

**Criminalizing Truancy,
A Solution of Last Resort**

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Compulsory Attendance


Education Code §25.085

- Students must attend school each school day for the entire period.

Education Code §25.085(b) and (c)

- Child at least 6 and not yet 18
- Child younger than 6 and previously enrolled in 1st grade
- On enrollment in pre-K or kindergarten

Over 18


Education Code §25.085(e)

- If voluntarily in school after 18th birthday, person must attend each school day for the entire period.
- Enrollment may be revoked for five or more absences in a semester.
- Criminal prosecution is not an option.
- Under §37.107, person may then be an unauthorized person on school grounds.

GA-0946 (2012)

- Is a public school student who is at least 18 years of age or older and younger than 21, and who is enrolled in a district that has adopted a compulsory attendance policy under section 25.085 of the Education Code, subject to prosecution under section 25.094 of the Education Code for a failure to attend school?
 - No
 - Senate Bill 1489 amended section 25.094 of the Education Code by adding a necessary element to the offense described by that section. Under that amendment, a person 18 years of age or older cannot commit an offense under section 25.094.

Failure to Attend School vs. Truancy

Failure to Attend School

Truancy

- Ed.Code §25.094
- CCP, Ch. 45
- Criminal Class C
- 12 – 17 years old
- Up to \$500 fine
- No lawyer needed
- Parent in court

- Fam.Code §51.03
- Fam.Code Title III
- Civil case (CINS)
- 10 – 16 years old
- No fine
- Lawyer needed
- Can be informal

Warning Notices

Education Code §25.095

- Required at the beginning of each school year and when student has three unexcused absences
- Notice must inform parent:
 - Parent is subject to criminal prosecution (§25.093) and
 - Student is subject to criminal prosecution (§25.094) or
 - Referral to juvenile court if under 100,000 in population

Warning Notices

Education Code §25.095

- Notice of unexcused absences must inform parent:
 - Duty to monitor student's attendance and require student to attend school
 - Subject to prosecution and
 - Request conference to discuss absences
- Lack of notice not a defense to prosecution

Original Jurisdiction

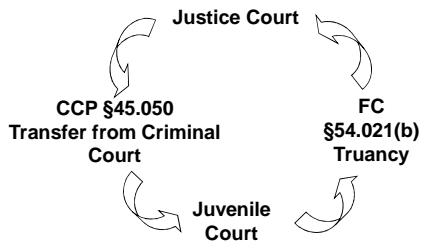
Family Code §54.021(b)

- Juvenile court with consent truancy cases may be transferred to:
 - Constitutional county court, justice or municipal court

Education Code §25.094

- Complaint must be timely filed
- Code of Criminal Procedure, Ch. 45 applies

Jurisdiction



Criminal Prosecution



Education Code §25.094

- An individual commits an offense if the individual
 - Is 12 years of age or older and younger than 18
 - Is required to attend school and
 - Fails to attend 10 or more days or parts of days within a six-month period in the same school year or
 - Fails to attend three or more days or parts of days within a four-week period

Truancy Prevention Measures



Education Code § 25.0915

- Timely filed complaint must:
 - Include a statement that the district's truancy prevention measures have been applied and failed and
 - Specify whether the student is eligible for special education services

Jurisdiction



Education Code §§25.094(b) & 25.0951

- FTAS cases may be filed in county, justice or municipal court:
 - Where individual resides or
 - Where school is located
- If county has less than 100,000 population, case can also be referred to juvenile court.

GA-0701 (2009)



- Can a justice of the peace hear truancy cases involving students who are enrolled in a school district located outside the boundaries of the justice's precinct?
 - Yes
 - An offense for failure to attend school under section 25.094(a) of the Education Code may be prosecuted in a justice court of any precinct in the county in which the alleged truant resides or in which his school is located.

When?



Education Code §25.0951

- If required to attend school (§25.085):
 - Permissive Filing: three – nine days or parts of days missed without an excuse in four weeks
 - Mandatory Filing: 10 or more days or parts of days missed without an excuse in six months in the same school year

Deadline



Education Code §25.0951

- Mandatory Filing: School must file within 10 school days of student's 10th absence.
- School district may:
 - File in county, justice or municipal court where student resides or school is located or
 - File in juvenile court if applicable by population
- Court must dismiss if not filed timely.

