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
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LEGAL UPDATE

November 15, 2010

To: Superintendents, Member School Districts (K-12)

From: Carl D. Corbin, Assistant General Counsel 

Subject: Changes to Student Truancy Laws
Memo No. 31-2010

On September 30, 2010, the Governor signed legislation that provides a new definition for truancy for students in first through eighth grades.¹ The legislation also provides additional penalties to parents of truant students and provides superior courts with the authority to establish a program to adjudicate the parents or guardians of truant students in first through eighth grades. The new legislation does not change the existing law, but instead adds additional provisions specific to students in first through eighth grade. For convenience, the new legislation is provided in full at the end of this Legal Update.

Existing law defines “habitual truant” as a student who misses, without valid excuse, any combination of three full days of school or is tardy for more than a 30-minute period during the school day on three occasions in one school year.² Existing law details the referral process to the School Attendance Review Board (“SARB”) and possible penalties against the truant student and parent/guardian. Existing law, Penal Code section 272, provides a penalty to parents/guardians for contributing to the delinquency of persons 18 years or younger, which is often used as basis for punishment of parents/guardians of truant students.

The legislation adds a new Education Code section that defines a student as a “chronic truant” if a student in first through eighth grade is absent from school without a valid excuse for ten percent or more of the school days in one school year, from the date of enrollment to the current date.³ The legislation adds Penal Code section 270.1 that provides superior courts with the authority to establish a program and supportive services to assist parents/guardians in addressing the attendance of their child who is a “chronic truant.” The legislation also authorizes additional penalties to parents/guardians of a child who is a “chronic truant” with fines up to \$2,000 and/or imprisonment in county jail for not more than one year. Lastly, the legislation clarifies that

¹ SB No. 1317, which takes effect on January 1, 2011.

² Education Code section 48260.

³ Education Code section 48263.6.

parents/guardians of truant students may only be punished under either new Penal Code section 270.1 or existing Penal Code section 272, but not under both sections.

Please contact any of the attorneys in our offices if you have any questions regarding this or any other legal matter.

CHAPTER 647

FILED WITH SECRETARY OF STATE SEPTEMBER 30, 2010
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PASSED THE SENATE AUGUST 31, 2010
PASSED THE ASSEMBLY AUGUST 30, 2010
AMENDED IN ASSEMBLY AUGUST 9, 2010
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AMENDED IN SENATE MAY 6, 2010
AMENDED IN SENATE APRIL 27, 2010
AMENDED IN SENATE APRIL 8, 2010
AMENDED IN SENATE MARCH 22, 2010

INTRODUCED BY Senator Leno
(Coauthor: Assembly Member Chesbro)

FEBRUARY 19, 2010

An act to add Section 48263.6 to the Education Code, and to add Section 270.1 to the Penal Code, relating to truancy.

LEGISLATIVE COUNSEL'S DIGEST

SB 1317, Leno. Truancy.

(1) Existing law defines a truant as any pupil subject to compulsory full-time education or to compulsory continuation education who is absent from school without a valid excuse 3 full days in one school year, or tardy or absent for more than any 30-minute period during the schoolday without a valid excuse on 3 occasions in one school year, or any combination thereof.

This bill would define a chronic truant as any pupil subject to compulsory full-time education or to compulsory continuing education who is absent from school without a valid excuse for 10% or more of the schooldays in one school year, from the date of enrollment to the current date, provided that the appropriate school district officer or employee has complied with specified provisions of law.

(2) Existing law provides that, if a person is a parent of a minor child, he or she is guilty of a misdemeanor punishable by a fine not exceeding \$2,000, or by imprisonment in a county jail for a period not exceeding one year, or by both that fine and imprisonment, if he or she willfully omits, without lawful excuse, to furnish necessary clothing, food, shelter, medical attendance, or other remedial care for the child.

Under existing law, the parent or guardian of a pupil, who is subject to compulsory full-time education or to compulsory continuation education, whose child is habitually truant, as defined, or fails to perform his or her duty to compel attendance of the pupil, is guilty of a crime.

This bill would provide that a parent or guardian of a pupil of 6 years of age or more who is in kindergarten or any of grades 1 to 8, inclusive, and who is subject to compulsory full-time education or to compulsory continuation education, whose child is a chronic truant, who has failed to reasonably supervise and encourage the pupil's school attendance, and who has been offered language accessible support services to address the pupil's truancy, is guilty of a misdemeanor punishable by a fine not exceeding

\$2,000, or by imprisonment in a county jail for a period not exceeding one year, or by both that fine and imprisonment. The bill would provide that a parent or guardian may not be punished for a violation of both these provisions and another specified law involving criminal liability for parents or guardians of truant children. By changing the definition of an existing crime, this bill would impose a state-mandated local program.

