matters is the fact that the State of Texas began providing additional resources to schools in 2003 specifically for truancy and dropout prevention. Logic dictates these funds and programs had an impact on graduation rates and highlights the fact that assumptions cannot be made just by comparing FTAS filings and graduation rates alone.

Since an effective analysis is not possible due to limitations on data, the ability of the committee to derive any conclusions on the public policy benefits of criminal complaints is limited. Instead, this report will rely on the assessments of hearing witnesses. According to Texas Appleseed, there is limited data to demonstrate that FTAS filings translate to improved student attendance.<sup>154</sup> A similar sentiment was echoed by the witness from the Texas Public Policy Foundation, who testified that empirical studies do not suggest that "criminal justice-based" interventions are effective.<sup>155</sup> Both of these organizations have devoted many years and staff research hours studying the impact of criminal sanctions on juvenile behaviors. A cursory review of nationwide trends suggests that many states are revamping approaches to provide additional school-based supports prior to punitive measures – such as initiating court complaints or referring children to out-of-school suspension for excessive absences – supports the conclusions drawn by both of these groups.

However, assessment efforts for the purpose of recommending comprehensive policy changes to the 84th Texas Legislature (2015) are complicated. Research indicates that specific truancy

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<sup>154</sup> Written testimony submitted by Mary Mergler, Texas Appleseed at Senate Committee on Jurisprudence hearing October 23, 2014. On file.

<sup>155</sup> Written testimony submitted by Derek Cohen, Texas Public Policy Foundation at Senate Committee on Jurisprudence hearing October 23, 2014. On file.

interventions and programs are not typically statewide in nature, but are instead, locally based. According to a report released by the American Association of School Administrators, six states including Texas have recently amended statutes to address referrals to juvenile and truancy courts.<sup>156</sup> Unfortunately, statewide initiatives tend to be general proposals, similar to one passed by the Colorado General Assembly in 2013, which amended statute to require that school districts "employ best practices and research-based strategies" prior to referring children to court for "habitual absences," and stressed that court proceedings should be a "last resort approach" after interventions have been tried. Examples of successful policy suggestions can instead be found by reviewing local initiatives. Some are discussed in the following bulleted sections:

- Beginning in 2009, school officials in Rapides Parish, Louisiana began a program intended to reduce truancy referrals to the Families in Need of Services (FINS) program (a subset of the juvenile court system) by requiring that schools provide and document interventions prior to court referral. Interventions must specifically: (1) verbally notify the child's parent that the child is at-risk for referral to court; and (2) include a referral to either a behavioral strategist or a "designated disciplinarian." Additionally, attempts are made to connect the student's family with the appropriate services even if official court proceedings are not initiated. Results show that this approach successfully dropped FINS referrals by 40 percent, and decreased the number of court filings by 50 percent.<sup>157</sup>
- A program in Clark County, Washington enrolls students that skip school into the Truancy Project. This program utilizes nationally recognized mental health screenings to identify necessary supports and services. Home visits by school personnel or attendance officers are used to monitor compliance. This program has reduced referrals to court from 40 percent during the 2008-09 school year to 10 percent during the 2011-12 school year.<sup>158</sup>

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<sup>156</sup> These states include Colorado, Delaware, Utah, Washington, and West Virginia. American Association of School Administrators. Winter 2014 Edition: Legislative Trends Report. Web. November 1, 2014. <[http://www.aasa.org/uploadedFiles/Policy\\_and\\_Advocacy/discipline\\_compendium.pdf](http://www.aasa.org/uploadedFiles/Policy_and_Advocacy/discipline_compendium.pdf)>.

<sup>157</sup> Salsich, Annie, and Jennifer Trone. *From Courts to Communities: The Right Response to Truancy, Running Away, and Other Status Offenses*. The Vera Institute of Justice, December 2013. Web. <<http://www.vera.org/sites/default/files/resources/downloads/from-courts-to-communities-response-to-status-offenses-v2.pdf>>. and Baton Rouge Government Website. *Juvenile Services*. Web. November 1, 2014. <<https://brgov.com/dept/juvenile/fins.htm>>.

<sup>158</sup> *Ibid.*

- The WilCo's B.E.S.T. program in Williamson County, Texas – a collaboration between community partners, including local juvenile services, school districts, justice courts, and local social service providers – has successfully reduced the number of students referred to court from participating school districts from 308 students in 2009 to 150 students in 2012. Students referred to the program are provided with an individualized action plan, which can include referral to a social services agency or mental health provider. Students are also tracked weekly by volunteer case managers to ensure completion of intervention efforts.<sup>159</sup>
- Waco Independent School District's Suspending Kids to School Initiative reduced court referrals by 54 percent in its first year through an approach that uses both a student court and Saturday classes to bring together the student and their parent. This program also serves as a conduit whereby students in need of additional services, such as counseling, transportation, or clothing, are referred to the appropriate local service provider.<sup>160</sup>
- Northside ISD in San Antonio, Texas has also taken advantage of diversionary programs and juvenile case managers to address chronic absenteeism. With over 100,000 students on 112 campuses, the district provided interventions to 17,000 students during the 2012-13 school year. This timeframe not only showed reduced failure to attend school case filings, data also indicates that attendance was at an all-time high – 95.6 percent.<sup>161</sup>

### **Committee Hearing**

The Senate Committee on Jurisprudence took invited and public testimony on October 23, 2014 in Austin.<sup>162</sup> Invited witnesses included representatives from jurisdictional courts, educational organizations, and advocacy groups. Testimony overwhelming focused on means to address truancy through intervention and prevention, as numerous witnesses highlighted that criminal filings for excessive absences should only be used as a last resort. Some witnesses called for

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<sup>159</sup> Written testimony submitted by Mary Mergler, Texas Appleseed at Senate Committee on Jurisprudence hearing October 23, 2014. On file.

<sup>160</sup> *Ibid.*

<sup>161</sup> Padilla, Gloria. "New truancy plan should boost bottom line." San Antonio Express News. July 18, 2014. Web. <[http://www.mysanantonio.com/opinion/columnists/gloria\\_padilla/article/New-truancy-plan-should-boost-bottom-line-5631383.php](http://www.mysanantonio.com/opinion/columnists/gloria_padilla/article/New-truancy-plan-should-boost-bottom-line-5631383.php)>.

<sup>162</sup> A video of the October 23, 2014 hearing can be accessed at <http://www.senate.state.tx.us/75r/senate/commit/c550/c550.htm>.

increased school and community resources for students that are truant as a result of personal or family circumstances, while others stressed a need for additional alternatives if students refuse to comply with school-based interventions or other court-based sanctions.

Representatives from the Office of Court Administration and school boards provided the committee members with an overview of relevant statutory provisions related to compulsory school attendance and the mandatory aspect of filing complaints for failure to attend school or petitions for truancy. Historical background relevant to these topics was also explained. Witnesses representing jurisdictional courts – justice courts, municipal courts, as well as the Dallas County Unified Truancy court – cautioned consideration of proposals intended to remove the criminal nature of failure to attend school. School principals expressed ambivalence regarding the nature of the complaint – civil versus criminal – and testified that future proposals should continue to utilize judicial resources as a last resort, if other interventions fail. All focused on keeping students in the classroom above all else. The final panel of invited witnesses discussed alternatives to the existing manner in which excessive absences are dealt with in Texas, including advocating for the removal of the offense of failure to attend school from statute. Witnesses discussed specific proposals that have proven successful in reducing the need for court filings in some parts of the state, and highlighted that similar programs could be initiated statewide. Specific data in regards to interventions being utilized in Bexar County, as a result of House Bill 1479, were also identified. A workgroup was formed to assist Senate staff with developing recommendations.

The Jurisprudence Committee workgroup on failure to attend school met on November 7, 2014 in Austin. Discussions were very similar to those at the committee hearing – with school representatives expressing concerns that moving away from the status quo may negatively impact attendance rates. Advocacy groups stressed the ineffectiveness and negative consequences associated with the existing criminal offense. Little consensus was reached specifically in regards to removing failure to attend school from the Texas Education Code, as is the charge of the committee. However, it was agreed upon by the vast majority of individuals in attendance that it would be in the state’s best interest to: (1) remove the ability for schools to file discretionary – three absences in a month – charges, except in very limited circumstances; (2)

allow school districts to delay filing complaints – or extend the 10 absences in six months – mandatory filing requirement for excessive absences if meaningful interventions are being attempted and proving successful; and (3) court referrals – whether civil or criminal – should be a last resort option if students are not responding to school-based interventions or other recognized best practices.

### **Recommendations**

**3.1** Amendment should be made to Section 25.0915, Education Code (Truancy Prevention Measures) to require school districts adopt policies establishing progressive, graduated sanctions – similar to those established in Senate Bill 393 (83rd Legislature, 2013) – prior to filing complaints for excessive school absences.

**3.2** The 84th Legislature should amend Section 25.0951, Texas Education Code – which requires that schools file complaints against students absent 10 or more days or parts of days without excuse for truancy (Section 51.03(b)(2), Texas Family Code) or failure to attend school (Section 25.094, Texas Education Code) – to provide additional latitude to delay filing complaints if intervention and truancy prevention strategies are proving successful. School districts shall adopt intervention and truancy prevention strategies as part of the student code of conduct (Section 37.001, Texas Education Code).

**3.3** There are discrepancies between the number of court referrals for truancy and failure to attend school reported by school districts to the Texas Education Agency and those reported by courts to the Office of Court Administration. The Texas Education Agency should modify existing practices to ensure that school districts are accurately reporting data regarding judicial filings for truancy and failure to attend school as part of the Public Education Information Management System (PEIMS).

**3.4** The 84th Texas Legislature should ensure that the revenue generated by Senate Bill 1419 (83rd Legislature, 2013) is maintained in its own GR-D account and no longer subject to funds consolidation. Instead of being swept for certification of the budget, all revenue collected as a result of Senate Bill 1419 should be used for its intended purpose – state and local juvenile case

manager programs – and no longer diverted. The Office of Court Administration should develop additional measures in order to ensure that those local governments collecting juvenile case manager funds – under Article 102.015 or Article 102.0174, Texas Code of Criminal Procedure – are doing so in accordance with statutory mandates.

**3.5** Relevant statutory provisions granting school districts discretionary – 3 absences in a month – authority to file complaints (Sec. 25.0951(b), Texas Education Code) against students for failure to attend school (Section 25.094, Texas Education Code) in Texas criminal courts should be repealed by the 84th Texas Legislature.

**3.6** Statutory provisions relating to the prosecution of failure to attend school (Section 25.094, Texas Education Code) in Texas criminal courts should be repealed. In lieu of criminal complaints, the 84th Texas Legislature should evaluate proposals that expand the judicial jurisdictions that can be referred CINS truancy (Section 51.03(b)(2), Texas Family Code) petitions as a means to address chronic absenteeism within those schools subject to compulsory school attendance.

**3.7** The 84th Texas Legislature should modify all relevant statutes to ensure that all juvenile records, resulting from truancy (Section 51.03(b)(2), Texas Family Code) or failure to attend school (Section 25.094, Texas Education Code) judicial proceedings are expunged upon the age of 18. Appropriate judicial authority should be granted in order to effectuate the expunction of all juvenile records in relation to truancy or failure to attend school.





**Charge 4: Study and make recommendations on the availability and application of deferred adjudication, orders for non-disclosure, and expunctions. Study extending the use of expunction of criminal records history and non-disclosures to certain qualified individuals with low-level, non-violent convictions.**



## **Background**

Many states, including Texas, have come to realize the benefit of allowing certain defendants – particularly those convicted of low-level, non-violent offenses – to remain in the community instead of serving time in local jails or state prisons. In the hopes of giving these individuals a second chance, and recognizing the costs savings associated with community placement, state statute provides an opportunity for deferred adjudication. Additionally, statute provides a means for certain individuals – after a defined period of time and without additional arrests – to keep records associated with bad acts from the general public. In authorizing orders of non-disclosure, the Texas Legislature recognized that a criminal history can preclude individuals from obtaining employment or other opportunities, without hindering the ability of law enforcement and prosecutors to share data as necessary. The Texas Legislature also recognized that it is in the public interest, in very specific instances, to destroy criminal history information that does not result in a conviction. Expunctions, while limited, provide a means for individuals to completely erase evidence of an arrest.

### **Deferred Adjudication:**

What is commonly referred to as probation – where an individual is allowed to serve out all or part of a defined sentence in the community, instead of jail, under supervision of the court – is called "community supervision" in Texas. Judges can place certain defendants<sup>163</sup> on community supervision without a finding of guilt, or by suspending all or part of an imposed sentence.<sup>164</sup> When placing an individual on community supervision, a judge can attach certain “conditions,” such as electronic monitoring, drug and alcohol tests for DWI cases, or restricted contact with children in abuse and sex-related offenses. Upon violation of any of these conditions, a judge is authorized to revoke community supervision and impose any punishment allowed by law.<sup>165</sup>

"Deferred adjudication" community supervision is outlined in Article 42.12, Section 5, Texas Code of Criminal Procedure. One notable difference between deferred adjudication and regular

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<sup>163</sup> Offenses in which community supervision is prohibited are listed in Article 42.12, Texas Code of Criminal Procedure, Section 3g, and are limited by Section 3(e) of the same statute.

<sup>164</sup> Procedures associated with community supervision can be found in Article 42.12, Texas Code of Criminal Procedure.

<sup>165</sup> Article 42.12, Section 10, Texas Code of Criminal Procedure.

community supervision is that deferred adjudication takes place without a finding of guilt or innocence. In these situations a plea is entered by the defendant but all further proceedings are deferred until a point in time – up to 10 years for felony offenses and two years for misdemeanor cases – as determined by the judge.<sup>166</sup> Similar to regular community supervision, defendants placed on deferred adjudication must comply with judicial orders and other conditions or risk jail time. A judge may grant a deferred adjudication – subject to the restrictions on community supervision – to any defendant charged with a misdemeanor offense, other than driving, flying, or boating while intoxicated; and for a felony offense other than:

- Driving, flying, or boating while intoxicated;
- Intoxication assault;
- Intoxication manslaughter;
- A repeat drug offense enhanced with a drug-free zone finding; and
- A repeat sex offense (indecency with a child, sexual assault, or aggregated sexual assault).<sup>167</sup>

### **Orders of Non-Disclosure/ Expunction:**

Two processes exist whereby an individual accused of a crime can restrict access to their criminal history background – orders of non-disclosure and expunctions. The primary difference between these processes relate to what physically happens with the records in question. An order of non-disclosure restricts the access to criminal record information to only statutorily specified entities, while an expunction requires the destruction of records related to a case. A brief discussion of each is provided in the following paragraphs. Procedures for an order of non-disclosure – which prohibit "criminal justice agencies from disclosing to the public criminal history records information related to an offense" – can be found in Section 411.081, Texas Government Code.<sup>168</sup> Similar to an expunction, an order of non-disclosure "legally frees" an individual from disclosing information about their criminal history in response to questions, such

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<sup>166</sup> Written testimony submitted by David Slayton, Office of Court Administration at Senate Committee on Jurisprudence hearing October 23, 2014. On file.

<sup>167</sup> *Ibid.*

<sup>168</sup> Written testimony submitted by Angie Kendall, Texas Department of Public Safety at Senate Committee on Jurisprudence hearing October 23, 2014. On file.

as those on job applications.<sup>169</sup> Individuals eligible to request an order of non-disclosure must: (1) have successfully completed court ordered *deferred adjudication* community supervision; (2) waited the statutorily defined period (five years for felonies or two years for certain misdemeanors, including certain sexual, disorderly conduct, weapons, and Penal Code offenses); and (3) not be convicted or placed on deferred adjudication for another criminal offense, other than a traffic offense, between deferred adjudication, dismissal, and discharge.<sup>170</sup> Table 4.A lists those offenses that preclude individuals from seeking an order of non-disclosure.

**Table 4.A.**

<b>Orders of Non-Disclosure: Prohibited Offenses</b>		
Indecency with a child	Abandoning/jeopardizing a child	Online solicitation of a minor
Aggravated kidnapping with intent to abuse victim sexually	Repeated violations of bond conditions in a family violence case	Continuous sexual abuse of young children
Burglary of a habitation with intent to abuse a victim sexually	Stalking	Injury to a child or elderly
Compelling prostitution	Aggravated sexual assault	Violation of a protective order
Possession/promotion of child pornography	Incest	Any offense involving family violence
Unlawful restraint, kidnapping or aggravated kidnapping of person under the age of 17	Sexual performance by a child	Sexual assault
Capital murder/murder	Indecent Exposure	Offenses requiring registration as a sex offender

Office of Court Administration written testimony provided October 23, 2014

The Texas Department of Public Safety (DPS) serves as the state's repository of all criminal history information. An individual seeking an order of non-disclosure must petition the court that placed the individual on deferred adjudication for relief.<sup>171</sup> Once this petition is received, the

<sup>169</sup> Written testimony submitted by David Slayton, Office of Court Administration at Senate Committee on Jurisprudence hearing October 23, 2014. On file.

<sup>170</sup> Section 411.081(d) and (e), Texas Government Code.

<sup>171</sup> Section 411.081(d).

state (prosecutor) may request a hearing on the petition.<sup>172</sup> A judge can grant the petition if: (1) the individual meets all statutory criteria, and (2) the issuance of an order of non-disclosure is in the "best interest of justice."<sup>173</sup> Once granted, the clerk of the court is required to notify the Department of Public Safety that an order has been granted.<sup>174</sup> DPS has within 30 days to notify all statutorily required entities to seal relevant criminal history information.<sup>175</sup> During the 83rd Legislative Session (2013), the Office of Court Administration (OCA) was required to promulgate a model form to seek an order of non-disclosure. A copy of this form, including instructions, can be found in Appendix R.

**Senate Bill 107 - Author: Senator West/ Sponsor: Rep. Eric Johnson:**

- Allows a petition for an order of non-disclosure to be filed electronically or by mail.
- Requires OCA to proscribe the form for an order of non-disclosure that is sought electronically or by mail.
- Requires all county and district clerk offices that maintain an Internet website to publish this form, and provide a web-based link to file an electronic application.
- Requires the court, on receipt of a petition, to provide notice to the prosecutor and an opportunity for a hearing.
- Requires the court to hold a hearing, except that a hearing is not required if: (1) the state does not request a hearing before the 45th day of notice; and (2) the court determines that the defendant is entitled to file the petition and the order is in the best interest of justice.
- Prohibits a court from disclosing to the public any information contained in the court records that is the subject of an order of nondisclosure issued under this section.<sup>176</sup>

While often confused with orders of non-disclosure, expunctions are much less common – likely due to restrictions on those individuals who are eligible. Expunctions can only be sought when there is ***not a conviction*** in a case and are not applicable in cases where deferred adjudication has

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<sup>172</sup> Section 411.081(f-1). Texas Government Code.

<sup>173</sup> *Ibid.*

<sup>174</sup> Section 411.081(g-1).

<sup>175</sup> Section 411.081(g-1b).

<sup>176</sup> A copy of Senate Bill 107 can be found in Appendix S.

been completed.<sup>177</sup> Individuals, who have received acquittals or pardons, are also eligible in certain circumstances.<sup>178</sup> Similar to an order of non-disclosure, an expunction is a civil matter that must be adjudicated in a trial court. Respondents are given 30 days notice of expunction hearings and have the right to appeal the order.<sup>179</sup> Upon receiving notice from a court that an expunction has been granted, the entity that receives the notification must destroy all files and records related to the arrest or return them to the court.<sup>180</sup>

## **Issues**

Individuals convicted of a crime face barriers to obtaining employment, receiving an occupational license, applying for housing, or seeking public assistance for educational or other needs.<sup>181</sup> However, state statute recognizes that not all crimes should be bars to employment or assistance, and that not all dispositions should be treated equally. This is especially true when an arrest results in a non-conviction, or the individual is deemed appropriate to be placed on deferred adjudication community supervision. One of the clearest examples of statutory means for a second chance is the ability of individuals to erase bad acts from their criminal record through either orders of non-disclosure or expunctions. These give individuals accused of certain offenses the opportunity for a second chance, and further provide motivation not to commit additional crimes. While there are statutory and legal hurdles to obtaining either an order of non-disclosure or expunction, they still provide relief to many individuals, who would likely be unable to seek opportunities in the military or employment, if they did not exist. Unfortunately, studies indicate that these remedies are underutilized. According to the Texas Criminal Justice Coalition, data maintained by the Office of Court Administration reports that 170,587 cases were dismissed in district criminal courts from September 2010 to August 2014, of which over 30,000

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<sup>177</sup> Written testimony submitted by Angie Kendall, Texas Department of Public Safety at Senate Committee on Jurisprudence hearing October 23, 2014. On file.

<sup>178</sup> Article 55.01(a)(1)(B), Texas Code of Criminal Procedure.

<sup>179</sup> Written testimony submitted by David Slayton, Office of Court Administration at Senate Committee on Jurisprudence hearing October 23, 2014. On file.

<sup>180</sup> *Ibid.*

<sup>181</sup> Written testimony submitted by Elizabeth Henneke, Texas Criminal Justice Coalition at Senate Committee on Jurisprudence hearing October 23, 2014. On file.



were drug possession and an additional 3,300 were misdemeanor dismissals.<sup>182</sup> By comparison, from May 2012 to May 2014, the Department of Public Safety (DPS) only reported 8,842 orders of non-disclosure.<sup>183</sup>

**Civil Proceedings:**

Although Texas statutes provide clear guidance regarding those eligible and the parameters for seeking either an order of non-disclosure or expunction, problems can still arise when individuals attempt to pursue either mechanism, thus making the hiring of an attorney a foregone conclusion in many instances. This is because these orders must be sought by filing a legal petition to a civil jurisdiction, and are not part of the criminal proceeding that resulted from an arrest. Hiring an attorney is an added cost that many individuals cannot afford. A survey of defense attorney websites indicates that, on average, costs for legal representation can range from \$1000 to \$3000. Many individuals are hindered from accessing legal relief because of these costs alone. This is why during the 83rd Legislative Session (2013), Senate Bill 107 was filed to provide a model form to be used by individuals attempting to represent themselves before a court seeking an order of non-disclosure.

**Table 4.B.**

<b>Office of Court Administration: Senate Bill 107</b>		
	<b>Page Views</b>	<b>Average Time Spent</b>
October 2013	377	2:49
November 2013	908	3:51
December 2013	1688	4:01
January 2014	2777	4:26
February 2014	2990	4:28
March 2014	3111	4:17
April 2014	3185	4:35
May 2014	3268	4:33
June 2014	3145	4:38
July 2014	3761	4:29

Data provided by the Office of Court Administration November 2014

<sup>182</sup> Written testimony submitted by Elizabeth Henneke, Texas Criminal Justice Coalition at Senate Committee on Jurisprudence hearing October 23, 2014. On file.

<sup>183</sup> *Ibid.*

As Table 4.B indicates, there has been a lot of interest in self-representation for orders of non-disclosure. However, in addition to the fees charged by attorneys for representation, individuals seeking orders of non-disclosure or expunctions also have to pay statutory court costs and filing fees, even if they use the promulgated form. The civil filing fees for a petition for non-disclosure vary from county to county, but there is a range within which the total filing fee must fall – from \$225 to \$330.<sup>184</sup> The fees for filing a civil petition seeking an expunction are the same as the fees for the filing of a general civil suit. As with the petition for an order of nondisclosure, there is no set total fee; instead, there is a fee range – from \$197 to \$302.<sup>185</sup> This can also vary from county to county. As these numbers indicate, the civil suit to initiate proceedings for orders of non-disclosure and expunction are costly. A couple of options were presented at the hearing on this charge to help more individuals overcome these hurdles.

Witness testimony recommended attaching the non-disclosure petition to the criminal case file, allowing the order to move forward, upon judicial signature, without the need for an additional lawsuit or court proceeding.<sup>186</sup> However, this proposal may be opposed by prosecutors, who historically request input into non-disclosure petitions. Unlike orders of non-disclosure – which can be sought when an individual successfully completes deferred adjudication community supervision – expunctions can only be sought for qualifying non-conviction dispositions. In essence, when a case results in a non-conviction or the individual was acquitted, the offense did not occur and therefore, all records associated with the arrest should be removed. Judges could be authorized to provide automatic expunctions of arrest records for cases dismissed for reasons indicating an absence of probable cause, providing easily obtainable relief for those individuals for whom charges were not pursued.<sup>187</sup> It would be difficult to find an argument as to why individuals under these circumstances should have permanent criminal records for arrests that do not result in criminal proceedings, especially if judges were granted final authority for the decision.

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<sup>184</sup> David Slayton, Office of Court Administration. November 13, 2014. Email to the author. On file.

<sup>185</sup> *Ibid.*

<sup>186</sup> Senate Committee on Jurisprudence hearing, October 23, 2014 (statement of Patricia Cummings, Texas Criminal Defense Lawyers Association).

<sup>187</sup> Written testimony submitted by Elizabeth Henneke, Texas Criminal Justice Coalition at Senate Committee on Jurisprudence hearing October 23, 2014. On file.

### **Impediments to Confidentiality:**

Affordability is just one of several barriers identified when reviewing existing practices involving orders of non-disclosure and expunction. Another prominent impediment may be public perception. As many individuals with criminal records are all too aware, even after an order of non-disclosure is obtained and a judge requires records sealed, access to criminal history information is possible. This is largely due to the fact that today's society is web-based. Once information is provided online, it is often impossible for it to be deleted. The scenario exists where a county or district clerk has notified the Department of Public Safety that an order of non-disclosure or expunction has been granted, and this update has been provided to other entities, as statutorily required, but the individual's criminal history information is still accessible. This is largely because of the web-based information. It is also the result of the bulk sale of criminal history information by private entities.

Multiple state agencies can sell criminal records to private entities in Texas. These include: (1) the Department of Public Safety; (2) the Department of Criminal Justice (3) county and district clerks; and (4) certain law enforcement agencies.<sup>188</sup> If a private entity purchases information from a source other than DPS, they may not be notified of any updates reflecting orders of non-disclosure or expunction.<sup>189</sup> Additionally, concerns have been raised in regards to private entities selling data to other private entities. While statute is clear that private entities, who disseminate criminal history information, must update data in regards to orders of non-disclosure and expunction, concerns have been raised that these requirements – as well as other legal protections – may not currently encompass what happens to the information once the original private entities sells it to another.<sup>190</sup>

### **Statutory Interpretations:**

An additional impediment was identified at the October 23rd hearing in regards to existing practices in some court jurisdictions, likely the result of incorrect statutory interpretations. As it

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<sup>188</sup> Written testimony submitted by Elizabeth Henneke, Texas Criminal Justice Coalition at Senate Committee on Jurisprudence hearing October 23, 2014. On file.

<sup>189</sup> *Ibid.*

<sup>190</sup> *Ibid.*

relates to records subject to either destruction or non-disclosure, Article 55.01(a), Texas Code of Criminal Procedure requires that "all records and files related to the arrest" are to be expunged. Similarly, Section 411.081(d), Texas Government Code prohibits the disclosure of all criminal history information "related to the offense giving rise to the deferred adjudication." While these statutes appear to require that all records associated with an arrest be subject to the order of non-disclosure or destroyed upon an expunction being granted, the committee was provided with testimony that this is not always the case.

Individuals are often arrested for one offense and adjudicated for another – arrested for a higher crime and then successfully plea bargained to a lower offense. Defense attorney representatives allege that in some instances, anecdotal evidence exists that prosecutors are refusing to allow the order of non-disclosure to move forward for the arresting offense even though the individual successfully completed the terms of deferred adjudication for the offense that was plea bargained.<sup>191</sup> This results in — even after an order of non-disclosure has been sought and granted — an individual having an arrest on their criminal record for a higher crime than the one that was subject to diversion. Similarly for expunctions, an individual can be arrested for one offense, and during that period is subsequently charged with another. In the example provided at the hearing, the individual pleads guilty to the initial offense and is convicted. Charges are ultimately dropped for the subsequent offense. Defense attorneys allege that some courts have been interpreting statute, in these situations, to prohibit the individual from seeking an expunction of the second offense because it arose out of an arrest for which the individual was convicted.<sup>192</sup>

### **Waiver of Non-Disclosure/ Expunction Rights:**

In January 2014, it was brought to the Jurisprudence Committee's attention that district attorneys in certain counties were requiring individuals accused of a crime to waive future rights to seek orders of non-disclosure as part of accepting plea agreements. While anecdotal stories indicate that several counties currently require such waivers, the committee focused on practices in Upshur County since documented proof was provided. Upon confirmation of this practice, a

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<sup>191</sup> Senate Committee on Jurisprudence hearing, October 23, 2014 (statement of Patricia Cummings, Texas Criminal Defense Lawyers Association).

<sup>192</sup> *Ibid.*

letter was sent to the Upshur County District Clerk requesting: (1) copies of all waivers of non-disclosure rights for the preceding three years; (2) the ethnicity of each defendant; and (3) the prosecuting attorney.<sup>193</sup> Table 4.C provides a breakdown of waivers based on ethnicity and gender.

**Table 4.C.**

<b>Upshur County: Waiver of Right to File Motion for Non-Disclosure 2010-2013</b>		
	<b>Number</b>	<b>% Of Total</b>
White Male	47	59%
Hispanic Male	0	0%
Black Male	11	14%
White Female	16	20%
Black Female	4	5%
Hispanic Female	0	0%
Not Provided	1	2%
<b>Total</b>	<b>79</b>	<b>100%</b>

Data compiled from records requested February 14, 2014

Contrary to oral explanations provided – that only serious offenses were resulting in waivers of non-disclosure – the records provided revealed that there was very little correlation between the seriousness of the offense and the requirement to sign a waiver.<sup>194</sup> Defendants accused of a litany of offenses – from possession of marijuana to petty theft – were agreeing to waive all future rights to non-disclosure. Prosecution witnesses assert that waiver practices often involve situations where either: (1) a higher crime is being sought but there are "proof problems" or (2) as part of typical negotiations arising out of plea deals.<sup>195</sup> According to defense attorney witnesses, conditioning plea bargain agreements of the waiver of future rights – whether they are

<sup>193</sup> A copy of this letter can be found in Appendix T.