GA-0574 (2007)

- When must a FTAS complaint be filed?
 - 10 school days after the 10th absence.
- Can a complaint allege dates previously included in a dismissed complaint?
 - Yes, if absences occurred within six months in the same school year.
- Are there penalties besides dismissal?
 - No

Age Limitations

Education Code §25.094

- "Individual" commits FTAS if requisite days or parts of days are missed without excuse
- Allows prosecution of 12 – 17 year olds
- Includes individuals not subject to juvenile court jurisdiction (17-year-olds)

Excused Absences

Education Code §§25.087 & 25.094

- Permissive: any acceptable cause and up to two days per year to visit college as local district policy allows
- Mandatory:
 - Religious holy days
 - Court appearances
 - Citizenship appointments and related ceremony
 - Serving as an election clerk
 - Health care appointments, including appointments for autism spectrum disorder practitioners
- Affirmative defense: Absence is excused or involuntary.
- Burden of proof: preponderance of the evidence is on defendant to show that absence was involuntary

Summons



Code of Criminal Procedure, Art. 45.054

- Summons parent to personally appear and bring the individual to court
- Must include Failure to Appear warning
- Contempt – Government Code §21.002(c)
- Juvenile contempt – CCP Art. 45.050
- Expunction - CCP Art. 45.055
- Individual and parent must receive notice of expunction rights in open court

Deferred Supervision



Code of Criminal Procedure, Art. 45.051

- Authorizes a justice court to defer proceedings against a defendant, place the defendant on probation, and require the defendant to comply with one or more of the specified conditions of probation.
- Includes “any other reasonable condition” in connection with the deferment of proceedings and placement of defendants on probation.

Authorized Conditions



Code of Criminal Procedure, Art. 45.054

- Court may order one or more:
 - Attend school without unexcused absences
 - Attend GED prep classes
 - Take GED (if at least 16 years old)
 - Attend special programs
 - Complete reasonable amount of service hours
 - Participate in tutorial program
 - Order DPS to suspend or deny TDL/permit for up to 12 months

GA-0713 (2009)



- Can a justice of the peace defer further proceedings, place the individual on probation, and enter an order requiring the individual to wear an electronic monitoring device as a reasonable condition of deferral?
 - Yes
 - A justice court may use an electronic monitoring device as a condition of deferment for an individual found to have committed an offense under section 25.094, TEC, if the justice court determines that the use of the device is reasonable.

Fine Alternatives



Code of Criminal Procedure, Art. 45.051

- In fine-only misdemeanor cases, court may offer alternative fine payment options, e.g., installments, service hours or combination.
 - Show cause hearing (with notice) to determine compliance
 - Additional time to comply may be given

Undue Hardship



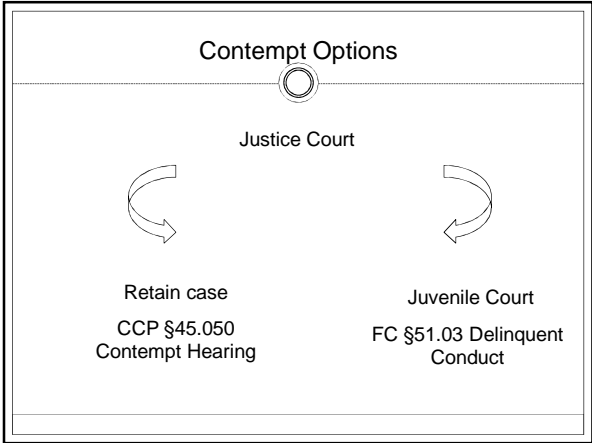
Code of Criminal Procedure, Art. 45.0491

- Justice or municipal court may waive payment of a fine or costs if it determines:
 - Defendant is indigent and
 - Paying fine and costs would impose an "undue hardship" on defendant

Violations of Court Orders

Code of Criminal Procedure, Art. 45.050

- For violation of its order the court may:
 - Refer case to juvenile court for delinquent conduct (Contempt of Court); or
 - Retain jurisdiction and after notice and hearing:
 - ✦ Hold in contempt and fine up to \$500 and/or
 - ✦ Order DPS to suspend or deny TDL or permit until obligation is fully discharged



Contempt Dispositions

Code of Criminal Procedure, Art. 45.050(b)

- No confinement for:
 - Failure to pay fine or costs imposed
 - Contempt of another order of justice or municipal court
- May hold person in contempt and impose fine and/or DPS order on TDL

