

Education Issues

Speaker Information

Kris Moore
Assistant District Attorney
Harris County District Attorney's Office
1201 Franklin, Suite 600
Houston, Texas 77002
(713) 755-5874
E-Mail: moore_kris@dao.co.harris.tx.us

Biographical Information

Kris Moore graduated from South Texas College of Law in 1977 and joined the Harris County District Attorney's Office later that same year. She started in the juvenile division and was then moved to various assignments, including stints in the misdemeanor division, several felony courts and the appellate division. She came back to her first love, juvenile court, as Chief in 1980 and has been there ever since. She currently serves as Chief of the juvenile intake and supervises the "Stay in School" truancy program. Kris has served as Chairman of the Juvenile Law Section of the State Bar (1992-1993), Chairman of the Juvenile Law Section of the Houston Bar Association (2000-2001), and is currently serving on the Juvenile Law Advisory Commission for the Texas Board of Legal Specialization. Kris is board certified in Juvenile Law.

18th Annual Juvenile Law Conference

PROFESSOR ROBERT O. DAWSON
JUVENILE LAW INSTITUTE

February 1- 3, 2005 • Renaissance Hotel • Austin, Texas

EDUCATION ISSUES

1. THE CHANGING RELATIONSHIP BETWEEN THE SCHOOLS AND THE JUVENILE JUSTICE SYSTEM
2. NEW DEVELOPMENTS = MORE CHANGES ARE PROBABLY COMING
3. ZERO TOLERANCE AND THE "SCHOOL TO PRISON PIPELINE"
4. TRUANCY AND DROPOUTS – A REAL PROBLEM
5. A SELECTION OF PERTINENT STATUTES

1. THE CHANGING RELATIONSHIP BETWEEN THE SCHOOLS AND THE JUVENILE JUSTICE SYSTEM

1. Sweeping legislative changes enacted in 1995, and changes and modifications enacted since, have affected both Juvenile Justice Code and Education Code, including:
 1. Required Schools to report offenses to Law Enforcement (See Education Code Sections 37.015 and 37.016)
 2. Required Notification to Schools when student taken into custody for certain offenses (See Code of Criminal Procedure Section 15.27)
 3. Required Notification to the Schools of Juvenile Court action (See Code of Criminal Procedure Section 15.27)
 4. New Compulsory School Attendance Laws (See Education Code Sections 25.085 and 25.094)
 5. New list of Exemptions and Excused Absences (See Education Code Sections 25.086 and 25.087)
 6. New laws affecting adults standing in parental relation to student and Contributing to Nonattendance (See Education Code Section 25.093)
 7. New laws regarding Removal of Students to Alternative Educational Settings (See Education Code Sections 37.002, 37.006, 37.007, 37.008, and 37.0081)
 8. A new Juvenile Justice Alternative Education Program scheme (see above sections of the Education Code).
2. The rise of School District Police Departments and School Resource Officers in every school
 1. Issues of safety
 2. Issues of maintaining a positive learning environment
 3. Goal of positive student – law enforcement relationships
3. Resulting flood of cases into the Juvenile Justice System
 1. Impact felt by BOTH educational and juvenile systems
 2. Increased workload of both systems
 3. Financial impact of increased caseload

2. NEW DEVELOPMENTS = MORE CHANGES ARE PROBABLY COMING

1. The Federal Government enacted laws during Clinton administration
 1. Requiring schools to keep and submit records of truancy and dropout rates
 2. Holding schools accountable for the truanancies and dropouts
 3. The provisions were largely ignored
2. Under the Bush Administration – **“NO CHILD LEFT BEHIND INITIATIVE”**
 1. The requirements now being enforced
 2. **FEDERAL FUNDING WILL BE TIED TO COMPLIANCE**

3. ZERO TOLERANCE AND THE “SCHOOLS TO PRISONS PIPELINE”

In preparing for this conference, the planners received the following Email from Richard Lavallo at Advocacy Inc. :

“Is the conference in February 2005 going to have any sessions on zero tolerance? The Harvard Civil Rights Project is focusing on Texas in it’s campaign to ‘Build Capacity for State-Level Advocates to Address the School to Prison Pipeline.’ The focus of this effort is to examine how schools are filing criminal charges against students to divert them to the criminal justice system.”

They offered to provide a speaker on this topic. But since I was already the designated “Education Issues” speaker, I offered to try to include that topic as well. I will try to cover both points of view and the opinions expressed are my own.

1. The "Schools to Prisons Pipeline" – the idea is that the schools are using the juvenile and criminal justice system to get rid of students that they don't want. The allegation is that charges are filed on students who are troublesome to the school district in order to put the student out of school. They believe that this is resulting in more students being, eventually, locked up and that many of the problems should not be referred into the legal system, but handled within the school district.
2. Another criticism of the system raising a similar allegation is in The "Report on the Legal Needs of Harris County Children" published by the Children's Rights Litigation Committee Section of the American Bar Association which criticized the Harris County juvenile court dockets saying they are "swollen with misdemeanor filings, such as cases involving marijuana or theft." In interviews they held they said "The overwhelming majority [of those interviewed] ... attributed the docket overload to petitions filed from school referrals." (at p. 17). In this report, the District Attorney's office was blamed for this situation because the authors of the report felt that the "District Attorney's office should simply refuse to file a petition for a minor non-violent school referral." (p. 20).
3. Is the Juvenile Court being used as a VERY EXPENSIVE discipline system for situations that should be handled by internal discipline procedures in the schools?
4. ZERO TOLERANCE - Statutes mandate the schools to report offenses, the schools don't get to choose. The school tells the child and the parent the policy in the Student Code of Conduct.
5. Law enforcement and District Attorney's offices are ETHICALLY bound to look at and handle every case the same, provided it meets the legal requirements.
6. MANDATE from the Legislature to report and process these cases in the juvenile and criminal justice system in the interest of safe schools and with the objective of removing troublemakers so that the other children could concentrate on their educations.
7. We need to remember that school personnel are good people trying to do a difficult and very important job under adverse conditions and they persevere despite low pay, inadequate facilities, potentially dangerous situations and without the support and respect that they deserve from society in general. They need all the help and support we can provide.
8. I think everyone needs to get over their resentment at the increased workload and start trying to figure out how to get the job done! Focus on the goal: if we can improve attendance and make the schools safer, more orderly and more engaging to the students, then the kids will want to be there and want to succeed and, in the long run, that will lighten the load in the Juvenile and Criminal justice system (in addition to all kinds of other benefits to society).