<sup>194</sup> Copies of waivers on file with the committee.

<sup>195</sup> Senate Committee on Jurisprudence hearing, June 3, 2014 (statement of Shannon Edmonds, Texas District and County Attorneys Association).

non-disclosure of expunction – is coercive.<sup>196</sup> Individuals accused of crimes tend to focus solely on potential punishment, and therefore do not consider the future implications of waiving rights during plea negotiations. One witness at the October 23rd hearing noted, "[t]hese agreements exploit the vulnerable position of individuals charged with a crime and should be strictly prohibited."<sup>197</sup>

### **Committee Hearing**

The Senate Committee on Jurisprudence held a hearing in Austin on June 3, 2014 on practices requiring the "forfeiture of future rights to nondisclosure as a condition of plea agreements in certain counties;" an additional hearing on this charge was held on October 23, 2014.<sup>198</sup> Similar witnesses testified in both proceedings. Advocates and defense attorney witnesses called for additional avenues to access orders of non-disclosure and expunctions. The prosecution witness primarily focused on answering questions, the vast majority of which occurred at the initial hearing regarding practices in Upshur County. State agency representatives from the Office of Court Administration and the Department of Public Safety provided an overview of existing agency practices and provided updates on the automated processes used to track the dissemination of criminal history information.

### **Recommendations**

**4.1** The 84th Texas Legislature should amend appropriate statutes to prohibit the waiver of future rights of non-disclosure or expunction by individuals accused of a crime as part of plea bargain agreements.

**4.2** Modifications need to be made to Section 411.081, Texas Government Code to clarify that all records – including those charges that were not formally adjudicated – related to the offense

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<sup>196</sup> Senate Committee on Jurisprudence hearing, October 23, 2014 (statement of Patricia Cummings, Texas Criminal Defense Lawyers Association).

<sup>197</sup> Written testimony submitted by Elizabeth Henneke, Texas Criminal Justice Coalition at Senate Committee on Jurisprudence hearing October 23, 2014. On file.

<sup>198</sup> A video of the June 3, 2014 hearing and October 23, 2014 hearing can be accessed at <http://www.senate.state.tx.us/75r/senate/commit/c550/c550.htm>.

that gave rise to the arrest in which a defendant was placed on deferred adjudication are subject to an order of non-disclosure.

**4.3** Amendments should be made to Chapter 55, Texas Code of Criminal procedures to provide for judicial expunctions of records for those qualifying cases that result in a non-conviction or finding of innocence.

**Appendix A:**

**Texas Judicial Council Resolution – Juvenile Justice Committee  
Recommendations**





**STATE OF TEXAS**

**RESOLUTION**

**of the**

**TEXAS JUDICIAL COUNCIL**

**Juvenile Justice Committee Recommendations**

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code; and

WHEREAS, the Council is charged with improving the administration of justice; and

WHEREAS, the problems with the adjudication of children for fine-only misdemeanors has been well-documented<sup>1</sup>; and

WHEREAS, children charged with fine-only misdemeanors are adjudicated in the criminal justice system while children charged with other misdemeanors and felonies are adjudicated in the juvenile justice system; and

WHEREAS, in his 2011 State of the Judiciary Address, Texas Supreme Court Chief Justice Wallace B. Jefferson called upon the Legislature to work to address the problems surrounding this issue; and

WHEREAS, in February 2012 this Council formed the Juvenile Justice Committee to “assess the impact of school discipline and school-based policing on referrals to the municipal, justice, and juvenile courts and identify judicial policies or initiatives that: work to reduce referrals without having a negative impact on school safety; limit recidivism; and preserve judicial resources for students who are in need of this type of intervention”; and

WHEREAS, the Juvenile Justice Committee, composed of judges, advocacy group representatives, educators, school police representatives and the public, has made recommendations for legislative changes that will address some of the issues involved with the adjudication of children for fine-only misdemeanors; and


WHEREAS, the Council believes that these legislative changes will result in meaningful change in curtailing the “school-to-prison pipeline” and will ensure equitable treatment for children who are adjudicated in the municipal and justice courts;

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<sup>1</sup> Tony Fabelo, et al., *Breaking Schools' Rules: A statewide Study of How School Discipline Relates to Students' Success and Juvenile Justice Involvement*. (New York: Council of State Governments Justice Center); Deborah Fowler, et al., *Texas' School-to-Prison Pipeline: Dropout to Incarceration, The Impact of School Discipline and Zero Tolerance*. (Austin: Texas Appleseed).

NOW THEREFORE, BE IT RESOLVED that the Texas Judicial Council recommends that the Texas Legislature enact the following statutory changes:

- (1) Expressly authorize local governments to implement "deferred prosecution" measures in Class C misdemeanors to decrease the number of local filings from schools;
- (2) Amend applicable criminal laws to ensure that local courts are the last and not the first step in school discipline;
- (3) Amend offenses relating to Disruption of Class, Disruption of Transportation and Disorderly Conduct so that age, not grade level, is a prima facie element of the offense; and
- (4) Amend existing criminal laws and procedures to increase parity between "criminal juvenile justice in local trial courts" and "civil juvenile justice in juvenile court and juvenile probation."

  
Honorable Wallace B. Jefferson  
Chair, Texas Judicial Council

Contact: David Slayton  
Executive Director, Texas Judicial Council  
512-463-1625

**Appendix B:**

**Senate Bill 393, 83rd Legislative Session**



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AN ACT

relating to the criminal procedures related to children who commit certain Class C misdemeanors.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Article 42.15, Code of Criminal Procedure, is amended by amending Subsection (b) and adding Subsections (d), (e), and (f) to read as follows:

(b) Subject to Subsections ~~[Subsection]~~ (c) and (d), when imposing a fine and costs, a court may direct a defendant:

(1) to pay the entire fine and costs when sentence is pronounced;

(2) to pay the entire fine and costs at some later date; or

(3) to pay a specified portion of the fine and costs at designated intervals.

(d) A judge may allow a defendant who is a child, as defined by Article 45.058(h), to elect at the time of conviction, as defined by Section 133.101, Local Government Code, to discharge the fine and costs by:

(1) performing community service or receiving tutoring under Article 45.0492, as added by Chapter 227 (H.B. 350), Acts of the 82nd Legislature, Regular Session, 2011; or

(2) paying the fine and costs in a manner described by Subsection (b).

1       (e) The election under Subsection (d) must be made in  
2 writing, signed by the defendant, and, if present, signed by the  
3 defendant's parent, guardian, or managing conservator. The court  
4 shall maintain the written election as a record of the court and  
5 provide a copy to the defendant.

6       (f) The requirement under Article 45.0492(a), as added by  
7 Chapter 227 (H.B. 350), Acts of the 82nd Legislature, Regular  
8 Session, 2011, that an offense occur in a building or on the grounds  
9 of the primary or secondary school at which the defendant was  
10 enrolled at the time of the offense does not apply to the  
11 performance of community service or the receipt of tutoring to  
12 discharge a fine or costs under Subsection (d)(1).

13       SECTION 2. Article 43.091, Code of Criminal Procedure, is  
14 amended to read as follows:

15       Art. 43.091. WAIVER OF PAYMENT OF FINES AND COSTS FOR  
16 INDIGENT DEFENDANTS AND CHILDREN. A court may waive payment of a  
17 fine or cost imposed on a defendant who defaults in payment if the  
18 court determines that:

19               (1) the defendant is indigent or was, at the time the  
20 offense was committed, a child as defined by Article 45.058(h); and

21               (2) each alternative method of discharging the fine or  
22 cost under Article 43.09 or 42.15 would impose an undue hardship on  
23 the defendant.

24       SECTION 3. Article 44.2811, Code of Criminal Procedure, is  
25 amended to read as follows:

26       Art. 44.2811. RECORDS RELATING TO CHILDREN CONVICTED OF OR  
27 RECEIVING DEFERRED DISPOSITION FOR FINE-ONLY MISDEMEANORS.

1 (a) This article applies only to a misdemeanor offense punishable  
2 by fine only, other than a traffic offense.

3 (b) All records and files and information stored by  
4 electronic means or otherwise, from which a record or file could be  
5 generated, relating to a child who is convicted of and has satisfied  
6 the judgment for or who has received a dismissal after deferral of  
7 disposition for an [a fine-only misdemeanor] offense described by  
8 Subsection (a) [other than a traffic offense] are confidential and  
9 may not be disclosed to the public except as provided under Article  
10 45.0217(b). [~~All records and files and information stored by~~  
11 ~~electronic means or otherwise, from which a record or file could be~~  
12 ~~generated, relating to a child whose conviction for a fine-only~~  
13 ~~misdemeanor other than a traffic offense is affirmed are~~  
14 ~~confidential upon satisfaction of the judgment and may not be~~  
15 ~~disclosed to the public except as provided under Article~~  
16 ~~45.0217(b).~~]

17 SECTION 4. Article 45.0217, Code of Criminal Procedure, is  
18 amended to read as follows:

19 Art. 45.0217. CONFIDENTIAL RECORDS RELATED TO THE  
20 CONVICTION OF OR DEFERRAL OF DISPOSITION FOR A CHILD. (a) This  
21 article applies only to a misdemeanor offense punishable by fine  
22 only, other than a traffic offense.

23 (a-1) Except as provided by Article 15.27 and Subsection  
24 (b), all records and files, including those held by law  
25 enforcement, and information stored by electronic means or  
26 otherwise, from which a record or file could be generated, relating  
27 to a child who is convicted of and has satisfied the judgment for or



1 who has received a dismissal after deferral of disposition for an [a  
2 fine-only misdemeanor] offense described by Subsection (a) [other  
3 than a traffic offense] are confidential and may not be disclosed to  
4 the public.

5 (b) Information subject to Subsection (a-1) [~~a~~] may be  
6 open to inspection only by:

7 (1) judges or court staff;

8 (2) a criminal justice agency for a criminal justice  
9 purpose, as those terms are defined by Section 411.082, Government  
10 Code;

11 (3) the Department of Public Safety;

12 (4) an attorney for a party to the proceeding;

13 (5) the child defendant; or

14 (6) the defendant's parent, guardian, or managing  
15 conservator.

16 SECTION 5. Article 45.041, Code of Criminal Procedure, is  
17 amended by amending Subsection (b) and adding Subsections (b-3),  
18 (b-4), and (b-5) to read as follows:

19 (b) Subject to Subsections [~~Subsection~~] (b-2) and (b-3),  
20 the justice or judge may direct the defendant:

21 (1) to pay:

22 (A) the entire fine and costs when sentence is  
23 pronounced;

24 (B) the entire fine and costs at some later date;

25 or

26 (C) a specified portion of the fine and costs at  
27 designated intervals;

1           (2) if applicable, to make restitution to any victim  
2 of the offense; and

3           (3) to satisfy any other sanction authorized by law.

4           (b-3) A judge may allow a defendant who is a child, as  
5 defined by Article 45.058(h), to elect at the time of conviction, as  
6 defined by Section 133.101, Local Government Code, to discharge the  
7 fine and costs by:

8           (1) performing community service or receiving  
9 tutoring under Article 45.0492, as added by Chapter 227 (H.B. 350),  
10 Acts of the 82nd Legislature, Regular Session, 2011; or

11           (2) paying the fine and costs in a manner described by  
12 Subsection (b).

13           (b-4) The election under Subsection (b-3) must be made in  
14 writing, signed by the defendant, and, if present, signed by the  
15 defendant's parent, guardian, or managing conservator. The court  
16 shall maintain the written election as a record of the court and  
17 provide a copy to the defendant.

18           (b-5) The requirement under Article 45.0492(a), as added by  
19 Chapter 227 (H.B. 350), Acts of the 82nd Legislature, Regular  
20 Session, 2011, that an offense occur in a building or on the grounds  
21 of the primary or secondary school at which the defendant was  
22 enrolled at the time of the offense does not apply to the  
23 performance of community service or the receipt of tutoring to  
24 discharge a fine or costs under Subsection (b-3)(1).

25           SECTION 6. Article 45.0491, Code of Criminal Procedure, is  
26 amended to read as follows:

27           Art. 45.0491. WAIVER OF PAYMENT OF FINES AND COSTS FOR

1 INDIGENT DEFENDANTS AND CHILDREN. A municipal court, regardless of  
2 whether the court is a court of record, or a justice court may waive  
3 payment of a fine or costs imposed on a defendant who defaults in  
4 payment if the court determines that:

5 (1) the defendant is indigent or was, at the time the  
6 offense was committed, a child as defined by Article 45.058(h); and

7 (2) discharging the fine and costs under Article  
8 45.049 or as otherwise authorized by this chapter would impose an  
9 undue hardship on the defendant.

10 SECTION 7. Subsections (a) and (c), Article 45.056, Code of  
11 Criminal Procedure, are amended to read as follows:

12 (a) On approval of the commissioners court, city council,  
13 school district board of trustees, juvenile board, or other  
14 appropriate authority, a county court, justice court, municipal  
15 court, school district, juvenile probation department, or other  
16 appropriate governmental entity may:

17 (1) employ a case manager to provide services in cases  
18 involving juvenile offenders who are before a court consistent with  
19 the court's statutory powers or referred to a court by a school  
20 administrator or designee for misconduct that would otherwise be  
21 within the court's statutory powers prior to a case being filed,  
22 with the consent of the juvenile and the juvenile's parents or  
23 guardians; or

24 (2) agree in accordance with Chapter 791, Government  
25 Code, to jointly employ a case manager.

26 (c) A county or justice court on approval of the  
27 commissioners court or a municipality or municipal court on

1 approval of the city council may employ one or more juvenile case  
2 managers who:

3 (1) shall [~~to~~] assist the court in administering the  
4 court's juvenile docket and in supervising its court orders in  
5 juvenile cases; and

6 (2) may provide:

7 (A) prevention services to a child considered  
8 at-risk of entering the juvenile justice system; and

9 (B) intervention services to juveniles engaged  
10 in misconduct prior to cases being filed, excluding traffic  
11 offenses.

12 SECTION 8. Section 25.0915, Education Code, is amended by  
13 adding Subsection (c) to read as follows:

14 (c) A court shall dismiss a complaint or referral made by a  
15 school district under this section that is not made in compliance  
16 with Subsection (b).

17 SECTION 9. Subsection (b), Section 37.081, Education Code,  
18 is amended to read as follows:

19 (b) In a peace officer's jurisdiction, a peace officer  
20 commissioned under this section:

21 (1) has the powers, privileges, and immunities of  
22 peace officers;

23 (2) may enforce all laws, including municipal  
24 ordinances, county ordinances, and state laws; [~~and~~]

25 (3) may, in accordance with Chapter 52, Family Code,  
26 take a juvenile into custody; and

27 (4) may dispose of cases in accordance with Section

1 52.03 or 52.031, Family Code.

2 SECTION 10. Subsection (d), Section 37.124, Education Code,  
3 is amended to read as follows:

4 (d) It is an exception to the application of Subsection (a)  
5 that, at the time the person engaged in conduct prohibited under  
6 that subsection, the person was younger than 12 years of age [~~a~~  
7 ~~student in the sixth grade or a lower grade level~~].

8 SECTION 11. Subsection (c), Section 37.126, Education Code,  
9 is amended to read as follows:

10 (c) It is an exception to the application of Subsection  
11 (a)(1) that, at the time the person engaged in conduct prohibited  
12 under that subdivision, the person was younger than 12 years of age  
13 [~~a student in the sixth grade or a lower grade level~~].

14 SECTION 12. Chapter 37, Education Code, is amended by  
15 adding Subchapter E-1 to read as follows:

16 SUBCHAPTER E-1. CRIMINAL PROCEDURE

17 Sec. 37.141. DEFINITIONS. In this subchapter:

18 (1) "Child" has the meaning assigned by Article  
19 45.058(h), Code of Criminal Procedure, except that the person must  
20 also be a student.

21 (2) "School offense" means an offense committed by a  
22 child enrolled in a public school that is a Class C misdemeanor  
23 other than a traffic offense and that is committed on property under  
24 the control and jurisdiction of a school district.

25 Sec. 37.142. CONFLICT OF LAW. To the extent of any  
26 conflict, this subchapter controls over any other law applied to a  
27 school offense alleged to have been committed by a child.

1       Sec. 37.143. CITATION PROHIBITED; CUSTODY OF CHILD. (a) A  
2 peace officer may not issue a citation to a child who is alleged to  
3 have committed a school offense.

4       (b) This subchapter does not prohibit a child from being  
5 taken into custody under Section 52.01, Family Code.

6       Sec. 37.144. GRADUATED SANCTIONS FOR CERTAIN SCHOOL  
7 OFFENSES. (a) A school district that commissions peace officers  
8 under Section 37.081 may develop a system of graduated sanctions  
9 that the school district may require to be imposed on a child before  
10 a complaint is filed under Section 37.145 against the child for a  
11 school offense that is an offense under Section 37.124 or 37.126 or  
12 under Section 42.01(a)(1), (2), (3), (4), or (5), Penal Code. A  
13 system adopted under this section must include multiple graduated  
14 sanctions. The system may require:

15           (1) a warning letter to be issued to the child and the  
16 child's parent or guardian that specifically states the child's  
17 alleged school offense and explains the consequences if the child  
18 engages in additional misconduct;

19           (2) a behavior contract with the child that must be  
20 signed by the child, the child's parent or guardian, and an employee  
21 of the school and that includes a specific description of the  
22 behavior that is required or prohibited for the child and the  
23 penalties for additional alleged school offenses, including  
24 additional disciplinary action or the filing of a complaint in a  
25 criminal court;

26           (3) the performance of school-based community service  
27 by the child; and

1           (4) the referral of the child to counseling,  
2 community-based services, or other in-school or out-of-school  
3 services aimed at addressing the child's behavioral problems.

4           (b) A referral made under Subsection (a)(4) may include  
5 participation by the child's parent or guardian if necessary.

6           Sec. 37.145. COMPLAINT. If a child fails to comply with or  
7 complete graduated sanctions under Section 37.144, or if the school  
8 district has not elected to adopt a system of graduated sanctions  
9 under that section, the school may file a complaint against the  
10 child with a criminal court in accordance with Section 37.146.

11           Sec. 37.146. REQUISITES OF COMPLAINT. (a) A complaint  
12 alleging the commission of a school offense must, in addition to the  
13 requirements imposed by Article 45.019, Code of Criminal Procedure:

14           (1) be sworn to by a person who has personal knowledge  
15 of the underlying facts giving rise to probable cause to believe  
16 that an offense has been committed; and

17           (2) be accompanied by a statement from a school  
18 employee stating:

19           (A) whether the child is eligible for or receives  
20 special services under Subchapter A, Chapter 29; and

21           (B) the graduated sanctions, if required under  
22 Section 37.144, that were imposed on the child before the complaint  
23 was filed.

24           (b) After a complaint has been filed under this subchapter,  
25 a summons may be issued under Articles 23.04 and 45.057(e), Code of  
26 Criminal Procedure.

27           Sec. 37.147. PROSECUTING ATTORNEYS. An attorney

1 representing the state in a court with jurisdiction may adopt rules  
2 pertaining to the filing of a complaint under this subchapter that  
3 the state considers necessary in order to:

4 (1) determine whether there is probable cause to  
5 believe that the child committed the alleged offense;

6 (2) review the circumstances and allegations in the  
7 complaint for legal sufficiency; and

8 (3) see that justice is done.

9 SECTION 13. Section 51.08, Family Code, is amended by  
10 adding Subsection (f) to read as follows:

11 (f) A court shall waive original jurisdiction for a  
12 complaint against a child alleging a violation of a misdemeanor  
13 offense punishable by fine only, other than a traffic offense, and  
14 refer the child to juvenile court if the court or another court has  
15 previously dismissed a complaint against the child under Section  
16 8.08, Penal Code.

17 SECTION 14. The heading to Chapter 52, Family Code, is  
18 amended to read as follows:

19 CHAPTER 52. PROCEEDINGS BEFORE AND INCLUDING REFERRAL TO

20 [~~JUVENILE~~] COURT

21 SECTION 15. Subsection (a), Section 52.03, Family Code, is  
22 amended to read as follows:

23 (a) A law-enforcement officer authorized by this title to  
24 take a child into custody may dispose of the case of a child taken  
25 into custody or accused of a Class C misdemeanor, other than a  
26 traffic offense, without referral to juvenile court or charging a  
27 child in a court of competent criminal jurisdiction, if:



1           (1) guidelines for such disposition have been adopted  
2 by the juvenile board of the county in which the disposition is made  
3 as required by Section 52.032;

4           (2) the disposition is authorized by the guidelines;  
5 and

6           (3) the officer makes a written report of the officer's  
7 disposition to the law-enforcement agency, identifying the child  
8 and specifying the grounds for believing that the taking into  
9 custody or accusation of criminal conduct was authorized.

10          SECTION 16. Subsections (a), (d), (f), (i), and (j),  
11 Section 52.031, Family Code, are amended to read as follows:

12          (a) A juvenile board may establish a first offender program  
13 under this section for the referral and disposition of children  
14 taken into custody, or accused prior to the filing of a criminal  
15 charge, of [✗]:

16           (1) conduct indicating a need for supervision; [✗]

17           (2) a Class C misdemeanor, other than a traffic  
18 offense; or

19           (3) delinquent conduct other than conduct that  
20 constitutes:

21           (A) a felony of the first, second, or third  
22 degree, an aggravated controlled substance felony, or a capital  
23 felony; or

24           (B) a state jail felony or misdemeanor involving  
25 violence to a person or the use or possession of a firearm, illegal  
26 knife, or club, as those terms are defined by Section 46.01, Penal  
27 Code, or a prohibited weapon, as described by Section 46.05, Penal

1 Code.

2 (d) A law enforcement officer taking a child into custody or  
3 accusing a child of an offense described in Subsection (a)(2) may  
4 refer the child to the law enforcement officer or agency designated  
5 under Subsection (b) for disposition under the first offender  
6 program and not refer the child to juvenile court or a court of  
7 competent criminal jurisdiction only if:

8 (1) the child has not previously been adjudicated as  
9 having engaged in delinquent conduct;

10 (2) the referral complies with guidelines for  
11 disposition under Subsection (c); and

12 (3) the officer reports in writing the referral to the  
13 agency, identifying the child and specifying the grounds for taking  
14 the child into custody or accusing a child of an offense described  
15 in Subsection (a)(2).

16 (f) The parent, guardian, or other custodian of the child  
17 must receive notice that the child has been referred for  
18 disposition under the first offender program. The notice must:

19 (1) state the grounds for taking the child into  
20 custody or accusing a child of an offense described in Subsection  
21 (a)(2);

22 (2) identify the law enforcement officer or agency to  
23 which the child was referred;

24 (3) briefly describe the nature of the program; and

25 (4) state that the child's failure to complete the  
26 program will result in the child being referred to the juvenile  
27 court or a court of competent criminal jurisdiction.

1 (i) The case of a child who successfully completes the first  
2 offender program is closed and may not be referred to juvenile court  
3 or a court of competent criminal jurisdiction, unless the child is  
4 taken into custody under circumstances described by Subsection  
5 (j)(3).

6 (j) The case of a child referred for disposition under the  
7 first offender program shall be referred to juvenile court or a  
8 court of competent criminal jurisdiction if:

9 (1) the child fails to complete the program;

10 (2) the child or the parent, guardian, or other  
11 custodian of the child terminates the child's participation in the  
12 program before the child completes it; or

13 (3) the child completes the program but is taken into  
14 custody under Section 52.01 before the 90th day after the date the  
15 child completes the program for conduct other than the conduct for  
16 which the child was referred to the first offender program.

17 SECTION 17. Section 8.07, Penal Code, is amended by adding  
18 Subsections (d) and (e) to read as follows:

19 (d) Notwithstanding Subsection (a), a person may not be  
20 prosecuted for or convicted of an offense described by Subsection  
21 (a)(4) or (5) that the person committed when younger than 10 years  
22 of age.

23 (e) A person who is at least 10 years of age but younger than  
24 15 years of age is presumed incapable of committing an offense  
25 described by Subsection (a)(4) or (5), other than an offense under a  
26 juvenile curfew ordinance or order. This presumption may be  
27 refuted if the prosecution proves to the court by a preponderance of

1 the evidence that the actor had sufficient capacity to understand  
2 that the conduct engaged in was wrong at the time the conduct was  
3 engaged in. The prosecution is not required to prove that the actor  
4 at the time of engaging in the conduct knew that the act was a  
5 criminal offense or knew the legal consequences of the offense.

6 SECTION 18. Chapter 8, Penal Code, is amended by adding  
7 Section 8.08 to read as follows:

8 Sec. 8.08. CHILD WITH MENTAL ILLNESS, DISABILITY, OR LACK  
9 OF CAPACITY. (a) On motion by the state, the defendant, or a  
10 person standing in parental relation to the defendant, or on the  
11 court's own motion, a court with jurisdiction of an offense  
12 described by Section 8.07(a)(4) or (5) shall determine whether  
13 probable cause exists to believe that a child, including a child  
14 with a mental illness or developmental disability:

15 (1) lacks the capacity to understand the proceedings  
16 in criminal court or to assist in the child's own defense and is  
17 unfit to proceed; or

18 (2) lacks substantial capacity either to appreciate  
19 the wrongfulness of the child's own conduct or to conform the  
20 child's conduct to the requirement of the law.

21 (b) If the court determines that probable cause exists for a  
22 finding under Subsection (a), after providing notice to the state,  
23 the court may dismiss the complaint.

24 (c) A dismissal of a complaint under Subsection (b) may be  
25 appealed as provided by Article 44.01, Code of Criminal Procedure.

26 (d) In this section, "child" has the meaning assigned by  
27 Article 45.058(h), Code of Criminal Procedure.

1           SECTION 19. Subsection (f), Section 42.01, Penal Code, is  
2 amended to read as follows:

3           (f) Subsections (a)(1), (2), (3), (5), and (6) do not apply  
4 to a person who, at the time the person engaged in conduct  
5 prohibited under the applicable subdivision, was a student younger  
6 than 12 years of age [~~in the sixth grade or a lower grade level~~], and  
7 the prohibited conduct occurred at a public school campus during  
8 regular school hours.

9           SECTION 20. Except as provided by Sections 21 and 22 of this  
10 Act, the changes in law made by this Act apply only to an offense  
11 committed on or after the effective date of this Act. An offense  
12 committed before the effective date of this Act is governed by the  
13 law in effect on the date the offense was committed, and the former  
14 law is continued in effect for that purpose. For purposes of this  
15 section, an offense was committed before the effective date of this  
16 Act if any element of the offense occurred before that date.

17           SECTION 21. (a) Articles 42.15 and 45.041, Code of  
18 Criminal Procedure, as amended by this Act, apply only to a  
19 sentencing proceeding that commences on or after the effective date  
20 of this Act.

21           (b) Articles 43.091 and 45.0491, Code of Criminal  
22 Procedure, as amended by this Act, apply to a sentencing proceeding  
23 that commences before, on, or after the effective date of this Act.

24           SECTION 22. Articles 44.2811 and 45.0217, Code of Criminal  
25 Procedure, as amended by this Act, apply to the disclosure of a  
26 record or file on or after the effective date of this Act regardless  
27 of whether the offense that is the subject of the record or file was

1 committed before, on, or after the effective date of this Act.

2 SECTION 23. This Act takes effect September 1, 2013.

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Speaker of the House

I hereby certify that S.B. No. 393 passed the Senate on April 4, 2013, by the following vote: Yeas 30, Nays 0; and that the Senate concurred in House amendments on May 23, 2013, by the following vote: Yeas 30, Nays 1.

\_\_\_\_\_  
Secretary of the Senate

I hereby certify that S.B. No. 393 passed the House, with amendments, on May 20, 2013, by the following vote: Yeas 144, Nays 3, two present not voting.

\_\_\_\_\_  
Chief Clerk of the House

Approved:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Governor



**Appendix C:**

**Senate Bill 1114, 83rd Legislative Session**





AN ACT

1  
2 relating to the prosecution of certain misdemeanor offenses  
3 committed by children and to school district law enforcement.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Article 45.058, Code of Criminal Procedure, is  
6 amended by adding Subsections (i) and (j) to read as follows:

7 (i) If a law enforcement officer issues a citation or files  
8 a complaint in the manner provided by Article 45.018 for conduct by  
9 a child 12 years of age or older that is alleged to have occurred on  
10 school property or on a vehicle owned or operated by a county or  
11 independent school district, the officer shall submit to the court  
12 the offense report, a statement by a witness to the alleged conduct,  
13 and a statement by a victim of the alleged conduct, if any. An  
14 attorney representing the state may not proceed in a trial of an  
15 offense unless the law enforcement officer complied with the  
16 requirements of this subsection.

17 (j) Notwithstanding Subsection (g) or (g-1), a law  
18 enforcement officer may not issue a citation or file a complaint in  
19 the manner provided by Article 45.018 for conduct by a child younger  
20 than 12 years of age that is alleged to have occurred on school  
21 property or on a vehicle owned or operated by a county or  
22 independent school district.

23 SECTION 2. Section 25.0915, Education Code, is amended by  
24 adding Subsection (c) to read as follows:

1        (c) A court shall dismiss a complaint or referral made by a  
2 school district under this section that is not made in compliance  
3 with Subsection (b).