The bill would authorize a superior court to establish a deferred entry of judgment program, meeting specified conditions, to adjudicate cases involving parents or guardians of elementary school pupils who are chronic truants. The bill would authorize a deferred entry of judgment program established under the bill to refer defendant parents or guardians for services, including, but not necessarily limited to, case management, mental and physical health services, parenting classes and support, substance abuse treatment, and child care and housing. The bill would authorize the deferment of entry of judgment in these cases upon the defendant's compliance with terms and conditions set forth by the court. The bill would require that funding for the deferred entry of judgment program come solely from nonstate sources.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 48263.6 is added to the Education Code, to read:

48263.6. Any pupil subject to compulsory full-time education or to compulsory continuation education who is absent from school without a valid excuse for 10 percent or more of the schooldays in one school year, from the date of enrollment to the current date, is deemed a chronic truant, provided that the appropriate school district officer or employee has complied with Sections 48260, 48260.5, 48261, 48262, 48263, and 48291.

SEC. 2. Section 270.1 is added to the Penal Code, to read:

270.1. (a) A parent or guardian of a pupil of six years of age or more who is in kindergarten or any of grades 1 to 8, inclusive, and who is subject to compulsory full-time education or compulsory continuation education, whose child is a chronic truant as defined in Section 48263.6 of the Education Code, who has failed to reasonably supervise and encourage the pupil's school attendance, and who has been offered language accessible support services to address the pupil's truancy, is guilty of a misdemeanor punishable by a fine not exceeding two thousand dollars (\$2,000), or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment. A parent or guardian guilty of a misdemeanor under this subdivision may participate in the deferred entry of judgment program defined in subdivision (b).

(b) A superior court may establish a deferred entry of judgment program that includes the components listed in paragraphs (1) to (7), inclusive, to adjudicate cases involving parents or guardians of elementary school pupils who are chronic truants as defined in Section 48263.6 of the Education Code:

- (1) A dedicated court calendar.
- (2) Leadership by a judge of the superior court in that county.
- (3) Meetings, scheduled and held periodically, with school district representatives designated by the chronic truant's school district of enrollment. Those representatives may include school

psychologists, school counselors, teachers, school administrators, or other educational service providers deemed appropriate by the school district.

(4) Service referrals for parents or guardians, as appropriate to each case that may include, but are not limited to, all of the following:

- (A) Case management.
- (B) Mental and physical health services.
- (C) Parenting classes and support.
- (D) Substance abuse treatment.
- (E) Child care and housing.

(5) A clear statement that, in lieu of trial, the court may grant deferred entry of judgment with respect to the current crime or crimes charged if the defendant pleads guilty to each charge and waives time for the pronouncement of judgment and that, upon the defendant's compliance with the terms and conditions set forth by the court and agreed to by the defendant upon the entry of his or her plea, and upon the motion of the prosecuting attorney, the court will dismiss the charge or charges against the defendant and the same procedures specified for successful completion of a drug diversion program or a deferred entry of judgment program pursuant to Section 851.90 and the provisions of Section 1203.4 shall apply.

(6) A clear statement that failure to comply with any condition under the program may result in the prosecuting attorney or the court making a motion for entry of judgment, whereupon the court will render a finding of guilty to the charge or charges pled, enter judgment, and schedule a sentencing hearing as otherwise provided in this code.

(7) An explanation of criminal record retention and disposition resulting from participation in the deferred entry of judgment program and the defendant's rights relative to answering questions about his or her arrest and deferred entry of judgment following successful completion of the program.

(c) Funding for the deferred entry of judgment program pursuant to this section shall be derived solely from nonstate sources.

(d) A parent or guardian of an elementary school pupil who is a chronic truant, as defined in Section 48263.6 of the Education Code, may not be punished for a violation of both this section and the provisions of Section 272 that involve criminal liability for parents and guardians of truant children.

(e) If any district attorney chooses to charge a defendant with a violation of subdivision (a) and the defendant is found by the prosecuting attorney to be eligible or ineligible for deferred entry of judgment, the prosecuting attorney shall file with the court a declaration in writing, or state for the record, the grounds upon which that determination is based.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.