4. TRUANCY AND DROPOUTS – A REAL PROBLEM – EFFECTS AND SOLUTIONS

1. Schools MUST now keep statistics on trancies and dropouts and be held accountable
2. Social and financial impact of Truancy (Information from the Colorado Foundation for Families and Children, the Office of Juvenile Justice and Delinquency Prevention, and The National Dropout Prevention Center)
 - High Truancy Rates = Low Achievement. Truancy and Low Achievement are important predictors of student headed for delinquency activity, social isolation, educational failure, suspension, expulsion, dropping out, substance abuse, gang activity, and early sexual activity resulting in teen pregnancies
 - Cost in personal lack of self esteem due to low achievement which affects the family and the overall community
 - Consequences of dropping out – fewer job prospects, lower pay, and more often unemployed. More likely to be welfare dependent, and experience unstable marriages and domestic violence.
 - Dropouts more likely to be involved in problem behaviors such as delinquency, substance abuse, early childbearing.
 - Higher chance of becoming an adjudicated delinquent and later, serving time in prison. In one study, 89% of prison inmates had a history of truancy and 75% were dropouts.
 - Dropouts twice as likely to be unemployed and two and a half times more likely to be on welfare as compared to high school graduates
 - According to a 1999 study, dropouts use more government-funded social services. The average dropout costs more that \$200,000 in social service and criminal justice costs over the course of his or her lifetime.

- Habitual truants more likely to be in custody of Protective Services
 - Financial impact of truancy and dropping out borne by taxpayers in increased cost of court proceedings and justice systems, both juvenile and adult
 - Schools suffer loss of state and federal funding. Truants and dropouts cost school districts money
 - Businesses must pay to train uneducated workers
 - Youth “hanging out” can hurt businesses and shopping centers located near schools. Higher daytime crime rate for burglary and vandalism during school hours
 - This list is not complete – many other effects of truancy
3. Predictors of Truancy
- Unfavorable perception of school
 - Perceive parental discipline as lax or inconsistent
 - Feel academically inferior
 - Experience family conflict
 - Feel socially incompetent
4. Some reasons students give for truancy
- Did not feel safe at school
 - Classes viewed as boring, irrelevant and a waste of time
 - Lack of positive relationships with teachers and other students
 - Could not keep up with schoolwork or was failing
 - Couldn't work and go to school at the same time
 - Personality conflicts with teachers or other students
 - Did not like school
 - Family related reasons
 - Dropped out because they had become parents themselves
 - Illness in family
 - Lack of appropriate clothing
5. Some reasons given for truancy by schools
- Parental neglect
 - Parents do not value education
 - Student kept home to work or babysit
 - Parent unaware child truant
 - Parents believe family needs are reasons for absences
 - Immigrant parents don't understand school attendance compulsory
6. THE OFFENSES: Truancy, Failure to Attend School, and Parent Contributing to Nonattendance
- Handled in Justice of the Peace and Municipal Court
 - Filed directly on the student and parent JP/Municipal Court or upon transfer from Juvenile court
 - Failure to Attend School offense under the Education Code Section 25.094 has all the same elements as the Family Code CINS offense of Truancy under 51.03(b)(2) and (d)
 - Can be filed by a law enforcement officer or a school attendance/truancy officer
 - JP/Municipal court also has jurisdiction of individuals over 17
 - Number of absences required: 3 within a 4 week period or 10 within a 6 month period. The 6 month period must be within the same school year.
 - “Parent” includes a person standing in parental relation to a child (Ed. Code 25.093(i))
 - Parent can be ordered to attend program providing instruction designed to assist in identifying problems contributing to student's nonattendance and strategies to resolve the problems
 - For a Parent the offense is a Class C misdemeanor and each day the child remains out of school may constitute a separate offense (Ed. Code Sec. 25.093(c))
 - Notice to parent is mandated as soon as student has been absent without excuse on 3 days or parts of days within a 4 week period
 - School can also deal administratively with truancies after the 3 absences but before 10 absences have accumulated. After that, they must file charges against the student or the parents or both
 - Failure to attend school complaints handled in JP and Municipal Courts under procedures set out in Chapter 45 of the Code of Criminal Procedure

7. Truancy and Dropout Prevention Strategies

- Prevention by the Schools:
 1. Send a strong message to students regarding policies
 2. Specify attendance policies in writing
 3. Enforce the policies consistently at every level
 4. Student absence should result in phone call or letter to parent
 5. Make it clear that attendance is the responsibility of the student and parent and that they will be held accountable
 6. Make students and parents feel welcome
 7. Recognize and reward good attendance
 8. Make sure students feel safe and respected at school
 9. Enlist support of local businesses and community leaders
 10. Help overcome barriers to re-entry after absence
- Prevention by Communities and Law Enforcement:
 1. Enact and enforce school hour curfews
 2. Maintain a presence in the community – so that they are aware of the consequences of truancy and that you will be enforcing the law.
 3. Escort out-of-school youth back to school or to a non-secure juvenile processing center for appropriate handling. Have a procedure set up for this and make sure parents are notified and part of the process.
- Prevention by Juvenile courts
 1. Make school attendance the centerpiece of any juvenile court allowed disposition
 2. Make sure that probation officers monitor school attendance as mandated by the Family Code (See Section 54.043) and report any absences. Have specific guidelines for the filing of VOPs/Motions to Modify on juveniles with school attendance problems
 3. If necessary (and if they are available) include as part of your disposition order services that can help a child overcome any problems that are interfering with school attendance

8. There is not just ONE SOLUTION

- In juvenile court we have a wide variety of alternatives, and we need them all because the problems we face are so complex
- Truancy and dropout problems are complex and also require a wide range of possible solutions
- Different jurisdictions across Texas have approached these problems differently – and no one way to do it is necessarily the right way

EDUCATION CODE: § 25.085. COMPULSORY SCHOOL ATTENDANCE. (a) A child who is required to attend school under this section shall attend school each school day for the entire period the program of instruction is provided.

(b) Unless specifically exempted by Section 25.086, a child who is at least six years of age, or who is younger than six years of age and has previously been enrolled in first grade, and who has not yet reached the child's 18th birthday shall attend school.

(c) On enrollment in prekindergarten or kindergarten, a child shall attend school.

(d) Unless specifically exempted by Section 25.086, a student enrolled in a school district must attend:

(1) an extended-year program for which the student is eligible that is provided by the district for students identified as likely not to be promoted to the next grade level or tutorial classes required by the district under Section 29.084;

(2) an accelerated reading instruction program to which the student is assigned under Section 28.006(g);

(3) an accelerated instruction program to which the student is assigned under Section 28.0211;

(4) a basic skills program to which the student is assigned under Section 29.086; or

(5) a summer program provided under Section 37.008(l) or Section 37.021.

(e) A person who voluntarily enrolls in school or voluntarily attends school after the person's 18th birthday shall attend school each school day for the entire period the program of instruction is offered. A school district may revoke for the remainder of the school year the enrollment of a person who has more than five absences in a semester that are not excused under Section 25.087. A person whose enrollment is revoked under this subsection may be considered an unauthorized person on school district grounds for purposes of Section 37.107.

