

# The Recorder

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## THE 2015 TRUANCY REFORM BILL – HB 2398

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Supreme Court of Texas addressed this issue in his state-of-the-judiciary address:

### Background

Children in Texas are legally obligated to attend school.<sup>1</sup> While a smattering of people may disagree with the idea of compulsory school attendance, the concept is not particularly controversial. Requiring children to attend school is an accepted public policy.

Another well-established idea is that dropping out of school is not a good thing. Accordingly, most people would probably agree that society should take actions to try to keep kids in school. And most people would likely say that children should face some sort of consequences for habitually missing school.

But the question of what these consequences should be has been an area of considerable discussion. In recent years, the most common consequence in Texas for missing too much school has been a criminal conviction. Some people objected to the idea of criminal convictions for missing school and these voices found receptive audiences in high places. Earlier this year, Chief Justice Nathan Hecht of the

The [school ticketing] reforms last Session did not extend to truancy and attendance laws, which, while intended to keep kids in school, often operate to keep them out. The theory is that the threat of punishment will incentivize attendance. But when almost 100,000 criminal truancy charges are brought each year against Texas schoolchildren, one has to think, this approach may not be working. Playing hooky is bad, but is it criminal? A better, more effective solution may be for schools and courts alike to provide prevention and intervention services for at-risk children to actually achieve the goal: getting them back in school. This has led the Texas Judicial Council, a policy-making body for the Judiciary, to call for decriminalizing the failure to attend school. The stakes are high. Our children are our most precious treasures and our future. Education is the key to their success.<sup>2</sup>

Consistent with Chief Justice Hecht’s entreaty, eight separate bills were filed in the Texas Legislature during

*Truancy Reform continued on pg. 5*



### INSIDE THIS ISSUE

#### Features:

2016 MTSI Awards .....	24
Bills with Early Effective Dates.....	3
Impaired Driving: Legislative Update .....	26
Juvenile/Truancy Clinic .....	27
Legislative Update Registration Form .....	29
Meet the TxDOT Grant Administrators .....	25
Order Form for Legislative Materials .....	28
San Antonio Clerks Certification .....	2
TMCA Annual Conference: Corpus Christi.....	32
Truancy Court Procedures Flowchart .....	12

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## AROUND THE STATE

# SAN ANTONIO LAUNCHES CERTIFICATION PROGRAM

Tessa Madison  
TMCEC Program Coordinator

This summer, the San Antonio Municipal Court offered all of their court clerks an opportunity for professional development through the Municipal Court Clerk Certification Program – a bold step for a municipality of this size. TMCEC helped San Antonio tackle this enormous challenge by offering four eight-hour sessions every Friday in June for a total of 32 hours. More than 60 clerks attended the extensive training at alternating sites of the Central Library and Business Development Center.

Spearheading this project was Fred Garcia, Clerk of the Court, and Norma Morales-Arias, Court Administrator. "We're very excited about the response we received from the entire court," said Morales-Arias. "The clerks were excited to be given this opportunity and we are thankful to have been fully supported by our judges," she continued. The clerks are required to complete Level I within an 18-month period—supervisors are required to complete Level II within the same time frame.

Working the extra trainings into TMCEC's already packed schedule was challenging, but Hope Lochridge, Executive Director, immediately saw the value. "When San Antonio invited TMCEC to offer the 32-hour Boot Camp for Clerks, it made great sense in terms of convenience and cost effectiveness," said Lochridge. "Why should 50-plus clerks have the expense of travel, housing, and meals to attend the Austin Boot Camp, when we could take the program to them? It was a cost savings for all and allowed for a program tailored to local needs."

The last time a training of this scope was achieved was in the Houston Municipal Court. A total of 52 Certified Court Clerks was the end result – a great benefit to the City of Houston.

San Antonio knew one of the keys to successfully implementing this program was offering the proper support to all personnel who attended. To ensure participants were able to complete the 32-hour training offered by TMCEC, the court was closed on Fridays for four straight weeks. The additional eight hours of training will be accomplished through programs offered by local chapters of TCCA and TMCEC webinars, to meet the 40 hour education requirement for Level I.

Clerks were also given access to study materials found on TMCEC's Online Learning Center (OLC) via [online.tmcec.com](http://online.tmcec.com) and encouraged to utilize the Study Guides. Many clerks studied together during breaks and lunch hours. The Human Resources Department pitched in by helping clerks keep track of the education hours. In addition, San Antonio has taken necessary steps to actively involve their local TCCA chapter – Freedom Trail Chapter.

Robby Chapman, Director of Clerk Education and Program Attorney for TMCEC, managed the Friday sessions and was impressed with the commitment the city showed. "It is exciting to see a court really embrace clerk education and make this kind of investment," he said. "Fred and Norma were on the ground with the clerks from day 1 through test day. Their vision and assistance made this seminar a success."

On the final day of the training series, the certification exam test was offered. A total of 55 clerks sat for the exam – both TMCEC and San Antonio believe the results will be very positive. For more information on the San Antonio model, please contact Norma Morales-Arias: [Norma.Morales-Arias@sanantonio.gov](mailto:Norma.Morales-Arias@sanantonio.gov)



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# BILLS WITH EARLY EFFECTIVE DATES

Of the bills TMCEC is analyzing in preparation for the 2015 TMCEC Legislative Update (August 7 – Lubbock; August 14 – Houston; August 17 – Dallas; August 21 – Austin), 56 have already gone into effect. These bills are listed below and accompanied by a link to more information on the Texas Legislature Online. While all of these bills are important, depending on the circumstances, bills that are of particular interest to courts are denoted with \*.

## **HB 6**

Effective 6-19-15

Relating to the creation and recreation of funds and accounts, the dedication and rededication of revenue, and the exemption of unappropriated money from use for general governmental purposes.

## **HB 40\***

Effective 5-18-15

Relating to the express preemption of regulation of oil and gas operations and the exclusive jurisdiction of those operations by the state.

## **HB 75**

Effective 5-28-15

Relating to the exemption from vehicle registration for certain farm vehicles owned by a farmers' cooperative society or marketing association.

## **HB 121\***

Effective 6-15-15

Relating to an alternative means of payment of certain criminal fines and court costs.

## **HB 239**

Effective 6-10-15

Relating to storage of flammable liquids at retail service stations in unincorporated areas and certain municipalities.

## **HB 388 \***

Effective 6-9-15

Relating to the duration of protective orders issued in cases of family violence against persons who are subsequently confined or imprisoned.

## **HB 408**

Effective 6-19-15

Relating to the retirement benefits for certain elected state officials.

## **HB 416**

Effective 6-19-15

Relating to requiring personnel of abortion facilities and certain other facilities performing abortions to complete training on human trafficking.

## **HB 431**

Effective 5-28-15

Relating to the creation of an advisory committee to examine the retention of juvenile justice records.

## **HB 716\***

Effective 6-1-15

Relating to the certification of certain peace officers to enforce commercial motor vehicle safety standards.

## **HB 790**

Effective 6-17-15

Relating to noise abatement procedures on certain turnpikes.

## **HB 819\***

Effective 6-9-15

Relating to the definition of a public health nuisance.

## **HB 942\***

Effective 6-16-15

Relating to the storage of certain hazardous chemicals, including ammonium nitrate.

## **HB 1039**

Effective 6-19-15

Relating to the sale by package stores of containers of liquor with a capacity of less than six fluid ounces.

## **HB 1079**

Effective 6-16-15

Relating to the distribution of certain civil penalties and civil restitution received by the attorney general.

## **HB 1080**

Effective 6-16-15

Relating to the definition of a state judge for purposes of state driver's license and personal identification laws.

## **HB 1186**

Effective 6-16-15

Relating to the validation of certain actions relating to municipal airport zoning regulations.

## **HB 1190**

Effective 6-19-15

Relating to the compensation of property owners whose property is damaged as a result of a pursuit involving a federal law enforcement agency.

## **HB 1277**

Effective 6-17-15

Relating to requirements for annexation of certain commercial or industrial areas by a general-law municipality.

## **HB 1595\***

Effective 6-17-15

Relating to testing certain defendants or confined persons for communicable diseases.

## **HB 1783**

Effective 6-19-15

Relating to the right of a school employee to report a crime and persons subject to the prohibition on coercing another into suppressing or failing to report information to a law enforcement agency.

## **HB 1814**

Effective 6-1-15

Relating to the online renewal of driver's licenses of certain active duty military personnel.

## **HB 2194\***

Effective 6-19-15

Relating to the offense of leaving a motor vehicle unattended (remote-start vehicles).

## **HB 2430**

Effective 6-16-15

Relating to food and beverage consumption in certain public swimming pools.

## **HB 2455**

Effective 6-16-15

Relating to the establishment of a task force to promote uniformity in the collection and reporting of information relating to family violence, sexual assault, stalking, and human trafficking.

## **HB 2511**

Effective 6-19-15

Relating to the creation of the human trafficking prevention business partnership.

## **HB 2633**

Effective 6-18-15

Relating to the release of information regarding motor vehicle accidents.



**HB 2735**

Effective 6-15-15  
Relating to the sale of alcoholic beverages in certain areas annexed by a municipality.

**HB 2945\***

Effective 6-17-15  
Relating to the use of the juvenile case manager fund.

**HB 3668**

Effective 6-19-15  
Relating to the definition of peace officer for purposes of intercepting or collecting information in relation to certain communications in an investigation conducted by an arson investigating unit.

**HB 3747**

Effective 6-16-15  
Relating to certain licenses issued to retired judicial officers.

**HB 4059**

Effective 6-18-15  
Relating to limitations on annexation by and extraterritorial jurisdiction of certain municipalities.

**SB 107**

Effective 6-20-15  
Relating to the removal, discipline, or transfer of a public school student.

**SB 112\***

Effective 5-23-15  
Relating to the authority of a magistrate to prohibit certain communications in an order for emergency protection.

**SB 287\***

Effective 6-19-15  
Relating to the elimination of certain court fees and costs and to Bill of Costs.

**SB 339\***

Effective 6-1-15  
Relating to the medical use of low-THC cannabis and the regulation of related organizations and individuals.

**SB 449\***

Effective 5-22-15  
Relating to the titling, registration, and operation of an autocycle.

**SB 507**

Effective 6-19-15  
Relating to the placement of video cameras in self-contained classrooms providing special education services.

**SB 534\***

Effective 5-15-15  
Relating to the oath of a person admitted to practice law in the State of Texas.

**SB 562**

Effective 5-15-15  
Relating to annual permits for oversized vehicles.

**SB 565\***

Effective 5-16-15  
Relating to designating the first week of May as Jury Appreciation Week.

**SB 627**

Effective 5-28-15  
Relating to the truth as a defense to libel and to an accurate reporting of allegations made by a third party regarding a matter of public concern.

**SB 631\***

Effective 6-19-15  
Relating to the authority of certain contiguous municipalities to agree to extend municipal court jurisdiction.

**SB 681**

Effective 6-16-15  
Relating to a bailiff administering the selection of names of persons for jury service in Bexar County.

**SB 850**

Effective 5-28-15  
Relating to a public duty justification for conduct of a service member of the Texas military forces.

**SB 996**

Effective 6-19-15  
Relating to notifying a parent or guardian whether an employee of a school is appointed school marshal and the confidentiality of information submitted to or collected by the Texas Commission on Law Enforcement.

**SB 1171**

Effective 6-19-15  
Relating to the operation of certain oversize or overweight vehicles transporting timber, timber products, or forestry equipment on certain public roadways.

**SB 1317**

Effective 6-18-15  
Relating to the prosecution of the offense of improper photography or visual recording.

**SB 1338\***

Effective 6-18-15  
Relating to the exemption from length limitations of certain vehicles or combinations of vehicles used to transport harvest machines.

**SB 1494\***

Effective 6-19-15  
Relating to the educational needs of homeless students.

**SB 1651**

Effective 6-19-15  
Relating to the employment requirements of a person working as a cashier for transactions involving the sale of alcoholic beverages.

**SB 1666**

Effective 5-22-15  
Relating to exempting manufacturers engaged in certain commercial research and development from registration under the Texas Controlled Substances Act.

**SB 1756**

Effective 6-19-15  
Relating to agreements between the Department of Public Safety and counties for the provision of renewal and duplicate driver's license and other identification certificate services.

**SB 1820\***

Effective 5-23-15  
Relating to the exemption of certain vehicles from towing regulations.

**SB 1853**

Effective 6-19-15  
Relating to authorizing the Department of Public Safety of the State of Texas to establish a statewide program for the prevention and detection of certain criminal offenses.

**SB 2065**

Effective 6-11-15  
Relating to the rights of certain religious organizations and individuals relating to a marriage that violates a sincerely held religious belief.



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## Truancy Reform *continued from pg. 1*

the 84th Session that sought to decriminalize truancy.<sup>3</sup> The leading decriminalization bill turned out to be Senate Bill 106 filed by Senator John Whitmire. Senate Bill 106 passed the Senate, but failed to survive a vote in the House Juvenile Justice and Family Issues Committee. However, near the end of the session, the text of Senate Bill 106 was added to House Bill 2398 filed by Representative James White. Identical versions of House Bill 2398 were eventually passed by the House and the Senate. Governor Greg Abbott signed the bill into law on June 18, 2015. The provisions of HB 2398 will go into effect on September 1, 2015.

### Treatment of Truancy Matters Under Current Law

Under current law,<sup>4</sup> truancy matters can be handled in two entirely separate ways.

**First**, the cases can be handled as criminal cases.<sup>5</sup> With a couple of exceptions,<sup>6</sup> these criminal cases are handled by justice courts and municipal courts.<sup>7</sup> In these proceedings, children may actually be convicted of the Class C misdemeanor offense of “failure to attend school” created under Education Code, Section 25.094. The offense is not technically known as “truancy,” although this term is sometimes incorrectly used. The convictions in these cases are the criminal convictions that HB 2398 seeks to eliminate.

