



Update from Texas' 84th Legislative Session (2015)

HB 2398: Truancy Reform

What does House Bill 2398 do?

HB 2398 changes the way school districts and courts treat children who have unexcused absences from school. Schools will be required to provide more help to families in order to ensure students attend school before they send students to court. If students are sent to court, they will no longer be charged with a criminal offense, but with a civil offense called “truant conduct.”

What changes will affect schools?

- Schools must provide more meaningful help to students before they send them to court, and are required to employ truancy prevention facilitators to implement truancy prevention measures. For example, schools can create behavior improvement contracts with families and refer students to counseling, mentoring, or other services.
- Schools cannot send a student to court before ten (10) unexcused absences and may choose not to file at that time if the truancy interventions are working.
- Students may never be sent to truancy court if their absences are because of pregnancy, homelessness, being in foster care, or being the main income-earners for their families.
- Students must now attend school until they are 19 years old, unless they graduate or otherwise lawfully withdraw. Students who voluntarily attend school after turning 19 may be un-enrolled if they have five (5) unexcused absences.
- School districts must adopt the truancy prevention measures created by the Texas Education Agency (TEA) as a minimum standard for the district’s truancy prevention policy.

What changes will affect courts?

- Failure to Attend School (FTAS) will no longer be a criminal offense, so students cannot be fined and will not receive criminal records.
- Schools may refer students to court after ten (10) or more unexcused absences in a six-month period. A truancy prosecutor will review the school’s referral and decide whether to file a civil case in court for the offense of “truant conduct.” This filing is called a “petition for an

adjudication of a child for truant conduct.”

- The cases will be heard in truancy courts, which are county, justice, or municipal courts that are specifically designated to hear truancy cases.
- Truancy courts may still order a student to attend school without additional unexcused absences; un-enroll from school and take the GED; attend other counseling, training, or rehabilitation programs; perform community service; or complete academic tutorial programs. Courts may also still order the suspension of a student’s driver’s license or permit for truant conduct.
- A truancy court must dismiss a truancy petition filed against a student if it does not state:
 - (1) whether the student receives special education services,
 - (2) that the school attempted truancy prevention measures, and
 - (3) that the truancy prevention measures failed.
- Courts may dismiss charges against children who are suffering from mental illness.

What is the State required to do?

The Texas Education Agency (TEA) must create minimum standards for the truancy prevention measures that must be adopted by school districts and must establish a set of best practices for truancy prevention measures.

Can parents still be charged?

Yes. Parents can still be charged with the criminal offense of Parent Contributing to Nonattendance (PCN) but will be fined differently—\$100 for a first offense, \$200 for a second, \$300 for a third, \$400 for a fourth, and \$500 for a fifth or later offense.

Can courts still fine students?

No. Students may not be fined for truancy. Courts may charge a \$50 court fee, but only for families who are financially able to pay.

Can students still be sent to jail for contempt of a truancy court order?

“Contempt” means not following an order made by a court. Truancy courts cannot jail students for contempt, but they can issue fines of up to \$100 or suspend students’ driver’s licenses or permits.

Students younger than 17 years old who are found in contempt of a truancy court order two or more times may additionally be referred to the juvenile probation department and, possibly, to juvenile court. Following a detention hearing, juvenile courts may detain children younger than 17 years old for violating a truancy court order.

When will these new changes happen?

The new truancy law goes into effect on September 1, 2015.

What happens to old criminal records?

All records related to FTAS convictions or complaints made before September 1, 2015 must be expunged automatically. Having records expunged means that:

- (1) the records are destroyed,
- (2) they can never be released or used by anyone, including a school or employer, for any purpose, and
- (3) if a student is asked, he or she can deny that there was ever a charge, in most situations.

These records include court records, convictions, dismissals, school records, and law enforcement records. Automatic expungement means that the court should expunge the records on its own—students should not have to fill out an application for expungement. After September 1, 2015 families may contact the court where a student’s case was heard to ensure the records are being expunged.

What happens to old fines?

Starting September 1st, truancy courts may not collect fines or fees or enforce other orders against students that were made before September 1, 2015.

If a student is sent to court under the new law, can his or her records be sealed?

Yes. The new truancy law requires that all records be sealed after a student’s 18th birthday if the student has complied with the court’s orders in the case. A student must apply to have his or her records sealed; the court will not do it automatically.

Courts must order the destruction of records if a student is referred to truancy court by his or her school, but a prosecutor chooses not to file a petition for an adjudication of a child for truant conduct.

What if a school district or court does not follow the new law?

After September 1, 2015, if a school district or court is not following the new law—including refusing to expunge old records, threatening to jail a student, jailing a student, or attempting to collect old fines—please contact Texas Appleseed at 512-473-2800 immediately.