EDUCATION CODE: § 25.086. EXEMPTIONS. (a) A child is exempt from the requirements of compulsory school attendance if the child:

(1) attends a private or parochial school that includes in its course a study of good citizenship;

(2) is eligible to participate in a school district's special education program under Section 29.003 and cannot be appropriately served by the resident district;

(3) has a physical or mental condition of a temporary and remediable nature that makes the child's attendance infeasible and holds a certificate from a qualified physician specifying the temporary condition, indicating the treatment prescribed to remedy the temporary condition, and covering the anticipated period of the child's absence from school for the purpose of receiving and recuperating from that remedial treatment;

(4) is expelled in accordance with the requirements of law in a school district that does not participate in a mandatory juvenile justice alternative education program under Section 37.011;

(5) is at least 17 years of age and:

(A) is attending a course of instruction to prepare for the high school equivalency examination, and:

(i) has the permission of the child's parent or guardian to attend the course;

(ii) is required by court order to attend the course;

(iii) has established a residence separate and apart from the child's parent, guardian, or other person having lawful control of the child; or

(iv) is homeless as defined by 42 U.S.C. Section 11302; or

(B) has received a high school diploma or high school equivalency certificate;

(6) is at least 16 years of age and is attending a course of instruction to prepare for the high school equivalency examination, if:

(A) the child is recommended to take the course of instruction by a public agency that has supervision or custody of the child under a court order; or

(B) the child is enrolled in a Job Corps training program under the Job Training Partnership Act (29 U.S.C. Section 1501 et seq.), and its subsequent amendments;

(7) is enrolled in the Texas Academy of Mathematics and Science;

(8) is enrolled in the Texas Academy of Leadership in the Humanities; or

(9) is specifically exempted under another law.

(b) This section does not relieve a school district in which a child eligible to participate in the district's special education program resides of its fiscal and administrative responsibilities under Subchapter A, Chapter 29, or of its responsibility to provide a free appropriate public education to a child with a disability.

EDUCATION CODE: § 25.087. EXCUSED ABSENCES. (a) A person required to attend school, including a person required to attend school under Section 25.085(e), may be excused for temporary absence resulting from any cause acceptable to the teacher, principal, or superintendent of the school in which the person is enrolled.

(b) A school district shall excuse a student from attending school for the purpose of observing religious holy days, including traveling for that purpose. A school district shall excuse a student for temporary absence resulting

from health care professionals if that student commences classes or returns to school on the same day of the appointment. A student whose absence is excused under this subsection may not be penalized for that absence and shall be counted as if the student attended school for purposes of calculating the average daily attendance of students in the school district. A student whose absence is excused under this subsection shall be allowed a reasonable time to make up school work missed on those days. If the student satisfactorily completes the school work, the day of absence shall be counted as a day of compulsory attendance.

EDUCATION CODE: § 25.093. PARENT CONTRIBUTING TO NONATTENDANCE. (a) If a warning is issued as required by Section 25.095(a), the parent with criminal negligence fails to require the child to attend school as required by law, and the child has absences for the amount of time specified under Section 25.094, the parent commits an offense.

(b) The attendance officer or other appropriate school official shall file a complaint against the parent in:

(1) the constitutional county court of the county in which the parent resides or in which the school is located, if the county has a population of two million or more;

(2) a justice court of any precinct in the county in which the parent resides or in which the school is located; or

(3) a municipal court of the municipality in which the parent resides or in which the school is located.

(c) An offense under Subsection (a) is a Class C misdemeanor. Each day the child remains out of school may constitute a separate offense. Two or more offenses under Subsection (a) may be consolidated and prosecuted in a single action. If the court orders deferred disposition under Article 45.051, Code of Criminal Procedure, the court may require the defendant to provide personal services to a charitable or educational institution as a condition of the deferral.

(d) A fine collected under this section shall be deposited as follows:

(1) one-half shall be deposited to the credit of the operating fund of, as applicable:

(A) the school district in which the child attends school;

(B) the open-enrollment charter school the child attends; or

(C) the juvenile justice alternative education program that the child has been ordered to attend; and

(2) one-half shall be deposited to the credit of:

(A) the general fund of the county, if the complaint is filed in the justice court or the constitutional county court; or

(B) the general fund of the municipality, if the complaint is filed in municipal court.

(e) At the trial of any person charged with violating this section, the attendance records of the child may be presented in court by any authorized employee of the school district or open-enrollment charter school, as applicable.

(f) The court in which a conviction, deferred adjudication, or deferred disposition for an offense under Subsection (a) occurs may order the defendant 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 students' unexcused absences and in developing strategies for resolving those problems if a program is available.

(g) If a parent refuses to obey a court order entered under this section, the court may punish the parent for contempt of court under Section 21.002, Government Code.

(h) It is an affirmative defense to prosecution for an offense under Subsection (a) that one or more of the absences required to be proven under Subsection (a) was excused by a school official or should be excused by the court. The burden is on the defendant to show by a preponderance of the evidence that the absence has been or should be excused. A decision by the court to excuse an absence for purposes of this section does not affect the ability of the school district to determine whether to excuse the absence for another purpose.

(i) In this section, "parent" includes a person standing in parental relation.

EDUCATION CODE: § 25.094. FAILURE TO ATTEND SCHOOL. (a) An individual commits an offense if the individual:

(1) is required to attend school under Section 25.085; and

(2) fails to attend school on 10 or more days or parts of days within a six-month period in the same school year or on three or more days or parts of days within a four-week period.

(b) An offense under this section may be prosecuted in:

(1) the constitutional county court of the county in which the individual resides or in which the school is located, if the county has a population of two million or more;

(2) a justice court of any precinct in the county in which the individual resides or in which the school is located; or

(3) a municipal court in the municipality in which the individual resides or in which the school is located.

(c) On a finding by the county, justice, or municipal court that the individual has committed an offense under Subsection (a) or on a finding by a juvenile court in a county with a population of less than 100,000 that the individual has engaged in conduct that violates Subsection (a), the court may enter an order that includes one or more of the requirements listed in Article 45.054, Code of Criminal Procedure, as added by Chapter 1514, Acts of the 77th Legislature, Regular Session, 2001.

(d) If the county, justice, or municipal court believes that a child has violated an order issued under Subsection (c), the court may proceed as authorized by Article 45.050, Code of Criminal Procedure.

(d-1) Pursuant to an order of the county, justice, or municipal court based on an affidavit showing probable cause to believe that an individual has committed an offense under this section, a peace officer may take the individual into custody. A peace officer taking an individual into custody under this subsection shall:

(1) promptly notify the individual's parent, guardian, or custodian of the officer's action and the reason for that action; and

(2) without unnecessary delay:

(A) release the individual to the individual's parent, guardian, or custodian or to another responsible adult, if the person promises to bring the individual to the county, justice, or municipal court as requested by the court; or

(B) bring the individual to a county, justice, or municipal court with venue over the offense.

(e) An offense under this section is a Class C misdemeanor.