**Second**, the cases can be handled as civil cases in the juvenile courts.<sup>8</sup> In these proceedings, children may be found to have engaged in “truancy” which constitutes conduct indicating a need for supervision (CINS).<sup>9</sup> Such findings are not criminal convictions.

Regardless of which way the truancy matter is handled, the conduct giving rise to the case is exactly the same. The conduct in question is (1) failing to attend school on 10 or more days or parts of days within a six-month period in the same school year; or (2) failing to attend school on three or more days or parts of days within a four-week period.<sup>10</sup>

Although there are two different ways in which truancy matters can be handled, as a practical matter only the first way is used. In Fiscal Year 2014, 69,052 failure-to-attend-school cases were filed in justice and municipal courts in Texas.<sup>11</sup> (This number does not include the failure-to-attend school cases filed in the constitutional county court in Dallas County.) By contrast, only 596 CINS petitions were filed in our state’s juvenile courts during the same fiscal year.<sup>12</sup> And there is no indication as to how many of the CINS cases were for truancy. Even if all 596 CINS petitions were filed for the offense of truancy,<sup>13</sup> failure-to-attend-school cases outnumber truancy cases 115 to 1.<sup>14</sup>

There is no published research as to why truancy matters are handled primarily as criminal cases instead of as juvenile matters. School districts refer truancy matters to the court system. The case statistics above show that the referral of truancy matters to the justice and municipal courts is standard operating procedure in most school districts. Thus, the handling of truancy matters by justice and municipal courts may have more to do with custom and tradition than with anything else. Some believe that juvenile courts are so focused on more serious forms of juvenile delinquency<sup>15</sup> that truancy cases tend to fall through the cracks. This may or may not be accurate. Whatever the reason, justice and municipal courts have been the courts handling most of the truancy matters in Texas for a number of years.

Current law permits judges handling failure-to-attend-school cases to do much more than simply convict a child for failing to attend school. Judges are authorized to enter remedial orders in connection with failure-to-attend-school convictions that aim to keep kids in school. These remedial orders are detailed in Article 45.054 of the Code of Criminal Procedure.<sup>16</sup>

Judges may order children to attend school, attend preparatory classes for the high school equivalency exam, or take the high school equivalency exam.<sup>17</sup> Judges may also order children to attend special programs aimed at remedying school non-attendance issues. Such programs include alcohol and drug abuse programs, self-improvement counseling programs, and programs in self-esteem and leadership.<sup>18</sup> Other such programs include training in manners, violence avoidance, sensitivity training, and advocacy.<sup>19</sup>

Judges may also direct children to perform community service.<sup>20</sup> Another alternative is to require children to participate in tutorial programs covering relevant academic subjects. And judges are also authorized to order the child and the child’s parents to attend a class for students who are at risk of dropping out of school.<sup>21</sup>

Separate and apart from the offense of failure-to-attend-school, a criminal offense exists which is known as “parent contributing to nonattendance [of school].” This offense is called for by Section 25.093 of the Education Code and is an offense committed by the parent of a truant child.<sup>22</sup> These parent-contributing-to-nonattendance cases are Class C misdemeanors and are commonly handled by justice and municipal courts. In Fiscal Year 2014, there were 68,061 of these cases filed in the justice and municipal courts.<sup>23</sup> This is very close to the number of failure-to-attend-school cases filed in the justice and municipal courts.<sup>24</sup> When a failure-to-attend-school case is filed against a child, a parent-contributing-to-nonattendance case is often filed against the child’s parent.

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As mentioned earlier, the current system of handling truancy cases has come under criticism. The primary concern has been the criminal convictions of children. The criminal convictions of adults (for parent-contributing-to-nonattendance) have not been a concern.

### **The Aims of the Truancy Reforms**

The chief objective of the truancy reforms was to do away with the criminal offense of failure to attend school. In other words, the main goal was to decriminalize truancy. But this was not the only objective. The legislators behind the reforms did not want to give students a pass for missing school. Quite to the contrary, the reformers sought to replace the current system of criminal prosecution with a new legal framework. This new framework would continue to hold students accountable for missing school. And the new framework would keep justices of the peace and municipal judges in charge of truancy cases.

Significantly, the reformers aimed to give judges the same remedial options to deal with truant children existing under current law.<sup>25</sup> Also, they wanted to keep the crime of parent-contributing-to-nonattendance in place. Thus, parents would be just as susceptible to prosecution for contributing to their child's nonattendance under the new law as under the current law.

At bottom, the reformers aimed to keep the good parts of the current truancy system while eliminating the taint associated with criminal convictions.

### **Repealing Section 25.094 is not a Complete Solution**

House Bill 2398 repeals Section 25.094 of the Education Code – the statute making failure to attend school a crime.<sup>26</sup> Repealing Section 25.094 – and thereby decriminalizing truancy – was easy. The challenge was to establish a new legal framework for handling truancy cases.

Please note that the repeal of Section 25.094 by itself ends only the first way of dealing with truancy matters under current law.<sup>27</sup> The repeal of Section 25.094 does nothing to affect the second way of handling truancy matters under current law.<sup>28</sup> Thus, if lawmakers had repealed Section 25.094 but had done nothing else, existing law would still have provided a way to process truancy cases. Juvenile courts could hear truancy matters as juvenile cases involving conduct indicating a need for supervision [CINS].

But this second way of dealing with truancy issues was not thought to be an acceptable alternative going forward. Our state's juvenile courts would not be able to keep up with nearly 70,000 new truancy cases.<sup>29</sup> Justice and municipal courts – the courts currently handling the truancy caseload – would be unable to assist with the juvenile cases. This is because under current law, justice and municipal courts are

not juvenile courts and are therefore without jurisdiction to hear juvenile cases.

Even if juvenile courts could accept this huge influx of new cases, handling truancy matters as juvenile cases is largely unworkable. In juvenile cases, attorneys must be appointed to represent all children who cannot afford their own attorney.<sup>30</sup> By contrast, in failure-to-attend school cases in the justice and municipal courts, there is no such requirement. Attorneys are generally not appointed. The cost of requiring the government to pay for the appointment of attorneys in truancy cases would be prohibitive.

Additionally, the detailed procedures called for in juvenile cases<sup>31</sup> are not an especially good fit for the majority of truancy cases. The system of separate detention hearings,<sup>32</sup> adjudication hearings,<sup>33</sup> and disposition hearings<sup>34</sup> seems ill-suited for relatively simple and straightforward truancy matters. Forcing truancy cases to fit into the procedural structure of juvenile cases would be undesirable. Both the time and expense of processing truancy cases would increase without much likelihood of a concomitant improvement in school attendance.

As noted above, there are multiple reasons why truancy matters are not well-suited for the juvenile courts. These reasons may well be partly why most truancy matters are processed in our justice and municipal courts today instead of in our juvenile courts.<sup>35</sup>

One thing was abundantly clear to the legislators behind the efforts to decriminalize truancy – simply repealing Section 25.094 would not be enough. The existing statutes allowing juvenile courts to handle truancy cases were not a panacea. Further changes would have to be made to truly reform truancy in Texas.

### **Making Justice and Municipal Courts into Juvenile Courts – A Good Idea with a Few Drawbacks**

As noted above, more needed to be done than to simply repeal Section 25.094. One idea involved designating justice and municipal courts as juvenile courts for the limited purpose of hearing truancy matters. The idea was to expand the definition of juvenile courts in Family Code, Section 51.04, to include justice and municipal courts. The new juvenile courts would serve as juvenile courts only in truancy cases.

This concept had a distinct advantage over simply repealing Section 25.094. The advantage would be that the justice and municipal courts would still be handling truancy matters. There would be no need to move a mountain of truancy cases to juvenile courts with little capacity for tens of thousands of new cases, and the judges most adept at handling truancy matters and interfacing with truant teens (justices of the peace and municipal judges) would continue to do so.

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But the concept also had drawbacks. Some of the same problems that would have plagued juvenile courts if they were tasked with hearing truancy cases would necessarily raise their ugly heads. Attorneys would have to be appointed. Overly-complex procedures would need to be employed. Thus, the costs of processing truancy cases would increase as would the time for courts to process the cases.

So the idea of designating justice and municipal courts as juvenile courts and having these courts utilize existing juvenile procedures was not ideal. A better idea would be to designate these courts as juvenile courts for limited purposes and to limit the juvenile procedures that applied to them.

For example, Section 51.10 of the Family Code calls for the appointment of attorneys. That statute could have been rewritten to make an exception to an attorney-appointment requirement in truancy cases. This approach would have tailored the Juvenile Justice Code provisions to read one way for regular juvenile cases and another way for truancy cases.

The idea certainly had promise. But the theory would have involved taking as many as 100 different statutes and dividing each of them into two parts. One part would have been applicable to regular juvenile cases while the other part would have been applicable to juvenile cases involving truancy. The implementation of the theory would likely have made a mishmash of the Juvenile Justice Code. One wishing to read the provisions applicable to truancy cases would have to wade through a multitude of material applicable only in regular juvenile cases, and users of the Juvenile Justice Code would suddenly have exceptions of all sorts (for the truancy cases) interjected into familiar Family Code provisions.

Because of the aforementioned drawbacks, the idea of designating justice and municipal courts as juvenile courts never made its way into Senate Bill 106. Instead, Senate Bill 106 (which was later incorporated into House Bill 2398) took a slightly different, outside-the-box approach.

### **Title 3A – Truancy Courts and Truant Conduct**

Senator John Whitmire is the author of Senate Bill 106 (which was adopted into House Bill 2398 by Representative James White). House Bill 2398 is the vehicle that carried the 2015 truancy reforms into reality. We will refer to the new truancy reform legislation as House Bill 2398 from this point forward.

As mentioned earlier, because of perceived drawbacks, House Bill 2398 did not propose truancy case revisions via changes to Title 3 of the Family Code.<sup>36</sup> Rather, the bill proposed a brand new Family Code title denominated as Title 3A that would deal with truancy.

House Bill 2398 consists of 44 separate sections. Section 27 of the bill contains the entirety of the new Title 3A which comprises over 30 of the bill's 79 pages. While the other sections are important (for example, Section 41 repeals Section 25.094 of the Education Code), clearly Section 27 is the key section.

Title 3A consists of just one chapter – Chapter 65 of the Family Code. This one chapter creates an entirely new type of court, an entirely new classification of conduct, and a freestanding set of procedures. The new procedures are to be used by the new courts in proceedings involving the new classification of conduct.

The new courts in question are known as truancy courts.<sup>37</sup> These courts are not actually new in the sense that there are no new courtrooms and no new judges. Rather, truancy courts are simply certain existing courts authorized to exercise a special area of jurisdiction. Thus, truancy courts are very much like juvenile courts which are actually selected district and county-level courts designated locally to exercise juvenile jurisdiction.<sup>38</sup>

Unlike juvenile courts, however, no local designations are required for certain courts to become truancy courts.<sup>39</sup> Rather, the Legislature has declared that certain courts are automatically truancy courts – no designation by a local governing board is necessary.<sup>40</sup>

The courts designated as truancy courts are: (1) constitutional county courts in counties with a population of 1.75 million or more;<sup>41</sup> (2) all justice courts; and (3) all municipal courts.<sup>42</sup> Even if a particular justice court, municipal court, or constitutional county court does not actually hear truancy cases, the court is a truancy court. Truancy court judges receive no extra compensation for their service. They simply exercise a special kind of jurisdiction when (figuratively) wearing their truancy court hats.

Having discussed the new type of court (truancy court), we turn now to the new type of conduct created under Title 3A. The new type of conduct is known as “truant conduct.” Section 65.003(a)<sup>43</sup> defines truant conduct in the following way:

A child engages in truant conduct if the child is required to attend school under Section 25.085, Education Code, and fails to attend on 10 or more days or parts of days within a six-month period in the same school year.<sup>44</sup>

This is the type of conduct over which truancy courts will exercise **exclusive** original jurisdiction when House Bill 2398 becomes effective on September 1, 2015.<sup>45</sup> Juvenile courts will no longer have jurisdiction of this conduct. House Bill 2398 amends Section 51.03(b), Family Code, to eliminate this conduct from the list of acts constituting

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conduct indicating a need for supervision [CINS].<sup>46</sup> In essence, HB 2398 has created a new form of conduct that is similar to delinquent conduct and conduct indicating a need for supervision. The juvenile courts will continue to handle delinquent conduct cases and CINS cases. But the juvenile courts will no longer hear cases involving allegations of truant conduct. Truant conduct cases will be handled (exclusively) by the new truancy courts.

We have now discussed the new type of court (truancy court) and the new type of conduct (truant conduct). Thus, we are ready to move on to a discussion of the new set of freestanding court procedures. These procedures will apply to cases involving allegations of truant conduct that will be handled by our new truancy courts.

### **Truancy Court Procedures**

One of the consequences of decriminalizing truancy is that the Code of Criminal Procedure no longer applies to truancy cases. Similarly, a consequence of eliminating truancy from the universe of conduct indicating a need for supervision is that the Juvenile Justice Code no longer applies. Thus, an entirely new set of procedures is needed to govern truancy cases.

To accentuate this point, consider the following simple question: Is there such a thing as a jury trial in a truancy case? Well, the answer is not going to be found in the provisions in the Code of Criminal Procedure dealing with juries.<sup>47</sup> The Code of Criminal Procedure does not apply. Nor is the answer going to be found in the Family Code provisions making up the Juvenile Justice Code.<sup>48</sup> The Juvenile Justice Code no longer applies either. In fact, the answer is not going to be found in any law existing prior to the passage of HB 2398.