4        SECTION 3. Subsection (a), Section 37.001, Education Code,  
5 is amended to read as follows:

6        (a) The board of trustees of an independent school district  
7 shall, with the advice of its district-level committee established  
8 under Subchapter F, Chapter 11, adopt a student code of conduct for  
9 the district. The student code of conduct must be posted and  
10 prominently displayed at each school campus or made available for  
11 review at the office of the campus principal. In addition to  
12 establishing standards for student conduct, the student code of  
13 conduct must:

14            (1) specify the circumstances, in accordance with this  
15 subchapter, under which a student may be removed from a classroom,  
16 campus, ~~[or]~~ disciplinary alternative education program, or  
17 vehicle owned or operated by the district;

18            (2) specify conditions that authorize or require a  
19 principal or other appropriate administrator to transfer a student  
20 to a disciplinary alternative education program;

21            (3) outline conditions under which a student may be  
22 suspended as provided by Section 37.005 or expelled as provided by  
23 Section 37.007;

24            (4) specify that consideration will be given, as a  
25 factor in each decision concerning suspension, removal to a  
26 disciplinary alternative education program, expulsion, or  
27 placement in a juvenile justice alternative education program,

1 regardless of whether the decision concerns a mandatory or  
2 discretionary action, to:

- 3 (A) self-defense;
- 4 (B) intent or lack of intent at the time the  
5 student engaged in the conduct;
- 6 (C) a student's disciplinary history; or
- 7 (D) a disability that substantially impairs the  
8 student's capacity to appreciate the wrongfulness of the student's  
9 conduct;

10 (5) provide guidelines for setting the length of a  
11 term of:

- 12 (A) a removal under Section 37.006; and
- 13 (B) an expulsion under Section 37.007;
- 14 (6) address the notification of a student's parent or  
15 guardian of a violation of the student code of conduct committed by  
16 the student that results in suspension, removal to a disciplinary  
17 alternative education program, or expulsion;
- 18 (7) prohibit bullying, harassment, and making hit  
19 lists and ensure that district employees enforce those  
20 prohibitions; and

21 (8) provide, as appropriate for students at each grade  
22 level, methods, including options, for:

- 23 (A) managing students in the classroom, ~~and~~ on  
24 school grounds, and on a vehicle owned or operated by the district;
- 25 (B) disciplining students; and
- 26 (C) preventing and intervening in student  
27 discipline problems, including bullying, harassment, and making

1 hit lists.

2 SECTION 4. Subsections (b), (d), and (f), Section 37.081,  
3 Education Code, are amended to read as follows:

4 (b) In a peace officer's jurisdiction, a peace officer  
5 commissioned under this section:

6 (1) has the powers, privileges, and immunities of  
7 peace officers;

8 (2) may enforce all laws, including municipal  
9 ordinances, county ordinances, and state laws; and

10 (3) may, in accordance with Chapter 52, Family Code,  
11 or Article 45.058, Code of Criminal Procedure, take a child  
12 [~~juvenile~~] into custody.

13 (d) A school district peace officer shall perform  
14 [~~administrative and~~] law enforcement duties for the school district  
15 as determined by the board of trustees of the school district.  
16 Those duties must include protecting:

17 (1) the safety and welfare of any person in the  
18 jurisdiction of the peace officer; and

19 (2) the property of the school district.

20 (f) The chief of police of the school district police  
21 department shall be accountable to the superintendent and shall  
22 report to the superintendent [~~or the superintendent's designee~~].  
23 School district police officers shall be supervised by the chief of  
24 police of the school district or the chief of police's designee and  
25 shall be licensed by the Commission on Law Enforcement Officer  
26 Standards and Education.

27 SECTION 5. Subchapter C, Chapter 37, Education Code, is

1 amended by adding Section 37.085 to read as follows:

2 Sec. 37.085. ARRESTS PROHIBITED FOR CERTAIN CLASS C  
3 MISDEMEANORS. Notwithstanding any other provision of law, a  
4 warrant may not be issued for the arrest of a person for a Class C  
5 misdemeanor under this code committed when the person was younger  
6 than 17 years of age.

7 SECTION 6. Subsection (a), Section 37.124, Education Code,  
8 is amended to read as follows:

9 (a) A person other than a primary or secondary grade student  
10 enrolled in the school commits an offense if the person, on school  
11 property or on public property within 500 feet of school property,  
12 alone or in concert with others, intentionally disrupts the conduct  
13 of classes or other school activities.

14 SECTION 7. Subsection (a), Section 37.126, Education Code,  
15 is amended to read as follows:

16 (a) Except as provided by Section 37.125, a person other  
17 than a primary or secondary grade student commits an offense if the  
18 person intentionally disrupts, prevents, or interferes with the  
19 lawful transportation of children:

20 (1) to or from school on a vehicle owned or operated by  
21 a county or independent school district; or

22 (2) to or from an activity sponsored by a school on a  
23 vehicle owned or operated by a county or independent school  
24 district.

25 SECTION 8. Section 52.031, Family Code, is amended by  
26 adding Subsection (a-1) and amending Subsections (d), (f), (i), and  
27 (j) to read as follows:

1           (a-1) A child accused of a Class C misdemeanor, other than a  
2 traffic offense, may be referred to a first offender program  
3 established under this section prior to the filing of a complaint  
4 with a criminal court.

5           (d) A law enforcement officer taking a child into custody  
6 for conduct described by Subsection (a) or before issuing a  
7 citation to a child for an offense described by Subsection (a-1) may  
8 refer the child to the law enforcement officer or agency designated  
9 under Subsection (b) for disposition under the first offender  
10 program and not refer the child to juvenile court for the conduct or  
11 file a complaint with a criminal court for the offense only if:

12                   (1) the child has not previously been adjudicated as  
13 having engaged in delinquent conduct;

14                   (2) the referral complies with guidelines for  
15 disposition under Subsection (c); and

16                   (3) the officer reports in writing the referral to the  
17 agency, identifying the child and specifying the grounds for taking  
18 the child into custody or for accusing the child of an offense.

19           (f) The parent, guardian, or other custodian of the child  
20 must receive notice that the child has been referred for  
21 disposition under the first offender program. The notice must:

22                   (1) state the grounds for taking the child into  
23 custody for conduct described by Subsection (a), or for accusing  
24 the child of an offense described by Subsection (a-1);

25                   (2) identify the law enforcement officer or agency to  
26 which the child was referred;

27                   (3) briefly describe the nature of the program; and

1           (4) state that the child's failure to complete the  
2 program will result in the child being referred to the juvenile  
3 court for the conduct or a complaint being filed with a criminal  
4 court for the offense.

5           (i) The case of a child who successfully completes the first  
6 offender program is closed and may not be referred to juvenile court  
7 or filed with a criminal court, unless the child is taken into  
8 custody under circumstances described by Subsection (j)(3).

9           (j) The case of a child referred for disposition under the  
10 first offender program shall be referred to juvenile court or, if  
11 the child is accused of an offense described by Subsection (a-1),  
12 filed with a criminal court if:

13                   (1) the child fails to complete the program;

14                   (2) the child or the parent, guardian, or other  
15 custodian of the child terminates the child's participation in the  
16 program before the child completes it; or

17                   (3) the child completes the program but is taken into  
18 custody under Section 52.01 before the 90th day after the date the  
19 child completes the program for conduct other than the conduct for  
20 which the child was referred to the first offender program.

21           SECTION 9. Section 42.01, Penal Code, is amended by adding  
22 Subsection (a-1) to read as follows:

23                   (a-1) For purposes of Subsection (a), the term "public  
24 place" includes a public school campus or the school grounds on  
25 which a public school is located.

26           SECTION 10. (a) Except as provided by Subsection (b) of  
27 this section, the changes in law made by this Act apply only to an



1 offense committed on or after the effective date of this Act. An  
2 offense committed before the effective date of this Act is covered  
3 by the law in effect at the time the offense was committed, and the  
4 former law is continued in effect for that purpose. For the  
5 purposes of this section, an offense is committed before the  
6 effective date of this Act if any element of the offense was  
7 committed before that date.

8 (b) Section 37.085, Education Code, as added by this Act,  
9 applies to an offense committed before, on, or after the effective  
10 date of this Act.

11 SECTION 11. This Act takes effect September 1, 2013.

S.B. No. 1114

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Speaker of the House

I hereby certify that S.B. No. 1114 passed the Senate on April 11, 2013, by the following vote: Yeas 31, Nays 0.

\_\_\_\_\_  
Secretary of the Senate

I hereby certify that S.B. No. 1114 passed the House on May 20, 2013, by the following vote: Yeas 124, Nays 19, two present not voting.

\_\_\_\_\_  
Chief Clerk of the House

Approved:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Governor



**Appendix D:**

**Office of Court Administration – Texas School-Ticketing Reform Data**



# Texas School-Ticketing Reform Data

## Justice Court Filings (County)

Case Type	FY 2013	FY 2014	% Change
Education Code Violations	5,752	1,120	-80.53%
Penal Code Violations <sup>1</sup>	155,427	111,970	-27.96%
Other State Law Criminal Violations <sup>1</sup>	277,277	258,738	-6.69%
Failure to Attend School Violations	63,349	54,821	-13.46%
All Other Juvenile Filings	15,199	4,148	-72.71%

## Municipal Court Filings (City)

Case Type	FY 2013	FY 2014	% Change
Education Code Violations	2,114	245	-87.77%
Penal Code Violations <sup>1</sup>	410,721	377,417	-8.11%
Other State Law Criminal Violations <sup>1</sup>	326,004	274,544	-15.79%
Failure to Attend School Violations	10,804	8,511	-21.22%
All Other Juvenile Filings	45,149	21,176	-53.10%

## Combined Filings – Justice and Municipal Court Totals

Case Type	FY 2013	FY 2014	% Change
Education Code Violations	7,866	1,365	-82.65%
Penal Code Violations <sup>1</sup>	566,148	489,387	-13.56%
Other State Law Criminal Violations <sup>1</sup>	603,281	533,282	-11.60%
Failure to Attend School Violations	74,153	63,332	-14.59%
All Other Juvenile Filings	60,348	25,324	-58.04%

<sup>1</sup> The total number of Penal Code Violations and Other State Law Criminal Violations include adult filings as well. However, no change in the law was made to other offenses in this category.

## Case Type Descriptions

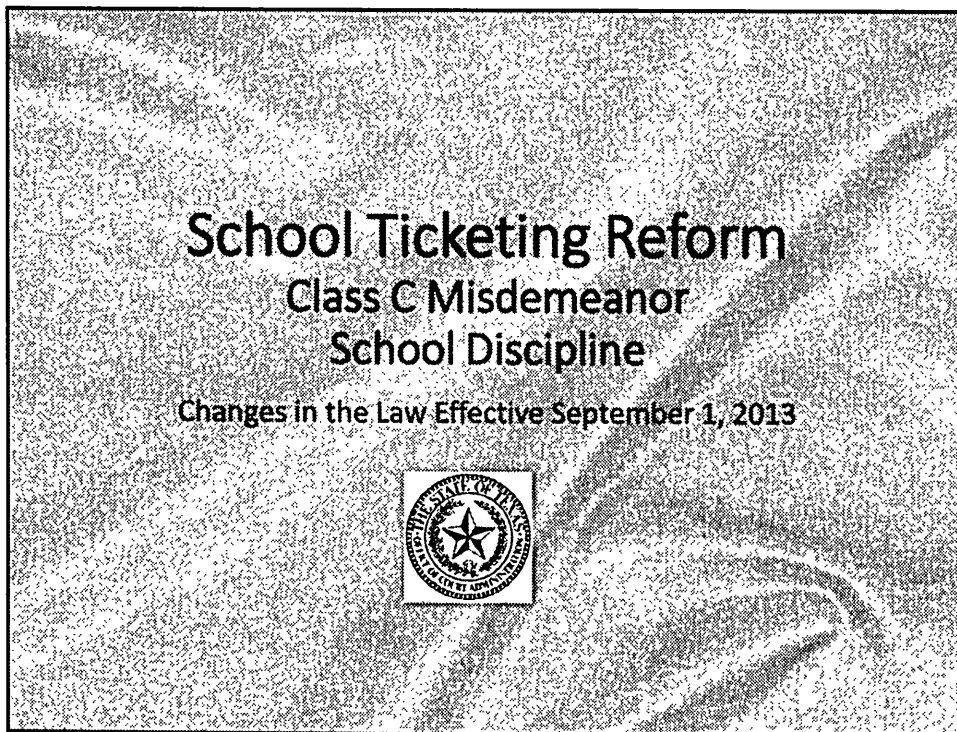
- **Education Code Violations** - These are offenses in the Texas Education Code, other than Failure to Attend School. Examples of these offenses include disruption of class or disruption of transportation.
  - Disruption of class includes emitting a noise that hinders classroom instruction, enticing or attempting to entice a student from attending a class, and preventing or attempting to prevent a student from attending a class or other school activity.
  - Disruption of transportation includes disrupting, preventing or interfering with the lawful transportation of children on a school bus or school-owned vehicle.
- **Penal Code Violations** - These are Class C misdemeanor offenses in the Penal Code. The primary example is disorderly conduct.
  - Disorderly conduct includes offenses such as using offensive language in public that breaches the peace, making offensive gestures in a public place that breaches the peace, fighting, or displaying a firearm or deadly weapon in a public place to cause an alarm.
- **Other juvenile violation filings (non-Penal Code)** - These are offenses that are non-traffic offenses punishable by fine only that aren't included elsewhere.

**Appendix E:**

**PowerPoint – School Ticketing Reform (Gold-Standard Training)**







This presentation has been prepared by the Texas Office of Court Administration, working in conjunction with a workgroup organized by the Senate Jurisprudence Committee. The presentation is intended to be delivered to individuals interested in the school ticketing reform efforts or involved in dealing with school discipline issues.

## **New Legislation of the 83<sup>rd</sup> Legislature**

- **Senate Bill 393 – West/Hinojosa/Whitmire; Lewis/S. Thompson – Effective 9/1/13**
- **Senate Bill 1114 – Whitmire/West; Herrero – Effective 9/1/13**
- **House Bill 528 – S. Turner/Giddings/Miles/Wu; Whitmire – Effective 1/1/14**

The 83<sup>rd</sup> Legislature (Regular Session) passed three bills that had an impact on school discipline.

Senate Bill 393 contained the proposals of the Texas Judicial Council, the policy-making body of the Judicial Branch.

This presentation attempts to reconcile all of the existing statutory language and revisions made by these three bills. The presentation does not distinguish among the bills after this slide.

## Purpose of School Ticketing Reform

- Reduces the school-to-prison pipeline
- Removes Law Enforcement from school discipline and allows them to focus on school safety
- Adjusts the way law enforcement and school administrators handle student misbehavior on campus to keep kids in the classroom and out of the courtroom
- Statutes impacted:
  - Code of Criminal Procedure
  - Education Code
  - Family Code
  - Penal Code

In recent years, the adjudication of children for fine-only misdemeanors has piqued the attention of critics and, in turn, the media. Laws passed in recent legislative sessions suggested that the criminalization of misbehavior by children should be subject to restraints and that the unbridled outsourcing of school discipline from the school house to the court house is bad public policy.

The *Breaking Schools' Rules* report issued by the Council of State Governments and Texas A&M Public Policy Research Institute (July 2011) studied nearly 1 million Texas students and followed the students between 7<sup>th</sup> and 12<sup>th</sup> grade. The report found serious future consequences and disproportionality in the school discipline system.

Law enforcement has frequently expressed concern with having to spend time on school discipline rather than on school safety.

The bills made changes in several statutes that affected multiple codes.

## Key Definitions

### > "Child" (Code of Criminal Procedure Art. 45.058(h))

- A person who is:
  1. At least 10 years of age and younger than 17 years of age; and
  2. Charged with or convicted of an offense that a justice or municipal court has jurisdiction of under Article 4.11 or 4.14; Code of Criminal Procedure.
- For purposes of ticketing in schools, a child must also be a student.

### > "School Offense" (Education Code Sec. 37.141)

- An offense committed by a child enrolled in a public school that is a Class C misdemeanor other than a traffic offense and that is committed on property under the control and jurisdiction of a school district.

### > "Citation" (Code of Criminal Procedure Art. 14.06(b))

- Commonly referred to as a ticket; written notice of the time and place a person must appear before a magistrate; name and address of the person charged; the offense charged; and admonishment.

### > "Complaint" (Code of Criminal Procedure Art. 45.018)

- A sworn allegation charging the accused with the commission of an offense.

This slide provides several key definitions.

**Child** – the law defines a child as an individual between 10-16 years. It does not include an individual that is 17 or 18 years of age.

**School offense** – this is a newly defined term; basically includes all Class C offenses (other than traffic offenses) committed by a 10-16 year old on school property

**Citation** – i.e. ticket

**Complaint** – a written allegation of an offense filed with the court

## Classes of Offenses (Penal Code Ch. 12)

### ➤ Misdemeanors

- Class A – fine not to exceed \$4,000 and/or jail not to exceed 1 year
- Class B – fine not to exceed \$2,000 and/or jail not to exceed 180 days
- Class C – fine not to exceed \$500 (no jail term)
  - Offenses designated a misdemeanor without specification as to category are Class C misdemeanors
  - Offenses of any fine amount, if fine only, are also Class C misdemeanors

### ➤ Felonies

- Capital – Death, Life (if committed when younger than 18 years of age), or Life without Parole (if committed when 18 years of age or older)
- 1<sup>st</sup> Degree – Life or 5-99 years; fine up to \$10,000
- 2<sup>nd</sup> Degree – 2-20 years; fine up to \$10,000
- 3<sup>rd</sup> Degree – 2-10 years; fine up to \$10,000
- State Jail – 180 days to 2 years; fine up to \$10,000
  - Offenses designated a felony without specification as to category are state jail felonies

This slide describes the different types of offenses and the punishments associated with each level of offense.

## Different Courts where Cases are Filed

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

This slide describes the different courts where cases are filed.

The key is to notice that Justice and Municipal courts generally hear Class C misdemeanors.

Juvenile courts hear delinquent conduct or conduct indicating a need for supervision.

## Delinquent Conduct & CINS vs. Criminal Offenses

### > Delinquent Conduct (Family Code Sec. 51.03)

- Conduct, other than traffic offense, that violates a penal law of this state or of the United States and is punishable by imprisonment or by confinement in jail
  - Ex. Felonies, Class A and B misdemeanors
- Conduct that violates a lawful order of a court under circumstances that would constitute contempt of that court in a JP or municipal court, or a county court for conduct punishable by a fine
- DWI, Flying While Intoxicated, Boating While Intoxicated, Intoxicated Assault, and Intoxication Manslaughter
- Driving under the influence of alcohol by a minor (third or subsequent offense)

### > Delinquent conduct is:

- Prosecuted in a juvenile court
- Not considered criminal in nature

The next few slides define the differences between delinquent conduct, conduct indicating a need for supervision and Class C misdemeanor offenses.

Notice that delinquent conduct are offenses that, if committed by an adult, would be punishable by jail or prison time. There are a few delinquent conduct offenses that apply only to children. These offenses are not considered criminal in nature and do not carry with them all of the consequences of a criminal case.



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

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

Conduct indicating a need for supervision (CINS) – acronym pronounced CHINS.

These are offenses that would not be felonies or Class A/B misdemeanors if prosecuted otherwise. Some of these offenses are referred to as status offenses, meaning that they would not be crimes if committed by an adult (i.e. runaway, failure to attend school, etc). There are several other offenses that are designated as CINS offenses by the Family Code.

CINS offenses are also not treated as criminal in nature and do not carry the same consequences as a criminal offense.

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

- **Conduct designated as a Class C Misdemeanor Offense may be filed against a child as a:**
  - Criminal offense in the justice or municipal court; OR
  - CINS offense in the juvenile courts
  
- **Class C Misdemeanor Offenses against a child:**
  - Are treated as criminal cases for all intents and purposes
  - Result in a criminal conviction on the child's record
  - Result in potential fines
  - Result in criminal court costs that may or may not be waived
  - Treated like an adult in many respects

If a child commits an offense that is designated as a Class C misdemeanor may be filed in two ways as noted.

There are several potentially serious consequences to an offense being filed as a Class C misdemeanor.

## Failure to Attend School vs. Truancy

- **Failure to Attend School (Education Code Sec. 25.094)**
  - Applies to students between 12-18 years old
  - Applies to students who fail to attend school:
    - 10 or more days or parts of days within a six-month period in the same school year; or
    - 3 or more days or parts of days within a four-week period
  - Filed in county, justice or municipal courts
  - Class C misdemeanor
  - If convicted, student has a criminal conviction on record
- **Truancy (Family Code Sec. 51.03(b)(2))**
  - Applies to students between 10-17 years old
  - Applies to students who fail to attend school:
    - 10 or more days or parts of days within a six-month period in the same school year; or
    - 3 or more days or parts of days within a four-week period
  - Filed in juvenile court
    - May be transferred to county, justice or municipal court to handle
  - CINS offense
  - If found to have engaged in the conduct, student does not have criminal conviction on record
- Excessive absences can be filed as either offense

This slide defines the difference between failure to attend school and truancy. These terms are generally used interchangeably, but there are differences.

The primary difference is where the case is filed and the consequences of the behavior.

Failure to attend school is a Class C misdemeanor; truancy is a CINS offense.

## Disorderly Conduct

➤ Under Penal Code Sec. 42.01(a)(1), (2), (3), (5) and (6) are applicable to all students on a school campus who are 12 years of age and older (instead of above 6<sup>th</sup> grade):

- 42.01(a)(1) - "using abusive, indecent, profane, or vulgar language in a public place..."
- 42.01(a)(2) - "makes an offensive gesture of display in a public place, and the gesture tends to incite an immediate breach of the peace"
- 42.01(a)(3) - "creates, by chemical means, a noxious unreasonable odor in a public place"
- 42.01(a)(5) - "makes unreasonable noise in a public place..."
- 42.01(a)(6) - "fights with another in a public place"
  - Disorderly conduct such as abuse or threats, lewd exposure and display or discharge of a firearm, remain offenses that can be charged to a student of any age

There are multiple behaviors that can be charged as disorderly conduct. Five of those ways are limited to students who are 12 years of age and older. These used to be limited to students above 6<sup>th</sup> grade.

## No Longer Offenses For Certain Children

- The following offenses are no longer applicable to primary or secondary school students, if:
  - the offense is committed on the school campus where they are enrolled:
    - Disruption of Class (Education Code 37.124)
  - The offense is committed on a vehicle owned or operated by a county or independent school district:
    - Disruption of Transportation (Education Code 37.126)

There are two behaviors that are no longer offenses for primary or secondary students.

1. Disruption of class is no longer an offense if the individual committing the offense is enrolled on the school campus where the offense is committed.
2. Disruption of transportation is no longer an offense if the student commits the offense on a vehicle operated by a county or ISD.

## What's New for Law Enforcement?

### > PERMITTED UNDER NEW LAWS

- Ticketing for traffic offenses are allowed
- Primarily focus on non-traffic Class C misdemeanors
  - Class B offenses and above are not impacted.
- Still have the ability to "File Charges" for Class C offenses
  - However, charges are filed through a COMPLAINT instead of a CITATION or TICKET if the student is under 17.
  - Tickets for students 17 and above are still permitted for most offenses.

### > NOT PERMITTED UNDER NEW LAWS

- Issuing a citation to a child for a non-traffic, Class C misdemeanor committed by a child/student on school property
- Criminally charging a student for disruption of class on the student's own campus (even if 17 or older)
- Criminally charging a student for disruption of transportation (even if 17 or older)
- Charging a child under 12 years of age with certain offenses of disorderly conduct
- Issuing an arrest warrant for a student based on an Education Code Class C misdemeanor committed prior to his or her 17<sup>th</sup> Birthday

Several things change for law enforcement under the new laws.

#### Things Permitted:

1. Ticketing for traffic offenses do not change.
2. Procedures related to Class A/B misdemeanors and felonies does not change.
3. Ticketing (issuing a citation) for Class C misdemeanors (non-traffic) is no longer allowed for school offenses, but a student may still be charged through a complaint.
4. Ticketing for 17 and 18 year olds is still permitted. (except for disruption of class and disruption of transportation in certain instances – see previous slide)

#### Things Not Permitted:

1. Ticketing for non-traffic, Class C misdemeanors committed by a student under 17 on school property is no longer allowed.
2. Charging a student (even 17 and above) with disruption of class on their own campus
3. Charging a student (even 17 and above) with disruption of transportation on any vehicle owned or operated by a county or ISD
4. Issuing an arrest warrant for Education Code Class C misdemeanor committed prior to his or her 17<sup>th</sup> birthday

## The Complaint Process

➤ Education Code Sec. 37.146 - Requirements of a complaint for a Class C offense committed by a child on school property:

\*\*\*Remember the complaint replaced the use of a ticket or citation for these offenses\*\*\*

1. Must be in writing;
2. Include the offense report;
3. A statement by the witness to the conduct;
4. A statement by the victim, if any;
5. It must be sworn to by a person who has personal knowledge of the underlying facts giving rise to probable cause to believe that an offense has been committed; and
6. A statement by a school employee stating:
  1. Whether the child is eligible to receive special education services; and
  2. The graduated sanctions imposed on the student prior to the filing of the complaint, IF THE SCHOOL DISTRICT HAS ADOPTED A GRADUATED SANCTION SYSTEM.
7. The complaint must comply with requirements for a criminal complaint found in the Code of Criminal Procedure Art. 45.019.

➤ Items 2, 3 and 4 above only apply if law enforcement files the complaint (Code of Criminal Procedure 45.058)

➤ A complaint should allege that an offense has been committed.

This slide lays out the requirements of a complaint for a Class C misdemeanor committed by a child under 17 on school property.

Items 2-4 only apply if the complaint is being filed by a law enforcement officer.

## Additional Factors in the Complaint Process

- New laws give prosecutors discretion to allow for additional rules on how a complaint should be filed, could vary by jurisdiction. Education Code Sec. 37.147
- Students who may receive a complaint for a Class C Misdemeanor (non traffic offense) may also be referred to a first-offender's program prior to the filing of the complaint with a criminal or juvenile court, if such a program exists. Family Code Sec. 52.031
- The alleged offense also may be disposed of through other non-court options provided in the Family Code Sec. 52.03:
  - Example: Conference with Parents about alleged offense

Prosecutors may require other items – check with your local prosecutor for this information.

First time offender programs or informal disposition are other options, other than a complaint.



## Confidentiality of Criminal Records of Children

- Criminal records of children charged with Class C misdemeanors are confidential from the time an offense is:
  - Charged
  - Convicted
  - Found guilty
  - Dismissed; or
  - Upon deferred disposition
- Applies to all records and files, including those held by law enforcement, and information stored by electronic means or otherwise
- May not be disclosed to the public
  - Open to inspection by judge or court staff, criminal justice agency for a criminal justice purpose, DPS, an attorney for a party to the proceeding, the child defendant, or the defendant's parent, guardian, or managing conservator
- Code of Criminal Procedure Art. 44.2811, 45.0217 and Family Code Sec. 58.00711

Records of children charged with Class C misdemeanor are restricted from being released to the public under the new law.

There are certain individuals that are entitled to view the records under the law and are listed here.

This applies to all records that a school, law enforcement, prosecutor or court may have.

## Conflict of Laws

➤ Education Code Sec. 37.142

- To the extent of any conflict with other laws, subchapter E-1 (New Complaint Process for Class C misdemeanors for Children on School Property) controls over any other law applied to a school offense alleged to have been committed by a child.

Education Code Section 37.142 provides a catch-all statement that, if there is a conflict of law, the new complaint process controls. This should be considered since there are some differences in other provisions of law regarding complaints.



## Frequent Questions

The next section attempts to answer some of the most frequently asked questions.

## What are Graduated Sanctions?

- A tool that may be used by school districts that commission police officers under Education Code Sec. 37.081
  - Graduated Sanctions are permissive, not required
- If a school district adopts a graduated sanction system they would exhaust their graduated sanctions prior to filing a complaint against a child/student
- Graduated Sanction examples in Education Code Sec. 37.144:
  - A warning letter to be issued to the child and the child's parent or guardian that specifically states the child's alleged school offense and explains the consequences if the child engages in additional misconduct
  - Performance of school-based community service by the child
  - Referral of the child to counseling, community-based services, or other in-school or out-of-school services aimed at addressing the child's behavioral problems

Graduated sanctions have been employed by several school districts to address school discipline effectively.

Graduated sanctions are not required but may be utilized, specifically by a school that commissions its own peace officers.

If a school has a graduated sanctions model in place, the sanctions must be attempted prior to filing a complaint against a child.

Several examples of graduated sanctions are in the statute and referenced in the slide.

## Must I go to the Court to File the Complaint?

### ➤ A complaint may be sworn before:

- Any officer authorized to administer oaths, including:
  - Judge, retired judge;
  - Notary public; or
  - A Peace Officer
- Municipal judge.
- Clerk of the court or deputy clerk;
- City secretary; or
- City attorney or deputy city attorney.

Some law enforcement and other individuals have heard that they must go to the court to file a complaint. The statute does not require this.

A complaint may be sworn before any individual authorized to administer oaths. Several are listed here.

## Can Prosecutors Ignore Complaints that are Filed?

- Have prosecutorial discretion on pursuing or filing a complaint, just as in any other offense.
- Education Code Sec. 37.147 allows prosecutors to adopt rules in their jurisdiction pertaining to the filing of a complaint.

Some law enforcement and school officials have heard that prosecutors can ignore complaints for school discipline.

Prosecutors in Texas have significant discretion to decide when probable cause exists to file a case and whether to pursue charges in court.

The new law allows prosecutors to adopt rules to require for complaints filed in their jurisdiction. Check with your local prosecutor to determine if there are rules in place in your jurisdiction.

## Issues of Capacity that May Be Raised for Fine-Only Offenses or Violation of Ordinance

- A child between the ages of 10 and 15 is presumed to be incapable of committing a fine-only misdemeanor (other than juvenile curfew order) (Penal Code 8.07)
  - Is not a bar to prosecution or filing of a charge
  - The prosecutor must overcome the presumption
  - Prosecutor must prove child had sufficient capacity to understand conduct
  - Doesn't apply to curfew violations
- Child with mental illness or developmental disability who (1) lacks capacity to understand proceedings, unable to assist in defense, or is unfit to proceed OR (2) lacks sufficient capacity to appreciate the wrongfulness of the child's own conduct or conform to the law (Penal Code 8.08)
  - Can be raised by court, prosecutor, defense, person standing in parental relation to defendant
  - Court may dismiss complaint (after notice to state) if probable cause of this
  - May be appealed
  - Subsequent complaints against that child shall be referred to juvenile court

The new law enacted some provisions regarding a child's capacity to commit offenses.