(f) It is an affirmative defense to prosecution under this section that one or more of the absences required to be proven under Subsection (a) was excused by a school official or should be excused by the court. The burden is on the defendant to show by a preponderance of the evidence that the absence has been or should be excused. A decision by the court to excuse an absence for purposes of this section does not affect the ability of the school district to determine whether to excuse the absence for another purpose.

(g) It is an affirmative defense to prosecution under this section that one or more of the absences required to be proven under Subsection (a) was involuntary. The burden is on the defendant to show by a preponderance of the evidence that the absence was involuntary.

(h) Deleted by Acts 2001, 77th Leg., ch. 1514, § 4.

(i) Deleted by Acts 2001, 77th Leg., ch. 1514, § 4.

EDUCATION CODE: § 25.095. WARNING NOTICES. (a) A school district or open-enrollment charter school shall notify a student's parent in writing at the beginning of the school year that if the student is absent from school on 10 or more days or parts of days within a six-month period in the same school year or on three or more days or parts of days within a four-week period:

(1) the student's parent is subject to prosecution under Section 25.093; and

(2) the student is subject to prosecution under Section 25.094 or to referral to a juvenile court in a county with a population of less than 100,000 for conduct that violates that section.

(b) A school district shall notify a student's parent if the student has been absent from school, without excuse under Section 25.087, on three days or parts of days within a four-week period. The notice must:

(1) inform the parent that:

(A) it is the parent's duty to monitor the student's school attendance and require the student to attend school; and

(B) the parent is subject to prosecution under Section 25.093; and

(2) request a conference between school officials and the parent to discuss the absences.

(c) The fact that a parent did not receive a notice under Subsection (a) or (b) does not create a defense to prosecution under Section 25.093 or 25.094.

(d) In this section, "parent" includes a person standing in parental relation.

§ 25.0951. SCHOOL DISTRICT COMPLAINT OR REFERRAL FOR FAILURE TO ATTEND SCHOOL. (a) If a student fails to attend school without excuse on 10 or more days or parts of days within a six-month period in the same school year, a school district shall:

(1) file a complaint against the student or the student's parent or both in a county, justice, or municipal court for an offense under Section 25.093 or 25.094, as appropriate, or refer the student to a juvenile court in a county with a population of less than 100,000 for conduct that violates Section 25.094; or

(2) refer the student to a juvenile court for conduct indicating a need for supervision under Section 51.03(b)(2), Family Code.

(b) If a student fails to attend school without excuse on three or more days or parts of days within a four-week period but does not fail to attend school for the time described by Subsection (a), the school district may:

(1) file a complaint against the student or the student's parent or both in a county, justice, or municipal court for an offense under Section 25.093 or 25.094, as appropriate, or refer the student to a juvenile court in a county with a population of less than 100,000 for conduct that violates Section 25.094; or

(2) refer the student to a juvenile court for conduct indicating a need for supervision under Section 51.03(b)(2), Family Code.

(c) In this section, "parent" includes a person standing in parental relation.

FAMILY CODE: § 51.03. DELINQUENT CONDUCT; CONDUCT INDICATING A NEED FOR SUPERVISION. (a) Delinquent conduct is:

(1) conduct, other than a traffic offense, that violates a penal law of this state or of the United States punishable by imprisonment or by confinement in jail;

(2) conduct that violates a lawful order of a court under circumstances that would constitute contempt of that court in:

(A) a justice or municipal court; or

(B) a county court for conduct punishable only by a fine;

(3) conduct that violates Section 49.04, 49.05, 49.06, 49.07, or 49.08, Penal Code; or

(4) conduct that violates Section 106.041, Alcoholic Beverage Code, relating to driving under the influence of alcohol by a minor (third or subsequent offense).

(b) Conduct indicating a need for supervision is:

(1) subject to Subsection (f), conduct, other than a traffic offense, that violates:

(A) the penal laws of this state of the grade of misdemeanor that are punishable by fine only; or

(B) the penal ordinances of any political subdivision of this state;

(2) the absence of a child on 10 or more days or parts of days within a six-month period in the same school year or on three or more days or parts of days within a four-week period from school;

(3) the voluntary absence of a child from the child's home without the consent of the child's parent or guardian for a substantial length of time or without intent to return;

(4) conduct prohibited by city ordinance or by state law involving the inhalation of the fumes or vapors of paint and other protective coatings or glue and other adhesives and the volatile chemicals itemized in Section 484.002, Health and Safety Code;

(5) an act that violates a school district's previously communicated written standards of student conduct for which the child has been expelled under Section 37.007(c), Education Code; or

(6) conduct that violates a reasonable and lawful order of a court entered under Section 264.305.

(c) Nothing in this title prevents criminal proceedings against a child for perjury.

(d) It is an affirmative defense to an allegation of conduct under Subsection (b)(2) that one or more of the absences required to be proven under that subsection have been excused by a school official or should be excused by the court or that one of the absences was involuntary. The burden is on the respondent to show by a preponderance of the evidence that the absence has been or should be excused or that the absence was involuntary. A decision by the court to excuse an absence for purposes of this subsection does not affect the ability of the school district to determine whether to excuse the absence for another purpose.

(e) For the purposes of Subsection (b)(3), "child" does not include a person who is married, divorced, or widowed.

(f) Except as provided by Subsection (g), conduct described under Subsection (b)(1), other than conduct that violates Section 49.02, Penal Code, prohibiting public intoxication, does not constitute conduct indicating a need for supervision unless the child has been referred to the juvenile court under Section 51.08(b).

(g) In a county with a population of less than 100,000, conduct described by Subsection (b)(1)(A) that violates Section 25.094, Education Code, is conduct indicating a need for supervision.

FAMILY CODE: § 54.021. COUNTY, JUSTICE, OR MUNICIPAL COURT: TRUANCY. (a) The juvenile court may waive its exclusive original jurisdiction and transfer a child to the constitutional county court, if the county has a population of two million or more, or to an appropriate justice or municipal court, with the permission of the county, justice, or municipal court, for disposition in the manner provided by Subsection (b) if the child is alleged to have engaged in conduct described in Section 51.03(b)(2). A waiver of jurisdiction under this subsection may be for an individual case or for all cases in which a child is alleged to have engaged in conduct described in Section 51.03(b)(2). The waiver of a juvenile court's exclusive original jurisdiction for all cases in which a child is alleged to have engaged in conduct described in Section 51.03(b)(2) is effective for a period of one year.

(b) A county, justice, or municipal court may exercise jurisdiction over a person alleged to have engaged in conduct indicating a need for supervision by engaging in conduct described in Section 51.03(b)(2) in a case where:

(1) the juvenile court has waived its original jurisdiction under this section; and

(2) a complaint is filed by the appropriate authority in the county, justice, or municipal court charging an offense under Section 25.094, Education Code.

(c) A proceeding in a county, justice, or municipal court on a complaint charging an offense under Section 25.094, Education Code, is governed by Chapter 45, Code of Criminal Procedure.