In order to answer this simple question about jury trials, one must look to an entirely new set of laws. This new set of laws is contained in the new Title 3A (Chapter 65) of the Family Code. Title 3A is the 30 pages of new procedures in truancy cases set out in Section 27 of House Bill 2398. No wonder Title 3A is 30 pages long, and no wonder House Bill 2398 consists of 79 pages. The bill does more than just decriminalize truancy and remove truancy from the realm of conduct indicating a need for supervision. The bill actually creates entirely new procedures (Title 3A) for handling entirely new conduct (truant conduct) in entirely new courts (truancy courts).

Returning to the question about juries in truancy cases, the answer is found in Section 65.007. “A child alleged to have engaged in truant conduct is entitled to a jury trial.”<sup>49</sup> Section 65.007 goes on to say that the number of jurors in a truant conduct case is six.<sup>50</sup> The statute further details that both the State and the child are entitled to three peremptory challenges.<sup>51</sup> No fee is to be paid for a jury trial.<sup>52</sup>

The point in discussing jury trials in truancy cases at this juncture is not to delve in to these particular details. Rather, the purpose is to illustrate that House Bill 2398 creates an entirely new set of court procedures.

Many of the new procedures are borrowed from the Juvenile Justice Code. For example, the new Chapter 65 contains a provision authorizing truancy courts to appoint a guardian ad litem for a child in certain situations.<sup>53</sup> The provision is clearly based on Family Code Section 51.11.<sup>54</sup> Some of the phraseology is exactly the same.

But not all Juvenile Justice Code provisions have been brought over to Title 3A. In fact, only selected provisions show up in the new truancy law. A considerable number of Juvenile Justice Code provisions do not appear in Title 3A. Basically, the truancy court provisions may be considered a sort of “juvenile lite.”

While the new truancy provisions borrow many Juvenile Justice Code provisions, certain concepts from the Code of Criminal Procedure also make an appearance. A good example is Section 65.059 which allows a court to appoint an attorney for a child in certain situations. This provision is quite similar to Article 1.051 of the Code of Criminal Procedure which permits appointments of attorneys in the interest of justice. Justices of the peace and municipal judges have power to appoint attorneys to represent defendants under Article 1.051, although the power is rarely utilized.<sup>55</sup> Had Section 65.059 not been put in the new truancy provisions, then interest-of-justice appointments would not be authorized in truancy cases. This is because Article 1.051 applies only to criminal cases and under House Bill 2398 the truancy cases will no longer be criminal cases.

As indicated above, many of the truancy court procedures are borrowed from existing statutes. But some of the procedures are entirely new. For example, prosecutors must file petitions alleging truant conduct within 45 days of a child’s last absence giving rise to the act of truant conduct.<sup>56</sup> This is an extremely short limitations period that has no precedent in Texas law. But given the goal to get children back in school as soon as possible, a very quick timeline for court intervention seems desirable.

The new truancy procedures set out in the new Chapter 65 of the Family Code are a mix of existing laws and new ideas. This article does not attempt to detail all of the new procedures. But a flowchart has been prepared that provides an in-depth guide to the new court procedures. This flowchart can be accessed online at <http://tinyurl.com/pp7cbkt>. A commentary accompanying the flowchart is also available online at <http://tinyurl.com/ou2332y>. Both are printed in this issue of *The Recorder*.



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## The Rest of House Bill 2398

Section 27 of House Bill 2398 comprises 30 pages and sets out the court procedures in truancy cases. But the entire bill is 79 pages long and consists of 44 sections. The other 49 pages and 43 sections of the bill do not detail court procedures. Of course, this does not mean these other sections are unimportant. In fact, they are critical to the overall objective of keeping kids in school.

Many of the other sections detail different directives to school districts and school personnel. For example, Section 9 of the bill makes significant amendments to Education Code Section 25.0915, dealing with truancy prevention measures.<sup>57</sup> Section 12 amends Education Code Section 25.095 dealing with certain school district notifications by school districts to parents of children who have missed school.<sup>58</sup> And Section 13 requires school districts to refer students to truancy courts when a student has failed to attend 10 days of school in the same school year.<sup>59</sup>

These provisions will not be detailed in this document either. The article is not meant to be an exhaustive analysis of House Bill 2398. Rather, this article focuses on the reasons that House Bill 2398 came to be and the reasons an entirely new procedure was created. But a second flowchart has been prepared that systematically outlines procedures and requirements aimed at keeping kids in school. These procedures and requirements deal with children before they have (if they ever will be) been referred to truancy court. The flowchart is available online at <http://tinyurl.com/orx9ppj>. An accompanying commentary can be found online at <http://tinyurl.com/q4t5y9n>.

Other sections of the bill deal with neither truancy court procedures nor school district requirements, but these sections most definitely have a connection to truancy issues. One such section is Section 31 of the bill, which establishes judicial donation trust funds.<sup>60</sup> These funds come from gifts and donations. The money realized can be used to assist needy children or families who appear before county, justice, or municipal courts. The assistance comes in the form of “resources and services that eliminate barriers to school attendance or that seek to prevent criminal behavior.”<sup>61</sup>

Another such section is Section 36, which concerns reporting requirements to the Office of Court Administration. In light of a new type of court and a new type of conduct, changes needed to be made to the statute mandating the reporting of court activity.<sup>62</sup>

The various sections of the bill outside of Section 27 (which creates Title 3A) will not be detailed in this paper. But the content of all such sections is detailed in a section-by-section commentary available at <http://tinyurl.com/ormo4ee>.

## Summary

While much has changed in the world of truancy, a great many things have remained the same. Justices of the peace and municipal judges still oversee cases involving children who habitually miss school. The remedies available to these judges to deal with truant children under current law will be available under the new law. The concept of making children responsible for attending school is still key. The overarching aim of keeping kids in school and facilitating their graduation from high school remains the goal.

But while much remains the same, the decriminalization of truancy has been achieved. New procedures have been put in place for the courts to handle the cases in this new decriminalized world. There is great promise that courts can utilize these procedures to keep children in school without saddling them with a criminal record.

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- <sup>1</sup> See Tex. Educ. Code Section 25.085 (West 2012).
  - <sup>2</sup> The State of the Judiciary Address in Texas, Chief Justice Nathan L. Hecht, presented to the 84<sup>th</sup> Legislature, February 18, 2015. Available online at <http://www.txcourts.gov/media/857636/state-of-the-judiciary-2015.pdf>.
  - <sup>3</sup> The eight bills were HB 93, HB 297, HB 378, HB 1490, HB 2362, HB 2821, SB 106, and SB 285.
  - <sup>4</sup> “Current law” means the law before House Bill 2398 becomes effective on September 1, 2015.
  - <sup>5</sup> See generally Tex. Educ. Code Ann. Section 25.094(a)(3) (West 2012).
  - <sup>6</sup> The **first exception** concerns constitutional county courts in counties with populations of 1.75 million or more. Such constitutional county courts have jurisdiction to hear failure-to-attend school cases. Tex. Gov’t Code Ann. Section 26.045(d) (West Supp. 2014). The relevant time period for determining the population of a county for purposes of statutory interpretation is the 2010 census. See Tex. Gov’t Code Ann. Section 312.011(20) (West 2005). At the time of the 2010 census, there were only three Texas counties with populations of 1.75 million or more – Dallas County, Harris County, and Tarrant County. In these counties, the constitutional county judge is authorized to appoint magistrates to hear failure-to-attend-school cases. Tex. Gov’t Code Ann. Section 54.1172 (West 2013). But as a matter of current practice, only in Dallas County does the county judge appoint magistrates to hear failure-to-attend-school cases. The **second exception** concerns counties with populations of more than 585,000 that are contiguous to a county with a population of at least four million. See Tex. Gov’t Code Ann. Section 54.1951 (West 2013). Only Fort Bend County fits in this category. In Fort Bend County, the constitutional county court does not have jurisdiction to hear failure-to-attend-school cases. However, the constitutional county judge is authorized to appoint magistrates to hear failure-to-attend-school cases that are referred to the magistrates by courts having jurisdiction over the cases. Tex. Gov’t Code Ann. Section 54.1952 (West 2013). In Fort Bend County, magistrates have traditionally been appointed to hear failure-to-attend-school cases.
  - <sup>7</sup> Tex. Educ. Code Ann. Section 25.094(b) (West 2012).
  - <sup>8</sup> See generally Tex. Fam. Code Ann. Section 51.03(b)(2) (West 2014). Juvenile courts are simply district courts and county-level courts that have been designated to act as juvenile courts. See Tex. Fam. Code Ann. Section 51.04 (West 2014).
  - <sup>9</sup> See Tex. Fam. Code Ann. Section 51.03(b)(2), 54.021 (West 2014).
  - <sup>10</sup> See Tex. Educ. Code Section 25.094(a)(3) (West 2012) for the criminal offense of failure to attend school. See Tex. Fam. Code

- Section 51.03(b)(2) (West 2014) for the conduct indicating a need for supervision known as “truancy” under Section 54.021 of the Family Code.
- <sup>11</sup> Texas Judicial System Annual Statistical Report for Fiscal Year 2014. Statistics on Fiscal Year 2014 activity in the justice court are available online at [http://www.txcourts.gov/media/725116/3-Justice\\_Court\\_Activity\\_Detail-2014.pdf](http://www.txcourts.gov/media/725116/3-Justice_Court_Activity_Detail-2014.pdf). Statistics on Fiscal Year 2014 activity in the municipal courts are available online at <http://www.txcourts.gov/media/728073/3-Municipal-Court-Activity-FY-2014.pdf>.
- <sup>12</sup> Texas Judicial System Annual Statistical Report for Fiscal Year 2014. Statistics on Fiscal Year 2014 juvenile activity in the district and county-level courts are available online at <http://www.txcourts.gov/media/713320/2-Statewide-Juvenile-Activity-FY-2014.pdf>.
- <sup>13</sup> This is a very doubtful supposition given all of the possible acts that constitute conduct indicating a need for supervision. *See* Tex. Fam. Code Ann. Section 51.03(b) (West 2014).
- <sup>14</sup> 69,052/596 = 115.85906
- <sup>15</sup> These more serious forms of juvenile delinquency are those actions that constitute “delinquent conduct.” *See* Tex. Fam. Code Ann. Section 51.03(a) (West 2014). These actions would generally constitute Class A and B misdemeanors and felonies if committed by adults.
- <sup>16</sup> Tex. Crim. Proc. Code Ann. art. 45.054 (West Supp. 2014).
- <sup>17</sup> *Id.*
- <sup>18</sup> *Id.*
- <sup>19</sup> *Id.*
- <sup>20</sup> *Id.*
- <sup>21</sup> *Id.*
- <sup>22</sup> Tex. Educ. Code Ann. Section 25.093 (West 2012).
- <sup>23</sup> Texas Judicial System Annual Statistical Report for Fiscal Year 2014. There were 63,682 parent-contributing-to-nonattendance cases filed in the justice courts and 4,379 such cases filed in the municipal courts. Statistics on Fiscal Year 2014 activity in the justice court are available online at [http://www.txcourts.gov/media/725116/3-Justice\\_Court\\_Activity\\_Detail-2014.pdf](http://www.txcourts.gov/media/725116/3-Justice_Court_Activity_Detail-2014.pdf). Statistics on Fiscal Year 2014 activity in the municipal courts are available online at <http://www.txcourts.gov/media/728073/3-Municipal-Court-Activity-FY-2014.pdf>.
- <sup>24</sup> 69,052 failure-to-attend school cases were filed in the justice and municipal courts. *See* text accompanying footnote 11.
- <sup>25</sup> *See* text accompanying footnotes 16–21.
- <sup>26</sup> Act of May 30, 2015, 84<sup>th</sup> Leg., House Bill 2398, Section 42. (Hereinafter the bill will be cited as HB 2398, Section \_\_\_\_.)
- <sup>27</sup> *See* text accompanying footnotes 5–7.
- <sup>28</sup> *See* text accompanying footnotes 8–9.
- <sup>29</sup> 69,052 new failure-to-attend school cases were initiated in Texas in Fiscal year 2014. *See* footnote 11.
- <sup>30</sup> Tex. Fam. Code Ann. Section 51.10 (West 2014).
- <sup>31</sup> The procedures in juvenile cases are set out in Title 3 of the Family Code which consists of Chapters 51 through 61. Title 3 is known as the Juvenile Justice Code.
- <sup>32</sup> Tex. Fam. Code Ann. Section 54.01 (West 2014).
- <sup>33</sup> Tex. Fam. Code Ann. Section 54.03 (West 2014).
- <sup>34</sup> Tex. Fam. Code Ann. Section 54.04 (West 2014).
- <sup>35</sup> *See* full paragraph of text accompanying footnote 15.
- <sup>36</sup> Title 3 of the Family Code is known as the Juvenile Justice Code.
- <sup>37</sup> *See* HB 2398, Section 27, Subsection 65.002(4), Subsection 65.004.
- <sup>38</sup> *See* Tex. Fam. Code Ann. Section 51.04(b) (West 2014) (“In each county, the county’s juvenile board shall designate one or more district, criminal district, domestic relations, juvenile, or county courts or county courts at law as the juvenile court . . .”).
- <sup>39</sup> *See Id.* Not all district courts and county-level courts are juvenile courts. A county juvenile board must designate a district court or a county-level court to act as a juvenile court.
- <sup>40</sup> *See* HB 2398, Section 29, Subsection 65.004(a)(2), (3).
- <sup>41</sup> As mentioned in footnote 6, three counties meet this population requirement – Dallas County, Harris County, and Tarrant County.
- <sup>42</sup> Both municipal courts of record and municipal courts that are not courts of record are statutorily designated as truancy courts.
- <sup>43</sup> All references to sections within Chapter 65 mean Chapter 65 of the Family Code as added by House Bill 2398. As mentioned earlier, Chapter 65 is the sole chapter contained in new Title 3A of the Family Code.
- <sup>44</sup> Please note that the definition of truant conduct does not include the failure of a child to attend school on three or more days or parts of days within a four-week period. This act of nonattendance would constitute failure to attend school under Section 25.094, Education Code. This act would also constitute conduct indicating a need for supervision under Section 51.03(b)(2), Family Code. *See* text accompanying footnote 10. House Bill 2398 eliminates both of these provisions. *See* HB 2398, Section 18 (amending Section 51.03(b)(2), Family Code) and HB 2398, Section 41 (repealing Section 25.094, Education Code). The truancy reforms envision no court action for a child’s absence on three or more days within a four-week period. This is a significant change.
- <sup>45</sup> *See* HB 2398, Section 44 (effective date of HB 2398 is September 1, 2015.)
- <sup>46</sup> HB 2398, Section 18.
- <sup>47</sup> *See e.g.*, Tex. Crim. Proc. Code Ann. art. 45.025 – 45.036 (West 2006).
- <sup>48</sup> *See* Tex. Fam. Code Ann. Section 54.03(c) (West 2014).
- <sup>49</sup> HB 2398, Section 29, Subsection 65.007(a).
- <sup>50</sup> HB 2398, Section 29, Subsection 65.007(b).
- <sup>51</sup> *Id.*
- <sup>52</sup> HB 2398, Section 29, Subsection 65.007(c).
- <sup>53</sup> HB 2398, Section 29, Subsection 65.061.
- <sup>54</sup> Section 51.11 of the Family Code is part of the Juvenile Justice Code and is applicable to juvenile cases.
- <sup>55</sup> For a comprehensive article on interest-of-justice appointments in municipal courts, *see* Ryan Kellus Turner, *The Oversimplification of the Assistance of Counsel in the Adjudication of Class C Misdemeanors in Texas*, Volume 18, No. 3 Municipal Court Recorder 1 (2009).
- <sup>56</sup> HB 2398, Section 29, Subsection 65.055.
- <sup>57</sup> HB 2398, Section 9.
- <sup>58</sup> HB 2398, Section 12. These amendments serve to conform Section 25.095 to the new provisions in Title 3A of the Family Code.
- <sup>59</sup> HB 2398, Section 13.
- <sup>60</sup> HB 2398, Section 31.
- <sup>61</sup> HB 2398, Section 31, Subsection 36.002.
- <sup>62</sup> HB 2398, Section 36.