1. A child between 10-15 is presumed incapable of committing a fine-only misdemeanor (other than juvenile curfew violation)
  - This does not prohibit the prosecution of a child between 10-15
  - This does require the prosecutor to rebut the presumption
  - To rebut the presumption, the prosecutor must prove the child had sufficient capacity to understand the conduct
2. A child with mental illness or developmental disability is presumed incapable of committing an offense.
  - This can be raised by the court, prosecutor, defense, or person standing in parental relation to the defendant
  - The court can dismiss the complaint in this instance
  - The decision is appealable
  - If the court dismisses a complaint under this section, subsequent complaints are to be referred to the juvenile court for action

## Can Courts Ignore Complaints that are Filed?

- Courts cannot ignore complaints that are filed before them
- Courts must dismiss failure to attend school cases if the complaint is not filed in compliance with the filing requirements of Education Code Sec. 25.0915(b)
  - Must be accompanied by a statement from the student's school stating that:
    - School applied truancy prevention measures that must be adopted; and
    - Truancy prevention measures failed to meaningfully address the student's school attendance
  - Must specify whether the student is eligible for or receives special education services

Some law enforcement and school officials have asked whether courts can ignore complaints.

Courts cannot ignore complaints that are filed before them.

The law requires judges to dismiss a failure to attend school complaint that is not filed accompanied by a statement from the student's school stating the factors listed and whether the student is eligible for or receives special education services.



## **Can 17 and 18-Year-Old Students be Ticketed?**

- **17 and 18-year-old students are not considered to be children under the Code of Criminal Procedure Art. 45.058(h) and thus can still receive citations/tickets, regardless of whether they occur on school campuses**
- **17 and 18-year-olds students may not receive citations for disruption of class (if committed on their own campus) or disruption of transportation (if committed on a vehicle owned or operated by a county or independent school district) - Education Code Sec. 37.124 and 37.126.**

This clarifies that 17 and 18 year olds are not children and that the restrictions on ticketing for school offenses does not apply.

That being said, 17 and 18 year olds may not receive citations for disruption of class (if committed on the student's own campus) or disruption of transportation (on a vehicle owned or operated by a county or ISD).

## What Options are Available to School Administrators in regards to Fighting?

- Internal School Discipline
- Graduated Sanctions
- Informal Diversions
- Juvenile Case Manager interventions
- Potential charging offenses for fighting, including mutual combat (not an exhaustive list):
  - Disorderly Conduct – Class C (Penal Code 42.01 (a)(6))
  - Assault threat or offensive contact – Class C (Penal Code 22.01(a)(2) or (3))
  - Assault with bodily injury – Class A (Penal Code 22.01(a)(1))
  - Aggravated Assault (with serious bodily injury or use of a deadly weapon) – 2<sup>nd</sup> degree felony (Penal Code 22.02(a)(1) and (2))
- A child/student under 12 years of age can't be charged with certain offenses of disorderly conduct

Several law enforcement and school officials have asked how to address fighting on school campuses under the new law. This slide provides various options for how to address fighting on school campuses.

1. Schools might be able to address fighting with internal school discipline.
2. Schools might utilize graduated sanctions (if they exist).
3. School can utilize information diversions.
4. School can utilize the intervention services of a juvenile case manager (if one is available)
5. Charging under various criminal, CINS or delinquent conduct offenses

## What Options are Available to School Administrators Related to Possession?

### ➤ Drugs (not an exhaustive list):

- Possession of Substance in Penalty Group 1, 1-A, 2 and 2A (Health & Safety Code Sec. 481.115, 1151, 116,1161) – Felony depending on amount.
- Possession of Substance in Penalty Group 3 (Health & Safety Code Sec. 481.117) – Class A Misdemeanor or felony depending on amount.
- Possession of Substance in Penalty Group 4 (Health & Safety Code Sec. 481,118) – Class B misdemeanor or felony depending on amount.
- Possession of Miscellaneous Substances (Health & Safety Code Sec. 481.119) – Class A or B misdemeanor.
- Possession of Marihuana (Health & Safety Code Sec. 481.121) – Class A or B Felony depending on amount.

➤ Possession of many of these drugs within a drug-free zone enhances the punishment by one level under Health & Safety Code Sec. 481.134

This slide provides information on how a law enforcement officer or school official can charge a student who possesses drugs. The list is not exhaustive.

## What Options are Available to School Administrators Related to Possession?

### ➤ Alcohol (not an exhaustive list)

- Possession of alcohol by minor – (Alcohol Beverage Code Sec. 106.05) – Class C misdemeanor (17 years old and up can be punished with fine)

### ➤ Tobacco (not an exhaustive list)

- Possession, purchase, consumption, or receipt of cigarettes or tobacco products by minors prohibited (Health & Safety Code Sec. 161.252) – Punishable by fine not to exceed \$250

This slide provides options for how a law enforcement officer or school official can charge a student who possesses alcohol or tobacco. This is not an exhaustive list.

## What Options are Available to School Administrators to Address "Gang Related" Activities?

- Can still file a Class C misdemeanor complaint for this type of activity under Education Code Sec. 37.145.
  - Disorderly Conduct - Penal Code Sec. 42.01
  
- Can take child into custody under Family Code Sec. 52.01 – allows child to be taken into custody if there is probable cause to believe that the child has engaged in:
  1. Conduct that violates a penal law of this state or penal ordinance of any political subdivision of this state;
  2. Delinquent conduct or conduct indicating a need for supervision
  
- If student is 17 or 18 years of age, can charge and arrest as an adult
  
- Gang related offenses that are not Class C misdemeanors (not exhaustive)
  - Exhibition of firearms – 3<sup>rd</sup> degree felony (Education Code Sec. 37.125)
  - Disruptive Activities – Class B misdemeanor (Education Code 37.123)

This slide provide law enforcement officers and school officials with options for how to charge students who commit gang-related activities.

**Appendix F:**  
**House Bill 528, 83rd Legislative Session**



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AN ACT

relating to the restriction of access to the records and files of a child charged with or convicted of certain fine-only misdemeanor offenses.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Article 44.2811, Code of Criminal Procedure, is amended to read as follows:

Art. 44.2811. RECORDS RELATING TO CERTAIN [~~CHILDREN CONVICTED OF~~] FINE-ONLY MISDEMEANORS COMMITTED BY A CHILD. [~~All records and files and information stored by electronic means or otherwise, from which a record or file could be generated, relating to a child who is convicted of and has satisfied the judgment for a fine-only misdemeanor offense other than a traffic offense are confidential and may not be disclosed to the public except as provided under Article 45.0217(b).~~] All records and files and information stored by electronic means or otherwise, from which a record or file could be generated, relating to a criminal case [~~child whose conviction~~] for a fine-only misdemeanor, other than a traffic offense, that is committed by a child and that is appealed [~~affirmed~~] are confidential [~~upon satisfaction of the judgment~~] and may not be disclosed to the public except as provided under Article 45.0217(b).

SECTION 2. The heading to Article 45.0217, Code of Criminal Procedure, is amended to read as follows:



1           Art. 45.0217. CONFIDENTIAL RECORDS RELATED TO CHARGES  
2 AGAINST OR THE CONVICTION OF A CHILD.

3           SECTION 3. Article 45.0217(a), Code of Criminal Procedure,  
4 is amended to read as follows:

5           (a) Except as provided by Article 15.27 and Subsection (b),  
6 all records and files, including those held by law enforcement, and  
7 information stored by electronic means or otherwise, from which a  
8 record or file could be generated, relating to a child who is  
9 charged with, is convicted of, is found not guilty of, had a charge  
10 dismissed for, or is granted deferred disposition [~~and has~~  
11 ~~satisfied the judgment~~] for a fine-only misdemeanor offense other  
12 than a traffic offense are confidential and may not be disclosed to  
13 the public.

14           SECTION 4. Section 58.00711, Family Code, is amended to  
15 read as follows:

16           Sec. 58.00711. RECORDS RELATING TO CHILDREN CHARGED WITH OR  
17 CONVICTED OF FINE-ONLY MISDEMEANORS. Except as provided by Article  
18 45.0217(b), Code of Criminal Procedure, all records and files and  
19 information stored by electronic means or otherwise, from which a  
20 record or file could be generated, relating to a child who is  
21 charged with, is convicted of, is found not guilty of, had a charge  
22 dismissed for, or is granted deferred disposition [~~and has~~  
23 ~~satisfied the judgment~~] for a fine-only misdemeanor offense other  
24 than a traffic offense are confidential and may not be disclosed to  
25 the public.

26           SECTION 5. Articles 44.2811 and 45.0217, Code of Criminal  
27 Procedure, and Section 58.00711, Family Code, as amended by this

H.B. No. 528

1 Act, apply to an offense committed before, on, or after the  
2 effective date of this Act.

3 SECTION 6. This Act takes effect January 1, 2014.

H.B. No. 528

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Speaker of the House

I certify that H.B. No. 528 was passed by the House on April 23, 2013, by the following vote: Yeas 146, Nays 0, 2 present, not voting.

\_\_\_\_\_  
Chief Clerk of the House

I certify that H.B. No. 528 was passed by the Senate on May 22, 2013, by the following vote: Yeas 31, Nays 0.

\_\_\_\_\_  
Secretary of the Senate

APPROVED: \_\_\_\_\_  
Date

\_\_\_\_\_  
Governor

**Appendix G:**

**Texas Legislative Council – Graduated Sanctions Survey**





TEXAS LEGISLATIVE COUNCIL

P.O. Box 12128, Capitol Station  
Austin, Texas 78711-2128  
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DAVID DEWHURST  
Lieutenant Governor  
Joint Chair

JEFF ARCHER  
Acting Executive Director

JOE STRAUS  
Speaker of the House  
Joint Chair

MEMORANDUM

TO: Julie Frank  
Senate Committee on Jurisprudence

FROM: Lisa Kalakanis *Pamela Lam-Yip*  
Social Policy Statistician

DATE: September 11, 2014

SUBJECT: School District Survey Results

**Introduction**

Senate Bill 393, passed in 2013, allows school districts to implement a series of graduated sanctions to discipline children who engage in a specific set of fine-only misdemeanors committed under the Penal Code. The bill also specifies sanctions that may be imposed in these instances. This report summarizes the results of a survey of school districts designed to determine (1) how many school districts have implemented the sanctions, (2) which components of the sanctions mentioned in the bill are being used, (3) what other disciplinary methods are being used, and (4) whether districts plan to implement the sanctions in the future.

In this report, the **Summary of Findings** presents an overview of results and a discussion of general patterns that are evident across the survey. The **Discussion of Survey Results** presents detailed results from each of the four survey questions. Survey methodology is described in Appendix A. The answers to the two open-ended survey questions are presented separately in Appendixes B and C. The survey instrument is reproduced in Appendix D.

**Summary of Findings**

- *Approximately 30 percent of districts have implemented the graduated sanctions, while 55 percent have not.*
- *Warning letters, referral to counseling, and/or behavior contracts are being used by over half of the districts that have implemented the sanctions.*

- *Districts not using the graduated sanctions are most likely to use in-school suspensions, disciplinary alternative education programs (DAEP), out-of-school suspensions, and detention to address the behaviors specified in S.B. 393. Approximately one-third of responding districts mentioned following their district or other code of conduct to address these issues.*
- *Approximately one-fifth of districts plan to implement the sanctions in the future. Nearly half of responding districts are unsure about their plans to implement the sanctions.*

### Discussion of Survey Results

**[Q1]. As of August 1, 2014, has your school district implemented the graduated sanctions described in Section 12 of S.B. 393 (83R)?**

Approximately 30 percent of responding districts report implementing the graduated sanctions described in S.B. 393, while approximately 55 percent have not. Results are shown in Table 1.

**Table 1. Percentage of school districts that have implemented the graduated sanctions**

	Count	Percent
Yes	152	29.5%
No	281	54.5%
I don't know	83	16.1%
<b>Total</b>	<b>516</b>	<b>100.0%</b>

**[Q2]. Which of the following components of the graduated sanctions described in S.B. 393 has your district implemented? (check all that apply)**

Warning letters and referral to counseling were the most commonly used components, with nearly two-thirds of responding districts using them. Behavior contracts are also commonly used (57 percent of responding districts). Community service is used by approximately one-third of responding districts. Results are shown in Table 2.

**Table 2. Components of the graduated sanctions currently being utilized**

Component	Count	Percent*
A warning letter issued to the child and his/her parent or guardian	96	63.2%
A behavior contract signed by the child, his/her parent or guardian, and a school employee	86	56.6%
School-based community service	49	32.2%
Referral to counseling or other services	101	66.4%
Other	22	14.5%

\* Percent of districts that have implemented the graduated sanctions.

Among the "Other" listed components of the graduated sanctions, the most common ones were parent conferences (23 percent) and in-school suspensions (23 percent). Results are shown in Table 3.

**Table 3. Other components being utilized as part of the graduated sanctions**

<b>Category</b>	<b>Count</b>	<b>Percent*</b>
Conference with parent	5	22.7%
In-school suspension	5	22.7%
Detention	4	18.2%
Code of conduct	4	18.2%
Miscellaneous answer	3	13.6%
Out-of-school suspension	3	13.6%
Discipline/staff committee	3	13.6%
Program not needed	2	9.1%
Law enforcement involvement	2	9.1%
Disciplinary alternative educational program (DAEP)	2	9.1%
Positive Behavior Intervention and Support (PBIS)	2	9.1%
Mediation	2	9.1%
Restorative discipline	1	4.5%
Administrator conference	1	4.5%
Expulsion	1	4.5%

\*Percent of districts that use "Other" components in their graduated sanction process.

**[Q3]. Does your school district plan to implement the graduated sanctions allowed by S.B. 393 in the future?**

Approximately 20 percent of districts indicated that the sanctions will be implemented in the future; nearly half of responding districts were uncertain. Results are shown in Table 4.

**Table 4. Districts planning to implement graduated sanctions in the future**

	<b>Count</b>	<b>Percent</b>
Yes	71	19.5%
No	105	28.8%
I don't know	167	45.9%
No response*	21	5.8%
<b>Total</b>	<b>364</b>	<b>100.0%</b>

\*Some respondents exited the survey prior to answering this question.

**[Q4]. If your district has not implemented the graduated sanctions described in Section 12 of Senate Bill 393, what disciplinary methods does your district use with children who commit the offenses described earlier (disorderly conduct, using inappropriate language, making offensive gestures, threatening another person, or making unreasonable noise)?**



The most common disciplinary method mentioned by districts was in-school suspension (50 percent), followed by disciplinary alternative education programs (DAEP) (28 percent), out-of-school suspension (25 percent), and detention (24 percent). One-third of respondents mentioned using their district or other similar code of conduct to address these offenses. Results are shown in Table 5.

**Table 5. Other disciplinary methods employed by districts**

<b>Category</b>	<b>Count</b>	<b>Percent*</b>
<b>In-school suspension</b>	150	50.3%
<b>Code of conduct</b>	103	34.6%
<b>Disciplinary alternative education program (DAEP)</b>	82	27.5%
<b>Out-of-school suspension</b>	75	25.2%
<b>Detention</b>	72	24.2%
<b>Parent conference</b>	41	13.8%
<b>Corporal punishment</b>	31	10.4%
<b>Counseling</b>	17	5.7%
<b>Referral to principal/administrator</b>	17	5.7%
<b>Miscellaneous answer</b>	17	5.7%
<b>Expulsion/school removal</b>	15	5.0%
<b>Law enforcement involvement</b>	15	5.0%
<b>Warning</b>	13	4.4%
<b>Behavior contract</b>	11	3.7%
<b>Loss of privileges</b>	11	3.7%
<b>Saturday school</b>	10	3.4%
<b>Community service</b>	10	3.4%
<b>Redirection</b>	7	2.3%
<b>Time out</b>	7	2.3%
<b>Program is not applicable/necessary</b>	7	2.3%
<b>Don't know</b>	5	1.7%
<b>Other discipline program</b>	5	1.7%

\*Percent of districts providing a response. Not all districts responding "No" to Question 1 responded, while some districts responding "I don't know" to Question 1 provided feedback.

#### **Limitations of the study**

All Texas school districts were invited to participate in the survey, and the response rate was large enough to produce statistically valid results. However, as with all surveys, the individuals who chose to complete the survey may have different characteristics than those who chose not to complete the survey. Therefore, these results might be different had every district responded.

### Appendix A. Methodology

The survey was conducted online between August 1, 2014, and August 17, 2014. Each school district in the state was invited to participate in the survey. Based on commonly accepted survey standards, the survey response rates achieved in this study were sufficient to provide statistically valid results,<sup>1,2</sup> with 95 percent confidence and a margin of error of 3.3 percent. Less than two percent of districts opted out of participation. See Table A-1.

**Table A-1. Summary of Survey Responses**

<b>Number in Initial E-mail List</b>	<b>Number Undeliverable</b>	<b>Number Responding</b>	<b>Response Rate</b>	<b>Number Refusing to Participate</b>	<b>Refusal Rate</b>	<b>Margin of Error</b>
1,216	0	516	42.4%	18	1.5%	3.3%



**Appendix H:**

**Office of Court Administration – E-Filing for Courts**



The eFiling program was started in 2003 and now covers 51 counties (more than 80% of the State's population) and processes about 45,000 eFilings monthly.

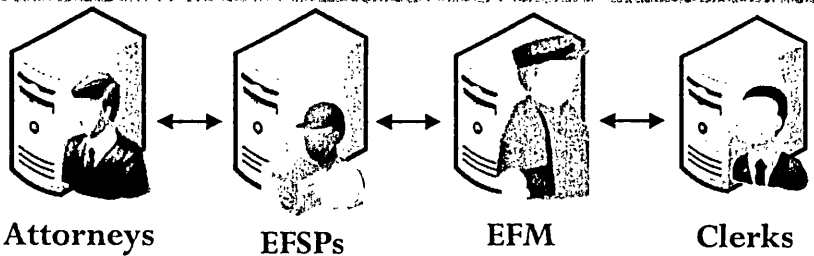
eFiling streamlines court operations by eliminating paper shuffling as well as reducing physical storage costs. eFiling improves attorney efficiency.

eFiling will become mandatory for attorneys in civil cases filed at the appellate courts, district courts, statutory county courts, statutory probate courts, and county courts beginning in January 2014 (pursuant to a schedule).

In 2012, OCA signed an agreement with Tyler Technologies to provide a new electronic filing

manager. This reduces the EFM fee from \$10.50/document to \$6.00/transaction (and to \$3.50/transaction in January 2014), thereby reducing the overall cost of eFiling.

This also provides another electronic service provider choice at \$1 per transaction.



(Current)	\$13.50-\$31.50	=	\$3-\$16	+	\$10.50	+	\$0-\$5
(January 2014)	\$4.50-\$24.50	=	\$1-\$16	+	\$3.50	+	\$0-\$5

**Reduces the retail cost of eFiling by up to 86%.**

The Texas eFiling model is built upon national eFiling standards.

Filers choose an electronic filing service provider (EFSP) with differing levels of costs and service.

Documents are sent to the electronic filing manager

(EFM) and then to the respective clerk's office. The EFM fee includes eService at no additional charge.

The clerk can choose to integrate and have the eFiled document flow automatically to their case management system. Clerks

are currently allowed to charge a small fee to recoup integration costs.

This model provides choice by allowing the filer choose their EFSP and gives clerk's local control over their choice of case management systems.

The new eFiling system, Without legislation could continue to hamper TexFile, will be available for modifying the existing the use of this effective use beginning in Summer structure, implementation technology. 2013, with a full and ongoing operation implementation expected by costs will be placed Fall 2013. directly on litigants and

OFFICE OF COURT ADMINISTRATION

### **"Toll Road" Model (Current Model)**

Each eFiling document is charged an additional fee (in additional to the court cost) to recover the cost of the eFiling service. Current overall cost is between \$13.50-\$31.50 per document and will be reduced to \$4.50-\$24.50 per transaction in January 2014.

*PRO:* No direct cost to the state. Cost is recovered through usage.

*CON:* Adoption deterred by extra cost to the filer (beyond cost of filing paper).

*CON:* Vendor assumes a large amount of risk to recover costs at some point in the future, raising the cost of eFiling.

### **Statutory Court Technology Fee (per case)**

Each civil, criminal and family case filed is charged a small (\$5-\$15) court technology fee. This fee could be appropriated to OCA to support technology projects for the Judicial Branch, including the eFiling project.

*PRO:* Significantly reduces cost of eFiling in current system

*PRO:* Increases the adoption rate by equalizing the cost of eFiling vs. paper cost.

*PRO:* Allows Legislature to set fee and direct appropriation of revenue.

*PRO:* No direct cost to the state. Cost is paid by those using the judicial system.

*CON:* Restructures a fee to an already complex court fee matrix.

### **Direct Appropriation**

The Legislature could provide OCA with an appropriation to pay for the implementation and ongoing operations of the selected vendor's eFiling system.

*PRO:* No additional cost to parties to eFile.

*PRO:* Increases the adoption rate by equalizing the cost of eFiling vs. paper.

*PRO:* Does not add to an already complex court fee matrix.

*CON:* Requires an ongoing biennial appropriation from General Revenue.

**Appendix I:**

**Texas Judicial Council Resolution – Adequate Funding of the  
Court eFiling System**





**STATE OF TEXAS**

**RESOLUTION**

**of the**

**TEXAS JUDICIAL COUNCIL**

**Adequate Funding of the Court eFiling System**

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code; and

WHEREAS, the Council is charged with improving the administration of justice; and

WHEREAS, court electronic filing ("eFiling") began in Texas in 2003 through the statewide portal; and

WHEREAS, 28 justice courts in 12 counties now provide for eFiling in their jurisdictions; and

WHEREAS, 80 district and county clerks in 52 counties covering over 80% of the state's population now provide for eFiling in their jurisdictions; and

WHEREAS, 9 of the 14 intermediate courts of appeal now provide for eFiling in their jurisdictions; and

WHEREAS, the Supreme Court of Texas has mandated that attorneys utilize eFiling in their court; and

WHEREAS, the existing eFiling model requires attorneys and litigants to pay a user fee on each submitted document between \$8-\$18 as set by the Texas Department of Information Resources and the vendors; and

WHEREAS, the average civil case has ten documents filed, resulting in an average eFiling cost between \$80-\$180 per civil case; and

WHEREAS, the full implementation of eFiling in the courts will result in greater efficiency for attorneys, litigants, clerks and the courts; and

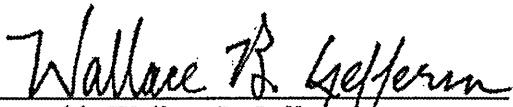
WHEREAS, a newly procured eFiling system by the Judiciary could provide for an eFiling system that does not require a per document or per transaction user fee; and

WHEREAS, a technology filing fee and court cost set by the Legislature and appropriated to the Office of Court Administration could provide for eFiling at no additional per transaction charge to litigants; and

WHEREAS, the expanded use of eFiling would promote the efficient administration of justice in Texas;

NOW THEREFORE, BE IT RESOLVED that the Texas Judicial Council recommends that the Texas Legislature:

- (1) establish a court technology fee in civil cases and a criminal court cost at the justice, county, district and appellate courts to cover the cost of eFiling; and
- (2) appropriate the revenue from the fee and court cost to the Office of Court Administration for the purposes of funding eFiling in Texas and related technology implementation costs.

  
Wallace B. Jefferson  
Honorable Wallace B. Jefferson  
Chair, Texas Judicial Council

Contact: David Slayton  
Executive Director, Texas Judicial Council  
512-463-1625

**Appendix J:**

**Texas Supreme Court Misc. Docket No. 12-9208**



# IN THE SUPREME COURT OF TEXAS

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Misc. Docket No. 12- 9208

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## ORDER REQUIRING ELECTRONIC FILING IN CERTAIN COURTS

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This order mandates electronic filing (“e-filing”) in civil cases, including family and probate cases, by attorneys in appellate courts, district courts, statutory county courts, constitutional county courts, and statutory probate courts pursuant to a detailed implementation schedule.

Disputes in court require the exchange of information. The primary medium of that exchange has been paper. Texas courts have struggled for over a century to process, manage, and store court documents. With the information age, it is now possible to receive and store those documents digitally. Texas courts first experimented with this new medium in the 1990s when two district courts urged lawyers to file documents electronically. The benefits were immediate. With electronic filing, storage expenses decreased dramatically. Clerks that formerly spent time sorting and file-stamping documents could be assigned to more productive activities. Documents were no longer damaged or lost. The public, lawyers, and judges could instantly access vital pleadings, accelerating the progress of litigation. These efficiencies prompted the judiciary to initiate a pilot project in January 2003 to test and refine the e-filing model. That model was instituted statewide in 2004 through the state’s Texas.gov<sup>1</sup> internet portal. Since that time, a growing number of trial and appellate courts have implemented e-filing.

Currently, the following courts in Texas accept e-filing:

- Supreme Court of Texas (mandatory);
- 9 of the 14 courts of appeals (4 mandatory);

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<sup>1</sup> The portal was originally named TexasOnline.

- 236 district courts and 81 county courts covering 51 counties and more than 80% of the state's population (mandatory in a few district courts);
- 7 statutory probate courts covering 7 counties; and
- 28 justice courts covering 12 counties.

While most of these courts have accepted e-filings through the Texas.gov portal, several courts have adopted systems that diverge from the Supreme Court's e-filing exemplar. As a result, Texas litigants and attorneys confront several different systems and must master the requirements for each. Without a centralized and uniform portal for accessing court case information, the advantages of filing electronically are greatly diminished.

The federal courts, including the bankruptcy courts, district courts and courts of appeals, offer e-filing through a unified, nationwide system, and most of those courts require lawyers to file electronically. Twenty-three states mandate e-filing to varying degrees. These courts have reported dramatic improvements in efficiency and decreased costs.

This Court convened a hearing on December 8, 2011, to assess the benefits and drawbacks of creating a uniform statewide e-filing system. The Court received testimony from the Chair of the Judicial Committee on Information Technology, a district judge, four district clerks, a representative of the current e-filing vendor, a representative of an e-filing service provider and a law firm technology officer. The Court also received numerous written comments. Almost all of the individuals who testified at that hearing and submitted written comments supported mandatory e-filing and implementation of a uniform statewide system.

The testimony revealed a number of benefits to e-filing in Texas courts, including quicker access to e-filed documents; increased efficiency for attorneys and litigants; reduced printing and mailing costs for attorneys and litigants; reduced storage costs for clerks; greater security of court documents in the event of disaster; more efficient use of court staff, as employees typically assigned to accept documents at the clerk's office counter can be retrained for higher skilled positions; and increased transparency and access to the courts. Information can generally be found more quickly in an e-filed document because of the capacity to search for words and phrases. Documents can also be easily cross-referenced and hyperlinks can facilitate direct citation to other filings, legal databases, and exhibits. All of this enhances the quality of legal advocacy and the quantity of information the tribunal possesses when deciding the case.

The testimony also revealed a number of concerns, including the high cost of e-filing associated with the "toll-road" structure of the current system, which requires litigants to pay a fee each time a document is e-filed; the current system's inability to allow certain government<sup>2</sup> and indigent filers to e-file documents at no cost; the decentralized nature of the current system

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<sup>2</sup> Government filers referenced here are those which are not statutorily required to pay filing fees.

and accompanying local e-filing rules; and the inability of the current technology to handle an increase in filings.

While considering the information received at the hearing, the Court learned that the vendor who managed the Texas.gov system would not renew its contract. Accordingly, unless appropriate measures were taken, e-filing would expire in Texas in August 2012.<sup>3</sup> The Court, the Judicial Committee on Information Technology (“JCIT”), the Department of Information Resources, and others determined that it would be prudent to seek a new vendor. The Office of Court Administration (“OCA”) procured and recently signed a contract with a new vendor to provide e-filing to all Texas courts through a system called “TexFile.” The TexFile system follows the “toll road” model, but drastically reduces<sup>4</sup> the cost of e-filing and electronic service. To further reduce costs, OCA and the Court continue to pursue alternative funding models for the new system. In support of these efforts, the Texas Judicial Council has requested that the Texas Legislature lower e-filing fees by adopting a one-time, per-case e-filing fee to replace the “toll-road” model’s per-document or per-transaction fee.<sup>5</sup> TexFile will also permit indigent and certain government filers to submit documents at no cost. Finally, the new system will be scalable to handle as many filings as necessary and will allow for better integration with existing case management software in the courts.

This Court relies on JCIT to develop policy recommendations for the Judiciary on matters relating to technology. JCIT has spent the last several years evaluating the existing e-filing structure and determining how to improve service to the courts and citizens of Texas. After much study, JCIT recommended that the Court “mandate a statewide, uniform system of e-filing for all courts with a phased implementation starting with the most populous counties.”

After considering the testimony, both oral and written, provided at the Court’s hearing, along with the recommendations of JCIT regarding e-filing, the Supreme Court of Texas concludes that mandatory e-filing in civil cases will promote the efficient and uniform administration of justice in Texas courts.

Accordingly, it is **ORDERED** that:

1. This Order governs e-filing in all civil cases, including family and probate cases, at the Supreme Court of Texas, courts of appeals, district courts, statutory county courts, constitutional county courts, and statutory probate courts.

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<sup>3</sup> An eighteen month extension was negotiated between DIR and the current vendor to allow for a transition to a new vendor.

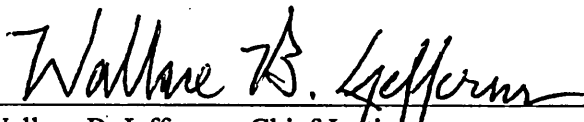
<sup>4</sup> The e-filing fees are reduced by up to 48 percent under the new contract. With additional filing volume, the e-filing fees could be reduced by up to 66 percent.


<sup>5</sup> Available at <http://www.courts.state.tx.us/tjc/pdf/AdequateFundingCourteFilingSystem.pdf>.