(d) Notwithstanding any other law, the costs assessed in a case filed in or transferred to a constitutional county court for an offense under Section 25.093 or 25.094, Education Code, must be the same as the costs assessed for a case filed in a justice court for an offense under Section 25.093 or 25.094, Education Code.

(e) The proceedings before a constitutional county court related to an offense under Section 25.093 or 25.094, Education Code, may be recorded in any manner provided by Section 30.00010, Government Code, for recording proceedings in a municipal court of record.

CODE OF CRIMINAL PROCEDURE : Art. 45.054. Failure to Attend School Proceedings

(a) On a finding by a county, justice, or municipal court that an individual has committed an offense under Section 25.094, Education Code, the court has jurisdiction to enter an order that includes one or more of the following provisions requiring that:

(1) the individual:

(A) attend school without unexcused absences;

(B) 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 too old to do well in a formal classroom environment;

or
(C) if the individual is at least 16 years of age, take the high school equivalency examination administered under Section 7.111, Education Code;

(2) the individual attend a special program that the court determines to be in the best interest of the individual, including:

(A) an alcohol and drug abuse program;

(B) a rehabilitation program;

(C) a counseling program, including self-improvement counseling;

(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;

(3) the individual and the individual's parent attend a class for students at risk of dropping out of school designed for both the individual and the individual's parent;

(4) the individual complete reasonable community service requirements; or

(5) for the total number of hours ordered by the court, the individual participate in a tutorial program covering the academic subjects in which the student is enrolled provided by the school the individual attends.

(a-1) On a finding by a juvenile court in a county with a population of less than 100,000 that the individual has engaged in conduct that violates Section 25.094, Education Code, the court has jurisdiction to enter an order that includes one or more of the provisions listed under Subsection (a).

(b) An order under Subsection (a)(3) that requires the parent of an individual to attend a class for students at risk of dropping out of school is enforceable in the justice, municipal, or juvenile court by contempt.

(c) A court having jurisdiction under this article shall endorse on the summons issued to the parent of the individual who is the subject of the hearing an order directing the parent to appear personally at the hearing and directing the person having custody of the individual to bring the individual to the hearing.

(d) An individual commits an offense if the individual is a parent who fails to attend a hearing under this article after receiving notice under Subsection (c) that the individual's attendance is required. An offense under this subsection is a Class C misdemeanor.

(e) On the commencement of proceedings under this article, the court shall inform the individual who is the subject of the hearing and the individual's parent in open court of the individual's expunction rights and provide the individual and the individual's parent with a written copy of Article 45.055.

(f) In addition to any other order authorized by this article, the court may order the Department of Public Safety to suspend the driver's license or permit of the individual who is the subject of the hearing or, if the individual does not have a license or permit, to deny the issuance of a license or permit to the individual for a period specified by the court not to exceed 365 days.

(g) A dispositional order under this article is effective for the period specified by the court in the order but may not extend beyond the 180th day after the date of the order or beyond the end of the school year in which the order was entered, whichever period is longer.

(h) In this article, "parent" includes a person standing in parental relation.

CODE OF CRIMINAL PROCEDURE: Art. 45.055. Expunction of Conviction and Records in Failure to Attend School Cases

(a) An individual convicted of not more than one violation of Section 25.094, Education Code, may, on or after the individual's 18th birthday, apply to the court in which the individual was convicted to have the conviction and records relating to the conviction expunged.

(b) To apply for an expunction, the applicant must submit a written request that:

(1) is made under oath;

(2) states that the applicant has not been convicted of more than one violation of Section 25.094, Education Code; and

(3) is in the form determined by the applicant.

(c) The court may expunge the conviction and records relating to the conviction without a hearing or, if facts are in doubt, may order a hearing on the application. If the court finds that the applicant has not been convicted of more than one violation of Section 25.094, Education Code, the court shall order the conviction, together with all complaints, verdicts, sentences, and other documents relating to the offense, including any documents in the possession of a school district or law enforcement agency, to be expunged from the applicant's record. After entry of the order, the applicant is released from all disabilities resulting from the conviction, and the conviction may not be shown or made known for any purpose. The court shall inform the applicant of the court's decision on the application.

(d) The court may not require an individual who files an application under this article to pay any fee or court costs for seeking expunction.

CODE OF CRIMINAL PROCEDURE: 15.27. Notification to Schools Required

(a) A law enforcement agency that arrests any person or refers a child to the office or official designated by the juvenile board who the agency believes is enrolled as a student in a public primary or secondary school, for an offense listed in Subsection (h), shall attempt to ascertain whether the person is so enrolled. If the law enforcement agency ascertains that the individual is enrolled as a student in a public primary or secondary school, the agency shall orally notify the superintendent or a person designated by the superintendent in the school district in which the student is enrolled of that arrest or referral within 24 hours after the arrest or referral is made, or on the next school day. If the law enforcement agency cannot ascertain whether the individual is enrolled as a student, the agency shall orally notify the superintendent or a person designated by the superintendent in the school district in which the student is believed to be enrolled of that arrest or detention within 24 hours after the arrest or detention, or on the next school day. If the individual is a student, the superintendent shall promptly notify all instructional and support personnel who have responsibility for supervision of the student. All personnel shall keep the information received in this subsection confidential. The State Board for Educator Certification may revoke or suspend the certification of personnel who intentionally violate this subsection. Within seven days after the date the oral notice is given, the law enforcement agency shall mail written notification, marked "PERSONAL and CONFIDENTIAL" on the mailing envelope, to the superintendent or the person designated by the superintendent. Both the oral and written notice shall contain sufficient details of the arrest or referral and the acts allegedly committed by the student to enable the superintendent or the superintendent's designee to determine whether there is a reasonable belief that the student has engaged in conduct defined as a felony offense by the Penal Code. The information contained in the notice may be considered by the superintendent or the superintendent's designee in making such a determination.

(b) On conviction, deferred prosecution, or deferred adjudication or an adjudication of delinquent conduct of an individual enrolled as a student in a public primary or secondary school, for an offense or for any conduct listed in Subsection (h) of this article, the office of the prosecuting attorney acting in the case shall orally notify the superintendent or a person designated by the superintendent in the school district in which the student is enrolled of the conviction or adjudication. Oral notification must be given within 24 hours of the time of the order or on the next school day. The superintendent shall promptly notify all instructional and support personnel who have regular contact with the student. Within seven days after the date the oral notice is given, the office of the prosecuting attorney shall mail written notice, which must contain a statement of the offense of which the individual is convicted or on which the adjudication, deferred adjudication, or deferred prosecution is grounded.