# RESOURCES FOR YOUR COURT

## Changes to OCA Monthly Reports

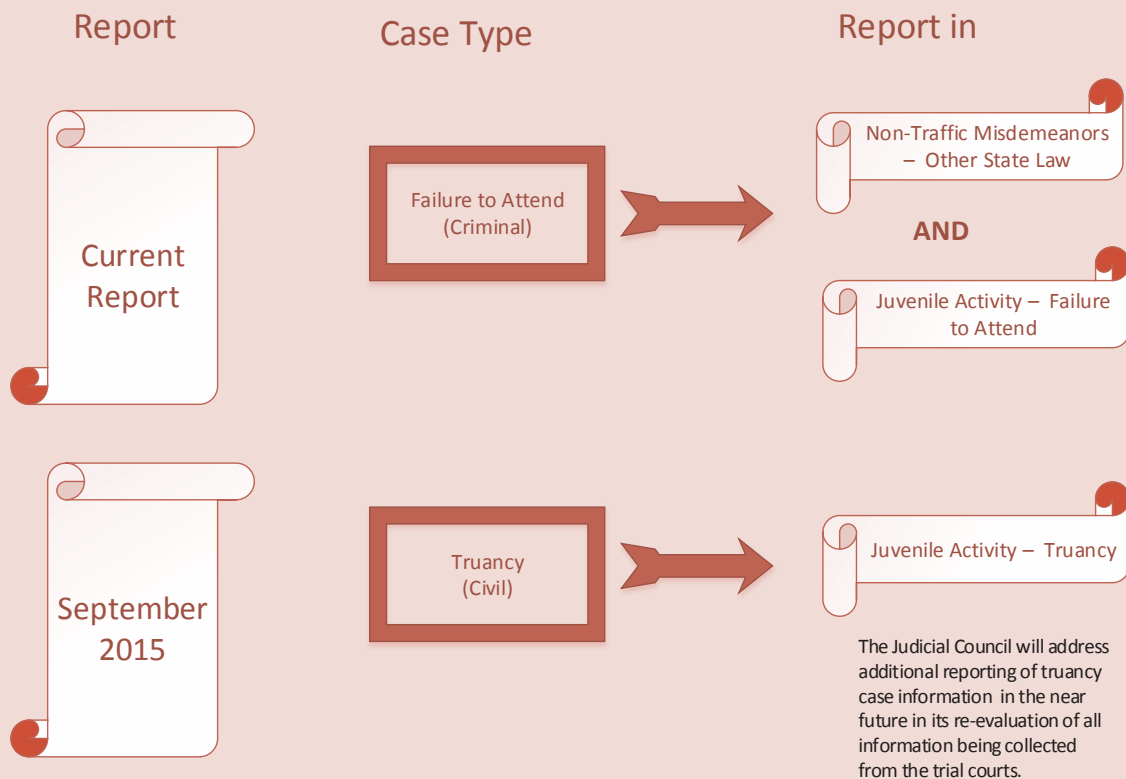
House Bill 2398, which goes into effect September 1, 2015, replaces the criminal offense of failure to attend school with a civil offense of truant conduct.

- Since truant conduct cases are civil offenses, truancy cases should not be included in the Criminal section of the report beginning September 1.
- New truancy cases filed should continue to be reported in the Juvenile section of the report on Line 6, which is currently labeled “Failure to Attend School Cases Filed” but will change to “Truancy Cases Filed.”
- Failure to attend cases filed prior to September 1, 2015 should continue to be counted as pending in the Criminal section of the report under Non-Traffic Misdemeanors—Other State Law and should be reported in the appropriate disposition category when disposed of.
- OCA has decided that inclusion of truancy cases in the Civil section of the report is not advisable at this time, as this section cannot adequately capture information on truancy cases.
- The Judicial Council will address additional reporting of truancy case information by justice and municipal courts in the near future in its re-evaluation of all information being collected from the trial courts on the monthly reports.
- Contempt of court cases involving truancy will continue to be reported under Contempt of Court.

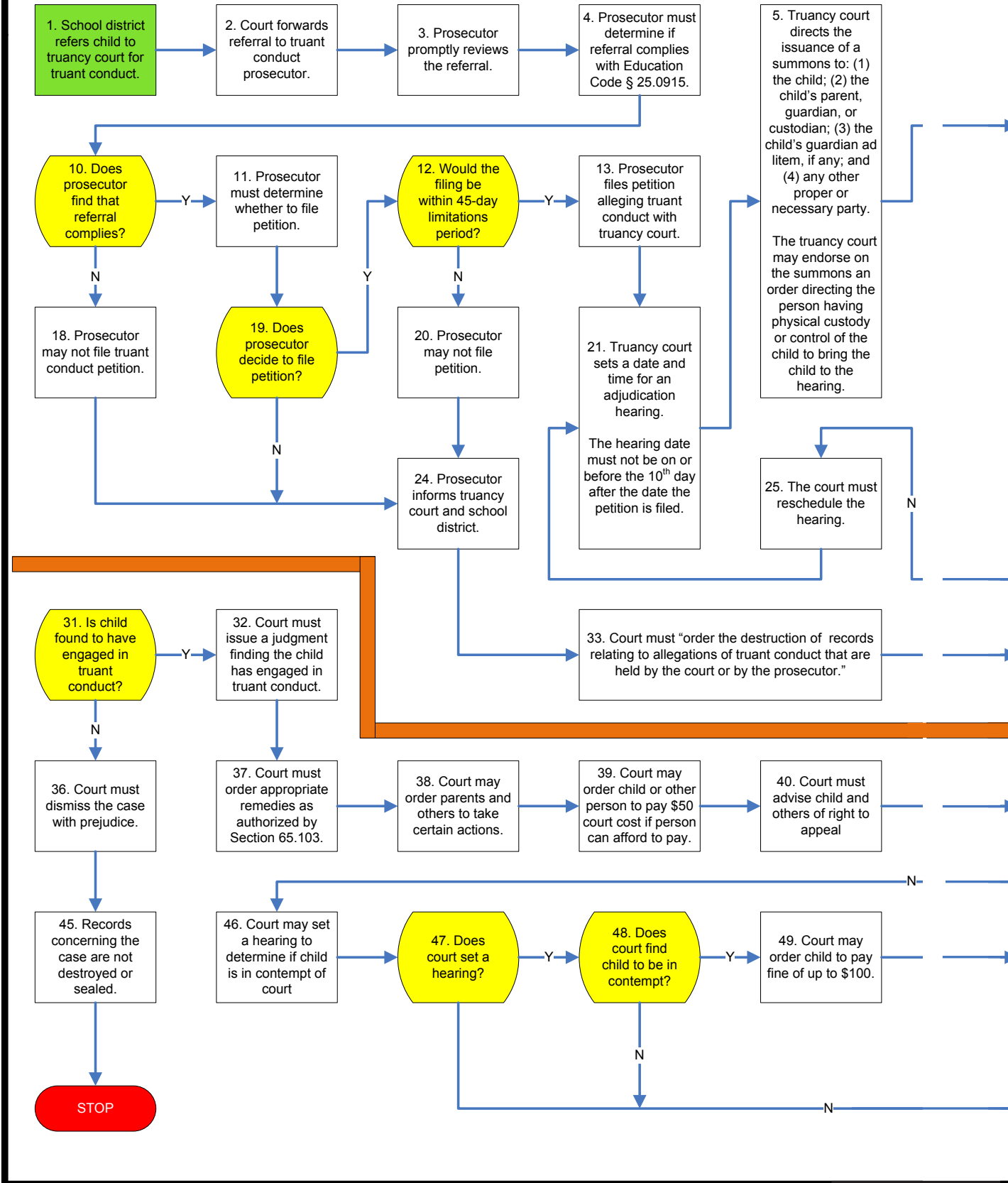
If you have any questions, please contact Judicial Information staff at [ReportingSection@txcourts.gov](mailto:ReportingSection@txcourts.gov) or (512) 463-1625.

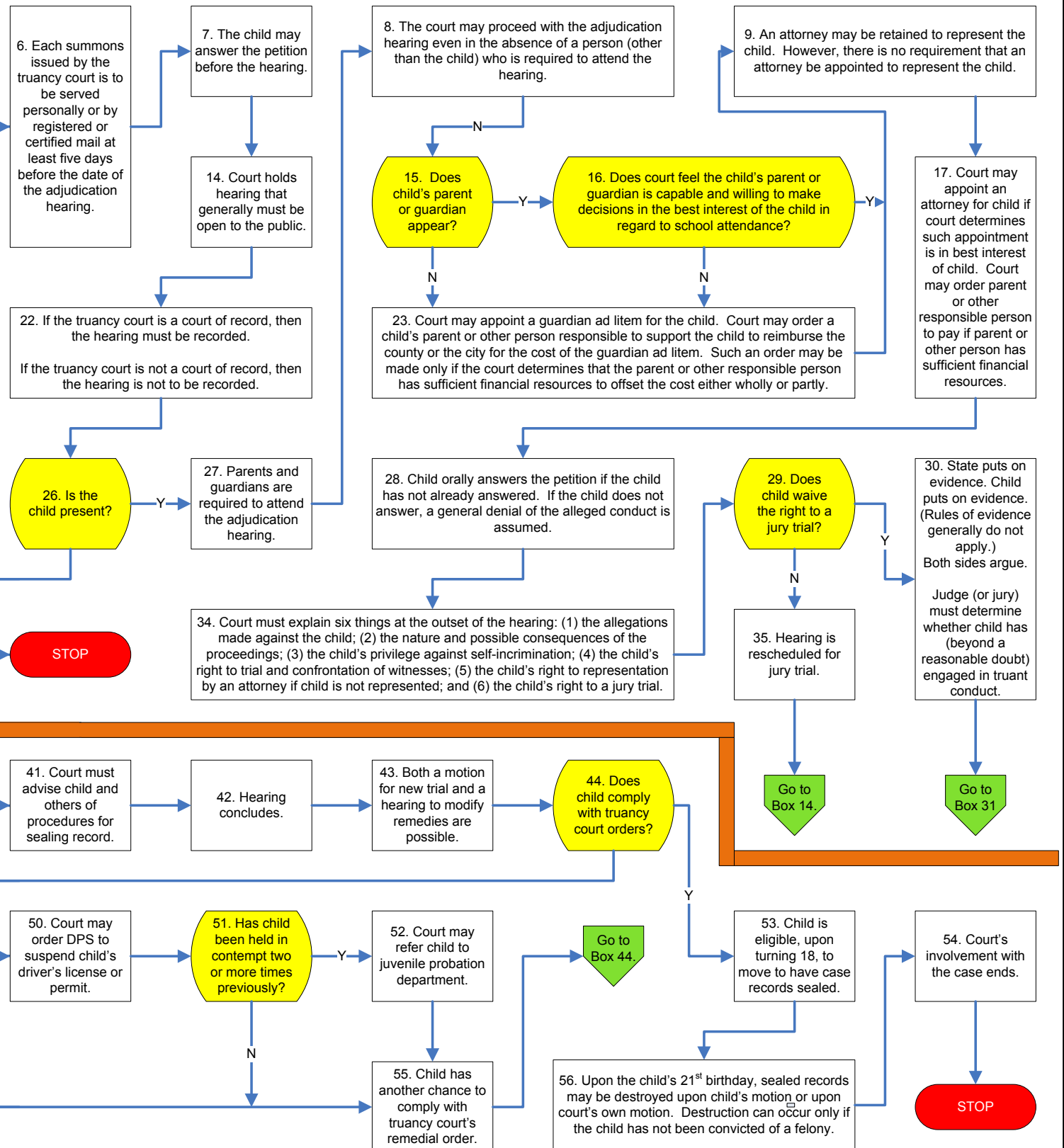
## Changes to Justice and Municipal Court Monthly Activity Reports In Response to Truancy Reform Bill (HB 2398)

Effective with the Report for September 2015



# Truancy Court Procedures





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# Step-by-Step Commentary Accompanying Flowchart for Truancy Court Procedures

July 2015

Ted Wood  
Assistant General Counsel  
Office of Court Administration  
State of Texas

## **Box 1. School district refers child to truancy court for truant conduct.**

A school district must **usually** refer a child to a truancy court to face an allegation of truant conduct in certain circumstances. Such circumstances exist if a child fails to attend school without excuse on a prescribed number of days. Specifically, a child must miss school on 10 or more days (or parts of days) within a six-month period in the same school year. Education Code Section 25.0951(a).