2. E-filing will be mandatory in the Supreme Court of Texas and in civil cases in the courts of appeals effective January 1, 2014.
3. E-filing will be mandatory in civil cases in the district courts, statutory county courts, constitutional county courts and statutory probate courts according to the following implementation schedule based upon the counties' 2010 Federal Census population:
  - a. Courts in counties with a population of 500,000 or more – January 1, 2014
  - b. Courts in counties with a population of 200,000 to 499,999 – July 1, 2014
  - c. Courts in counties with a population of 100,000 to 199,999 – January 1, 2015
  - d. Courts in counties with a population of 50,000 to 99,999 – July 1, 2015
  - e. Courts in counties with a population of 20,000 to 49,999 – January 1, 2016
  - f. Courts in counties with a population less than 20,000 – July 1, 2016
4. Once a court is subject to mandatory e-filing under this Order, attorneys must e-file all documents in civil cases, except documents exempted by rules adopted by this Court, through TexFile, the e-filing portal provided by OCA. Attorneys must not file documents through any alternative electronic document filing transmission system (including fax filing), except in the event of emergency. Persons not represented by an attorney may e-file documents, but e-filing is not required.
5. Once a court is subject to mandatory e-filing under this Order, courts and clerks must not offer to attorneys in civil cases any alternative electronic document filing transmission system (including fax filing), except in the event of emergency. And courts and clerks must not accept, file, or docket any document filed by an attorney in a civil case that is not filed in compliance with this Order, except in the event of emergency.
6. The Supreme Court will adopt rules governing e-filing and e-service in accordance with the mandate schedule above.
7. Courts or clerks who believe they cannot comply with this Order by the implementation date specified may petition the Supreme Court for an extension, which may be granted for good cause shown.

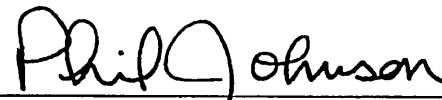
SO ORDERED, this 11<sup>th</sup> day of December, 2012.

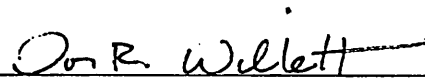
  
Wallace B. Jefferson, Chief Justice

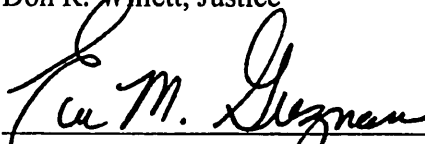
  
Nathan L. Hecht, Justice

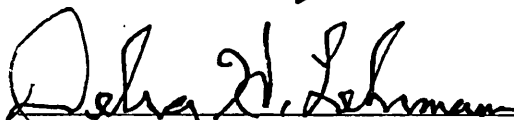
David M. Medina, Justice

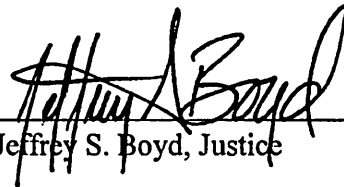
  
Paul W. Green, Justice

  
Phil Johnson, Justice

  
Don R. Willett, Justice

  
Eva M. Guzman, Justice

  
Debra H. Lehrmann, Justice

  
Jeffrey S. Boyd, Justice



**Appendix K:**

**House Bill 2302, 83rd Legislative Session**



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AN ACT

relating to signing electronic or digital court documents, to the electronic filing system established by the Texas Supreme Court, to the statewide electronic filing system fund, to certain court fees and court costs, and to recovery of electronic filing fees by taxing units; imposing and authorizing certain fees.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 21, Government Code, is amended by adding Section 21.011 to read as follows:

Sec. 21.011. ELECTRONIC OR DIGITAL SIGNATURE. A judge or justice presiding over a court in this state may sign an electronic or digital court document, including an order, judgment, ruling, notice, commission, or precept, electronically, digitally, or through another secure method. The document signed in that manner is the official document issued by the court.

SECTION 2. Chapter 51, Government Code, is amended by adding Subchapter I-1 to read as follows:

SUBCHAPTER I-1. ELECTRONIC FILING FEE

Sec. 51.851. ELECTRONIC FILING FEE. (a) In this section, "conviction" has the meaning assigned by Section 133.101, Local Government Code.

(b) In addition to other fees authorized or required by law, the clerk of the supreme court, a court of appeals, a district court, a county court, a statutory county court, or a statutory

1 probate court shall collect a \$20 fee on the filing of any civil  
2 action or proceeding requiring a filing fee, including an appeal,  
3 and on the filing of any counterclaim, cross-action, intervention,  
4 interpleader, or third-party action requiring a filing fee to be  
5 used as provided by Section 51.852.

6 (c) In addition to other fees authorized or required by law,  
7 the clerk of a justice court shall collect a \$10 fee on the filing of  
8 any civil action or proceeding requiring a filing fee, including an  
9 appeal, and on the filing of any counterclaim, cross-action,  
10 intervention, interpleader, or third-party action requiring a  
11 filing fee to be used as provided by Section 51.852.

12 (d) In addition to other court costs, a person shall pay \$5  
13 as a court cost on conviction of any criminal offense in a district  
14 court, county court, or statutory county court.

15 (e) A court may waive payment of a court cost or fee due  
16 under this section for an individual the court determines is  
17 indigent.

18 (f) Court costs and fees due under this section shall be  
19 collected in the same manner as other fees, fines, or costs in the  
20 case.

21 (g) The clerk of a district court, a county court, a  
22 statutory county court, a statutory probate court, or a justice  
23 court shall deposit the court costs and fees collected under this  
24 section in the appropriate local treasury and remit the court costs  
25 and fees to the comptroller in the manner provided by Subchapter B,  
26 Chapter 133, Local Government Code.

27 (h) The clerk of the supreme court or of a court of appeals

1 shall remit the fees collected under this section to the  
2 comptroller.

3 (i) The comptroller shall deposit the court costs and fees  
4 received under this section to the credit of the statewide  
5 electronic filing system fund established under Section 51.852.

6 (j) The comptroller may audit the records of a county  
7 related to costs and fees collected under this section.

8 (k) Money spent from costs and fees collected under this  
9 section is subject to audit by the state auditor.

10 Sec. 51.852. STATEWIDE ELECTRONIC FILING SYSTEM FUND. (a)  
11 The statewide electronic filing system fund is an account in the  
12 general revenue fund.

13 (b) Money in the statewide electronic filing system fund may  
14 only be appropriated to the Office of Court Administration of the  
15 Texas Judicial System and used to:

16 (1) support a statewide electronic filing technology  
17 project for courts in this state;

18 (2) provide grants to counties to implement components  
19 of the project; or

20 (3) support court technology projects that have a  
21 statewide impact as determined by the office of court  
22 administration.

23 SECTION 3. Subchapter C, Chapter 72, Government Code, is  
24 amended by adding Section 72.031 to read as follows:

25 Sec. 72.031. ELECTRONIC FILING SYSTEM. (a) In this  
26 section:

27 (1) "Appellate court" means the supreme court, the



1 court of criminal appeals, or a court of appeals.

2 (2) "Electronic filing system" means the filing system  
3 established by supreme court rule or order for the electronic  
4 filing of documents in courts of this state.

5 (3) "Electronic filing transaction" means the  
6 simultaneous electronic filing of one or more documents related to  
7 a proceeding before a court in this state.

8 (4) "Local government" means a county or municipality.

9 (b) The office as authorized by supreme court rule or order  
10 may implement an electronic filing system for use in the courts of  
11 this state.

12 (c) A local government or appellate court that uses the  
13 electronic filing system may charge a fee of \$2 for each electronic  
14 filing transaction if:

15 (1) the fee is necessary to recover the actual system  
16 operating costs reasonably incurred by the local government or  
17 appellate court to:

18 (A) accept electronic payment methods; or

19 (B) interface with other technology information  
20 systems;

21 (2) the fee does not include an amount to recover local  
22 government or appellate court employee costs, other than costs for  
23 directly maintaining the system;

24 (3) the governing body of the local government or the  
25 appellate court approves the fee using the local government or  
26 appellate court's standard approval process for fee increases; and

27 (4) the local government or appellate court annually

1 certifies to the office on a form prescribed by the office that the  
2 amount of the fee is necessary to recover the actual system  
3 operating costs incurred by the local government or appellate  
4 court.

5 (c-1) This subsection and Subsection (c) expire September  
6 1, 2019.

7 (d) A local government or appellate court that uses the  
8 electronic filing system may accept electronic payment methods,  
9 including payments made with credit and debit cards.

10 (e) A governmental entity not otherwise required to pay a  
11 filing fee under any other law may not be required to pay a fee  
12 established under this section.

13 (f) A court shall waive payment of any fee due under this  
14 section for an individual the court determines is indigent.

15 SECTION 4. Subchapter B, Chapter 101, Government Code, is  
16 amended by adding Section 101.0211 to read as follows:

17 Sec. 101.0211. ADDITIONAL SUPREME COURT FEES: GOVERNMENT  
18 CODE. The clerk of the supreme court shall collect a statewide  
19 electronic filing system fund fee of \$20 under Section 51.851,  
20 Government Code.

21 SECTION 5. Subchapter C, Chapter 101, Government Code, is  
22 amended by adding Section 101.0411 to read as follows:

23 Sec. 101.0411. ADDITIONAL COURT OF APPEALS FEES: GOVERNMENT  
24 CODE. The clerk of a court of appeals shall collect a statewide  
25 electronic filing system fund fee of \$20 under Section 51.851,  
26 Government Code.

27 SECTION 6. Subchapter D, Chapter 101, Government Code, is

1 amended by adding Section 101.06118 to read as follows:

2 Sec. 101.06118. ADDITIONAL DISTRICT COURT FEES: GOVERNMENT  
3 CODE. The clerk of a district court shall collect a statewide  
4 electronic filing system fund fee of \$20 under Section 51.851,  
5 Government Code.

6 SECTION 7. Subchapter E, Chapter 101, Government Code, is  
7 amended by adding Section 101.08117 to read as follows:

8 Sec. 101.08117. ADDITIONAL STATUTORY COUNTY COURT FEES:  
9 GOVERNMENT CODE. The clerk of a statutory county court shall  
10 collect a statewide electronic filing system fund fee of \$20 under  
11 Section 51.851, Government Code.

12 SECTION 8. Subchapter F, Chapter 101, Government Code, is  
13 amended by adding Section 101.10116 to read as follows:

14 Sec. 101.10116. ADDITIONAL STATUTORY PROBATE COURT FEES:  
15 GOVERNMENT CODE. The clerk of a statutory probate court shall  
16 collect a statewide electronic filing system fund fee of \$20 under  
17 Section 51.851, Government Code.

18 SECTION 9. Subchapter G, Chapter 101, Government Code, is  
19 amended by adding Section 101.12126 to read as follows:

20 Sec. 101.12126. ADDITIONAL COUNTY COURT FEES: GOVERNMENT  
21 CODE. The clerk of a county court shall collect a statewide  
22 electronic filing system fund fee of \$20 under Section 51.851,  
23 Government Code.

24 SECTION 10. Subchapter H, Chapter 101, Government Code, is  
25 amended by adding Section 101.1411 to read as follows:

26 Sec. 101.1411. ADDITIONAL JUSTICE COURT FEES: GOVERNMENT  
27 CODE. The clerk of a justice court shall collect a statewide

1 electronic filing system fund fee of \$10 under Section 51.851,  
2 Government Code.

3 SECTION 11. Subchapter C, Chapter 102, Government Code, is  
4 amended by adding Section 102.0415 to read as follows:

5 Sec. 102.0415. ADDITIONAL COURT COSTS ON CONVICTION IN  
6 DISTRICT COURT: GOVERNMENT CODE. The clerk of a district court  
7 shall collect from a defendant a court cost on conviction of \$5  
8 under Section 51.851, Government Code.

9 SECTION 12. Subchapter D, Chapter 102, Government Code, is  
10 amended by adding Section 102.0615 to read as follows:

11 Sec. 102.0615. ADDITIONAL COURT COSTS ON CONVICTION IN  
12 STATUTORY COUNTY COURT: GOVERNMENT CODE. The clerk of a statutory  
13 county court shall collect from a defendant a court cost on  
14 conviction of \$5 under Section 51.851, Government Code.

15 SECTION 13. Subchapter E, Chapter 102, Government Code, is  
16 amended by adding Section 102.082 to read as follows:

17 Sec. 102.082. ADDITIONAL COURT COSTS ON CONVICTION IN  
18 COUNTY COURT: GOVERNMENT CODE. The clerk of a county court shall  
19 collect from a defendant a court cost on conviction of \$5 under  
20 Section 51.851, Government Code.

21 SECTION 14. Section 103.027, Government Code, is amended to  
22 read as follows:

23 Sec. 103.027. MISCELLANEOUS FEES AND COSTS: GOVERNMENT  
24 CODE. (a) Fees and costs shall be paid or collected under the  
25 Government Code as follows:

26 (1) filing a certified copy of a judicial finding of  
27 fact and conclusion of law if charged by the secretary of state

1 (Sec. 51.905, Government Code) . . . \$15;

2 (2) cost paid by each surety posting the bail bond for  
3 an offense other than a misdemeanor punishable by fine only under  
4 Chapter 17, Code of Criminal Procedure, for the assistant  
5 prosecutor supplement fund and the fair defense account (Sec.  
6 41.258, Government Code) . . . \$15, provided the cost does not  
7 exceed \$30 for all bail bonds posted at that time for an individual  
8 and the cost is not required on the posting of a personal or cash  
9 bond;

10 (3) to participate in a court proceeding in this  
11 state, a nonresident attorney fee (Sec. 82.0361, Government Code)  
12 . . . \$250 except as waived or reduced under supreme court rules for  
13 representing an indigent person;

14 (4) on a party's appeal of a final decision in a  
15 contested case, the cost of preparing the original or a certified  
16 copy of the record of the agency proceeding, if required by the  
17 agency's rule, as a court cost (Sec. 2001.177, Government Code)  
18 . . . as assessed by the court, all or part of the cost of  
19 preparation;

20 (5) compensation to a referee in juvenile court in  
21 Wichita County taxed as costs if the judge determines the parties  
22 are able to pay the costs (Sec. 54.403, Government Code) . . . as  
23 determined by the judge; and

24 (6) the expense of preserving the record as a court  
25 cost in Brazos County if imposed on a party by the referring court  
26 or magistrate (Sec. 54.1111, Government Code) . . . actual cost.

27 (b) Any fee of \$2 charged by a local government or appellate

1 court for an electronic filing transaction as authorized under  
2 Section 72.031(c), Government Code, shall be collected. This  
3 subsection expires September 1, 2019.

4 SECTION 15. Section 231.202, Family Code, is amended to  
5 read as follows:

6 Sec. 231.202. AUTHORIZED COSTS AND FEES IN TITLE IV-D  
7 CASES. In a Title IV-D case filed under this title, including a  
8 case filed under Chapter 159, the Title IV-D agency shall pay only  
9 the following costs and fees:

10 (1) filing fees and fees for issuance and service of  
11 process as provided by Chapter 110 of this code and by Sections  
12 51.317(b)(1), (2), and (3) and (b-1), 51.318(b)(2), and 51.319(2),  
13 Government Code;

14 (2) fees for transfer as provided by Chapter 110;

15 (3) fees for the issuance and delivery of orders and  
16 writs of income withholding in the amounts provided by Chapter 110;

17 (4) the fee for services provided by sheriffs and  
18 constables, including:

19 (A) a fee authorized under Section 118.131, Local  
20 Government Code, for serving each item of process to each  
21 individual on whom service is required, including service by  
22 certified or registered mail; and

23 (B) a fee authorized under Section 157.103(b) for  
24 serving a capias;

25 (5) the fee for filing an administrative writ of  
26 withholding under Section 158.503(d);

27 (6) the fee for issuance of a subpoena as provided by

1 Section 51.318(b)(1), Government Code; and

2 (7) a fee authorized by Section 72.031, Government  
3 Code, [under a local rule] for the electronic filing of documents  
4 with a clerk.

5 SECTION 16. Section 231.204, Family Code, is amended to  
6 read as follows:

7 Sec. 231.204. PROHIBITED FEES IN TITLE IV-D CASES. Except  
8 as provided by this subchapter, an appellate court, a clerk of an  
9 appellate court, a district or county clerk, sheriff, constable, or  
10 other government officer or employee may not charge the Title IV-D  
11 agency or a private attorney or political subdivision that has  
12 entered into a contract to provide Title IV-D services any fees or  
13 other amounts otherwise imposed by law for services rendered in, or  
14 in connection with, a Title IV-D case, including:

15 (1) a fee payable to a district clerk for:

16 (A) performing services related to the estates of  
17 deceased persons or minors;

18 (B) certifying copies; or

19 (C) comparing copies to originals;

20 (2) a court reporter fee, except as provided by  
21 Section 231.209;

22 (3) a judicial fund fee;

23 (4) a fee for a child support registry, enforcement  
24 office, or domestic relations office;

25 (5) a fee for alternative dispute resolution services;

26 [and]

27 (6) a filing fee or other costs payable to a clerk of

1 an appellate court; and

2 (7) a statewide electronic filing system fund fee.

3 SECTION 17. Section 133.058(d), Local Government Code, is  
4 amended to read as follows:

5 (d) A county may not retain a service fee on the collection  
6 of a fee:

7 (1) for the judicial fund; ~~[ex]~~

8 (2) under Sections 14 and 19, Article 42.12, Code of  
9 Criminal Procedure; or

10 (3) under Section 51.851, Government Code.

11 SECTION 18. The imposition of a cost of court on conviction  
12 under Section 51.851, Government Code, as added by this Act,  
13 applies only to an offense committed on or after the effective date  
14 of this Act. An offense committed before the effective date of this  
15 Act is covered by the law in effect when the offense was committed,  
16 and the former law is continued in effect for that purpose. For  
17 purposes of this section, an offense was committed before the  
18 effective date of this Act if any element of the offense was  
19 committed before that date.

20 SECTION 19. Section 33.48(a), Tax Code, is amended to read  
21 as follows:

22 (a) In addition to other costs authorized by law, a taxing  
23 unit is entitled to recover the following costs and expenses in a  
24 suit to collect a delinquent tax:

25 (1) all usual court costs, including the cost of  
26 serving process and electronic filing fees;

27 (2) costs of filing for record a notice of lis pendens



1 against property;

2 (3) expenses of foreclosure sale;

3 (4) reasonable expenses that are incurred by the  
4 taxing unit in determining the name, identity, and location of  
5 necessary parties and in procuring necessary legal descriptions of  
6 the property on which a delinquent tax is due;

7 (5) attorney's fees in the amount of 15 percent of the  
8 total amount of taxes, penalties, and interest due the unit; and

9 (6) reasonable attorney ad litem fees approved by the  
10 court that are incurred in a suit in which the court orders the  
11 appointment of an attorney to represent the interests of a  
12 defendant served with process by means of citation by publication  
13 or posting.

14 SECTION 20. Section 33.49(a), Tax Code, is amended to read  
15 as follows:

16 (a) Except as provided by Subsection (b), a taxing unit is  
17 not liable in a suit to collect taxes for court costs, including any  
18 fees for service of process and electronic filing fees, an attorney  
19 ad litem, arbitration, or mediation, and may not be required to post  
20 security for costs.

21 SECTION 21. (a) Section 51.607, Government Code, does not  
22 apply to the imposition of a fee assessed under:

23 (1) Section 51.851, Government Code, as added by this  
24 Act;

25 (2) Section 101.0211, Government Code, as added by  
26 this Act;

27 (3) Section 101.0411, Government Code, as added by

1 this Act;

2 (4) Section 101.06118, Government Code, as added by  
3 this Act;

4 (5) Section 101.08117, Government Code, as added by  
5 this Act;

6 (6) Section 101.10116, Government Code, as added by  
7 this Act;

8 (7) Section 101.12126, Government Code, as added by  
9 this Act;

10 (8) Section 101.1411, Government Code, as added by  
11 this Act;

12 (9) Section 102.0415, Government Code, as added by  
13 this Act;

14 (10) Section 102.0615, Government Code, as added by  
15 this Act; or

16 (11) Section 102.082, Government Code, as added by  
17 this Act.

18 (b) The changes in law made by this Act apply only to a fee  
19 that becomes payable on or after September 1, 2013. A fee that  
20 becomes payable before that date is governed by the law in effect  
21 when the fee became payable, and the former law is continued in  
22 effect for that purpose.

23 SECTION 22. Not later than December 1, 2018, the Office of  
24 Court Administration of the Texas Judicial System shall file a  
25 report with the lieutenant governor, the speaker of the house of  
26 representatives, and the presiding officers of the standing  
27 committees of each house of the legislature with jurisdiction over

H.B. No. 2302

1 the judiciary detailing the number of local governments and  
2 appellate courts collecting a fee under Section 72.031(c),  
3 Government Code, as added by this Act, and the necessity of the  
4 local governments and appellate courts to continue collecting the  
5 fee.

6 SECTION 23. This Act takes effect September 1, 2013.

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Speaker of the House

I certify that H.B. No. 2302 was passed by the House on April 26, 2013, by the following vote: Yeas 138, Nays 0, 2 present, not voting; and that the House concurred in Senate amendments to H.B. No. 2302 on May 16, 2013, by the following vote: Yeas 141, Nays 0, 2 present, not voting.

\_\_\_\_\_  
Chief Clerk of the House

I certify that H.B. No. 2302 was passed by the Senate, with amendments, on May 15, 2013, by the following vote: Yeas 31, Nays 0.

\_\_\_\_\_  
Secretary of the Senate

APPROVED: \_\_\_\_\_

Date

\_\_\_\_\_  
Governor



**Appendix L:**

**A History of Dropout Prevention Legislation and Policy in Texas**



## A History of Dropout Prevention Legislation and Policy in Texas

### 1984 – 68<sup>th</sup> Legislature 2<sup>nd</sup> Called Session

#### House Bill 72

- Authorized TEA to implement a **system for collecting data on student dropouts** and to begin developing a **program to reduce the statewide dropout rate** to no more than 5 percent of the student population.

### 1987– 70<sup>th</sup> Legislature

#### House Bill 1010

- **Defined dropout** as a student in grades 7-12 who did not hold a high school diploma or a GED and was absent from school for 30 or more consecutive days and did not enroll in another public or private school.
- Required that TEA develop a **program to reduce the statewide longitudinal dropout rate**.
- Required TEA to develop a system for school districts to collect data on student dropouts, which was incorporated into the new **Public Education Information Management System (PEIMS)**. The **first PEIMS dropout records** were submitted for students who dropped out during the 1987-88 school year, and the **first TEA report on dropouts**, using actual student-level data, presented data on students who dropped out during the 1987-88 school year.

### 1989 – 71<sup>st</sup> Legislature

#### Senate Bill 417

- Directed the State Board of Education to adopt a set of performance indicators, which led to the establishment of the **Academic Excellence Indicator System (AEIS)** in 1990, using annual graduation counts and dropout rates as some of the initial performance indicators.

#### Senate Bill 222

- **Communities In Schools**, a dropout prevention program, received a legislative appropriation to expand the model. Funding for the program has been appropriated each biennium since 1989, and has increased to \$41.9 million for the 2010-11 biennium.



## 1993 – 73<sup>rd</sup> Legislature

### Senate Bill 7

- Directed that the AEIS data form the foundation of a **performance-based accountability system** to rate districts and campuses. TEA began using annual dropout rates as an indicator in the accountability system 1994.

## 1997 – 75<sup>th</sup> Legislature

### Senate Bill 247

- Required **compulsory attendance until the age of 18 years** with exemptions for students who are at least 17 years old and are attending a GED course to prepare for the high school equivalency examination with parental permission or a court order to attend, are living in a home outside parental supervision or considered homeless.

## 1999 – 76<sup>th</sup> Legislature

### Senate Bill 4

- Created the **Basic Skills Program for High School Students**, also known as the **Ninth Grade Success Initiative**, making \$85 million available to increase graduation rates in Texas public schools by reducing the number of students who are retained in the ninth grade or who drop out that year.

## 2003 – 78<sup>th</sup> Legislature

### Senate Bill 186

- Called for the adoption of the **National Center for Education Statistics (NCES) definition of dropout**, which is a student who is enrolled in public school in grades 7-12, does not return to public school the following fall, is not expelled and does not graduate, receive a GED, enroll in private school or home school, begins college or die.

### Senate Bill 976

- Created the Early College Education Program, which came to be known as the **Early College High School program (ECHS)**. ECHS uses a model to target at-risk students who would not otherwise consider attending college and provides an opportunity to earn a high school diploma and 60 college credit hours by the time they graduate from high school.

### House Bill 1

- The Legislature appropriated **\$60 million for High School Completion and Success** programs, which supported the development and implementation of high school reform models. Funding has been appropriated each biennium since 2004-05, and increased in 2008-09.

### Texas High School Project

- State investment in dropout prevention and college and career readiness attracted private funding, leading to the creation of the public-private alliance the **Texas High School Project**, which receives funds from the Bill & Melinda Gates Foundation, the Michael & Susan Dell Foundation, Communities Foundation of Texas, and National Instruments.

### **Completion Rate and Accountability System**

- TEA added the Grades 9-12 longitudinal completion rate and the Grades 7-8 annual rate as indicators in the accountability system in 2004.

## **2006 – 79<sup>th</sup> Legislature 3<sup>rd</sup> Called Special Session**

### House Bill 1

- Established the **High School Allotment**, which provides districts with funding based on the amount of \$275 per student in average daily attendance in grades 9 -12 to prepare underachieving students for high school completion and college success.
- Called for the development of **College and Career Readiness Standards** that specify what students must know and be able to do to succeed in entry-level courses at postsecondary institutions in Texas.
- Established a **College Credit Program** which required that all districts offer students an opportunity to earn a minimum of 12 hours of college credit by the 2008-2009 school year.
- Required all students graduate with **four years of math, science, English and social studies**.
- Made provisions for an **optional flexible school day program** for students in grades 9-12 who are dropouts or at-risk of dropping out and provided districts with additional flexibility in scheduling for certain high school students.

## 2007 – 80<sup>th</sup> Legislature

### House Bill 2237

- Increased to **\$104 million the funding for high school completion and success** and established several dropout prevention and recovery programs.
- **Added dropout prevention to TEA's Best Practices Clearinghouse** as one of the main topic areas.
- Directed TEA to contract with an outside entity to do a **study of best practices in dropout prevention** to identify high-performing dropout prevention programs and report recommendations to the legislature.
- Required districts and charter schools with high dropout rates to **develop and submit dropout plans for TEA approval** specifying how they intended to use Compensatory Education and High School Allotment for dropout prevention efforts.
- Established the **High School Completion and Success Initiative Council** to adopt a strategic plan to improve high school completion and reduce the dropout rate.

### Senate Bill 1031

- Replaced the TAKS test in grades 9-12 with **end-of-course exams**. Students in the ninth grade class of 2011-2012 will be the first students required to pass end-of-course exams to meet graduation requirements.

### House Bill 1137

- Allowed **individuals up to age 26 to attend public schools** for the purpose of achieving high school graduation and reengaging students who already dropped out.

## 2009 – 81<sup>st</sup> Legislature

### House Bill 3

- Added **postsecondary readiness** as a factor in determining school accountability and accreditation ratings.
- **Excluded the following groups of students from completion and dropout rates** calculated for state accreditation and performance ratings:
  - court-ordered to attend a GED program
  - previously counted as dropouts
  - refugees or asylees
  - incarcerated in facilities not served by Texas public schools
  - ADA ineligible

**Appendix M:**

**Senate Bill 1489, 82nd Legislative Session**



1 AN ACT  
2 relating to educational, juvenile justice, and criminal justice  
3 responses to truancy.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Subsection (a), Section 25.094, Education Code,  
6 is amended to read as follows:

7 (a) An individual commits an offense if the individual:

8 (1) is 12 years of age or older and younger than 18  
9 years of age;

10 (2) is required to attend school under Section 25.085;  
11 and

12 (3) ~~[-2-]~~ fails to attend school on 10 or more days or  
13 parts of days within a six-month period in the same school year or  
14 on three or more days or parts of days within a four-week period.

15 SECTION 2. Section 51.03, Family Code, is amended by adding  
16 Subsection (e-1) to read as follows:

17 (e-1) Notwithstanding any other law, for purposes of  
18 conduct described by Subsection (b)(2), "child" means a person who  
19 is:

20 (1) 10 years of age or older;

21 (2) alleged or found to have engaged in the conduct as  
22 a result of acts committed before becoming 18 years of age; and

23 (3) required to attend school under Section 25.085,  
24 Education Code.

1           SECTION 3. Subsections (a) and (b), Section 54.021, Family  
2 Code, are amended to read as follows:

3           (a) The juvenile court may waive its exclusive original  
4 jurisdiction and transfer a child to the constitutional county  
5 court, if the county has a population of two million or more, or to  
6 an appropriate justice or municipal court, with the permission of  
7 the county, justice, or municipal court, for disposition in the  
8 manner provided by Subsection (b) if the child is 12 years of age or  
9 older and is alleged to have engaged in conduct described in Section  
10 51.03(b)(2). A waiver of jurisdiction under this subsection may be  
11 for an individual case or for all cases in which a child is alleged  
12 to have engaged in conduct described in Section 51.03(b)(2). The  
13 waiver of a juvenile court's exclusive original jurisdiction for  
14 all cases in which a child is alleged to have engaged in conduct  
15 described in Section 51.03(b)(2) is effective for a period of one  
16 year.

17           (b) A county, justice, or municipal court may exercise  
18 jurisdiction over a person alleged to have engaged in conduct  
19 indicating a need for supervision by engaging in conduct described  
20 in Section 51.03(b)(2) in a case where:

- 21                 (1) the person is 12 years of age or older;  
22                 (2) the juvenile court has waived its original  
23 jurisdiction under this section; and  
24                 (3) [~~2~~] a complaint is filed by the appropriate  
25 authority in the county, justice, or municipal court charging an  
26 offense under Section 25.094, Education Code.

27           SECTION 4. Chapter 54, Family Code, is amended by adding

1 Section 54.0402 to read as follows:

2 Sec. 54.0402. DISPOSITIONAL ORDER FOR FAILURE TO ATTEND  
3 SCHOOL. A dispositional order regarding conduct under Section  
4 51.03(b)(2) is effective for the period specified by the court in  
5 the order but may not extend beyond the 180th day after the date of  
6 the order or beyond the end of the school year in which the order was  
7 entered, whichever period is longer.