(c) A parole or probation office having jurisdiction over a student described by Subsection (a), (b), or (e) who transfers from a school or is subsequently removed from a school and later returned to a school or school district other than the one the student was enrolled in when the arrest, referral to a juvenile court, conviction, or adjudication occurred shall notify the new school officials of the arrest or referral in a manner similar to that provided for by Subsection (a) or (e)(1), or of the conviction or delinquent adjudication in a manner similar to that provided for by Subsection (b) or (e)(2). The new school officials shall promptly notify all instructional and support personnel who have regular contact with the student.

(d) The superintendent or a person designated by the superintendent in the school district may send to a school district employee having direct supervisory responsibility over the student the information contained in the confidential notice if the superintendent or the person designated by the superintendent determines that the school district employee needs the information for educational purposes or for the protection of the person informed or others.

(e)(1) A law enforcement agency that arrests, or refers to a juvenile court under Chapter 52, Family Code, an individual who the law enforcement agency knows or believes is enrolled as a student in a private primary or

secondary school shall make the oral and written notifications described by Subsection (a) to the principal or a school employee designated by the principal of the school in which the student is enrolled.

(2) On conviction, deferred prosecution, or deferred adjudication or an adjudication of delinquent conduct of an individual enrolled as a student in a private primary or secondary school, the office of prosecuting attorney shall make the oral and written notifications described by Subsection (b) of this article to the principal or a school employee designated by the principal of the school in which the student is enrolled.

(3) The principal of a private school in which the student is enrolled or a school employee designated by the principal may send to a school employee having direct supervisory responsibility over the student the information contained in the confidential notice, for the same purposes as described by Subsection (d) of this article.

(f) A person who receives information under this article may not disclose the information except as specifically authorized by this article. A person who intentionally violates this article commits an offense. An offense under this subsection is a Class C misdemeanor.

(g) The office of the prosecuting attorney or the office or official designated by the juvenile board shall, within two working days, notify the school district that removed a student to a disciplinary alternative education program under Section 37.006, Education Code, if:

(1) prosecution of the student's case was refused for lack of prosecutorial merit or insufficient evidence and no formal proceedings, deferred adjudication, or deferred prosecution will be initiated; or

(2) the court or jury found the student not guilty or made a finding the child did not engage in delinquent conduct or conduct indicating a need for supervision and the case was dismissed with prejudice.

(h) This article applies to any felony offense and the following misdemeanors:

(1) an offense under Section 20.02, 21.08, 22.01, 22.05, 22.07, or 71.02, Penal Code;

(2) the unlawful use, sale, or possession of a controlled substance, drug paraphernalia, or marihuana, as defined by Chapter 481, Health and Safety Code; or

(3) the unlawful possession of any of the weapons or devices listed in Sections 46.01(1)-(14) or (16), Penal Code, or a weapon listed as a prohibited weapon under Section 46.05, Penal Code 15.27. Notification to Schools Required

(a) A law enforcement agency that arrests any person or refers a child to the office or official designated by the juvenile board who the agency believes is enrolled as a student in a public primary or secondary school, for an offense listed in Subsection (h), shall attempt to ascertain whether the person is so enrolled. If the law enforcement agency ascertains that the individual is enrolled as a student in a public primary or secondary school, the agency shall orally notify the superintendent or a person designated by the superintendent in the school district in which the student is enrolled of that arrest or referral within 24 hours after the arrest or referral is made, or on the next school day. If the law enforcement agency cannot ascertain whether the individual is enrolled as a student, the agency shall orally notify the superintendent or a person designated by the superintendent in the school district in which the student is believed to be enrolled of that arrest or detention within 24 hours after the arrest or detention, or on the next school day. If the individual is a student, the superintendent shall promptly notify all instructional and support personnel who have responsibility for supervision of the student. All personnel shall keep the information received in this subsection confidential. The State Board for Educator Certification may revoke or suspend the certification of personnel who intentionally violate this subsection. Within seven days after the date the oral notice is given, the law enforcement agency shall mail written notification, marked "PERSONAL and CONFIDENTIAL" on the mailing envelope, to the superintendent or the person designated by the superintendent. Both the oral and written notice shall contain sufficient details of the arrest or referral and the acts allegedly committed by the student to enable the superintendent or the superintendent's designee to determine whether there is a reasonable belief that the student has engaged in conduct defined as a felony offense by the Penal Code. The information contained in the notice may be considered by the superintendent or the superintendent's designee in making such a determination.

(b) On conviction, deferred prosecution, or deferred adjudication or an adjudication of delinquent conduct of an individual enrolled as a student in a public primary or secondary school, for an offense or for any conduct listed in Subsection (h) of this article, the office of the prosecuting attorney acting in the case shall orally notify the superintendent or a person designated by the superintendent in the school district in which the student is enrolled of the conviction or adjudication. Oral notification must be given within 24 hours of the time of the order or on the next school day. The superintendent shall promptly notify all instructional and support personnel who have regular contact with the student. Within seven days after the date the oral notice is given, the office of the prosecuting attorney shall mail written notice, which must contain a statement of the offense of which the individual is convicted or on which the adjudication, deferred adjudication, or deferred prosecution is grounded.

(c) A parole or probation office having jurisdiction over a student described by Subsection (a), (b), or (e) who transfers from a school or is subsequently removed from a school and later returned to a school or school district other than the one the student was enrolled in when the arrest, referral to a juvenile court, conviction, or adjudication occurred shall notify the new school officials of the arrest or referral in a manner similar to that provided for by Subsection (a) or (e)(1), or of the conviction or delinquent adjudication in a manner similar to that provided for by Subsection (b) or (e)(2). The new school officials shall promptly notify all instructional and support personnel who have regular contact with the student.

(d) The superintendent or a person designated by the superintendent in the school district may send to a school district employee having direct supervisory responsibility over the student the information contained in the

confidential notice if the superintendent or the person designated by the superintendent determines that the school district employee needs the information for educational purposes or for the protection of the person informed or others.

(e)(1) A law enforcement agency that arrests, or refers to a juvenile court under Chapter 52, Family Code, an individual who the law enforcement agency knows or believes is enrolled as a student in a private primary or secondary school shall make the oral and written notifications described by Subsection (a) to the principal or a school employee designated by the principal of the school in which the student is enrolled.

(2) On conviction, deferred prosecution, or deferred adjudication or an adjudication of delinquent conduct of an individual enrolled as a student in a private primary or secondary school, the office of prosecuting attorney shall make the oral and written notifications described by Subsection (b) of this article to the principal or a school employee designated by the principal of the school in which the student is enrolled.

(3) The principal of a private school in which the student is enrolled or a school employee designated by the principal may send to a school employee having direct supervisory responsibility over the student the information contained in the confidential notice, for the same purposes as described by Subsection (d) of this article.

(f) A person who receives information under this article may not disclose the information except as specifically authorized by this article. A person who intentionally violates this article commits an offense. An offense under this subsection is a Class C misdemeanor.