The school district is required to make the referral “within 10 school days of the student’s 10th absence.” *Id.*

There are **exceptions** to the referral requirement discussed above. These exceptions are set out in Section 25.0951(d) of the Education Code.

The school district’s referral has no set form, but is envisioned to be a written document.

Move to Box 2.

## **Box 2. Court forwards referral to truant conduct prosecutor.**

A school district’s referral must meet certain requirements. But a truancy court receiving such a referral is not to examine the referral for defects. Rather, the truancy court is simply required to forward the referral to the truant conduct prosecutor. Family Code Section 65.051.

Section 65.051 requires the court to forward the referral if the court is not required to dismiss the referral under Education Code Section 25.0915. But nothing in Section 25.0915 requires the court to dismiss a referral prior to forwarding the referral to the truant conduct prosecutor. Thus, a truancy court must **always** forward a school district’s referral to a truant conduct prosecutor.

Family Code Section 65.052 describes a truant conduct prosecutor as follows:

*In a justice or municipal court or a constitutional*

*county court that is designated as a truancy court, the attorney who represents the state in criminal matters in that court shall serve as the truant conduct prosecutor.*

Go to Box 3.

## **Box 3. Prosecutor promptly reviews the referral.**

Upon receiving a referral from the truancy court, the truant conduct prosecutor is required to “promptly review the facts described in [the] referral.” Family Code Section 65.053(a). There is no set period of time within which the prosecutor must perform this review. The statute simply instructs the prosecutor to perform his or her review promptly. *Id.* This makes sense because any petition alleging that the child has engaged in truant conduct must be filed within a short time period. Specifically, a petition must be filed no later than the 45<sup>th</sup> day after the last absence giving rise to the act of truant conduct. Family Code Section 65.055.

Go to Box 4.

## **Box 4. Prosecutor must determine if referral complies with Education Code Section 25.0915.**

As part of his or her review, the prosecutor must determine whether the referral was made in compliance with Education Code, Section 25.0915. Family Code Section 65.053(c). A referral complies if the referral:

- (1) is **not** for a student whose truancy is determined by the school to be the result of: (a) pregnancy; (b) being in the state foster program; (c) homelessness; or (d) being the principle income earner for the student’s family;
- (2) specifies whether the student is eligible for (or receives) special education services under Subchapter A of Section 29 of the Education Code;
- (3) is accompanied by a statement from the student’s school certifying that the school applied the “truancy prevention measures” adopted

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under Subsection (a) or (a-4) of Education Code, Section 25.0915; and

- (4) is accompanied by a statement from the student's school certifying that the truancy prevention measures failed to meaningfully address the student's school attendance.

Advance to Box 10.

**Box 5. Truancy court directs the issuance of a summons to: (1) the child; (2) the child's parent, guardian, or custodian; (3) the child's guardian ad litem, if any; and (4) any other proper or necessary party. The truancy court may endorse on the summons an order directing the person having physical custody or control of the child to bring the child to the hearing.**

The statute requiring a summons to be issued to the persons set out above is Family Code Section 65.057(a), (c). The summons must require the person to appear before the court at the place, date, and time of the adjudication hearing. Family Code Section 65.057(b). At the adjudication hearing, the person summoned will be required to answer the allegations of the petition. *Id.* A copy of the petition must accompany the summons. *Id.*

*The truancy court may endorse on the summons an order directing the person having the physical custody or control of the child to bring the child to the hearing. Family Code Section 65.057(c).*

Go to Box 6.

**Box 6. Each summons issued by the truancy court is to be served personally or by registered or certified mail at least five days before the date of the adjudication hearing.**

See Family Code Section 65.058(a). Service of the summons may be made by any suitable person under the direction of the court. Family Code Section 65.058(b).

*A party, other than the child, may waive service of summons by written stipulation or by voluntary appearance at the hearing. Family Code Section 65.057(d).*

Go to Box 7.

**Box 7. The child may answer the petition before the hearing.**

*After the petition has been filed, the child may answer, orally or in writing, the petition at or before the commencement of the hearing. Family Code Section 65.060.*

There is no set way in which the child is to answer. But a plea of guilty or not guilty would not be appropriate since the case is not criminal. A child can "admit" or "deny" the allegations in the petition. Another possible way to plead would be "true" or "not true."

Advance to Box 14.

**Box 8. The court may proceed with the adjudication hearing even in the absence of a person (other than the child) who is required to attend the hearing.**

*If a person, other than the child, required to appear under this section [Family Code Section 65.057] fails to attend a hearing, the truancy court may proceed with the hearing. Family Code Section 65.057(b).*

Go to Box 15.

**Box 9. An attorney may be retained to represent the child. However, there is no requirement that an attorney be appointed to represent the child.**

*A child may be represented by an attorney in a case under this chapter. Representation by an attorney is not required. Family Code Section 65.059(a).*

Go to Box 17.

**Box 10. Does prosecutor find that referral complies?**

If yes, then go to Box 11. If no, then go to Box 18.

**Box 11. Prosecutor must determine whether to file petition.**

The decision to file a petition that complies with Education Code Section 25.0915 lies entirely with the prosecutor. See Family Code Section 65.053(b). The decision is a matter of prosecutorial discretion.

Go to Box 19.

**Box 12. Would the filing be within 45-day limitations period?**

*A petition may not be filed after the 45th day after the date of the last absence giving rise to the act of truant conduct. Family Code Section 65.055.*

If yes, then go to Box 13. If no, then go to Box 20.

**Box 13. Prosecutor files petition alleging truant conduct with truancy court.**

A petition for an adjudication of a child for truant conduct initiates an action of the state against a student who has

allegedly engaged in truant conduct. Family Code Section 65.054(a). The form and contents of the petition are detailed in Family Code Section 65.054 as follows:

- (b) *The proceedings shall be styled "In the matter of \_\_\_\_\_, Child," identifying the child by the child's initials only.*
- (c) *The petition may be on information and belief.*
- (d) *The petition must state:*
  - (1) *with reasonable particularity the time, place, and manner of the acts alleged to constitute truant conduct;*
  - (2) *the name, age, and residence address, if known, of the child who is the subject of the petition;*
  - (3) *the names and residence addresses, if known, of at least one parent, guardian, or custodian of the child and of the child's spouse, if any; and*
  - (4) *if the child's parent, guardian, or custodian does not reside or cannot be found in the state, or if their places of residence are unknown, the name and residence address of any known adult relative residing in the county or, if there is none, the name and residence address of the known adult relative residing nearest to the location of the court.*

No filing fee is required. Family Code Section 65.054(e).

Go to Box 21.

**Box 14. Court holds hearing that generally must be open to the public.**

The law envisions a hearing in every case involving allegations of truant conduct. See Family Code Section 65.056, 65.062, 65.101. Section 65.101 explicitly states that "[a] child may be found to have engaged in truant conduct only after an adjudication hearing conducted in accordance with the provisions of [Chapter 65]." This means that a child may not simply plead true to the allegations and avoid showing up in court.

As a general rule, truancy courts are required to be open to the public. There is an exception to this general open-court rule if the court determines that the public should be excluded. Family Code Section 65.015(a).

Go to Box 22.

**Box 15. Does child's parent or guardian appear?**

If yes, then go to Box 16. If no, then go to Box 23.

**Box 16. Does court feel the child's parent or guardian is capable and willing to make decisions in the best interest of the child in regard to school attendance?**

If yes, then go to Box 9. If no, then go to Box 23.

**Box 17. Court may appoint an attorney for child if court determines such appointment is in best interest of child. Court may order parent or other responsible person to pay if parent or other person has sufficient financial resources.**

*A child is not entitled to have an attorney appointed to represent the child, but the court may appoint an attorney if the court determines it is in the best interest of the child. Family Code Section 65.059(b).*

*The court may order a child's parent or other responsible person to pay for the cost of an attorney appointed under this section if the court determines that the person has sufficient financial resources. Family Code Section 65.059(c).*

Move to Box 28.

**Box 18. Prosecutor may not file truant conduct petition.**

*The prosecutor may not file a petition for an adjudication of a child for truant conduct if the referral was not made in compliance with Section 25.0915, Education Code. Family Code Section 65.053(c).*

Go to Box 24.

**Box 19. Does prosecutor decide to file petition?**

If yes, then go to Box 12. If no, then go to Box 24.

**Box 20. Prosecutor may not file petition.**

*A petition may not be filed after the 45th day after the date of the last absence giving rise to the act of truant conduct. Family Code Section 65.055.*

Go to Box 24.

**Box 21. Truancy court sets a date and time for an adjudication hearing. The hearing date must not be on or before the 10<sup>th</sup> day after the date the petition is filed.**

See Family Code Section 65.056(a).

Go to Box 5.



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**Box 22. If the truancy court is a court of record, then the hearing must be recorded. If the truancy court is not a court of record, then the hearing is not to be recorded.**

*The proceedings in a truancy court that is a court of record must be recorded by stenographic notes or by electronic, mechanical, or other appropriate means. Family Code Section 65.016(b). The proceedings in a truancy court that is not a court of record may not be recorded. Family Code Section 65.016(a).*

Move to Box 26.

**Box 23. Court may appoint a guardian ad litem for the child. Court may order a child's parent or other person responsible to support the child to reimburse the county or the city for the cost of the guardian ad litem. Such an order may be made only if the court determines that the parent or other responsible person has sufficient resources to offset the cost either wholly or partly.**

*If a child appears before the truancy court without a parent or guardian, or it appears to the court that the child's parent or guardian is incapable or unwilling to make decisions in the best interest of the child with respect to proceedings under this chapter, the court may appoint a guardian ad litem to protect the interests of the child in the proceedings. Family Code Section 65.061(a).*

*The court may order a child's parent or other person responsible to support the child to reimburse the county or municipality for the cost of the guardian ad litem. The court may issue the order only after determining that the parent or other responsible person has sufficient financial resources to offset the cost of the child's guardian ad litem wholly or partly. Family Code Section 65.061(c).*

Please note that an attorney for a child may also be the child's ad litem. Family Code Section 65.061(b). "A law enforcement officer, probation officer, or other employee of the truancy court may not be appointed as a guardian ad litem." Family Code Section 65.061(b).

Go to Box 9.

**Box 24. Prosecutor informs truancy court and school district.**

*If the prosecutor decides not to file a petition requesting an adjudication, the prosecutor shall inform the truancy court and the school district of the decision. Family Code Section 65.053(b).*

Go to Box 33.

**Box 25. The court must reschedule the hearing.**

*The child must be personally present at the adjudication hearing. The truancy court may not proceed with the adjudication hearing in the absence of the child. Family Code Section 65.062(a).*

Return to Box 21.

**Box 26. Is the child present?**

*The child must be personally present at the adjudication hearing. The truancy court may not proceed with the adjudication hearing in the absence of the child. Family Code Section 65.062(a).*

If yes, then go to Box 27. If no, then go to Box 25.

**Box 27. Parents and guardians are required to attend the adjudication hearing.**

*A parent or guardian of a child and any court-appointed guardian ad litem of a child is required to attend the adjudication hearing. Family Code Section 65.062(b). This rule does not apply to: (1) a person for whom, for good cause shown, the court excuses attendance; (2) a person who is not a resident of this state; or (3) a parent of a child for whom a managing conservator has been appointed and the parent is not the conservator of the child. Family Code Section 65.062(c).*

Go to Box 8.

**Box 28. Child orally answers the petition if the child has not already answered. If the child does not answer, a general denial of the alleged conduct is assumed.**

*After the petition has been filed, the child may answer, orally or in writing, the petition at or before the commencement of the hearing. Family Code Section 65.060.*

There is no set way in which the child is to answer. But a plea of guilty or not guilty would not be appropriate since the case is not criminal. A child can "admit" or "deny" the allegations in the petition. Another possible way to plead would be "true" or "not true."

If for some reason the child does not enter a plea, the court is to treat the non-response as a general denial.

Advance to Box 34.

**Box 29. Does child waive the right to a jury trial?**

If yes, then go to Box 30. If no, then go to Box 35.

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**Box 30. State puts on evidence. Child puts on evidence. (Rules of evidence generally do not apply.) Both sides argue. Judge (or jury) must determine whether child has (beyond a reasonable doubt) engaged in truant conduct.**

The State has the burden of proof to show that the child engaged in truant conduct. The burden of persuasion is “beyond a reasonable doubt” as in criminal cases. See Family Code Section 65.010.

As the party with the burden of proof, the State introduces its evidence first. The child is the next to introduce evidence. Both sides argue at the end.

The factfinder (typically the judge, but possibly the jury) has a responsibility to make just one determination. That determination is whether the child engaged in truant conduct. Family Code Section 65.101(f) (“At the conclusion of the adjudication hearing, the court or jury shall find whether the child has engaged in truant conduct.”) The finding of the factfinder must be based on competent evidence admitted at the hearing. *Id.*

Go to Box 31.