8 SECTION 5. Section 54.05, Family Code, is amended by  
9 amending Subsections (a) and (b) and adding Subsection (a-1) to  
10 read as follows:

11 (a) Except as provided by Subsection (a-1), any [Any]  
12 disposition, except a commitment to the Texas Youth Commission, may  
13 be modified by the juvenile court as provided in this section until:

- 14 (1) the child reaches his 18th birthday; or  
15 (2) the child is earlier discharged by the court or  
16 operation of law.

17 (a-1) A disposition regarding conduct under Section  
18 51.03(b)(2) may be modified by the juvenile court as provided by  
19 this section until the expiration of the period described by  
20 Section 54.0402.

21 (b) Except for a commitment to the Texas Youth Commission or  
22 a disposition under Section 54.0402, all dispositions  
23 automatically terminate when the child reaches his 18th birthday.

24 SECTION 6. Article 45.054, Code of Criminal Procedure, is  
25 amended by adding Subsections (i) and (j) to read as follows:

26 (i) A county, justice, or municipal court shall dismiss the  
27 complaint against an individual alleging that the individual



1 committed an offense under Section 25.094, Education Code, if:

2 (1) the court finds that the individual has  
3 successfully complied with the conditions imposed on the individual  
4 by the court under this article; or

5 (2) the individual presents to the court proof that  
6 the individual has obtained a high school diploma or a high school  
7 equivalency certificate.

8 (j) A county, justice, or municipal court may waive or  
9 reduce a fee or court cost imposed under this article if the court  
10 finds that payment of the fee or court cost would cause financial  
11 hardship.

12 SECTION 7. Article 45.055, Code of Criminal Procedure, is  
13 amended by amending Subsection (a) and adding Subsection (e) to  
14 read as follows:

15 (a) Except as provided by Subsection (e), an ~~Am~~ individual  
16 convicted of not more than one violation of Section 25.094,  
17 Education Code, may, on or after the individual's 18th birthday,  
18 apply to the court in which the individual was convicted to have the  
19 conviction and records relating to the conviction expunged.

20 (e) A court shall expunge an individual's conviction under  
21 Section 25.094, Education Code, and records relating to a  
22 conviction, regardless of whether the individual has previously  
23 been convicted of an offense under that section, if:

24 (1) the court finds that the individual has  
25 successfully complied with the conditions imposed on the individual  
26 by the court under Article 45.054; or

27 (2) before the individual's 21st birthday, the

1 individual presents to the court proof that the individual has  
2 obtained a high school diploma or a high school equivalency  
3 certificate.

4 SECTION 8. Subsections (b) and (c), Article 102.0174, Code  
5 of Criminal Procedure, are amended to read as follows:

6 (b) The governing body of a municipality by ordinance may  
7 create a juvenile case manager fund and may require a defendant  
8 convicted of a fine-only misdemeanor offense in a municipal court  
9 to pay a juvenile case manager fee not to exceed \$5 as a cost of  
10 court if the municipality employs a juvenile case manager. A  
11 municipality that does not employ a juvenile case manager may not  
12 collect a fee under this subsection.

13 (c) The commissioners court of a county by order may create  
14 a juvenile case manager fund and may require a defendant convicted  
15 of a fine-only misdemeanor offense in a justice court, county  
16 court, or county court at law to pay a juvenile case manager fee not  
17 to exceed \$5 as a cost of court if the court employs a juvenile case  
18 manager. A justice court, county court, or county court at law that  
19 does not employ a juvenile case manager may not collect a fee under  
20 this subsection.

21 SECTION 9. Subsections (a) and (b), Section 25.091,  
22 Education Code, are amended to read as follows:

23 (a) A peace officer serving as an attendance officer has the  
24 following powers and duties concerning enforcement of compulsory  
25 school attendance requirements:

26 (1) to investigate each case of a violation of  
27 compulsory school attendance requirements referred to the peace

1 officer;

2 (2) to enforce compulsory school attendance  
3 requirements by:

4 (A) applying truancy prevention measures adopted  
5 under Section 25.0915 to the student; and

6 (B) if the truancy prevention measures fail to  
7 meaningfully address the student's conduct:

8 (i) referring the [a] student to a juvenile  
9 court or filing a complaint against the [a] student in a county,  
10 justice, or municipal court if the student has unexcused absences  
11 for the amount of time specified under Section 25.094 or under  
12 Section 51.03(b)(2), Family Code; or [~~and~~]

13 (ii) [~~B~~] filing a complaint in a county,  
14 justice, or municipal court against a parent who violates Section  
15 25.093;

16 (3) to serve court-ordered legal process;

17 (4) to review school attendance records for compliance  
18 by each student investigated by the officer;

19 (5) to maintain an investigative record on each  
20 compulsory school attendance requirement violation and related  
21 court action and, at the request of a court, the board of trustees  
22 of a school district, or the commissioner, to provide a record to  
23 the individual or entity requesting the record;

24 (6) to make a home visit or otherwise contact the  
25 parent of a student who is in violation of compulsory school  
26 attendance requirements, except that a peace officer may not enter  
27 a residence without the permission of the parent of a student

1 required under this subchapter to attend school or of the tenant or  
2 owner of the residence except to lawfully serve court-ordered legal  
3 process on the parent; and

4 (7) to take a student into custody with the permission  
5 of the student's parent or in obedience to a court-ordered legal  
6 process.

7 (b) An attendance officer employed by a school district who  
8 is not commissioned as a peace officer has the following powers and  
9 duties with respect to enforcement of compulsory school attendance  
10 requirements:

11 (1) to investigate each case of a violation of the  
12 compulsory school attendance requirements referred to the  
13 attendance officer;

14 (2) to enforce compulsory school attendance  
15 requirements by:

16 (A) applying truancy prevention measures adopted  
17 under Section 25.0915 to the student; and

18 (B) if the truancy prevention measures fail to  
19 meaningfully address the student's conduct:

20 (i) referring the [a] student to a juvenile  
21 court or filing a complaint against the [a] student in a county,  
22 justice, or municipal court if the student has unexcused absences  
23 for the amount of time specified under Section 25.094 or under  
24 Section 51.03(b)(2), Family Code; and

25 (ii) [~~B~~] filing a complaint in a county,  
26 justice, or municipal court against a parent who violates Section  
27 25.093;

1           (3) to monitor school attendance compliance by each  
2 student investigated by the officer;

3           (4) to maintain an investigative record on each  
4 compulsory school attendance requirement violation and related  
5 court action and, at the request of a court, the board of trustees  
6 of a school district, or the commissioner, to provide a record to  
7 the individual or entity requesting the record;

8           (5) to make a home visit or otherwise contact the  
9 parent of a student who is in violation of compulsory school  
10 attendance requirements, except that the attendance officer may not  
11 enter a residence without permission of the parent or of the owner  
12 or tenant of the residence;

13           (6) at the request of a parent, to escort a student  
14 from any location to a school campus to ensure the student's  
15 compliance with compulsory school attendance requirements; and

16           (7) if the attendance officer has or is informed of a  
17 court-ordered legal process directing that a student be taken into  
18 custody and the school district employing the officer does not  
19 employ its own police department, to contact the sheriff,  
20 constable, or any peace officer to request that the student be taken  
21 into custody and processed according to the legal process.

22           SECTION 10. Subchapter C, Chapter 25, Education Code, is  
23 amended by adding Section 25.0915 to read as follows:

24           Sec. 25.0915. TRUANCY PREVENTION MEASURES; REFERRAL AND  
25 FILING REQUIREMENT. (a) A school district shall adopt truancy  
26 prevention measures designed to:

27           (1) address student conduct related to truancy in the

1 school setting;

2 (2) minimize the need for referrals to juvenile court  
3 for conduct described by Section 51.03(b)(2), Family Code; and

4 (3) minimize the filing of complaints in county,  
5 justice, and municipal courts alleging a violation of Section  
6 25.094.

7 (b) Each referral to juvenile court for conduct described by  
8 Section 51.03(b)(2), Family Code, or complaint filed in county,  
9 justice, or municipal court alleging a violation by a student of  
10 Section 25.094 must:

11 (1) be accompanied by a statement from the student's  
12 school certifying that:

13 (A) the school applied the truancy prevention  
14 measures adopted under Subsection (a) to the student; and

15 (B) the truancy prevention measures failed to  
16 meaningfully address the student's school attendance; and

17 (2) specify whether the student is eligible for or  
18 receives special education services under Subchapter A, Chapter 29.

19 SECTION 11. Section 58.106, Family Code, is amended by  
20 amending Subsection (a) and adding Subsection (a-1) to read as  
21 follows:

22 (a) Except as otherwise provided by this section,  
23 information contained in the juvenile justice information system is  
24 confidential information for the use of the department and may not  
25 be disseminated by the department except:

26 (1) with the permission of the juvenile offender, to  
27 military personnel of this state or the United States;

1           (2) to a person or entity to which the department may  
2 grant access to adult criminal history records as provided by  
3 Section 411.083, Government Code;

4           (3) to a juvenile justice agency;

5           (4) to the Texas Youth Commission and the Texas  
6 Juvenile Probation Commission for analytical purposes; ~~and~~

7           (5) to the office of independent ombudsman of the  
8 Texas Youth Commission; and

9           (6) to a county, justice, or municipal court  
10 exercising jurisdiction over a juvenile under Section 54.021.

11           (a-1) Information disseminated under Subsection (a) remains  
12 confidential after dissemination and may be disclosed by the  
13 recipient only as provided by this title.

14           SECTION 12. Section 102.061, Government Code, as amended by  
15 Chapters 87 (S.B. 1969), 1172 (H.B. 3389), and 1183 (H.B. 3637),  
16 Acts of the 81st Legislature, Regular Session, 2009, is reenacted  
17 and amended to read as follows:

18           Sec. 102.061. ADDITIONAL COURT COSTS ON CONVICTION IN  
19 STATUTORY COUNTY COURT: CODE OF CRIMINAL PROCEDURE. The clerk of  
20 a statutory county court shall collect fees and costs under the Code  
21 of Criminal Procedure on conviction of a defendant as follows:

22           (1) a jury fee (Art. 102.004, Code of Criminal  
23 Procedure) . . . \$20;

24           (2) a fee for services of the clerk of the court  
25 (Art. 102.005, Code of Criminal Procedure) . . . \$40;

26           (3) a records management and preservation services fee  
27 (Art. 102.005, Code of Criminal Procedure) . . . \$25;

1           (4) a county and district court technology fee  
2 (Art. 102.0169, Code of Criminal Procedure) . . . \$4;

3           (5) a security fee on a misdemeanor offense  
4 (Art. 102.017, Code of Criminal Procedure) . . . \$3;

5           (6) a juvenile delinquency prevention and graffiti  
6 eradication fee (Art. 102.0171, Code of Criminal Procedure) . . .  
7 \$50; ~~and~~

8           (7) a juvenile case manager fee (Art. 102.0174, Code  
9 of Criminal Procedure) . . . not to exceed \$5 if the court employs a  
10 juvenile case manager; and

11           (8) ~~[(7)]~~ a civil justice fee (Art. 102.022, Code of  
12 Criminal Procedure) . . . \$0.10.

13           SECTION 13. Section 102.081, Government Code, as amended by  
14 Chapters 87 (S.B. 1969), 1172 (H.B. 3389), and 1183 (H.B. 3637),  
15 Acts of the 81st Legislature, Regular Session, 2009, is reenacted  
16 and amended to read as follows:

17           Sec. 102.081. ADDITIONAL COURT COSTS ON CONVICTION IN  
18 COUNTY COURT: CODE OF CRIMINAL PROCEDURE. The clerk of a county  
19 court shall collect fees and costs under the Code of Criminal  
20 Procedure on conviction of a defendant as follows:

21           (1) a jury fee (Art. 102.004, Code of Criminal  
22 Procedure) . . . \$20;

23           (2) a fee for clerk of the court services  
24 (Art. 102.005, Code of Criminal Procedure) . . . \$40;

25           (3) a records management and preservation services fee  
26 (Art. 102.005, Code of Criminal Procedure) . . . \$25;

27           (4) a county and district court technology fee



- 1 (Art. 102.0169, Code of Criminal Procedure) . . . \$4;  
2 (5) a security fee on a misdemeanor offense  
3 (Art. 102.017, Code of Criminal Procedure) . . . \$3;  
4 (6) a juvenile delinquency prevention and graffiti  
5 eradication fee (Art. 102.0171, Code of Criminal Procedure) . . .  
6 \$50; ~~and~~  
7 (7) a juvenile case manager fee (Art. 102.0174, Code  
8 of Criminal Procedure) . . . not to exceed \$5 if the court employs a  
9 juvenile case manager; and  
10 (8) ~~[-7]~~ a civil justice fee (Art. 102.022, Code of  
11 Criminal Procedure) . . . \$0.10.

12 SECTION 14. Section 102.101, Government Code, is amended to  
13 read as follows:

14 Sec. 102.101. ADDITIONAL COURT COSTS ON CONVICTION IN  
15 JUSTICE COURT: CODE OF CRIMINAL PROCEDURE. A clerk of a justice  
16 court shall collect fees and costs under the Code of Criminal  
17 Procedure on conviction of a defendant as follows:

- 18 (1) a jury fee (Art. 102.004, Code of Criminal  
19 Procedure) . . . \$3;  
20 (2) a fee for withdrawing request for jury less than 24  
21 hours before time of trial (Art. 102.004, Code of Criminal  
22 Procedure) . . . \$3;  
23 (3) a jury fee for two or more defendants tried jointly  
24 (Art. 102.004, Code of Criminal Procedure) . . . one jury fee of \$3;  
25 (4) a security fee on a misdemeanor offense (Art.  
26 102.017, Code of Criminal Procedure) . . . \$4;  
27 (5) a fee for technology fund on a misdemeanor offense

1 (Art. 102.0173, Code of Criminal Procedure) . . . \$4;

2 (6) a juvenile case manager fee (Art. 102.0174, Code  
3 of Criminal Procedure) . . . not to exceed \$5 if the court employs a  
4 juvenile case manager;

5 (7) a fee on conviction of certain offenses involving  
6 issuing or passing a subsequently dishonored check (Art. 102.0071,  
7 Code of Criminal Procedure) . . . not to exceed \$30;

8 (8) a court cost on conviction of a Class C misdemeanor  
9 in a county with a population of 3.3 million or more, if authorized  
10 by the county commissioners court (Art. 102.009, Code of Criminal  
11 Procedure) . . . not to exceed \$7; and

12 (9) a civil justice fee (Art. 102.022, Code of  
13 Criminal Procedure) . . . \$0.10.

14 SECTION 15. Section 102.121, Government Code, is amended to  
15 read as follows:

16 Sec. 102.121. ADDITIONAL COURT COSTS ON CONVICTION IN  
17 MUNICIPAL COURT: CODE OF CRIMINAL PROCEDURE. The clerk of a  
18 municipal court shall collect fees and costs on conviction of a  
19 defendant as follows:

20 (1) a jury fee (Art. 102.004, Code of Criminal  
21 Procedure) . . . \$3;

22 (2) a fee for withdrawing request for jury less than 24  
23 hours before time of trial (Art. 102.004, Code of Criminal  
24 Procedure) . . . \$3;

25 (3) a jury fee for two or more defendants tried jointly  
26 (Art. 102.004, Code of Criminal Procedure) . . . one jury fee of \$3;

27 (4) a security fee on a misdemeanor offense (Art.

1 102.017, Code of Criminal Procedure) . . . \$3;

2 (5) a fee for technology fund on a misdemeanor offense  
3 (Art. 102.0172, Code of Criminal Procedure) . . . not to exceed \$4;

4 (6) a juvenile case manager fee (Art. 102.0174, Code  
5 of Criminal Procedure) . . . not to exceed \$5 if the municipality  
6 employs a juvenile case manager; and

7 (7) a civil justice fee (Art. 102.022, Code of  
8 Criminal Procedure) . . . \$0.10.

9 SECTION 16. Subsection (e), Article 45.056, Code of  
10 Criminal Procedure, is repealed.

11 SECTION 17. The change in law made by this Act applies only  
12 to conduct that occurs on or after the effective date of this Act.  
13 Conduct that occurs before the effective date of this Act is  
14 governed by the law in effect at the time the conduct occurred, and  
15 the former law is continued in effect for that purpose. For  
16 purposes of this section, conduct occurs before the effective date  
17 of this Act if any element of the violation occurs before that date.

18 SECTION 18. To the extent of any conflict, this Act prevails  
19 over another Act of the 82nd Legislature, Regular Session, 2011,  
20 relating to nonsubstantive additions to and corrections in enacted  
21 codes.

22 SECTION 19. This Act takes effect September 1, 2011.

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Speaker of the House

I hereby certify that S.B. No. 1489 passed the Senate on April 26, 2011, by the following vote: Yeas 27, Nays 4; May 24, 2011, Senate refused to concur in House amendments and requested appointment of Conference Committee; May 25, 2011, House granted request of the Senate; May 28, 2011, Senate adopted Conference Committee Report by the following vote: Yeas 31, Nays 0.

\_\_\_\_\_  
Secretary of the Senate

I hereby certify that S.B. No. 1489 passed the House, with amendments, on May 23, 2011, by the following vote: Yeas 139, Nays 0, three present not voting; May 25, 2011, House granted request of the Senate for appointment of Conference Committee; May 28, 2011, House adopted Conference Committee Report by the following vote: Yeas 146, Nays 0, one present not voting.

\_\_\_\_\_  
Chief Clerk of the House

Approved:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Governor



**Appendix N:**

**House Bill 1479, 83rd Legislative Session**



1 AN ACT  
2 relating to establishing a committee in certain counties to  
3 recommend a uniform truancy policy.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Subchapter C, Chapter 25, Education Code, is  
6 amended by adding Section 25.0916 to read as follows:

7 Sec. 25.0916. UNIFORM TRUANCY POLICIES IN CERTAIN COUNTIES.

8 (a) This section applies only to a county:

9 (1) with a population greater than 1.5 million; and

10 (2) that includes at least:

11 (A) 15 school districts with the majority of  
12 district territory in the county; and

13 (B) one school district with a student enrollment  
14 of 50,000 or more and an annual dropout rate spanning grades 9-12 of  
15 at least five percent, computed in accordance with standards and  
16 definitions adopted by the National Center for Education Statistics  
17 of the United States Department of Education.

18 (b) A committee shall be established to recommend a uniform  
19 truancy policy for each school district located in the county.

20 (c) Not later than September 1, 2013, the county judge and  
21 the mayor of the municipality in the county with the greatest  
22 population shall each appoint one member to serve on the committee  
23 as a representative of each of the following:

24 (1) a juvenile district court;



- 1           (2) a municipal court;
- 2           (3) the office of a justice of the peace;
- 3           (4) the superintendent or designee of an independent  
4 school district;
- 5           (5) an open-enrollment charter school;
- 6           (6) the office of the district attorney; and
- 7           (7) the general public.

8           (d) Not later than September 1, 2013, the county judge shall  
9 appoint to serve on the committee one member from the house of  
10 representatives and one member from the senate who are members of  
11 the respective standing legislative committees with primary  
12 jurisdiction over public education.

13           (e) The county judge and mayor of the municipality in the  
14 county with the greatest population shall:

15           (1) both serve on the committee or appoint  
16 representatives to serve on their behalf; and

17           (2) jointly appoint a member of the committee to serve  
18 as the presiding officer.

19           (f) Not later than September 1, 2014, the committee shall  
20 recommend:

21           (1) a uniform process for filing truancy cases with  
22 the judicial system;

23           (2) uniform administrative procedures;

24           (3) uniform deadlines for processing truancy cases;

25           (4) effective prevention, intervention, and diversion  
26 methods to reduce truancy and referrals to a county, justice, or  
27 municipal court;

1           (5) a system for tracking truancy information and  
2 sharing truancy information among school districts and  
3 open-enrollment charter schools in the county; and

4           (6) any changes to statutes or state agency rules the  
5 committee determines are necessary to address truancy.

6           (g) Compliance with the committee recommendations is  
7 voluntary.

8           (h) The committee's presiding officer shall issue a report  
9 not later than December 1, 2015, on the implementation of the  
10 recommendations and compliance with state truancy laws by a school  
11 district located in the county.

12           (i) This section expires January 1, 2016.

13           SECTION 2. This Act takes effect immediately if it receives  
14 a vote of two-thirds of all the members elected to each house, as  
15 provided by Section 39, Article III, Texas Constitution. If this  
16 Act does not receive the vote necessary for immediate effect, this  
17 Act takes effect September 1, 2013.

H.B. No. 1479

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Speaker of the House

I certify that H.B. No. 1479 was passed by the House on April 18, 2013, by the following vote: Yeas 142, Nays 1, 2 present, not voting; and that the House concurred in Senate amendments to H.B. No. 1479 on May 24, 2013, by the following vote: Yeas 145, Nays 0, 2 present, not voting.

\_\_\_\_\_  
Chief Clerk of the House

I certify that H.B. No. 1479 was passed by the Senate, with amendments, on May 22, 2013, by the following vote: Yeas 31, Nays 0.

\_\_\_\_\_  
Secretary of the Senate

APPROVED: \_\_\_\_\_

Date

\_\_\_\_\_  
Governor

**Appendix O:**

**Senate Bill 1234, 83rd Legislative Session/ Veto Proclamation**



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AN ACT

relating to the prevention of truancy and the offense of failure to attend school.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subsection (i), Article 45.054, Code of Criminal Procedure, is amended to read as follows:

(i) A county, justice, or municipal court shall dismiss the complaint against an individual alleging that the individual committed an offense under Section 25.094, Education Code, if:

(1) the court finds that the individual has successfully complied with the conditions imposed on the individual by the court under this article; or

(2) the individual presents to the court proof that the individual has obtained a high school diploma or a high school equivalency certificate after taking a high school equivalency examination administered under Section 7.111, Education Code.

SECTION 2. Subsection (e), Article 45.055, Code of Criminal Procedure, is amended to read as follows:

(e) A court shall expunge an individual's conviction under Section 25.094, Education Code, and records relating to a conviction, regardless of whether the individual has previously been convicted of an offense under that section, if:

(1) the court finds that the individual has successfully complied with the conditions imposed on the individual

1 by the court under Article 45.054; or

2 (2) before the individual's 21st birthday, the  
3 individual presents to the court proof that the individual has  
4 obtained a high school diploma or a high school equivalency  
5 certificate after taking a high school equivalency examination  
6 administered under Section 7.111, Education Code.

7 SECTION 3. Subsection (a), Article 45.056, Code of Criminal  
8 Procedure, is amended to read as follows:

9 (a) On approval of the commissioners court, city council,  
10 [~~school district board of trustees,~~] juvenile board, or other  
11 appropriate authority, a county court, justice court, municipal  
12 court, [~~school district,~~] juvenile probation department, or other  
13 appropriate governmental entity may[+]

14 [~~(1)~~] employ a case manager or agree, in accordance  
15 with Chapter 791, Government Code, with any appropriate  
16 governmental entity to jointly employ a case manager or to jointly  
17 contribute to the costs of a case manager employed by one  
18 governmental entity to provide services in cases involving juvenile  
19 offenders before a court consistent with the court's statutory  
20 powers[+~~or~~

21 [~~(2) agree in accordance with Chapter 791, Government~~  
22 ~~Code, to jointly employ a case manager].~~

23 SECTION 4. Section 25.085, Education Code, is amended by  
24 amending Subsection (e) and adding Subsections (g) and (h) to read  
25 as follows:

26 (e) A person who voluntarily enrolls in school or  
27 voluntarily attends school after the person's 18th birthday shall

1 attend school each school day for the entire period the program of  
2 instruction is offered. A school district may revoke for the  
3 remainder of the school year the enrollment of a person who has more  
4 than five absences in a semester that are not excused under Section  
5 25.087, except that a school district may not revoke the enrollment  
6 of a person under this subsection on a day on which the person is  
7 physically present at school. A person whose enrollment is revoked  
8 under this subsection may be considered an unauthorized person on  
9 school district grounds for purposes of Section 37.107.

10 (g) After the third unexcused absence of a person described  
11 by Subsection (e), a school district shall issue a warning letter to  
12 the person that states the person's enrollment may be revoked for  
13 the remainder of the school year if the person has more than five  
14 unexcused absences in a semester.

15 (h) As an alternative to revoking a person's enrollment  
16 under Subsection (e), a school district may impose a behavior  
17 improvement plan described by Section 25.0915(b)(1).

18 SECTION 5. Section 25.0915, Education Code, is amended to  
19 read as follows:

20 Sec. 25.0915. TRUANCY PREVENTION MEASURES; REFERRAL AND  
21 FILING REQUIREMENT. (a) A school district shall adopt truancy  
22 prevention measures designed to:

23 (1) address student conduct related to truancy in the  
24 school setting before the student violates Section 25.094;

25 (2) minimize the need for referrals to juvenile court  
26 for conduct described by Section 51.03(b)(2), Family Code; and

27 (3) minimize the filing of complaints in county,



1 justice, and municipal courts alleging a violation of Section  
2 25.094.

3 (b) As a truancy prevention measure under Subsection (a), a  
4 school district may take one or more of the following actions:

5 (1) impose:

6 (A) a behavior improvement plan on the student  
7 that must be signed by an employee of the school, that the school  
8 district has made a good faith effort to have signed by the student  
9 and the student's parent or guardian, and that includes:

10 (i) a specific description of the behavior  
11 that is required or prohibited for the student;

12 (ii) the period for which the plan will be  
13 effective, not to exceed 45 school days after the date the contract  
14 becomes effective; or

15 (iii) the penalties for additional  
16 absences, including additional disciplinary action or the referral  
17 of the student to a juvenile court; or

18 (B) school-based community service; or

19 (2) refer the student to counseling, community-based  
20 services, or other in-school or out-of-school services aimed at  
21 addressing the student's truancy.

22 (c) A referral made under Subsection (b)(2) may include  
23 participation by the child's parent or guardian if necessary.

24 (d) Each referral to juvenile court for conduct described by  
25 Section 51.03(b)(2), Family Code, or complaint filed in county,  
26 justice, or municipal court alleging a violation by a student of  
27 Section 25.094 must:

1           (1) be accompanied by a statement from the student's  
2 school certifying that:

3                   (A) the school applied the truancy prevention  
4 measures adopted under Subsection (a) to the student; and

5                   (B) the truancy prevention measures failed to  
6 meaningfully address the student's school attendance; and

7           (2) specify whether the student is eligible for or  
8 receives special education services under Subchapter A, Chapter 29.

9           (e) Except as provided by Subsection (f), a school district  
10 shall employ a truancy prevention facilitator to implement the  
11 truancy prevention measures required by this section and any other  
12 effective truancy prevention measures as determined by the school  
13 district or campus. At least annually, the truancy prevention  
14 facilitator shall meet to discuss effective truancy prevention  
15 measures with a case manager or other individual designated by a  
16 juvenile or criminal court to provide services to students of the  
17 school district in truancy cases.

18           (f) Instead of employing a truancy prevention facilitator,  
19 a school district may designate an existing district employee to  
20 implement the truancy prevention measures required by this section  
21 and any other effective truancy prevention measures as determined  
22 by the school district or campus.

23           SECTION 6. Subchapter C, Chapter 25, Education Code, is  
24 amended by adding Section 25.0916 to read as follows:

25           Sec. 25.0916. UNIFORM TRUANCY POLICIES IN CERTAIN COUNTIES.

26           (a) This section applies only to a county:

27                   (1) with a population greater than 1.5 million; and

1                   (2) that includes at least:

2                   (A) 15 school districts with the majority of  
3 district territory in the county; and

4                   (B) one school district with a student enrollment  
5 of 50,000 or more and an annual dropout rate spanning grades 9-12 of  
6 at least five percent, computed in accordance with standards and  
7 definitions adopted by the National Center for Education Statistics  
8 of the United States Department of Education.

9                   (b) A committee shall be established to recommend a uniform  
10 truancy policy for each school district located in the county.

11                   (c) Not later than September 1, 2013, the county judge and  
12 the mayor of the municipality in the county with the greatest  
13 population shall each appoint one member to serve on the committee  
14 as a representative of each of the following:

15                   (1) a juvenile district court;

16                   (2) a municipal court;

17                   (3) the office of a justice of the peace;

18                   (4) the superintendent or designee of an independent  
19 school district;

20                   (5) an open-enrollment charter school;

21                   (6) the office of the district attorney; and

22                   (7) the general public.

23                   (d) Not later than September 1, 2013, the county judge shall  
24 appoint to serve on the committee one member from the house of  
25 representatives and one member from the senate who are members of  
26 the respective standing legislative committees with primary  
27 jurisdiction over public education.

1       (e) The county judge and mayor of the municipality in the  
2 county with the greatest population shall:

3               (1) both serve on the committee or appoint  
4 representatives to serve on their behalf; and

5               (2) jointly appoint a member of the committee to serve  
6 as the presiding officer.

7       (f) Not later than September 1, 2014, the committee shall  
8 recommend:

9               (1) a uniform process for filing truancy cases with  
10 the judicial system;

11               (2) uniform administrative procedures;

12               (3) uniform deadlines for processing truancy cases;

13               (4) effective prevention, intervention, and diversion  
14 methods to reduce truancy and referrals to a county, justice, or  
15 municipal court;

16               (5) a system for tracking truancy information and  
17 sharing truancy information among school districts and  
18 open-enrollment charter schools in the county; and

19               (6) any changes to statutes or state agency rules the  
20 committee determines are necessary to address truancy.

21       (g) Compliance with the committee recommendations is  
22 voluntary.

23       (h) The committee's presiding officer shall issue a report  
24 not later than December 1, 2015, on the implementation of the  
25 recommendations and compliance with state truancy laws by a school  
26 district located in the county.

27       (i) This section expires January 1, 2016.