(g) The office of the prosecuting attorney or the office or official designated by the juvenile board shall, within two working days, notify the school district that removed a student to a disciplinary alternative education program under Section 37.006, Education Code, if:

(1) prosecution of the student's case was refused for lack of prosecutorial merit or insufficient evidence and no formal proceedings, deferred adjudication, or deferred prosecution will be initiated; or

(2) the court or jury found the student not guilty or made a finding the child did not engage in delinquent conduct or conduct indicating a need for supervision and the case was dismissed with prejudice.

(h) This article applies to any felony offense and the following misdemeanors:

(1) an offense under Section 20.02, 21.08, 22.01, 22.05, 22.07, or 71.02, Penal Code;

(2) the unlawful use, sale, or possession of a controlled substance, drug paraphernalia, or marihuana, as defined by Chapter 481, Health and Safety Code; or

(3) the unlawful possession of any of the weapons or devices listed in Sections 46.01(1)-(14) or (16), Penal Code, or a weapon listed as a prohibited weapon under Section 46.05, Penal Code

EDUCATION CODE: § 37.015. REPORTS TO LOCAL LAW ENFORCEMENT; LIABILITY. (a) The principal of a public or private primary or secondary school, or a person designated by the principal under Subsection (d), shall notify any school district police department and the police department of the municipality in which the school is located or, if the school is not in a municipality, the sheriff of the county in which the school is located if the principal has reasonable grounds to believe that any of the following activities occur in school, on school property, or at a school-sponsored or school-related activity on or off school property, whether or not the activity is investigated by school security officers:

(1) conduct that may constitute an offense listed under Section 508.149, Government Code;

(2) deadly conduct under Section 22.05, Penal Code;

(3) a terroristic threat under Section 22.07, Penal Code;

(4) the use, sale, or possession of a controlled substance, drug paraphernalia, or marihuana

under Chapter 481, Health and Safety Code;

(5) the possession of any of the weapons or devices listed under Sections 46.01(1)-(14) or

Section 46.01(16), Penal Code;

(6) conduct that may constitute a criminal offense under Section 71.02, Penal Code; or

(7) conduct that may constitute a criminal offense for which a student may be expelled under

Section 37.007(a), (d), or (e).

(b) A person who makes a notification under this section shall include the name and address of each student the person believes may have participated in the activity.

(c) A notification is not required under Subsection (a) if the person reasonably believes that the activity does not constitute a criminal offense.

(d) The principal of a public or private primary or secondary school may designate a school employee who is under the supervision of the principal to make the reports required by this section.

(e) The person who makes the notification required under Subsection (a) shall also notify each instructional or support employee of the school who has regular contact with a student whose conduct is the subject of the notice.

(f) A person is not liable in civil damages for reporting in good faith as required by this section.

EDUCATION CODE: § 37.016. REPORT OF DRUG OFFENSES; LIABILITY. A teacher, school administrator, or school employee is not liable in civil damages for reporting to a school administrator or governmental authority, in the

exercise of professional judgment within the scope of the teacher's, administrator's, or employee's duties, a student whom the teacher suspects of using, passing, or selling, on school property:

- (1) marihuana or a controlled substance, as defined by Chapter 481, Health and Safety Code;
- (2) a dangerous drug, as defined by Chapter 483, Health and Safety Code;
- (3) an abusable glue or aerosol paint, as defined by Chapter 485, Health and Safety Code, or a volatile chemical, as listed in Chapter 484, Health and Safety Code, if the substance is used or sold for the purpose of inhaling its fumes or vapors; or
- (4) an alcoholic beverage, as defined by Section 1.04, Alcoholic Beverage Code.

EDUCATION CODE: § 37.017. DESTRUCTION OF CERTAIN RECORDS. Information received by a school district under Article 15.27, Code of Criminal Procedure, may not be attached to the permanent academic file of the student who is the subject of the report. The school district shall destroy the information at the end of the school year in which the report was filed.

EDUCATION CODE: § 37.018. INFORMATION FOR EDUCATORS. Each school district shall provide each teacher and administrator with a copy of this subchapter and with a copy of the local policy relating to this subchapter.

EDUCATION CODE: § 37.019. EMERGENCY PLACEMENT OR EXPULSION. (a) This subchapter does not prevent the principal or the principal's designee from ordering the immediate placement of a student in a disciplinary alternative education program if the principal or the principal's designee reasonably believes the student's behavior is so unruly, disruptive, or abusive that it seriously interferes with a teacher's ability to communicate effectively with the students in a class, with the ability of the student's classmates to learn, or with the operation of school or a school-sponsored activity.

(b) This subchapter does not prevent the principal or the principal's designee from ordering the immediate expulsion of a student if the principal or the principal's designee reasonably believes that action is necessary to protect persons or property from imminent harm.

(c) At the time of an emergency placement or expulsion, the student shall be given oral notice of the reason for the action. The reason must be a reason for which placement in a disciplinary alternative education program or expulsion may be made on a nonemergency basis. Within a reasonable time after the emergency placement or expulsion, but not later than the 10th day after the date of the placement or expulsion, the student shall be accorded the appropriate due process as required under Section 37.009. If the student subject to the emergency placement or expulsion is a student with disabilities who receives special education services, the emergency placement or expulsion is subject to federal law and regulations and must be consistent with the consequences that would apply under this subchapter to a student without a disability.

(d) A principal or principal's designee is not liable in civil damages for an emergency placement under this section.

EDUCATION CODE: § 37.006. REMOVAL FOR CERTAIN CONDUCT. (a) A student shall be removed from class and placed in a disciplinary alternative education program as provided by Section 37.008 if the student:

- (1) engages in conduct involving a public school that contains the elements of the offense of false alarm or report under Section 42.06, Penal Code, or terroristic threat under Section 22.07, Penal Code; or
- (2) commits the following on or within 300 feet of school property, as measured from any point on the school's real property boundary line, or while attending a school-sponsored or school-related activity on or off of school property:

(A) engages in conduct punishable as a felony;

(B) engages in conduct that contains the elements of the offense of assault under Section 22.01(a)(1), Penal Code;

(C) sells, gives, or delivers to another person or possesses or uses or is under the influence of:

(i) marihuana or a controlled substance, as defined by Chapter 481, Health and Safety Code, or by 21 U.S.C. Section 801 et seq.; or

(ii) a dangerous drug, as defined by Chapter 483, Health and Safety Code;

(D) sells, gives, or delivers to another person an alcoholic beverage, as defined by Section 1.04, Alcoholic Beverage Code, commits a serious act or offense while under the influence of alcohol, or possesses, uses, or is under the influence of an alcoholic beverage;

(E) engages in conduct that contains the elements of an offense relating to an abusable volatile chemical under Sections 485.031 through 485.034, Health and Safety Code; or

(F) engages in conduct that contains the elements of the offense of public lewdness under Section 21.07, Penal Code, or indecent exposure under Section 21.08, Penal Code.