**Box 31. Is child found to have engaged in truant conduct?**

If yes, then go to Box 32. If no, then go to Box 36.

**Box 32. Court must issue a judgment finding the child has engaged in truant conduct.**

*If the court or jury finds that the child did engage in truant conduct, the court shall proceed to issue a judgment finding the child has engaged in truant conduct... Family Code Section 65.101(h).*

Go to Box 37.

**Box 33. Court must “order the destruction of records relating to allegations of truant conduct that are held by the court or by the prosecutor.”**

*A truancy court shall order the destruction of records relating to allegations of truant conduct that are held by the court or by the prosecutor if a prosecutor decides not to file a petition for an adjudication of truant conduct after a review of the referral under Section 65.053. Family Code Section 65.203.*

Stop.

**Box 34. Court must explain six things at the outset of the hearing: (1) the allegations made against the child; (2) the nature and possible**

**consequences of the proceedings; (3) the child’s privilege against self-incrimination; (4) the child’s right to trial and confrontation of witnesses; (5) the child’s right to representation by an attorney if child is not represented; and (6) the child’s right to a jury trial.**

These explanations are required by Family Code Section 65.101. An adjudication hearing should never be conducted without the truancy court explaining these six things.

Go to Box 29.

**Box 35. Hearing is rescheduled for jury trial.**

A child accused of engaging in truant conduct has the right to a jury trial. Family Code Subsection 65.007, 65.101(b)(6), 65.101(c).

The number of jurors is set at six. Family Code Section 65.007(b). Both sides are entitled to three peremptory challenges. *Id.* There is no fee for a jury. Jury verdicts must be unanimous. Family Code Section 65.101(c).

If the child declines to waive his or her right to a jury, then the court will have to stop the hearing and reschedule the case. Once the case is rescheduled for a jury trial, the hearing process starts again.

Return to Box 14.

**Box 36. Court must dismiss the case with prejudice.**

*If the court or jury finds that the child did not engage in truant conduct, the court shall dismiss the case with prejudice. Family Code Section 65.101(g).*

Go to Box 45.

**Box 37. Court must order appropriate remedies as authorized by Section 65.103.**

*If the court or jury finds that the child did engage in truant conduct, the court shall . . . order the remedies the court finds appropriate under Section 65.103. Family Code Section 65.101(h).*

The court is required to orally pronounce the court’s remedial actions. Family Code, Section 65.102. The remedial actions are also to be entered in a written order. *Id.*

Section 65.103 lists the possible remedies. The entire statute is set out below:

Sec. 65.103. REMEDIAL ORDER.

(a) A truancy court may enter a remedial order requiring a child who has been found to have engaged in truant conduct to:

- (1) attend school without unexcused absences;
- (2) attend a preparatory class for the high school equivalency examination administered under Section 7.111, Education Code, if the court determines that the individual is unlikely to do well in a formal classroom environment due to the individual's age;
- (3) if the child is at least 16 years of age, take the high school equivalency examination administered under Section 7.111, Education Code, if that is in the best interest of the child;
- (4) attend a nonprofit, community-based special program that the court determines to be in the best interest of the child, including:

- (A) an alcohol and drug abuse program;
- (B) a rehabilitation program;
- (C) a counseling program, including a self-improvement program;
- (D) a program that provides training in self-esteem and leadership;
- (E) a work and job skills training program;
- (F) a program that provides training in parenting, including parental responsibility;
- (G) a program that provides training in manners;
- (H) a program that provides training in violence avoidance;
- (I) a program that provides sensitivity training; and
- (J) a program that provides training in advocacy and mentoring;

(5) complete not more than 50 hours of community service on a project acceptable to the court; and

(6) participate for a specified number of hours in a tutorial program covering the academic subjects in which the child is enrolled that are provided by the school the child attends;

(b) A truancy court may not order a child who has been found to have engaged in truant conduct to:

- (1) attend a juvenile justice alternative education program, a boot camp, or a for-profit truancy class; or
- (2) perform more than 16 hours of community service per week under this section.

(c) In addition to any other order authorized by this section, a truancy court may order the Department of Public Safety to suspend the driver's license or permit of a child who has been found to have engaged in truant conduct. If the child does not have a driver's license or permit, the court may order the Department of Public Safety to deny the issuance of a license or permit to the child. The period of the license or permit suspension or the order that the issuance of a license or permit be denied may not extend beyond the maximum time period that a remedial order is effective as provided by Section 65.104.

Please note that the court always determines the remedies to be ordered. *The jury is not involved in ordering remedies for a child who has been adjudicated as having engaged in truant conduct.* Family Code Section 65.101(h).

Go to Box 38.

**Box 38. Court may order parents and others to take certain actions.**

If a child is found to have engaged in truant conduct, then the truancy court may issue certain orders affecting parents and others. There are seven specific things that may be ordered. Under Family Code Section 65.105(a), the truancy court may:

- (1) order the child and the child's parent to attend a class for students at risk of dropping out of school that is designed for both the child and the child's parent;
- (2) order any person found by the court to have, by a willful act or omission, contributed to, caused, or encouraged the child's truant conduct to do any act that the court determines to be reasonable and necessary for the welfare of the child or to refrain from doing any act that the court determines to be injurious to the child's welfare;
- (3) enjoin all contact between the child and a person who is found to be a contributing cause of the child's conduct, unless that person is related to the child within the third degree by consanguinity or affinity, in which case the court may contact the Department of Family and Protective Services, if necessary;

(4) *after notice to, and a hearing with, all persons affected, order any person living in the same household with the child to participate in social or psychological counseling to assist in the child's rehabilitation;*

(5) *order the child's parent or other person responsible for the child's support to pay all or part of the reasonable costs of treatment programs in which the child is ordered to participate if the court finds the child's parent or person responsible for the child's support is able to pay the costs;*

(6) *order the child's parent to attend a program for parents of students with unexcused absences that provides instruction designed to assist those parents in identifying problems that contribute to the child's unexcused absences and in developing strategies for resolving those problems; and*

(7) *order the child's parent to perform not more than 50 hours of community service with the child.*

Please note that the person subject to an order is entitled to a hearing before an order affecting the person is entered. Family Code Section 65.105(b). But while the person is entitled to a hearing, there is no requirement that the court hold a hearing if the person does not exercise his or her entitlement.

Go to Box 39.

**Box 39. Court may order child or other person to pay \$50 court cost if person can afford to pay.**

*If a child is found to have engaged in truant conduct, the truancy court, after giving the child, parent, or other person responsible for the child's support a reasonable opportunity to be heard, shall order the child, parent, or other person, if financially able to do so, to pay a court cost of \$50 to the clerk of the court. Family Code Section 65.107(a).*

*The court's order to pay the \$50 court cost is not effective unless the order is reduced to writing and signed by the judge. The written order to pay the court cost may be part of the court's order detailing the remedial actions in the case. Family Code Section 65.107(b).*

Please note that the funds collected may only be used to offset the costs of the operation of the truancy court. Family Code Section 65.107(d).

Go to Box 40.

**Box 40. Court must advise child and others of right to appeal.**

*After pronouncing the court's remedial actions, the court shall advise the child and the child's parent, guardian, or guardian ad litem of: (1) the child's right to appeal, as detailed in Subchapter D [Sections 65.151 – 65.153]. Family Code Section 65.102.*

Go to Box 41.

**Box 41. Court must advise child and others of procedures for sealing record.**

*After pronouncing the court's remedial actions, the court shall advise the child and the child's parent, guardian, or guardian ad litem of: . . . (2) the procedures for the sealing of the child's records under Section 65.201. Family Code Section 65.102.*

Go to Box 42.

**Box 42. Hearing Concludes.**

Go to Box 43.

**Box 43. Both a motion for new trial and a hearing to modify remedies are possible.**

Truancy judges should be aware that changes to the court's initial order are possible through both of these mechanisms.

Motions for new trial are authorized by Family Code Section 65.109. The statute announces that Rules 505.3(c) and (e) of the Texas Rules of Civil Procedure apply to motions for new trial.

Family Code Section 65.108 deals with hearings to modify remedies. Subsection (c) reads as follows:

*A hearing to modify a remedy imposed by the court shall be held on the petition of the state, the court, or the child and the child's parent, guardian, guardian ad litem, or attorney. Reasonable notice of a hearing to modify disposition shall be given to all parties.*

Go to Box 44.

**Box 44. Does child comply with truancy court orders?**

If yes, then go to Box 53. If no, then go to Box 46.

**Box 45. Records concerning the case are not destroyed or sealed.**

There is no statutory directive that courts destroy records

of cases in which children have been found to not have engaged in truant conduct. Records in these situations are treated differently than records of school district referrals on which truant court prosecutors have decided not to file petitions. See Family Code Section 65.203.

Also, no statute authorizes a child who has been found to not have engaged in truant conduct to seek a sealing order. Only children who have been found to have engaged in truant conduct and have complied with the court-ordered remedies may have their records sealed. See Family Code Section 65.201 (although the child must be at least 18).

Accordingly, there is no further action to be taken at this point. (The records of these cases are generally confidential under Family Code Section 65.202.) There are a few persons or entities that can access truancy case records even though the records are generally confidential. See discussion under Box 53.

The truancy court's involvement with the case is at an end.

Stop.

**Box 46. Court may set a hearing to determine if child is in contempt of court.**

*If a child fails to obey an order issued by a truancy court under Section 65.103(a) [court's remedial order], or a child is in direct contempt of court, the truancy court, after providing notice and an opportunity for a hearing, may hold the child in contempt of court... . Family Code Section 65.251(a).*

Please note that this is the same procedure that is to be used in a situation involving direct contempt.

Go to Box 47.

**Box 47. Does court set a hearing?**

There is no requirement that a court entertain contempt charges against a child. This is an option.

If the court chooses not to entertain contempt charge, child is still under obligation to obey the court's remedial order. Whether this will happen remains to be seen.

If yes, then go to Box 48. If no, then go to Box 55.

**Box 48. Does court find child to be in contempt?**

If the court finds the child to be in contempt, then the court can take certain actions. These actions are discussed in Box 49.

If the court does not find the child to be in contempt, the child has another chance to comply with the court's remedial orders.

If yes, then go to Box 49. If no, then go to Box 55.

**Box 49. Court may order child to pay fine of up to \$100.**

A truancy court can make two possible orders finding a child to be in contempt of court. The first is to order the child to pay a fine of up to \$100. Family Code Section 65.251(a)(1).

Go to Box 50.

**Box 50. Court may order DPS to suspend child's driver's license or permit.**

A truancy court can make two possible orders finding a child to be in contempt of court. The second is to order the Department of Public Safety [DPS] to suspend the child's driver's license or permit. Family Code Section 65.251(a)(2). If the child does not have a license or permit, the court may order DPS to deny the issuance of a license or permit. These orders are meant to encourage the child to comply with the court's remedial orders. When the child fully complies, the DPS suspensions (and non-issuances) are no longer to be kept in effect.

Go to Box 51.

**Box 51. Has child been held in contempt two or more times previously?**

If yes, then go to Box 52. If no, then go to Box 55.

**Box 52. Court may refer child to juvenile probation department.**

*If a child fails to obey an order issued by a truancy court under Section 65.103(a) [court's remedial order] or a child is in direct contempt of court and the child has failed to obey an order or has been found in direct of contempt of court on two or more occasions, the truancy court, after providing notice and an opportunity for a hearing, may refer the child to the juvenile probation department as a request for truancy intervention, unless the child failed to obey the truancy order or was in direct contempt of court while 17 years of age or older. Family Code Section 65.251(b).*

The procedures within (and the options available to) the juvenile probation department and the juvenile court are fully described in Sections 65.251 and 65.252 of the Family Code. Those procedures will not be detailed here. Suffice it to say that the result of the referral is often an order of the juvenile court that the child continue to obey the truancy court's remedial orders.

This flowchart does not detail the procedures involved in holding a parent or person other than the child in contempt. These procedures are outlined in Family Code, Sections 65.253 through 65.259.

Go to Box 55.

**Box 53. Child is eligible, upon turning 18, to move to have case records sealed.**

Upon turning 18, a child who has been found to have engaged in truant conduct may have the records in his or her case sealed. Family Code Section 65.201(a). The records in the case include all records held by the court, the truant conduct prosecutor, and the school district. Family Code Section 65.201(a). The records may be sealed only if the child has complied with the remedies ordered by the truancy court. Family Code Section 65.201(c).

The following subsections of Section 65.201 provide important details concerning a record that is sealed:

*(d) All, index references to the records of the truancy court that are ordered sealed shall be deleted not later than the 30<sup>th</sup> day after the date of the sealing order.*

*(e) A truancy court, clerk of the court, truant conduct prosecutor, or school district shall reply to a request for information concerning a child's sealed truant conduct case that no record exists with respect to the child.*

*(f) Inspection of the sealed records may be permitted by an order of the truancy court on the petition of the person who is the subject of the records and only by those persons named in the order.*

*(g) A person whose records have been sealed under this section is not required in any proceeding or in any application for employment, information, or licensing to state that the person has been the subject of a proceeding under this chapter. Any statement that the person has never been found to have engaged in truant conduct may not be held against the person in any criminal or civil proceeding.*

Please note that the records of truancy cases are generally confidential under Family Code Section 65.202. No sealing

order is necessary to make the cases generally confidential. There are a few persons or entities that can access truancy case records even though the records are generally confidential. These persons and entities are:

- (1) the judge of the truancy court, the truant conduct prosecutor, and the staff of the judge and prosecutor;*
- (2) the child or an attorney for the child;*
- (3) a governmental agency if the disclosure required or authorized by law;*
- (4) a person or entity to whom the child is referred for treatment or services if the agency or institution disclosing the information has entered into a written confidentiality agreement with the person or entity regarding the protection of the disclosed information;*
- (5) the Texas Department of Criminal Justice and the Texas Juvenile Justice Department for the purpose of maintaining records or recidivism and for diagnosis and classification;*
- (6) the agency; or*
- (7) with leave of the truancy court, any other person, agency, or institution having a legitimate interest in the proceeding or in the work of the court.*

Go to Box 56.