Expunction Based Upon One Case



Code of Criminal Procedure, Art. 45.055

- An individual convicted of not more than one violation may, on or after the individual's 18th birthday, apply to the court in which the individual was convicted to have the conviction and records expunged.
- If the court finds the applicant has not been convicted of more than one violation, the court shall order the conviction, and all documents relating to the offense, including documents in the possession of a school district or law enforcement agency, to be expunged.
- Mandatory \$30 fee to defray costs of expunction notices

Expunction Based upon Success



Code of Criminal Procedure, Art. 45.055(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:
 - the court finds that the individual has successfully complied with the conditions imposed on the individual by the court under Article 45.054; or
 - before the individual's 21st birthday, the individual presents to the court proof that the individual has obtained a high school diploma or a high school equivalency certificate.

Parent Contributing to Non-Attendance



Education Code §25.093

- Formerly "Thwarting Compulsory Attendance" and "Parent Contributing to Truancy"
- Class C – up to \$500 fine per offense
- Contempt – Government Code §21.002(c)
- Contempt for violation of court order not failure to pay fine

Jurisdiction

Education Code §25.095(a),(b)

- Warning letter must be sent to parent before criminal complaint is filed

Education Code §25.093(a)

- Complaint:
 - Parent acted with criminal negligence by failing to require child to attend school and
 - Allege requisite number of unexcused absences

Criminal Negligence

Penal Code §6.03(d)

- Failure to perceive a risk the actor should have perceived

Why should parent perceive the risk of child not attending school?

- §25.095(a) warning notice was sent at the beginning of the school year
- §25.095(b) warning notice was sent when student reached three unexcused absences during a four-week period

Jurisdiction

Education Code §25.093(b)

- If filed in justice or municipal court:
 - Where parent resides or
 - Where school is located
- Constitutional county court if county has a population of 2 million or more

Who is a Parent?

Education Code §25.002

- "Parent" includes a person with legal control of a child under a court order.

Education Code §§25.091, 25.093, 25.095, 25.0951, 26.002 & CCP, Art. 45.054(h)

- "Parent" includes a person standing in parental relation to the child.

Number of Absences

Education Code §25.0951

- Permissive filing: three – nine days or parts of days missed without an excuse in four weeks
- Mandatory filing: 10 or more days or parts of days missed without an excuse in six months in the same school year
- Now must file within 10 days of 10th absence

Separate Offenses

Education Code §25.093(c)

- Each day child remains out of school may constitute a separate offense.
- Cases can be consolidated and tried together

Education Code §25.093(h)

- Affirmative defense: Same as FTAS

Disposition Options



Education Code §25.093(f)

- Court may order parent to:
 - Provide services to charitable organization or educational institution
 - Attend program to help parents identify and resolve failure to attend issues, if such a program is available
- Contempt – Government Code §21.002(c)

Fine



Education Code §25.093(d)

- Any fines must be deposited:
 - ½ to school district, charter school or JJAEP where child attends school and
 - ½ to general fund of the municipality or the county if complaint filed in justice or county court

Parents' Failure to Appear



Code of Criminal Procedure, Arts. 45.054 & 45.057

- Summons orders parent to appear personally with the child.
- Summons warning says Failure to Appear may result in arrest and prosecution.
- Failure to attend hearing after receiving summons is a Class C misdemeanor.

Expunction of Other Class C's



Art. 55.01 Code of Criminal Procedure

- A person is entitled to expunction if:
 - Tried for the offense and
 - × Acquitted
 - × Convicted and subsequently pardoned
 - × Convicted and pardoned based upon actual innocence

Expunction of Other Class C's



Art. 55.01 Code of Criminal Procedure

- A person is entitled to expunction if:
 - Released from the charge without a final conviction and no court ordered community supervision under 42.12, unless a Class C, provided that:
 - × Regardless of any statute of limitation, if an information has not been presented and
 - 180 days have elapsed since the arrest for a Class C and no felony in same transaction or
 - Prosecutor certifies that arrest records and files are not needed for any criminal investigation or prosecution, including another person's prosecution

Expunction of Other Class C's



Art. 55.01 Code of Criminal Procedure

- A person is entitled to expunction if:
 - Released from the charge without a final conviction and no court ordered community supervision under 42.12, unless a Class C, provided that:
 - × Regardless of any statute of limitation, if an information has been presented and was later dismissed or quashed because:
 - Completion of pre-trial diversion
 - Presentment by mistake, false information or indication of lack of probable cause or
 - Information is void

Juvenile Crime Intervention



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