(b) Except as provided by Section 37.007(d), a student shall be removed from class and placed in a disciplinary alternative education program under Section 37.008 if the student engages in conduct on or off of school

property that contains the elements of the offense of retaliation under Section 36.06, Penal Code, against any school employee.

(c) In addition to Subsections (a) and (b), a student shall be removed from class and placed in a disciplinary alternative education program under Section 37.008 based on conduct occurring off campus and while the student is not in attendance at a school-sponsored or school-related activity if:

(1) the student receives deferred prosecution under Section 53.03, Family Code, for conduct defined as a felony offense in Title 5, Penal Code;

(2) a court or jury finds that the student has engaged in delinquent conduct under Section 54.03, Family Code, for conduct defined as a felony offense in Title 5, Penal Code; or

(3) the superintendent or the superintendent's designee has a reasonable belief that the student has engaged in a conduct defined as a felony offense in Title 5, Penal Code.

(d) In addition to Subsections (a), (b), and (c), a student may be removed from class and placed in a disciplinary alternative education program under Section 37.008 based on conduct occurring off campus and while the student is not in attendance at a school-sponsored or school-related activity if:

(1) the superintendent or the superintendent's designee has a reasonable belief that the student has engaged in conduct defined as a felony offense other than those defined in Title 5, Penal Code; and

(2) the continued presence of the student in the regular classroom threatens the safety of other students or teachers or will be detrimental to the educational process.

(e) In determining whether there is a reasonable belief that a student has engaged in conduct defined as a felony offense by the Penal Code, the superintendent or the superintendent's designee may consider all available information, including the information furnished under Article 15.27, Code of Criminal Procedure.

(f) Subject to Section 37.007(e), a student who is younger than 10 years of age shall be removed from class and placed in a disciplinary alternative education program under Section 37.008 if the student engages in conduct described by Section 37.007. An elementary school student may not be placed in a disciplinary alternative education program with any other student who is not an elementary school student.

(g) The terms of a placement under this section must prohibit the student from attending or participating in a school-sponsored or school-related activity.

(h) On receipt of notice under Article 15.27(g), Code of Criminal Procedure, the superintendent or the superintendent's designee shall review the student's placement in the disciplinary alternative education program. The student may not be returned to the regular classroom pending the review. The superintendent or the superintendent's designee shall schedule a review of the student's placement with the student's parent or guardian not later than the third class day after the superintendent or superintendent's designee receives notice from the office or official designated by the court. After reviewing the notice and receiving information from the student's parent or guardian, the superintendent or the superintendent's designee may continue the student's placement in the disciplinary alternative education program if there is reason to believe that the presence of the student in the regular classroom threatens the safety of other students or teachers.

(i) The student or the student's parent or guardian may appeal the superintendent's decision under Subsection (h) to the board of trustees. The student may not be returned to the regular classroom pending the appeal. The board shall, at the next scheduled meeting, review the notice provided under Article 15.27(g), Code of Criminal Procedure, and receive information from the student, the student's parent or guardian, and the superintendent or superintendent's designee and confirm or reverse the decision under Subsection (h). The board shall make a record of the proceedings. If the board confirms the decision of the superintendent or superintendent's designee, the board shall inform the student and the student's parent or guardian of the right to appeal to the commissioner under Subsection (j).

(j) Notwithstanding Section 7.057(e), the decision of the board of trustees under Subsection (i) may be appealed to the commissioner as provided by Sections 7.057(b), (c), (d), and (f). The student may not be returned to the regular classroom pending the appeal.

(k) Subsections (h), (i), and (j) do not apply to placements made in accordance with Subsection (a).

(l) Notwithstanding any other provision of this code, other than Section 37.007(e)(2), a student who is younger than six years of age may not be removed from class and placed in a disciplinary alternative education program.

(m) Removal to a disciplinary alternative education program under Subsection (a) is not required if the student is expelled under Section 37.007 for the same conduct for which removal would be required.

(n) A principal or other appropriate administrator may but is not required to remove a student to a disciplinary alternative education program for off-campus conduct for which removal is required under this section if the principal or other appropriate administrator does not have knowledge of the conduct before the first anniversary of the date the conduct occurred.

EDUCATION CODE: § 37.001. STUDENT CODE OF CONDUCT. (a) The board of trustees of an independent school district shall, with the advice of its district-level committee established under Subchapter F, Chapter 11, adopt a student code of conduct for the district. The student code of conduct must be posted and prominently displayed at

each school campus or made available for review at the office of the campus principal. In addition to establishing standards for student conduct, the student code of conduct must:

- (1) specify the circumstances, in accordance with this subchapter, under which a student may be removed from a classroom, campus, or disciplinary alternative education program;
- (2) specify conditions that authorize or require a principal or other appropriate administrator to transfer a student to a disciplinary alternative education program;
- (3) outline conditions under which a student may be suspended as provided by Section 37.005 or expelled as provided by Section 37.007;
- (4) specify whether consideration is given to self-defense as a factor in a decision to order suspension, removal to a disciplinary alternative education program, or expulsion;
- (5) provide guidelines for setting the length of a term of:
 - (A) a removal under Section 37.006; and
 - (B) an expulsion under Section 37.007; and
- (6) address the notification of a student's parent or guardian of a violation of the student code of conduct committed by the student that results in suspension, removal to a disciplinary alternative education program, or expulsion.
 - (b) Repealed by Acts 2003, 78th Leg., ch. 1055, § 30.
 - (c) Once the student code of conduct is promulgated, any change or amendment must be approved by the board of trustees.
 - (d) Each school year, a school district shall provide parents notice of and information regarding the student code of conduct.

EDUCATION CODE: § 37.002. REMOVAL BY TEACHER. (a) A teacher may send a student to the principal's office to maintain effective discipline in the classroom. The principal shall respond by employing appropriate discipline management techniques consistent with the student code of conduct adopted under Section 37.001.

- (b) A teacher may remove from class a student:
 - (1) who has been documented by the teacher to repeatedly interfere with the teacher's ability to communicate effectively with the students in the class or with the ability of the student's classmates to learn; or
 - (2) whose behavior the teacher determines is so unruly, disruptive, or abusive that it seriously interferes with the teacher's ability to communicate effectively with the students in the class or with the ability of the student's classmates to learn.
- (c) If a teacher removes a student from class under Subsection (b), the principal may place the student into another appropriate classroom, into in-school suspension, or into a disciplinary alternative education program as provided by Section 37.008. The principal may not return the student to that teacher's class without the teacher's consent unless the committee established under Section 37.003 determines that such placement is the best or only alternative available. The terms of the removal may prohibit the student from attending or participating in school-sponsored or school-related activity.
- (d) A teacher shall remove from class and send to the principal for placement in a disciplinary alternative education program or for expulsion, as appropriate, a student who engages in conduct described under Section 37.006 or 37.007. The student may not be returned to that teacher's class without the teacher's consent unless the committee established under Section 37.003 determines that such placement is the best or only alternative available.