**Box 54. Court's involvement with the case ends.**

Stop.

**Box 55. Child has another chance to comply with truancy court's remedial order.**

Return to Box 44.

**Box 56. Upon the child's 21<sup>st</sup> birthday, sealed records may be destroyed upon child's motion or upon court's own motion. Destruction can occur only if the child has not been convicted of a felony.**

*On or after the fifth anniversary of a child's 16<sup>th</sup> birthday, on the motion of the child or on the truancy court's own motion, the truancy court may order the destruction of the child's records that have been sealed under this section if the child has not been convicted of a felony. Family Code Section 65.201(h).*

Go to Box 54.

Contact information for Ted Wood:  
E-mail: [ted.wood@courts.state.tx.us](mailto:ted.wood@courts.state.tx.us)  
Phone: 512.936.1183

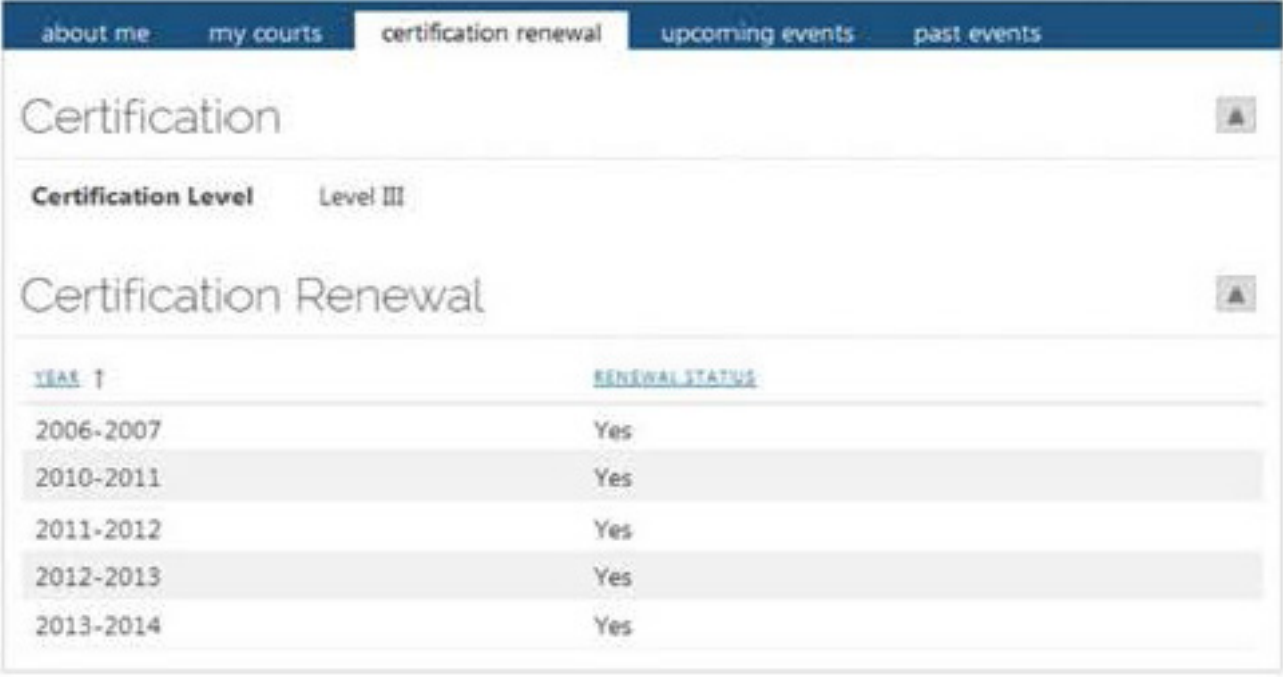
# CLERKS

## Verify Your Renewal Status Online

There is now a way for you to verify the status of your Clerk Certification Renewal online!

- Once logged into your online account at [register.tmcec.com](http://register.tmcec.com), look for the tab “Certification Renewal.”
- Displayed under the tab is the most current year renewed. For example, if you have already renewed for FY 15 it will say “2014-2015 Yes” (see below for an example).
- If you do not remember your log in information, please contact TMCEC for assistance.

**\*\*Emails will no longer be sent out confirming renewals. This will now serve as your confirmation.\*\***



The screenshot shows a web interface with a navigation bar at the top containing the following tabs: "about me", "my courts", "certification renewal", "upcoming events", and "past events". The "certification renewal" tab is selected. Below the navigation bar, the page displays "Certification" with a sub-section "Certification Level" showing "Level III". Below that is "Certification Renewal" with a table showing renewal status for various years.

<u>YEAR</u> ↑	<u>RENEWAL STATUS</u>
2006-2007	Yes
2010-2011	Yes
2011-2012	Yes
2012-2013	Yes
2013-2014	Yes

<http://register.tmcec.com>



# TRAFFIC SAFETY: NEWS YOU CAN USE

## 2016 MUNICIPAL TRAFFIC SAFETY INITIATIVES AWARDS

### **Purpose:**

To recognize those who work in local municipalities and have made outstanding contributions to their community in an effort to increase traffic safety. This competition is a friendly way for municipalities to increase their attention to decreasing impaired driving and underage drinking in their communities, and bonus points may be awarded for demonstrating such!

### **Eligibility:**

Any municipal court in the State of Texas. Entries may be submitted on behalf of the court by the following: Judge, Court Clerk, Deputy Court Clerk, Court Manager, Court Administrator, Bailiff, Marshal, Warrant Officer, City Manager, City Council person, Law Enforcement Representative, or Community Member.

### **Awards:**

Nine (9) awards will be given.\*

- Two (2) in the high volume courts: serving a population of 150,000 or more;
- Three (3) in the medium volume courts: serving populations between 30,000 and 149,999; and
- Four (4) in the low volume courts: serving a population below 30,000.

For two municipal court representatives, award recipients receive complimentary conference registration, travel to and from the 2016 Municipal Traffic Safety Initiatives Conference to include airfare or mileage that is within state guidelines, two nights' accommodations at the Omni Park West, and most meals and refreshments.

**Honorable Mention:** If there are a number of applications that are reviewed and deemed outstanding and innovative, at the discretion of TMCEC, honorable mentions may be selected. Honorable mentions will be provided complimentary conference registration for one representative to attend the Traffic Safety Conference and will be recognized at the Traffic Safety Conference.

### **Deadline:**

Entries must be postmarked no later than Thursday, December 31, 2015.

### **Presentation:**

Award recipients and honorable mention winners will be notified by February 12, 2016 and honored during the Traffic Safety Conference to be held March 21, 2016 in Dallas, Texas at the Omni Dallas Hotel at Park West.\*

### **Details:**

For complete award details, submission guidelines, and an application form, go to <http://www.tmcec.com/mtsi/traffic-safety-awards-2016/>.

\*All dependent on continued funding

Traffic safety benefits can go far beyond the traffic stop!

### **What Can You Do?**

- Get involved
- Add traffic safety materials to your city's and court's websites
- Host a warrant round-up with nearby cities
- Invite school groups into your court
- Start a proactive fine collection program
- Recognize situations where a "fine is not fine"
- Join the TMCEC Save A Life listserv on traffic safety
- Approve adequate funding, staff, and support for your municipal court
- Speak to local civic groups on the importance of traffic safety
- Build community partnerships
- Set up a traffic safety exhibit
- Ask law enforcement officers and prosecutors to work together to identify at-risk drivers in your community
- Create meaningful sentencing alternatives for repeat offenders, especially juveniles and minors using deferred disposition
- At the close of a trial after sentencing, remind jurors and court observers of the importance of compliance with traffic laws
- Adopt a safety belt policy for all city employees
- Participate annually in Municipal Courts Week and incorporate traffic safety outreach



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# TMCEC'S TRAFFIC SAFETY GRANTS HELP MAKE TEXAS ROADS SAFER



Liz De La Garza has 32 years of experience as a classroom teacher in Texas. She received her BA from Baylor University and her Masters of Education from UT-Austin. Liz began working on the grants in June, 2015.



Ned Minevitz graduated from the Sandra Day O'Connor College of Law in Tempe, Arizona before moving to Austin and earning his Texas law license. He has been at TMCEC since November, 2013.

Since 2008, the Texas Municipal Courts Education Center has been the proud recipient of two traffic safety grants with generous funding from the Texas Department of Transportation (TxDOT). Each grant implements unique methods of increasing traffic safety in Texas.

## ***Driving on the Right Side of the Road (DRSR)***

The DRSR grant is aimed at bringing traffic safety issues into the classroom. Through the years, a comprehensive curriculum has been developed which infuses traffic safety into social studies, government, language arts, health, math, and other curricula. Teacher training workshops are provided throughout the year across Texas to train teachers to utilize these materials. DRSR also works to bridge the gap between municipal courts and schools by providing courts with materials that allow them to be resource persons in the classroom. Examples include the six books in the *Don't Monkey Around* series and the mock trial guidebooks.

## ***Municipal Traffic Safety Initiatives (MTSI)***

MTSI's focus lies in using municipal courts as a vehicle to prevent alcohol and drug impaired driving. Anti-impaired driving materials are provided to courts free of charge which can be distributed to teenagers and adults of the community. Every year, MTSI recognizes those courts that have demonstrated outstanding contributions to increasing traffic safety and preventing impaired driving. These "MTSI Award Winners" are then publicized as models for other courts to emulate.

These grants could not survive without the dedicated work of TMCEC's two grant administrators: Liz De La Garza and Ned Minevitz. TMCEC Executive Director, Hope Lochridge, says, "Our TxDOT grant administrators offer courts and schools a tremendous resource. Liz De La Garza, as an experienced classroom teacher and trainer, brings great enthusiasm to getting DRSR materials used in schools. Ned Minevitz, a licensed Texas attorney, brings his superior organizational as well as legal research and writing skills to the MTSI grant. Please call upon both to help educate your local communities about traffic safety. We are very appreciative of both individuals as well as of TxDOT for providing funding for the program."

For more information and to learn how the grants can benefit you and your community, please visit the grant websites ([www.drsr.info](http://www.drsr.info) and [www.tmcec.com/mtsi](http://www.tmcec.com/mtsi)), e-mail Liz ([Elizabeth@tmcec.com](mailto:Elizabeth@tmcec.com)) or Ned ([Ned@tmcec.com](mailto:Ned@tmcec.com)), or give either of them a call at (512) 320-8274.

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# RECAPPING HOW PROPOSED ALCOHOL AND DRUG LAWS FARED IN THE 84TH LEGISLATIVE SESSION

By Ned Minevitz

TxDOT Grants Administrator & Program Attorney

## **HB 326/HB 1166/SB 715** (Electronic Search Warrants) – **PASSED** (HB 326)

HB 326 gives express authority for magistrates to accept a sworn statement by law enforcement showing substantial facts that establish probable cause for a search warrant **electronically** (e.g., by phone, e-mail, or fax). Now that the requirement to have a magistrate physically present is gone, warrants (including blood search warrants) can be issued more swiftly in time sensitive situations.

## **HB 460** (Contiguous County Blood Search Warrants) – **DID NOT PASS**

HB 460 would have allowed law enforcement to obtain a blood search warrant from a magistrate in a bordering county to the county where the offense took place. The bill sought to alleviate the problem of being unable to obtain a blood warrant if the magistrate in one's own county was unavailable.

## **HB 642** (Drug and Alcohol Awareness Programs) – **PASSED**

HB 642 authorizes judges to order a minor placed on deferred disposition for or convicted of certain drug-related offenses to perform community service related to the prevention of misuse of drugs. Up until September 1, 2015, the education program may only relate to alcohol, even though the offense may be drug related.

## **HB 543** (DIVERT Program) – **DID NOT PASS**

HB 543 would have created a statewide "DIVERT" program for first-time DWI offenders. DIVERT stands for "Direct Intervention using Voluntary Education, Restitution, and Treatment" and is a non-adversarial problem solving program run through the court which also helps ease the burden on the prison system. Certain cities, such as Houston and Dallas, already have established DIVERT programs.

## **HB 770** (Providing Alcohol to a Minor) – **DID NOT PASS**

HB 770 would have made providing alcohol to a minor a state jail felony if it is shown that the minor caused serious bodily harm or death to another as a result of the alcohol consumption.

## **HB 837** (Medical Marijuana) – **DID NOT PASS**

HB 837 would have legalized the possession of marijuana prescribed by a physician for the purpose of relieving a bona fide medical condition.

## **HB 1018** (Powdered Alcohol) – **DID NOT PASS**

HB 1018 would have made "powdered alcohol" illegal. This product is just what it sounds like: a powder that you add to water to form an alcoholic liquid. Of course, the sale of the powder would have been restricted to those of age.

## **HB 1245** (Biennial Alcohol Study) – **DID NOT PASS**

HB 1245 would have required the Governor to conduct a study on intoxication every two years that analyzed fatality rates, successful laws and programs in other states, and recommended legislation to combat impaired driving.

## **HB 1264/SB 780** (Preservation of Blood Sample) – **PASSED** (HB 1264)

HB 1264 requires that blood specimens taken as a result of violations of Chapter 49 of the Penal Code (Intoxication and Alcoholic Beverage Offenses) must be retained and preserved for (1) the greater of two years or the period of the statute of limitations; (2) the duration of the defendant's sentence or community supervision; or (3) until the defendant is acquitted. This applies retroactively to any specimens being held on the September 1, 2015 effective date.