1 SECTION 7. Subsection (e), Section 25.094, Education Code,  
2 is amended to read as follows:

3 (e) An offense under this section is a [~~Class C~~] misdemeanor  
4 punishable by a fine not to exceed:

- 5 (1) \$100 for a first offense;  
6 (2) \$200 for a second offense;  
7 (3) \$300 for a third offense;  
8 (4) \$400 for a fourth offense; or  
9 (5) \$500 for a fifth or subsequent offense.

10 SECTION 8. Subsections (a) and (b), Section 25.0951,  
11 Education Code, are amended to read as follows:

12 (a) If a student fails to attend school without excuse on 10  
13 or more days or parts of days within a six-month period in the same  
14 school year, a school district shall within 10 school days of the  
15 student's 10th absence:

16 (1) file a complaint against the student or the  
17 student's parent or, if the district provides evidence that both  
18 the student and the student's parent contributed to the student's  
19 failure to attend school, both the student and the parent in a  
20 county, justice, or municipal court for an offense under Section  
21 25.093 or 25.094, as appropriate, or refer the student to a juvenile  
22 court in a county with a population of less than 100,000 for conduct  
23 that violates Section 25.094; or

24 (2) refer the student to a juvenile court for conduct  
25 indicating a need for supervision under Section 51.03(b)(2), Family  
26 Code.

27 (b) If a student fails to attend school without excuse on

1 three or more days or parts of days within a four-week period but  
2 does not fail to attend school for the time described by Subsection  
3 (a), the school district may:

4 (1) file a complaint against the student or the  
5 student's parent or, if the district provides evidence that both  
6 the student and the student's parent contributed to the student's  
7 failure to attend school, both the student and the parent in a  
8 county, justice, or municipal court for an offense under Section  
9 25.093 or 25.094, as appropriate, or refer the student to a juvenile  
10 court in a county with a population of less than 100,000 for conduct  
11 that violates Section 25.094; or

12 (2) refer the student to a juvenile court for conduct  
13 indicating a need for supervision under Section 51.03(b)(2), Family  
14 Code.

15 SECTION 9. The changes in law made by this Act apply only to  
16 conduct violating Section 25.094, Education Code, on or after the  
17 effective date of this Act. A violation that occurs before the  
18 effective date of this Act is covered by the law in effect when the  
19 violation occurred, and the former law is continued in effect for  
20 that purpose. For purposes of this section, a violation occurs  
21 before the effective date of this Act if any element of the  
22 violation occurs before that date.

23 SECTION 10. This Act takes effect September 1, 2013.

S.B. No. 1234

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Speaker of the House

I hereby certify that S.B. No. 1234 passed the Senate on April 25, 2013, by the following vote: Yeas 27, Nays 3; and that the Senate concurred in House amendments on May 24, 2013, by the following vote: Yeas 28, Nays 3.

\_\_\_\_\_  
Secretary of the Senate

I hereby certify that S.B. No. 1234 passed the House, with amendments, on May 22, 2013, by the following vote: Yeas 145, Nays 3, one present not voting.

\_\_\_\_\_  
Chief Clerk of the House

Approved:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Governor

# **Gov. Perry Vetoes SB 1234**

Friday, June 14, 2013 • Austin, Texas • Veto Statement

Pursuant to Article IV, Section 14, of the Texas Constitution, I, Rick Perry, Governor of Texas, do hereby disapprove of and veto Senate Bill No. 1234 as passed by the Eighty-Third Texas Legislature, Regular Session, because of the following objections:

Senate Bill 1234 attempts to change how truancy is handled by placing progressive sanctions on students based on recommendations established in a behavioral improvement plan. While these plans are meant to hold students accountable for attendance and behavior management, they do not track the child from district to district and are lost as a student transfers from one school to another, which is common for chronically truant students.

Senate Bill 1234 will hurt established local programs and prevent schools from identifying and helping address the issues students are facing. Additionally, SB 1234 conflicts with other legislation, such as SB 393, concerning which trancies are considered a ticketable offense.

Since the Eighty-Third Texas Legislature, Regular Session, by its adjournment has prevented the return of this bill, I am filing these objections in the office of the Secretary of State and giving notice thereof by this public proclamation according to the aforementioned constitutional provision.

IN TESTIMONY WHEREOF, I have signed my name officially and caused the Seal of the State to be affixed hereto at Austin, this 14th day of June, 2013.

**RICK PERRY**  
Governor of Texas





**Appendix P:**

**Senate Bill 1419, 83rd Legislative Session**



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AN ACT

relating to funding for juvenile case managers through certain court costs and to the establishment of the truancy prevention and diversion fund.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subsections (a) and (c), Article 45.056, Code of Criminal Procedure, are amended to read as follows:

(a) On approval of the commissioners court, city council, school district board of trustees, juvenile board, or other appropriate authority, a county court, justice court, municipal court, school district, juvenile probation department, or other appropriate governmental entity may:

(1) employ a case manager to provide services in cases involving juvenile offenders who are before a court consistent with the court's statutory powers or referred to a court by a school administrator or designee for misconduct that would otherwise be within the court's statutory powers prior to a case being filed, with the consent of the juvenile and the juvenile's parents or guardians; [~~or~~]

(2) employ one or more juvenile case managers who:  
(A) shall assist the court in administering the court's juvenile docket and in supervising the court's orders in juvenile cases; and

(B) may provide:

1                   (i) prevention services to a child  
2 considered at risk of entering the juvenile justice system; and

3                   (ii) intervention services to juveniles  
4 engaged in misconduct before cases are filed, excluding traffic  
5 offenses; or

6                   (3) agree in accordance with Chapter 791, Government  
7 Code, to jointly employ a case manager to provide services  
8 described by Subdivisions (1) and (2).

9                   (c) An entity that jointly employs a case manager under  
10 Subsection (a)(3) employs a juvenile case manager for purposes of  
11 Chapter 102 of this code and Chapter 102, Government Code [A county  
12 or justice court on approval of the commissioners court or a  
13 municipality or municipal court on approval of the city council may  
14 employ one or more juvenile case managers to assist the court in  
15 administering the court's juvenile docket and in supervising its  
16 court orders in juvenile cases].

17                   SECTION 2. Subchapter A, Chapter 102, Code of Criminal  
18 Procedure, is amended by adding Article 102.015 to read as follows:

19                   Art. 102.015. COURT COSTS: TRUANCY PREVENTION AND  
20 DIVERSION FUND. (a) The truancy prevention and diversion fund is  
21 a dedicated account in the general revenue fund.

22                   (b) A person convicted in municipal or justice court of an  
23 offense, other than an offense relating to a pedestrian or the  
24 parking of a motor vehicle, shall pay as a court cost \$2 in addition  
25 to other court costs.

26                   (c) For purposes of this article, a person is considered to  
27 have been convicted if:

1           (1) a sentence is imposed; or  
2           (2) the defendant receives deferred disposition in the  
3 case.

4           (d) Court costs under this article are collected in the same  
5 manner as other fines or costs. An officer collecting the costs  
6 shall keep separate records of the funds collected as costs under  
7 this article and shall deposit the funds in the county treasury or  
8 municipal treasury, as applicable.

9           (e) The custodian of a county treasury or municipal  
10 treasury, as applicable, shall:

11           (1) keep records of the amount of funds on deposit  
12 collected under this article; and

13           (2) send to the comptroller before the last day of the  
14 first month following each calendar quarter the funds collected  
15 under this article during the preceding quarter, except that the  
16 custodian may retain 50 percent of funds collected under this  
17 article for the purpose of operating or establishing a juvenile  
18 case manager program, if the county or municipality has established  
19 or is attempting to establish a juvenile case manager program.

20           (f) If no funds due as costs under this article are  
21 deposited in a county treasury or municipal treasury in a calendar  
22 quarter, the custodian of the treasury shall file the report  
23 required for the quarter in the regular manner and must state that  
24 no funds were collected.

25           (g) The comptroller shall deposit the funds received under  
26 this article to the credit of a dedicated account in the general  
27 revenue fund to be known as the truancy prevention and diversion

1 fund. The legislature may appropriate money from the account only  
2 to the criminal justice division of the governor's office for  
3 distribution to local governmental entities for truancy prevention  
4 and intervention services.

5 (h) A local governmental entity may request funds from the  
6 criminal justice division of the governor's office for providing  
7 truancy prevention and intervention services. The division may  
8 award the requested funds based on the availability of appropriated  
9 funds and subject to the application procedure and eligibility  
10 requirements specified by division rule.

11 (i) Funds collected under this article are subject to audit  
12 by the comptroller.

13 SECTION 3. Subchapter B, Chapter 103, Government Code, is  
14 amended by adding Section 103.034 to read as follows:

15 Sec. 103.034. MISCELLANEOUS COURT COSTS: TRUANCY  
16 PREVENTION AND DIVERSION FUND. Court costs of \$2 for the truancy  
17 prevention and diversion fund established under Article 102.015,  
18 Code of Criminal Procedure, shall be collected under that article.

19 SECTION 4. The change in law made by this Act applies only  
20 to an offense committed on or after the effective date of this Act.  
21 An offense committed before the effective date of this Act is  
22 covered by the law in effect when the offense was committed, and the  
23 former law is continued in effect for that purpose. For purposes of  
24 this section, an offense is committed before the effective date of  
25 this Act if any element of the offense was committed before that  
26 date.

27 SECTION 5. This Act takes effect September 1, 2013.

S.B. No. 1419

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Speaker of the House

I hereby certify that S.B. No. 1419 passed the Senate on April 23, 2013, by the following vote: Yeas 21, Nays 10; and that the Senate concurred in House amendment on May 25, 2013, by the following vote: Yeas 26, Nays 4.

\_\_\_\_\_  
Secretary of the Senate

I hereby certify that S.B. No. 1419 passed the House, with amendment, on May 22, 2013, by the following vote: Yeas 139, Nays 9, two present not voting.

\_\_\_\_\_  
Chief Clerk of the House

Approved:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Governor



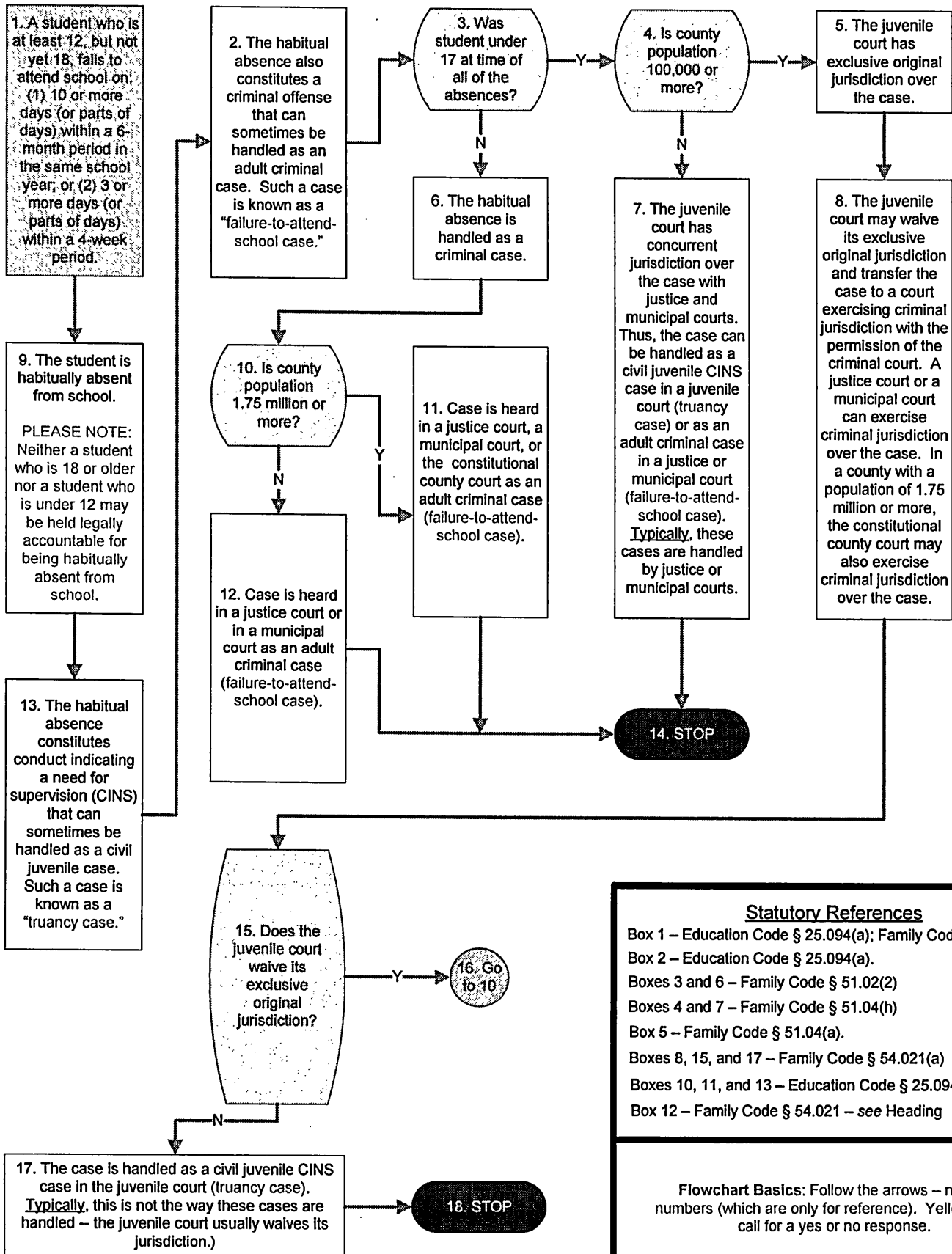


**Appendix Q:**

**Jurisdictional Flowchart – Failure to Attend School and Truancy**



## Jurisdictional Flowchart for Failure-to-Attend-School-Cases and Truancy Cases



### Statutory References

- Box 1 – Education Code § 25.094(a); Family Code § 51.03(b).
- Box 2 – Education Code § 25.094(a).
- Boxes 3 and 6 – Family Code § 51.02(2)
- Boxes 4 and 7 – Family Code § 51.04(h)
- Box 5 – Family Code § 51.04(a).
- Boxes 8, 15, and 17 – Family Code § 54.021(a)
- Boxes 10, 11, and 13 – Education Code § 25.094(b)
- Box 12 – Family Code § 54.021 – see Heading

**Flowchart Basics:** Follow the arrows – not the numbers (which are only for reference). Yellow boxes call for a yes or no response.



**Appendix R:**

**Office of Court Administration – Orders of Non-Disclosure Overview**





Office of Court Administration

## Orders of Nondisclosure Overview

### What is an Order of Nondisclosure?

An order of nondisclosure is a court order prohibiting public entities such as courts and police departments from disclosing certain criminal records. If you have a criminal record, you may benefit from obtaining such an order.

An order of nondisclosure also legally frees you from disclosing information about your criminal history in response to questions on job applications. You do not need to mention information related to the offense that is the subject of an order of nondisclosure.

Please note that an order of nondisclosure applies to a particular criminal offense. The order does not apply to all offenses that may be on your criminal record, but you may obtain multiple orders of nondisclosure for multiple offenses.

As mentioned above, an order of nondisclosure directs entities holding information about a certain offense on your criminal record to not release that information. This is a general rule. There are exceptions. Certain state agencies are still entitled to obtain information concerning an offense that is the subject of an order of nondisclosure.

### Who is eligible for an Order of Nondisclosure?

Not all persons with criminal records are entitled to file a petition for an order of nondisclosure. You are entitled to file a petition only if six specified conditions are met. These conditions are set out below:

1. First, you must have been placed on deferred adjudication community supervision (hereinafter, "deferred adjudication") for the offense in question. The court that placed you on deferred adjudication will have issued an order of deferred adjudication in your case. Ideally, you should attach a copy of your order of deferred adjudication to your petition. (While attaching a copy of your order of deferred adjudication is not required, doing so may expedite the process of obtaining an order of nondisclosure.)



You can obtain a copy of your order of deferred adjudication from the clerk of the court that placed you on deferred adjudication.

Please note that if you were placed on deferred adjudication for an offense, you were not considered to be convicted. If you were convicted on an offense, you are not entitled to file a petition for an order of nondisclosure. This is the case even if you were placed on community supervision (*i.e.*, probation) after being convicted.

2. Second, you must have successfully completed deferred adjudication. If you successfully completed deferred adjudication, the court that placed you on deferred adjudication should have issued an order of dismissal and discharge. Ideally, you should attach a copy of your order of dismissal and discharge to your petition. (While attaching a copy of your order of dismissal and discharge is not required, doing so may expedite the process of obtaining an order of nondisclosure.) You can obtain a copy of your order of dismissal and discharge from the clerk of the court that placed you on deferred adjudication.

Please note that if you did not successfully complete deferred adjudication, you are not entitled to file a petition for an order of nondisclosure.

3. Third, the offense in question must be an offense for which you may obtain an order of nondisclosure. A person may be placed on deferred adjudication for a wide variety of offenses. Not all of these offenses, however, may be the subject of an order of nondisclosure. There are three categories of offenses that are not eligible for an order of nondisclosure.

- The first category consists of violations of any of the following sections of the Texas Penal Code: 19.02, 19.03, 20.04, 22.04, 22.041, 25.07, and 42.072. The Texas Penal Code is available online at <http://www.statutes.legis.state.tx.us>.

- The second category consists of offenses that require registration as a sex offender.

- The third category consists of offenses involving family violence.

Please check your order of deferred adjudication to determine whether the offense in question falls in any of these three ineligible categories. If the

offense falls in one of the three ineligible categories, you are not entitled to file a petition.

4. Fourth, you must not have any disqualifying criminal history. Here, the offense for which you are seeking an order of nondisclosure is not the concern. Rather, the concern is other offenses that may be part of your criminal record. There are three categories of offenses that will cause you to not be entitled to file a petition for an order of nondisclosure. If you have ever been convicted of (or placed on deferred adjudication for) any of these offenses, you are not entitled to file a petition.

- The first category consists of violations of any of the following sections of the Texas Penal Code: 19.02, 19.03, 20.04, 22.04, 22.041, 25.07, and 42.072.

- The second category consists of offenses that require registration as a sex offender.

- The third category consists of offenses involving family violence.

If you are unsure if you have a disqualifying criminal history, you may wish to check your criminal history record. You can obtain a copy of your criminal history record from the Texas Department of Public Safety (DPS). Procedures for obtaining your criminal history record can be found online at <http://www.txdps.state.tx.us>.

Your criminal history record will list the offenses for which you have been convicted or placed on deferred adjudication. Your criminal history record will not show whether any of these offenses required registration as a sex offender, nor will your criminal history record reveal whether any of the offenses involved family violence. The underlying judgments of conviction and orders of deferred adjudication will reveal this information.

Again, if you know your criminal history, you do not need to obtain your criminal history record. You are not required to attach your criminal history record to your petition. You may, however, attach your criminal history record to your petition if you so desire.

5. Fifth, you must have waited a certain period of time after the court's order of dismissal and discharge to seek an order of nondisclosure.

- If the offense in question is a felony, you may not file a petition for an order of nondisclosure until the fifth anniversary after your dismissal and discharge.
  - If the offense is a misdemeanor under Chapter 20, 21, 22, 25, 42, or 46 of the Texas Penal Code, your wait is shorter. Specifically, you may not file a petition for an order of nondisclosure until the second anniversary after your dismissal and discharge.
  - For any other misdemeanor, there is no waiting period; you may file a petition seeking an order of nondisclosure once the Court issues an order of dismissal and discharge.
6. Sixth, you must not have been convicted of (or placed on deferred adjudication for) any criminal offenses during a special time period. A fine-only offense under the Texas Transportation Code does not count as a criminal offense for purposes of this requirement. In other words, a traffic ticket does not count as a conviction.

The special time period begins on the date you were placed on deferred adjudication. The special time period ends on the date of your order of dismissal and discharge plus any applicable waiting period as described above.

If you meet all six of the foregoing requirements, you are entitled to file a petition for order of nondisclosure.

#### How do I obtain an Order of Nondisclosure?

In order to obtain an order of nondisclosure, you must first file a petition for an order of nondisclosure with the proper court. The petition is to be filed with the clerk of the court that handled the offense for which you were placed on deferred adjudication. You will have to pay a filing fee in the approximate amount of \$280 – *the fee varies from county to county*. Please check with the clerk of the court to determine the exact filing fee. If you are indigent, you may file an affidavit of indigency in lieu of paying a filing fee. You can find a fill-in-the-blank affidavit-of-indigency form at <http://www.courts.state.tx.us/jcit/Efiling/IndigencyForm.doc>.

As mentioned immediately above, by meeting the six requirements you are entitled to file a petition for order of nondisclosure. This does not guarantee, however, that the judge will grant your petition and issue an order of nondisclosure. The judge must issue an order of nondisclosure only upon a finding that issuance of the order is in the best interest of justice.

On the next page you will find a petition form. Following the form, you will find detailed instructions on completing the form. You can fill in the blanks on the form by typing your answers in the spaces provided. Alternatively, you may handwrite the answers. Don't forget to sign your petition. Your petition does not need to be notarized. You may file your completed petition with the appropriate court clerk electronically, by mail, or in person. For directions on how to file your petition electronically, please go to <http://www.texfile.com>.

#### What happens after I file my Petition for an Order of Nondisclosure?

Once you have filed your petition, you do not need to provide notice to anyone else. The court clerk will provide notice of the filing of your petition to the State of Texas (*i.e.*, the prosecutor's office). The State may request a hearing on your petition. The first decision for the judge at the hearing will be whether you are entitled to file the petition. The second decision for the judge at the hearing will be whether issuance of an order of nondisclosure is in the best interest of justice.

If the State requests a hearing before the 45<sup>th</sup> day after receiving notice of the filing of your petition, the judge must hold a hearing. You will be required to attend this hearing. If the State does not ask for a hearing, the judge may still decide to hold a hearing. You will be given notice of the place and time of the hearing so be sure to keep your contact information up to date with the clerk of the court.

In many instances, however, the judge will not hold a hearing. If the State does not request a hearing, the judge may issue an order of nondisclosure without holding any hearing. The judge will decline to hold a hearing in such a circumstance if he or she makes two determinations:

- that you are entitled to file a petition for an order of nondisclosure; and
- that issuance of an order of nondisclosure is in the best interest of justice.

In such an instance, the court clerk will provide you with a copy of the order of nondisclosure.

Who do I contact if I have questions about this process?

If you need legal advice, you should contact a lawyer. It is always best to hire a lawyer. A lawyer will be in the best position to advise you as to what you should do. Without the advice and help of a lawyer, you may not properly seek an order of nondisclosure. This may cause your petition for an order of nondisclosure to be denied.

If you have questions about the form, please contact the Texas Office of Court Administration at (512) 463-1625.



Office of Court Administration

**Instructions for Completing the Model  
Petition for Order of Nondisclosure**

- (1) Please leave this blank. This number is not the number of your criminal case. A new civil case is created by filing this petition. This new case will be assigned a new cause number by the clerk of the court when the clerk receives your petition. The clerk will enter the new cause number in this space.
- (2) Please enter the name of the court in which you are filing this petition. You must file this petition in the court that placed you on deferred adjudication. The name of the court is shown on the top of your order of deferred adjudication.
- (3) Please enter your name as shown in your order of deferred adjudication.
- (4) Please enter the name of the county in which the court is situated. This will be the same county as shown on your order of deferred adjudication.
- (5) Please enter your name as you did in (3) above.
- (6) Please enter either "guilty" or "nolo contendere" as shown on your order of deferred adjudication under Plea to Offense.
- (7) Please enter the offense shown on your order of deferred adjudication under Offense.
- (8) Please enter the word "is" if you are attaching your order of deferred adjudication. Please enter the words "is not" if you are not attaching your order of deferred adjudication.
- (9) Please enter the date shown under Date Order Entered on your order of deferred adjudication.
- (10) Please enter a date here that is calculated by starting with the date in (9) above. Add the Period of Supervision as shown on your order of deferred adjudication to the date shown in (9). Then subtract one day. This is the date to enter.

*For example, if your starting date (shown in (9) above) is January 1, 2010 and the period of supervision is 3 years, then add 3 years to the January 1, 2010 date. This gives you a date of January 1, 2013. Subtract one day. This gives you a date of December 31, 2012. This would be the date to enter.*

- (11) Please enter the word “is” if you are attaching your order of dismissal and discharge. Please enter the words “is not” if you are not attaching your order of dismissal and discharge.
- (12) Please enter the date shown on your order of dismissal and discharge.
- (13) Please enter the Statute for Offense as shown on your order of deferred adjudication.
- (14) Please enter the word “not” unless the statute you listed in (13) is Section 19.02, 19.03, 20.04, 22.04, 22.041, 25.07 or 42.072 of the Texas Penal Code. If the statute you listed in (13) is one of the foregoing statutes, you are not entitled to file a petition for order of nondisclosure.
- (15) Please enter the word “not” unless the offense for which you were placed on deferred adjudication required you to register as a sex offender. Your order of deferred adjudication will show whether sex offender registration requirements do or do not apply to you. If sex offender registration requirements apply to you, then you are not entitled to file a petition for an order of nondisclosure.
- (16) Please enter the word “not” unless the offense for which you were placed on deferred adjudication involved family violence. You can tell whether the offense involved family violence by looking at your order of deferred adjudication. If the offense involved family violence, there will be a special order on your order of deferred adjudication saying so. This special order would be set out just above the judge’s signature. If the offense involved family violence, then you are not entitled to file a petition for an order of nondisclosure.
- (17) Please enter the word “never” unless you have previously been convicted of (or placed on deferred adjudication for) an offense:

- (a) under Section 19.02, 19.03, 20.04, 22.04, 22.041, 25.07 or 42.072 of the Texas Penal Code;
- (b) requiring registration as a sex offender; or
- (c) involving family violence.

(18) Please look at the section of your order of deferred adjudication entitled Degree of Offense. If the degree of offense is listed as a felony, then enter the word "felony." If the degree of offense is listed as a misdemeanor, then look at the statute you listed in (13) above. Is the listed statute found in Chapter 20, 21, 22, 25, 42, or 46 of the Penal Code? If so, then enter "misdemeanor under Chapter 20, 21, 22, 25, 42, or 46, Penal Code." If not, then enter "misdemeanor other than a misdemeanor under Chapter 20, 21, 22, 25, 42, or 46, Penal Code."

*Please note: The number of a statute consists of a chapter reference and a section reference. So a statute such as Penal Code, Section 20.03 refers to Chapter 20 and Section 3 within that chapter. If this were the statute you listed in (13) above, then this would be a misdemeanor under Chapter 20 of the Penal Code. Please be aware that not all violations of the law are found in the Penal Code. Some violations are found in other codes such as the Agriculture Code or the Transportation Code.*

- (19) If your response in (18) is "felony," then please enter "the fifth anniversary of the." If your response is "misdemeanor under Chapter 20, 21, 22, 25, 42, or 46, Penal Code," then enter "the second anniversary of the." If your response is "misdemeanor other than a misdemeanor under Chapter 20, 21, 22, 25, 42, or 46, Penal Code," then enter the word "the."
- (20) Please enter the date calculated by adding your entry in (19) to the date of your order of dismissal and discharge.

*For example, assume you entered "the second anniversary of" in (19) and the date of your order of dismissal and discharge is March 1, 2008. You would then enter March 1, 2010. As a further example, suppose you entered "the" in (19) and the*



*date of your order of dismissal and discharge is March 1, 2008. You would then enter March 1, 2008.*

- (21) Please enter the same date you entered in (9) above.
- (22) Please enter the same date you entered in (20) above.
- (23) There is a filing fee associated with filing a petition for order of nondisclosure. The filing fee is the amount of the court's regular civil filing fee plus an additional \$28.00. Typically, the total filing fee is about \$280.00. But the amount varies from county to county. You may contact the clerk of the court in which you are filing this petition to learn the amount of the total filing fee.

*As a general rule, you must pay the filing fee in order to file this petition. However, you may be eligible to file an affidavit of indigency in lieu of paying the filing fees. The affidavit of indigency is described in Texas Rule of Civil Procedure 145. You may view Rule 145 online at [http://www.supreme.court.state.tx.us/rules/trcp/trcp\\_part\\_2.pdf](http://www.supreme.court.state.tx.us/rules/trcp/trcp_part_2.pdf). You can find a fill-in-the-blank affidavit-of-indigency form at: <http://www.courts.state.tx.us/jcit/Efiling/IndigencyForm.doc>.*

Please enter "the required filing fee" if you will be paying the filing fee. If you are instead filing an affidavit of indigency, please enter "an affidavit of indigency in lieu of paying filing fees."

- (24) Please sign above the line. If you are filing this Petition electronically, you may enter "/s/" followed by your typewritten name.
- (25) Please enter your name.
- (26) Please enter your mailing address.
- (27) Please enter your city, state and zip code.
- (28) Please enter your telephone number.

Cause No. \_\_\_\_\_

In the Matter of

§

In the

§

\_\_\_\_\_

§

\_\_\_\_\_ County, Texas

## **Order of Nondisclosure**

Petitioner filed a Petition for an Order of Nondisclosure with this Court. Notice of the filing of the Petition was given to the State. The State was given an opportunity to request a hearing on the Petition. The State

- requested a hearing.
- did not request a hearing.

The Court

- conducted a hearing on \_\_\_\_\_.
- did not conduct a hearing.

The Court FINDS that Petitioner is entitled to file a Petition for an Order of Nondisclosure. Additionally, the Court FINDS that issuance of an Order of Nondisclosure is in the best interest of justice.

Accordingly, the Court ORDERS criminal justice agencies to not disclose to the public criminal history record information related to the offense of \_\_\_\_\_ for which Petitioner was placed on deferred adjudication on \_\_\_\_\_.

Signed on \_\_\_\_\_.