## **HB 1955/SB 461** (Designer Drug Labels) – **PASSED** (SB 461)

Beginning on September 1, 2015, it will be a Class C misdemeanor for knowingly producing, distributing, selling, or offering for sale a mislabeled "abusable" synthetic substance. This refers to designer drugs, e.g. "bath salts." It is not a defense if the substance is labeled "Not For Human Consumption."

## **HB 2246** (Ignition Interlock Device in Lieu of License Suspension) – **PASSED**

HB 2246, widely considered a major victory against impaired driving, requires anyone whose license is suspended for alcohol-related offenses (even the first offense) to use an ignition interlock device (IID) if they are going to drive under an occupational driver's license (ODL) during the period of the suspension. The bill also softens the burden of obtaining an ODL. Thus, the bill essentially means that Texas will let convicted drunk drivers drive as long as they use an IID.

## **HB 3791** (Recordings of Impaired Driving Stops) – **PASSED**

HB 3791 says that those stopped or arrested on suspicion of impaired driving offenses will be entitled to obtain any video of the stop taken by law enforcement if the video includes footage of the stop, the arrest, the conduct of the person stopped, or the procedure in which a breath or blood specimen was taken.

## **SB 510** (New Offense for Violating Ignition Interlock Device Bond/Community Supervision Condition) – **DID NOT PASS**

SB 510 would have created an entirely new Class B misdemeanor for violating a bond or community supervision condition which required the use of an IID. And it would have been a Class A Misdemeanor on the second offense.

# FROM THE CENTER

## Implementing Juvenile Justice Clinic

On July 24, 2015, TMCEC will present a four-hour clinic on municipal courts and juvenile issues, focusing on recent legislation. The registration fee is \$20. The clinic will be held at the Crowne Plaza Hotel in Austin from 10:00 am to 3:00 pm. Lunch is provided, as well as a continental breakfast. The program provides CLE credit for lawyers, flex time credit for judges, and certification credit for clerks. Pre-registration is required, as space is limited.



## REMINDER IDEA & Child Welfare Training for Judges

Municipal judges are required in years ending in 0 or 5 to receive instruction related to understanding relevant issues of child welfare and the Individual Disability Education Act. (<http://www.tmcec.com/programs/judges/idea-child-welfare/>). Judicial academic year 2015 will soon be coming to an end (August 31, 2015) and **the days remaining for municipal judges to obtain their mandatory IDEA and child welfare training are dwindling fast!**

**1. Webinars** –Webinars will cover child welfare and the IDEA. They will occur on July 2, 2015 (The IDEA) and July 23, 2015 (Child Welfare). If judges cannot watch these webinars live, they will be available on demand the day after the live webinar. Judges who watch this will fulfill the two hour requirement.

**2. Implementing Juvenile Justice Clinic** – On July 24, 2015, TMCEC will offer a four- hour clinic on Implementing Juvenile Justice: The 84th Legislature. Attending this will satisfy the requirement. Here is a link to the registration form: [http://www.tmcec.com/files/9114/1228/1966/One\\_Day\\_Clinic\\_Brochure\\_2015.pdf](http://www.tmcec.com/files/9114/1228/1966/One_Day_Clinic_Brochure_2015.pdf)

The deadline for completing and reporting the training to TMCEC is August 31, 2015. Many judges obtained the required training at the regional judges program by attending the pre/post-conference or the archived webinars offered on the 3rd day.

To check to see if you are in compliance, go to the TMCEC online registration site and login: <https://register.tmcec.com/web/online>.

Please call or email TMCEC if you do not remember your login or password.

A laptop displaying the TMCEC blog page titled "Credit Card or Jail? The Proposed Alternate Means of Payment for Class C Misdemeanors in H.B. 121". The page features the TMCEC logo and text about the proposed alternate means of payment for class C misdemeanors. The laptop is a MacBook Pro.

## HAVE YOU VISITED THE TMCEC BLOG?

The TMCEC blog is updated regularly. It has a responsive design that will allow you to view it on a smart phone, tablet, laptop, or desktop. The website shrinks or expands automatically for easy viewing on the type of device being used. The color scheme has been updated and the profile page layout has been streamlined. Visit the [tmcec.com](http://tmcec.com) home page and click on the Full Court Press Blog icon or visit <http://blog.tmcec.com/>

Texas Municipal Courts Education Center

2015 Legislative Update  
COURSE MATERIALS & DVD  
Order Form



Use this form to order extra sets of the course materials, including bill summaries, full bill text and updated charts, from the TMCEC Legislative Update and to order DVD copies of the streaming video from the Austin Legislative Update. Although the video will be available to watch online, some courts prefer the DVD version.

Name (please print legibly): \_\_\_\_\_

Street: \_\_\_\_\_ City: \_\_\_\_\_ Zip: \_\_\_\_\_

Office Telephone #: \_\_\_\_\_ FAX: \_\_\_\_\_

Primary City Served: \_\_\_\_\_ Title: \_\_\_\_\_

Other Cities Served: \_\_\_\_\_

Email Address: \_\_\_\_\_

PAYMENT INFORMATION:

<i>Quantity</i>	<i>Cost</i>	
_____	_____	x \$15 per set of course materials (Ship date 8.17.2015)
_____	_____	x \$20 per DVD (Ship date 9.1.2015)

*Subtotal* \_\_\_\_\_

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\_\_\_ Check enclosed (Make checks payable to TMCEC)

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<i>Credit card type:</i>	<i>Credit Card Number</i>	<i>Expiration Date</i>	<i>Grand Total</i>
___ MasterCard	_____	_____	_____

\_\_\_ Visa Name as it appears on card (print clearly): \_\_\_\_\_

Authorized Signature \_\_\_\_\_

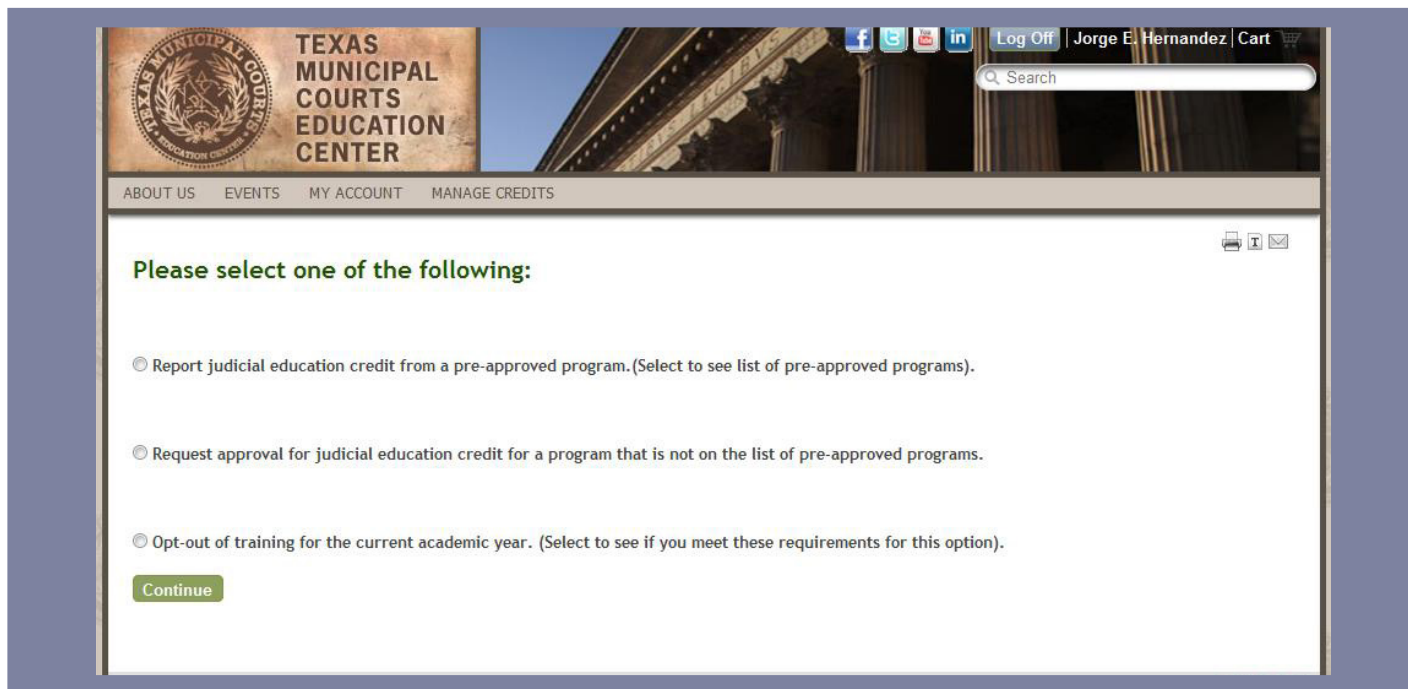
Please return completed form with payment to TMCEC  
2210 Hancock Drive, Austin, TX 78756  
Fax order forms with credit card information to 512.435.6118



## Judges Reporting of Flex-time and Opt-out

Judges who are eligible and choose to meet their mandatory judicial education requirement of 16 hours annually via “flex-time” or “opt-out” must report these to TMCEC either via an affirmation (see below) with attachments or online (see also, below). We hope that you will report online as it is a time savings for us all. The deadline to complete and report is August 31, 2015.

### Option 1: Report Online: Login at <http://register.tmcec.com>



The screenshot shows the website for the Texas Municipal Courts Education Center. The header includes the organization's logo, name, and navigation links (ABOUT US, EVENTS, MY ACCOUNT, MANAGE CREDITS). A user is logged in as Jorge E. Hernandez. The main content area displays a registration form with the instruction "Please select one of the following:" and three radio button options:

- Report judicial education credit from a pre-approved program. (Select to see list of pre-approved programs).
- Request approval for judicial education credit for a program that is not on the list of pre-approved programs.
- Opt-out of training for the current academic year. (Select to see if you meet these requirements for this option).

A green "Continue" button is located below the options.

### Option 2: Report with Affirmation for Credit for Judicial Education for Municipal Judges

I, \_\_\_\_\_, do hereby affirm that I attended \_\_\_ hours of continuing legal or judicial education offered on \_\_\_\_\_ by the following approved provider \_\_\_\_\_. I am attaching a copy of proof, such as a certificate, agenda, or receipt.



\_\_\_\_\_  
Signature Date

(Please print)  
Name: \_\_\_\_\_

City: \_\_\_\_\_

Email: \_\_\_\_\_

Return to TMCEC by fax, mail, or email.  
tmcec@tmcec.com  
Fax: 512.435.6118  
Mail: TMCEC, 2210 Hancock Drive, Austin, TX 78756



# SPEAK OUT!



TMCEC has a speakers' bureau. Knowledgeable judges and court support personnel can serve as guest speakers in K-12 classrooms. The *Driving on the Right Side of the Road* ([www.drsrc.info](http://www.drsrc.info)) and *Municipal Traffic Safety Initiatives* ([www.tmcec.com/mtsi](http://www.tmcec.com/mtsi)) projects have many resources, materials, and PowerPoint presentations that will assist you as you speak in your community and organize field trips and mock trials at your court.

There are many upcoming events this year where judges and court support personnel can play an important role in getting the word out about traffic safety:

- Back-to-School Nights
- Fall Fairs
- Drive Sober or Get Pulled Over Events
- National Stop on Red Week (August 2-8)
- National Child Passenger Safety Week (September 13-19)
- National Seat Check Saturday (September 19)
- National Night Out Texas (October 6)
- Drive Safely to Work Week (October 5-9)
- National Teen Driver Safety Week (October 19-25)
- National School Bus Safety Week (October 19-23)
- Municipal Court Week (November 2-6)
- "3D" Month – Drunk & Drugged Driving Prevention (December)
- And any other events in your community!

TMCEC, thanks to the generosity of its TxDOT grants, has resources that judges and court support personnel can use to set up exhibits in their courts and communities. Contact [ned@tmcec.com](mailto:ned@tmcec.com) or [elizabeth@tmcec.com](mailto:elizabeth@tmcec.com) to see what is available!



## We Want You!

Sign Me Up for the TMCEC  
Traffic Safety Speakers Bureau!

Name: \_\_\_\_\_

Court: \_\_\_\_\_

Number: \_\_\_\_\_

Email: \_\_\_\_\_

Texas Municipal Courts Education Center  
2210 Hancock Drive  
Austin, Texas 78756  
512.320.8274(t)  
512.435.6118(f)  
[tmcec@tmcec.com](mailto:tmcec@tmcec.com)



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## Change Service Requested

### TMCEC MISSION STATEMENT

To provide high quality judicial education, technical assistance, and the necessary resource materials to assist municipal court judges, court support personnel, and prosecutors in obtaining and maintaining professional competence.

## TMCA 2015 Annual Conference

### First Legislative Preview of the Year!

*Sunday-Tuesday, August 2-4, 2015*  
*The Omni Hotel Corpus Christi*

On the heels of the 84th Legislative Session wrapping up, the Texas Municipal Courts Association (TMCA) invites you to attend its 2015 Annual Meeting in Corpus Christi. Be one of the first to learn how the 84th Legislative Session affects municipal courts. Check the TMCA website (<http://www.txmca.com>) for additional information, agendas and registration. Online registration is available.

The Omni Hotel Corpus Christi will be the host hotel. A Special Room Rate of \$103 single and \$139 double has been secured for those attending the TMCA Annual Meeting and Conference. Last year's room block sold out at this low special rate, so register and reserve your room early. Contact the hotel directly at 1-800-THE OMNI and mention our group and date for the special rate. If you have any questions, please contact Judge Sharon Hatten, Chairperson of the Annual Meeting Committee at [shatten2018@yahoo.com](mailto:shatten2018@yahoo.com).