\_\_\_\_\_  
Judge Presiding



**Appendix S:**  
**Senate Bill 107, 83rd Legislative Session**



1 AN ACT  
2 relating to the disclosure by a court of criminal history record  
3 information that is the subject of an order of nondisclosure.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Section 411.081, Government Code, is amended by  
6 amending Subsections (a) and (d) and adding Subsections (f-1) and  
7 (g-3) to read as follows:

8 (a) This subchapter does not apply to criminal history  
9 record information that is contained in:

10 (1) posters, announcements, or lists for identifying  
11 or apprehending fugitives or wanted persons;

12 (2) original records of entry, including police  
13 blotters maintained by a criminal justice agency that are compiled  
14 chronologically and required by law or long-standing practice to be  
15 available to the public;

16 (3) public judicial, administrative, or legislative  
17 proceedings;

18 (4) court records of public judicial proceedings,  
19 except as provided by Subsection (g-3);

20 (5) published judicial or administrative opinions; or

21 (6) announcements of executive clemency.

22 (d) Notwithstanding any other provision of this subchapter,  
23 if a person is placed on deferred adjudication community  
24 supervision under Section 5, Article 42.12, Code of Criminal

1 Procedure, subsequently receives a discharge and dismissal under  
2 Section 5(c), Article 42.12, and satisfies the requirements of  
3 Subsection (e), the person may petition the court that placed the  
4 defendant on deferred adjudication for an order of nondisclosure  
5 under this subsection. Except as provided by Subsection (e), a  
6 person may petition the court for an order of nondisclosure [~~under~~  
7 ~~this subsection~~] regardless of whether the person has been  
8 previously placed on deferred adjudication community supervision  
9 for another offense. After notice to the state, an opportunity for  
10 [and] a hearing, and a determination that [~~on whether~~] the person is  
11 entitled to file the petition and issuance of the order is in the  
12 best interest of justice, the court shall issue an order  
13 prohibiting criminal justice agencies from disclosing to the public  
14 criminal history record information related to the offense giving  
15 rise to the deferred adjudication. A criminal justice agency may  
16 disclose criminal history record information that is the subject of  
17 the order only to other criminal justice agencies, for criminal  
18 justice or regulatory licensing purposes, an agency or entity  
19 listed in Subsection (i), or the person who is the subject of the  
20 order. A person may petition the court that placed the person on  
21 deferred adjudication for an order of nondisclosure [~~on payment of~~  
22 ~~a \$28 fee to the clerk of the court in addition to any other fee that~~  
23 ~~generally applies to the filing of a civil petition. The payment~~  
24 ~~may be made~~] only on or after:

25 (1) the discharge and dismissal, if the offense for  
26 which the person was placed on deferred adjudication was a  
27 misdemeanor other than a misdemeanor described by Subdivision (2);

1           (2) the second anniversary of the discharge and  
2 dismissal, if the offense for which the person was placed on  
3 deferred adjudication was a misdemeanor under Chapter 20, 21, 22,  
4 25, 42, or 46, Penal Code; or

5           (3) the fifth anniversary of the discharge and  
6 dismissal, if the offense for which the person was placed on  
7 deferred adjudication was a felony.

8           (f-1) A person who petitions the court for an order of  
9 nondisclosure under Subsection (d) may file the petition in person,  
10 electronically, or by mail. The petition must be accompanied by  
11 payment of a \$28 fee to the clerk of the court in addition to any  
12 other fee that generally applies to the filing of a civil petition.  
13 The Office of Court Administration of the Texas Judicial System  
14 shall prescribe a form for the filing of a petition electronically  
15 or by mail. The form must provide for the petition to be  
16 accompanied by the required fees and any other supporting material  
17 determined necessary by the office of court administration,  
18 including evidence that the person is entitled to file the  
19 petition. The office of court administration shall make available  
20 on its Internet website the electronic application and printable  
21 application form. Each county or district clerk's office that  
22 maintains an Internet website shall include on that website a link  
23 to the electronic application and printable application form  
24 available on the office of court administration's Internet website.  
25 On receipt of a petition under this subsection, the court shall  
26 provide notice to the state and an opportunity for a hearing on  
27 whether the person is entitled to file the petition and issuance of



1 the order is in the best interest of justice. The court shall hold a  
2 hearing before determining whether to issue an order of  
3 nondisclosure, except that a hearing is not required if:

4 (1) the state does not request a hearing on the issue  
5 before the 45th day after the date on which the state receives  
6 notice under this subsection; and

7 (2) the court determines that:

8 (A) the defendant is entitled to file the  
9 petition; and

10 (B) the order is in the best interest of justice.

11 (g-3) A court may not disclose to the public any information  
12 contained in the court records that is the subject of an order of  
13 nondisclosure issued under this section. The court may disclose  
14 information contained in the court records that is the subject of an  
15 order of nondisclosure only to criminal justice agencies for  
16 criminal justice or regulatory licensing purposes, to an agency or  
17 entity listed in Subsection (i), or to the person who is the subject  
18 of the order. The clerk of the court issuing an order of  
19 nondisclosure under this section shall seal any court records  
20 containing information that is the subject of the order as soon as  
21 practicable after the date the clerk of the court sends all relevant  
22 criminal history record information contained in the order or a  
23 copy of the order to the Department of Public Safety under  
24 Subsection (g).

25 SECTION 2. (a) Subsection (a), Section 411.081,  
26 Government Code, as amended by this Act, and Subsection (g-3),  
27 Section 411.081, Government Code, as added by this Act, apply to the

1 disclosure on or after the effective date of this Act of information  
2 that is the subject of an order of nondisclosure issued under  
3 Section 411.081, Government Code, regardless of whether the order  
4 is issued before, on, or after the effective date of this Act.

5 (b) Subsection (d), Section 411.081, Government Code, as  
6 amended by this Act, and Subsection (f-1), Section 411.081,  
7 Government Code, as added by this Act, apply to a person who  
8 petitions the court for an order of nondisclosure on or after the  
9 effective date of this Act, regardless of whether the person is  
10 placed on deferred adjudication community supervision before, on,  
11 or after that date.

12 SECTION 3. This Act takes effect September 1, 2013.

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Speaker of the House

I hereby certify that S.B. No. 107 passed the Senate on March 27, 2013, by the following vote: Yeas 30, Nays 0; and that the Senate concurred in House amendment on May 25, 2013, by the following vote: Yeas 30, Nays 0.

\_\_\_\_\_  
Secretary of the Senate

I hereby certify that S.B. No. 107 passed the House, with amendment, on May 22, 2013, by the following vote: Yeas 145, Nays 1, one present not voting.

\_\_\_\_\_  
Chief Clerk of the House

Approved:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Governor

**Appendix T:**

**Letter to Upshur County District Clerk**



# TEXAS SENATE COMMITTEE ON JURISPRUDENCE



SENATOR ROYCE WEST  
*Chairman*

SENATOR JOSE RODRIGUEZ  
*Vice-Chairman*  
SENATOR DONNA CAMPBELL  
SENATOR JOHN CARONA  
SENATOR KELLY HANCOCK  
SENATOR KEN PAXTON

February 7, 2014

Carolyn Parrott  
District Clerk, Upshur County  
405 N. Titus Street  
Gilmer, TX 75644

Dear Ms. Parrott:

It has recently been brought to my attention through documents provided my committee that citizens accused of crimes in Upshur County are being required to forfeit future rights to nondisclosure as a condition of plea agreements offering deferred adjudication community supervision. I am hoping your office may be able to shed additional light on this practice.

As Chair of the Senate Committee on Jurisprudence, I am concerned that requiring such a condition as part of a plea agreement may run afoul of the Legislature's intent when we adopted Section 411.081, Texas Government Code, which offers those individuals who satisfy the requirements of deferred adjudication the right to prevent the future release of certain criminal history information. It also appears to deny numerous individuals the ability to avail themselves of a plea agreement without coercion.

So that my committee may investigate this matter further, I respectfully request that you search your records and provide my office with all waivers of rights to file motions for nondisclosure that have been entered into for the preceding three years. In conjunction with these records, I also ask that you provide the ethnicity of each defendant, as well as the prosecuting attorney. In order to comply with confidentiality requirements, I understand that any records provided will not contain personal identifying information.

If you have any questions regarding the provision of these documents, please do not hesitate to contact my Jurisprudence Committee Director, Julie Frank, at (512) 463-0395 or at [julie.frank\\_sc@senate.state.tx.us](mailto:julie.frank_sc@senate.state.tx.us). I appreciate your immediate attention to this matter.

Sincerely,

A handwritten signature in black ink that reads "Royce West".

Royce West  
Chair, Senate Committee on Jurisprudence

THE STATE OF TEXAS

VS.

[Redacted]

IN THE 115<sup>TH</sup> DISTRICT COURT

IN AND FOR

UPSHUR COUNTY, TEXAS

§  
§  
§  
§  
§

[Redacted]

**WAIVER OF RIGHT TO FILE MOTION FOR NONDISCLOSURE**

I, [Redacted], acknowledge that on this the [Redacted] I intend to enter a plea of guilty to the offense of [Redacted]. In the event the Court honors the plea agreement, I understand that I will be placed on deferred community supervision for a period of [Redacted].

Further, I understand that under Section 411.081, Texas Government Code, if I subsequently receive a discharge and dismissal under Section 561, Article 42.12, and satisfy the requirements of Subsection (c), that I have the right to petition this Court for an order of nondisclosure. I understand that if this Court entered such an order, criminal justice agencies would be prohibited from disclosing to the public criminal history record information related to the offense giving rise to the deferred community supervision I received.

Understanding this, and pursuant to the plea agreement, I hereby waive my right to file a motion seeking an order of nondisclosure in this case and I understand that, pursuant to the plea agreement in this case, I am forfeiting my right to seek such an order in the future should I be eligible to do so. I enter into this agreement freely, voluntarily, without coercion, and of my own free will after consulting with my attorney.

[Redacted]

Defendant

SWORN TO AND SUBSCRIBED BEFORE ME, the undersigned authority on this [Redacted]

APPROVED:

Carolyn Parral District Clerk  
Upshur County, Texas

Attorney for Defendant

By  
Deputy

APPROVED

Judge Presiding

**Appendix U:**

**Senate Jurisprudence Committee Postings, Witness Lists, and Minutes**





**SENATE**  
**NOTICE OF PUBLIC HEARING**

RECEIVED  
SECRETARY OF THE SENATE

COMMITTEE: Jurisprudence  
TIME & DATE: 10:00 AM, Tuesday, June 03, 2014  
PLACE: 2E.20 (Betty King Cmte. Rm.)  
CHAIR: Senator Royce West

14 APR 16 AM 11:43

.....  
The Senate Jurisprudence Committee will meet on Tuesday, June 3, 2014 at 10:00 a.m. in the Betty King Committee Room, 2E.20, to hear invited and public testimony on the following interim charges:

1. Monitor the implementation of Senate Bill 393 and Senate Bill 1114 and determine if any statutory changes are necessary to clarify the intent of this legislation. In addition, determine those school districts that have implemented the graduated sanctions envisioned by Senate Bill 393 and decide if any additional statutory changes are necessary to ensure that school districts are complying with its intent.

2. Monitor the implementation of statewide electronic filing as mandated by the Texas Supreme Court to determine if any additional training or resources are needed by local jurisdictions. In addition, determine those jurisdictions that have imposed the local transaction fee, as created by House Bill 2302, to determine how it is being utilized and if its continued collection is necessary.

The committee will also:

Take invited and public testimony regarding allegations requiring the forfeiture of future rights to nondisclosure as a condition of plea agreements in certain counties.

Public testimony will be limited to 2 minutes.

.....  
**NOTICE OF ASSISTANCE AT PUBLIC MEETINGS**

PERSONS WITH DISABILITIES WHO PLAN TO ATTEND THIS MEETING AND WHO MAY NEED ASSISTANCE, SUCH AS A SIGN LANGUAGE INTERPRETER OR PERSONAL ASSISTIVE LISTENING DEVICES, ARE REQUESTED TO CONTACT THE SENATE COMMITTEE COORDINATOR AT 512/463-0070, 72 HOURS PRIOR TO THE MEETING SO APPROPRIATE ARRANGEMENTS CAN BE MADE.

# TEXAS SENATE COMMITTEE ON JURISPRUDENCE

SENATOR ROYCE WEST  
Chairman



SENATOR JOSE RODRIGUEZ  
Vice-Chairman  
SENATOR DONNA CAMPBELL  
SENATOR JOHN CARONA  
SENATOR SYLVIA GARCIA  
SENATOR KELLY HANCOCK  
SENATOR KEN PAXTON

*Betty King Room, 2E.20  
Austin, Texas*

*Tuesday, June 3, 2014  
10:00 A.M.*

## AGENDA

- I. CALL TO ORDER
- II. ROLL CALL
- III. OPENING REMARKS
- IV. INVITED TESTIMONY

### CHARGE 1:

*Monitor the implementation of Senate Bill 393 and Senate Bill 1114 and determine if any statutory changes are necessary to clarify the intent of this legislation. In addition, determine those school districts that have implemented the graduated sanctions envisioned by Senate Bill 393 and decide if any additional statutory changes are necessary to ensure that school districts are complying with its intent.*

### PANEL 1:

- A. DAVID SLAYTON, OFFICE OF COURT ADMINISTRATION
- B. RYAN TURNER, TEXAS MUNICIPAL COURTS EDUCATION CENTER
- C. JOY BASKIN, TEXAS ASSOCIATION OF SCHOOL BOARDS

### PANEL 2:

- A. DR. SCOTT MCKENZIE, RAYBURN MIDDLE SCHOOL, SAN ANTONIO, TEXAS
- B. JEFF GASAWAY, MIDWAY HIGH SCHOOL, WACO, TEXAS
- C. CHRISTOPHER COY, HUTTO HIGH SCHOOL, HUTTO, TEXAS
- D. LON CRAFT, TEXAS SCHOOL DISTRICT POLICE CHIEFS' ASSOCIATION

PANEL 3:

- A. **DEBORAH FOWLER, TEXAS APPLESEED**
- B. **DEREK COHEN, TEXAS PUBLIC POLICY FOUNDATION**

**CHARGE 2:**

*Monitor the implementation of statewide electronic filing as mandated by the Texas Supreme Court to determine if any additional training or resources are needed by local jurisdictions. In addition, determine those jurisdictions that have imposed the local transaction fee, as created by House Bill 2302, to determine how it is being utilized and if its continued collection is necessary.*

PANEL 1:

- A. **THE HONORABLE NATHAN HECHT, CHIEF JUSTICE, TEXAS SUPREME COURT**
- B. **DAVID SLAYTON, OFFICE OF COURT ADMINISTRATION**
- C. **REBECCA SIMMONS, JUDICIAL COMMITTEE ON INFORMATION TECHNOLOGY**

PANEL 2:

- A. **SHERI WOODFIN, COUNTY AND DISTRICT CLERKS ASSOCIATION OF TEXAS**
- B. **DONALD LEE, TEXAS CONFERENCE OF URBAN COUNTIES**
- C. **PAMELA MADERE, TEXAS ASSOCIATION OF DEFENSE COUNSEL**
- D. **LAURA TAMEZ, TEXAS TRIAL LAWYERS ASSOCIATION**

**NON-DISCLOSURE:**

*Allegations requiring the forfeiture of future rights to nondisclosure as a condition of plea agreements in certain counties.*

- A. **SHANNON EDMONDS, TEXAS DISTRICT AND COUNTY ATTORNEYS ASSOCIATION**
- B. **PATRICIA CUMMINGS, TEXAS CRIMINAL DEFENSE LAWYERS ASSOCIATION**
- C. **CURTIS LILLY, LAW OFFICE OF CURTIS LILLY**

V. **OTHER BUSINESS**

VI. **RECESS**

## MINUTES

### SENATE COMMITTEE ON JURISPRUDENCE

Tuesday, June 3, 2014

10:00 AM

Betty King Committee Room

\*\*\*\*\*

Pursuant to a notice posted in accordance with Senate Rule 11.10 and 11.18, a public hearing of the Senate Committee on Jurisprudence was held on Tuesday, June 3, 2014, in the Betty King Committee Room at Austin, Texas.

\*\*\*\*\*

#### MEMBERS PRESENT:

Senator Royce West, Chair  
Senator José Rodríguez, Vice Chair  
Senator Donna Campbell  
Senator Sylvia Garcia  
Senator Ken Paxton  
Senator John Whitmire

#### MEMBERS ABSENT:

Senator John Carona  
Senator Kelly Hancock

\*\*\*\*\*

The Chair called the meeting to order at 10:00 AM. The following business was transacted:

The Chair laid out interim committee charge #1, monitor the implementation of Senate Bill 393 and Senate Bill 1114 and determine if any statutory changes are necessary to clarify the intent of this legislation. In addition, determine those school districts that have implemented the graduated sanctions envisioned by Senate Bill 393 and decide if any additional statutory changes are necessary to ensure that school districts are complying with its intent.

The Chair called the following persons to provide invited testimony on interim committee charge #1. See attached witness list.

The Chair laid out interim committee charge #2, monitor the implementation of statewide electronic filing as mandated by the Texas Supreme Court to determine if any additional training or resources are needed by local jurisdictions. In addition, determine those jurisdictions that have imposed the local transaction fee, as created by House Bill 2302, to determine how it is being utilized and if its continued collection is necessary.

The Chair called the following persons to provide invited testimony on interim committee charge #2. See attached witness list.

At 12:05 PM Senator Rodríguez assumed the Chair.

At 12:11 PM Senator West resumed the Chair.

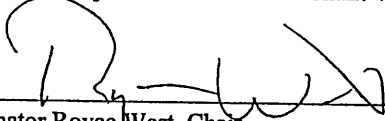
Senate Committee on Jurisprudence

Minutes

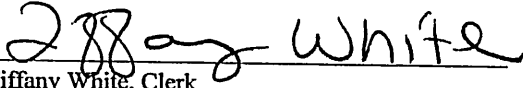
Tuesday, June 3, 2014

Page 2

There being no further business, at 1:47 PM Senator West moved that the Committee stand recessed subject to the call of the Chair. Without objection, it was so ordered.



Senator Royce West, Chair



Tiffany White, Clerk

WITNESS LIST

Jurisprudence

June 3, 2014 10:00 AM

INTERIM COMMITTEE CHARGE 1

ON:

Anderson, David General Counsel (Texas Education Agency), Austin, TX  
Baskin, Joy TASB Director of Legal Services (Texas Association of School Boards), Austin, TX  
Carreon, Jennifer Policy Researcher (Self; Texas Criminal Justice Coalition), Austin, TX  
Cobos, David Justice of the peace, midland county (Self; Justice of the peace and constables assoc of texas), Midland, TX  
Cohen, Derek Policy Analyst (Texas Public Policy Foundation), Austin, TX  
Coy, Christopher Associate Principal (Self), Austin, TX  
Craft, Lon Director Legislative Affairs-TMPA (Tmpa), Austin, TX  
Fowler, Deborah Deputy Director, Texas Appleseed (also providing written testimony) (Self; Texas Appleseed), Austin, TX  
Gasaway, Jeffrey Principal (Self), Waco, TX  
Humphrey, Ronnie Chief of Police (Self; Mt. Pleasant ISD Police Department), Mt. pleasant, TX  
Kerbow, Becky Judge (JPCA), Lewisville, TX  
McKenzie, Scott Dr. (Self; Tassp), Helotes, TX  
Slayton, David Administrative Director (Office of Court Administration), Austin, TX  
Turner, Ryan TMCEC General Counsel & Director of Education (Texas Municipal Courts Education Center), Austin, TX  
Whalen, Thea Program Attorney, Texas Justice Court Training (Texas Justice Court Training Center), Austin, TX

INTERIM COMMITTEE CHARGE 2

ON:

Bucko, Debbie Director harris county district clerk (Harris County District Clerk), Houston, TX  
Hecht, Nathan Chief Justice (Supreme Court of Texas), Austin, TX  
Hopper, Tracy Asst. Director (Harris county district clerk), Houston, TX  
Keeney, Rick President, Professional Civil Process (Self; Texas Process Servers Association), Spicewood, TX  
Lee, Donald Executive Director (Texas Conference of Urban Counties), Austin, TX  
Madere, Pamela Attorney (Self; Texas association of defense counsel), Austin, TX  
Simmons, Rebecca Hon. (Judicial committee on Information Technology (JCIT)), San Antonio, TX  
Slayton, David Administrative Director (Office of Court Administration), Austin, TX  
Tamez, Laura (Self; Texas Trial Lawyers Association), San Antonio, TX  
Woodfin, Sheri District Clerk, Tom Green County (Self; County and District Clerks Association of Texas), San Angelo, TX

Registering, but not testifying:

ON:

Leal, Paul Sergeant (Self), Hutto, TX

WITNESS LIST

Jurisprudence

June 3, 2014 10:00 AM

NON-DISCLOSURE

ON:

Cummings, Patricia Tedla (TCDLA), Round Rock, TX

Edmonds, Shannon Director of Governmental Relations (Texas District and County Attorneys Association), Austin, TX

Lilly, Curtis Attorney (Self), Dallas, TX

Registering, but not testifying:

ON:

Kendall, Angie Deputy Administrator (Texas Department of Public Safety), Austin, TX

Slayton, David Administrative Director (Office of Court Administration), Austin, TX



**SENATE  
NOTICE OF PUBLIC HEARING**

**RECEIVED  
SECRETARY OF THE SENATE**

COMMITTEE: Jurisprudence  
TIME & DATE: 10:00 AM, Thursday, October 23, 2014  
PLACE: 2E.20 (Betty King Cmte. Rm.)  
CHAIR: Senator Royce West

14 AUG 19 P3 56

---

The Senate Committee on Jurisprudence will meet on Thursday, October 23, 2014 at 10:00 a.m. in the Betty King Committee Room, 2E.20, to hear invited and public testimony on the following interim charges:

3. Study and make recommendations on the feasibility of removing failure to attend school (Section 25.094, Texas Education Code) as a Class C misdemeanor offense and determine the feasibility of adjudicating juvenile truancy as a civil offense.
4. Study and make recommendations on the availability and application of deferred adjudication, orders for non-disclosure, and expunctions. Study extending the use of expunction of criminal records history and non-disclosures to certain qualified individuals with low-level, non-violent convictions.

Public testimony will be limited to 2 minutes.

---

**NOTICE OF ASSISTANCE AT PUBLIC MEETINGS**

PERSONS WITH DISABILITIES WHO PLAN TO ATTEND THIS MEETING AND WHO MAY NEED ASSISTANCE, SUCH AS A SIGN LANGUAGE INTERPRETER OR PERSONAL ASSISTIVE LISTENING DEVICES, ARE REQUESTED TO CONTACT THE SENATE COMMITTEE COORDINATOR AT 512/463-0070, 72 HOURS PRIOR TO THE MEETING SO APPROPRIATE ARRANGEMENTS CAN BE MADE.

# TEXAS SENATE COMMITTEE ON JURISPRUDENCE

SENATOR ROYCE WEST  
*Chairman*



SENATOR JOSE RODRIGUEZ  
*Vice-Chairman*  
SENATOR DONNA CAMPBELL  
SENATOR JOHN CARONA  
SENATOR SYLVIA GARCIA  
SENATOR KELLY HANCOCK  
SENATOR KEN FAXTON

*Betty King Room, 2E.20  
Austin, Texas*

*Thursday, October 23, 2014  
10:00 A.M.*

## **AGENDA**

- I. CALL TO ORDER**
- II. ROLL CALL**
- III. OPENING REMARKS**
- IV. INVITED TESTIMONY**

### **CHARGE 3:**

*Study and make recommendations on the feasibility of removing failure to attend school (Section 25.094, Texas Education Code) as a Class C misdemeanor offense and determine the feasibility of adjudicating juvenile truancy as a civil offense.*

#### **PANEL 1:**

- A. DAVID SLAYTON, OFFICE OF COURT ADMINISTRATION**
- B. JOY BASKIN, TEXAS ASSOCIATION OF SCHOOL BOARDS**

#### **PANEL 2:**

- A. JUDGE REY CHAVEZ, DALLAS COUNTY UNIFIED TRUANCY COURT**
- B. RYAN TURNER, TEXAS MUNICIPAL COURTS EDUCATION CENTER**
- C. JUDGE DAVID M. COBOS, JUSTICES OF THE PEACE & CONSTABLES ASSOCIATION OF TEXAS (MIDLAND COUNTY)**
- D. JAMES HENRY, JUSTICE COURT ALTERNATIVE SENTENCING PROGRAM (MIDLAND COUNTY)**

#### **PANEL 3:**

- A. CHRIS COY, TEXAS ASSOCIATION OF SECONDARY SCHOOL PRINCIPALS**
- B. DR. SCOTT MCKENZIE, RAYBURN MIDDLE SCHOOL, NORTHSIDE ISD**
- C. GREGORY NELSON, ODESSA HIGH SCHOOL, ECTOR COUNTY ISD**

**MINUTES**

**SENATE COMMITTEE ON JURISPRUDENCE**

Thursday, October 23, 2014

10:00 AM

Betty King Committee Room

\*\*\*\*\*

Pursuant to a notice posted in accordance with Senate Rule 11.10 and 11.18, a public hearing of the Senate Committee on Jurisprudence was held on Thursday, October 23, 2014, in the Betty King Committee Room at Austin, Texas.

\*\*\*\*\*

**MEMBERS PRESENT:**

Senator Royce West, Chair  
Senator José Rodríguez, Vice Chair  
Senator Sylvia Garcia  
Senator Kelly Hancock  
Senator Ken Paxton

**MEMBERS ABSENT:**

Senator Donna Campbell  
Senator John Carona

\*\*\*\*\*

The Chair called the meeting to order at 10:04 AM. There being a quorum present, the following business was transacted:

Senator Rodríguez moved adoption of the minutes from the previous hearing held on June 3, 2014. Without objection, it was so ordered.

The Chair laid out interim committee charge #3, study and make recommendations on the feasibility of removing failure to attend school (Section 25.094, Texas Education Code) as a Class C misdemeanor offense and determine the feasibility of adjudicating juvenile truancy as a civil offense.

The Chair called the following persons to provide invited testimony on interim committee charge #3. See attached witness list.

At 12:30 PM Senator Rodríguez assumed the Chair.

At 12:58 PM Senator West resumed the Chair.

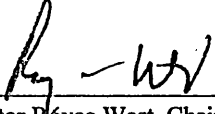
The Chair laid out interim committee charge #4, study and make recommendations on the availability and application of deferred adjudication, orders for non-disclosure, and expunctions. Study extending the use of expunction of criminal records history and non-disclosures to certain qualified individuals with low-level, non-violent convictions.

The Chair called the following persons to provide invited testimony on interim committee charge #4. See attached witness list.

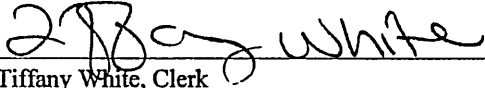
The Chair called the following persons to provide public testimony on interim committee charge #3. See attached witness list.

The Chair called the following persons to provide public testimony on interim committee charge #4. See attached witness list.

There being no further business, at 2:16 PM Senator West moved that the Committee stand recessed subject to the call of the Chair. Without objection, it was so ordered.



\_\_\_\_\_  
Senator Royce West, Chair



\_\_\_\_\_  
Tiffany White, Clerk

WITNESS LIST

Jurisprudence

October 23, 2014 10:00 AM

Charge 3

ON:

Acosta, Deborah Director Graduation and At-Risk Student Populations (also providing written testimony) (Midland Independent School District), Midland, TX  
Baskin, Joy Director of Legal Services (also providing written testimony) (Texas Association of School Boards), Austin, TX  
Bull, John Judge (City of San Antonio Truancy Committee), San Antonio, TX  
Chavez, Reinaldo Dallas County Magistrate - Truancy Courts (Dallas County), Dallas, TX  
Cobos, David Judge (also providing written testimony) (Justice of the Peace and Constables Association of Texas), Midland, TX  
Cohen, Derek Policy Analyst (Texas Public Policy Foundation), Austin, TX  
Coy, Christopher High School Assistant Principal (also providing written testimony) (Self), Austin, TX  
Funk, Ralph Principal (also providing written testimony) (Jersey Village High School, Cy Fair ISD), Houston, TX  
Gallardo, Michael (Self; Juvenile Case Manager), Austin, TX  
Henry, James Juvenile Case Manager (also providing written testimony) (JP PCT 2 - Midland, TX), Midland, TX  
McKenzie, Scott Principal (also providing written testimony) (Northside ISD), Helotes, TX  
Mergler, Mary Director, School to Prison Pipeline Project (Texas Appleseed), Austin, TX  
Nishimura, Christine (also providing written testimony) (Disability Rights Texas), Austin, TX  
Slayton, David Administrative Director (also providing written testimony) (Office of Court Administration), Austin, TX  
Stegg, Susan Judge (also providing written testimony) (Justice of the Peace, PCT 3, Travis County), Austin, TX  
Summers, Catherine Administrative Manager (also providing written testimony) (City of Houston Municipal Courts Department), Houston, TX  
Thomas, Nydia Special Counsel, Legal Education and Technical Assistance (Texas Juvenile Justice Department), Austin, TX  
Turner, Ryan Kellus General Counsel & Director of Education (also providing written testimony) (Texas Municipal Courts Education Center), Austin, TX

Registering, but not testifying:

ON:

Brower, Wendy (Texas Association for Truancy & Dropout Prevention), Garland, TX

Charge 4

ON:

Cohen, Derek Policy Analyst (Texas Public Policy Foundation), Austin, TX  
Cummings, Patricia General Counsel (TCDLA), Round Rock, TX  
Edmonds, Shannon Director of Governmental Relations (Texas District and County Attorneys Assn.), Austin, TX  
Heimlich, Ed (HonorQuest.org and Informed.org), Austin, TX

WITNESS LIST

Jurisprudence

October 23, 2014 10:00 AM

Henneke, Elizabeth Policy Attorney (Texas Criminal Justice Coalition), Austin, TX

Kendall, Angie Deputy Administrator (Texas Department of Public Safety), Austin, TX

Lewis, Bill Public Policy Liaison (Mothers Against Drunk Driving), Round Rock, TX

Quinzl, Paul Attorney (Self), Austin, TX

Slayton, David Administrative Director (also providing written testimony) (Office of Court Administration), Austin, TX

