

## A Guide to Truancy Prosecution

- **Who is subject to compulsory education laws?** Each person between the ages of 6 and 18 years of age are subject to compulsory full-time education. Education Code section 48200
- **Students who attend a Charter School are exempt from the laws governing school districts with regard to truancy.** Education Code section 47610
- **What is the legal definition of truancy?** Any pupil subject to compulsory full-time education who is absent from school without valid excuse three full-time days in one school year or tardy or absent for more than any 30-minute period during the schoolday without a valid excuse on three occasions in one school year, or any combination thereof, is a truant. Education Code section 48260
- **What happens once a person is determined to be truant?** Upon a pupil's classification as a truant, the school district shall notify the pupil's parent or guardian, by first class mail, or other reasonable means, that: (a) That the pupil is truant. (b) That the parent or guardian is obligated to compel the attendance of the pupil at school. (c) That parents or guardians who fail to meet this obligation may be guilty of an infraction and subject to prosecution pursuant to Article 6 (commencing with Section 48290) of Chapter 2 of Part 27. (d) That alternative educational programs are available in the district. (e) That the parent or guardian has the right to meet with appropriate school personnel to discuss solutions to the pupil's truancy. (f) That the pupil may be subject to prosecution under Section 48264. (g) That the pupil may be subject to suspension, restriction, or delay of the pupil's driving privilege pursuant to Section 13202.7 of the Vehicle Code. (h) That it is recommended that the parent or guardian accompany the pupil to school and attend classes with the pupil for one day. Education Code section 48260.5
- **What happens if the pupil is absent without excuse again?** Any pupil who has once been reported as a truant and who is again absent from school without valid excuse one or more days, or tardy on one or more days, shall again be reported as a truant to the attendance supervisor or the superintendent of the district.<sup>1</sup> Education Code section 48261
- **What is the legal definition of habitual truancy?** The student must have been reported as truant three or more times per school year **and** that there is a conscientious effort to hold at least one conference with the parent or guardian and the student.<sup>2</sup> Education Code section 48262
- **What happens once the minor is deemed "habitually truant"?** The pupil (now referred to as a minor) is referred to the school attendance review board or the probation department, if they handle truancy in the county. Written notice must be given to the pupil and the parent or guardian. The SARB can refer the case to the District Attorney for truancy mediation upon a finding that the problem cannot be resolved by the SARB in a county where the DA or the Probation Department has elected to conduct truancy mediation. In Los Angeles, the District Attorney conducts the truancy mediation. If the county has no SARB process, the school district can directly refer to the District Attorney or Probation for mediation. Education Code section 48263 If the mediation fails, the minor pupil and/or the parent can be filed upon in a court of law.
- **In addition to the above long standing legislative scheme related to truancy, beginning on January 1, 2011, a new and parallel scheme will be in effect.** On Thursday, September 30, 2010, the Governor signed Senate Bill 1317 (Leno) and created two new laws relating to truancy. The first law created is Education Code section 48263.6. The second law created is Penal Code section 270.1.

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<sup>1</sup> Once the pupil meets the legal definition of a single truancy, subsequent "truancies" only require that the pupil miss a day or be tardy more than 30 minutes without valid excuse.

<sup>2</sup> A student could be designated as habitually truant with a combination of five days of absence or more than 30 minute tardies and there was an effort, at a minimum, to hold a conference with regard to the truancy.

- **New Education Code section 48263.6 will create a third definition of truancy known as “chronic truancy”.** The new law provides that:

*“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.”*

- **If a pupil who is in grades one through eight is determined to be a “chronic truant” the parent is prosecutable pursuant to the newly created Penal Code section 270.1.** New Penal Code section 270.1 provides that:

*“(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 or 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.

- **Arrest of truants.** Education Code section 48264 provides any minor subject to the compulsory education laws who is found away from home and who is absent without valid excuse can be arrested by an attendance supervisor, a peace officer, a school administrator, or a probation officer. The pupil must be taken to their parent or guardian or to a nonsecure location designed to deal with the truancy. If the pupil meets the definition of a habitual truant, they may be taken to a probation officer. The police cannot book and incarcerate solely on the basis of truancy. Evidence Code section 48265

### Prosecution of Truancy Offenses

Statute	Level of Offense	Where Prosecuted	Elements of the Offense	Punishment	Comments
Education Code section 48264.5/Petition is brought against a juvenile pursuant to Welfare and Institutions Code section 601  Criminal Complaint Against Student	Infraction	Delinquency/Juvenile Court	Fourth time truancy within a single school year for the minor pupil. This means that the previous three truanies and the notice provisions must be proven. See Education Code section 48264.5 (a-c)	One or more of the following:  Community service of 20-40 hours lasting not more than 90 days.  A one-hundred dollar fine that the parent is jointly and severally liable for.  Attendance in a court approved truancy prevention program.	This statute is aimed solely at juveniles. Before it can be used, the minor pupil must have exhausted all the remedies as to the first three truanies. See Education Code section 48264.5 (a-c)

				Suspension or revocation of driving privileges pursuant to Vehicle Code section 13202.7 when the student has been to SARB or truancy mediation.	The SARB can refer the minor pupil for truancy mediation or for filing as can the Truancy Mediator. See Welfare and Institutions Code section 601.3 and 601.4.
Education Code section 48291/48293  Criminal Complaint Against Parent	Infraction	Adult Criminal and/or Juvenile Court Education Code section 49295 and Welfare and Institutions Code section 601.4	Parent or Guardian fails to send their child to school.  Parent or Guardian continually and willfully fails to respond to directives of the SARB or a service provider that the SARB directs the parent to go to for services.	1 <sup>st</sup> Conviction - \$100 fine  2 <sup>nd</sup> Conviction - \$250 fine  3 <sup>rd</sup> conviction - \$500 fine or attendance in a parent education and counseling program. The court can also order that the parent enroll the child in school and present proof of enrollment to the court. If the parent fails to comply, the court may hold the parent in contempt and fine them an additional \$1,000. Note that the parent cannot be imprisoned as a punishment for the contempt.	The SARB refers the parent for filing. Education Code section 48291  See also, Welfare and Institutions Code sections 601.3 and 601.4
Education Code section 48453/48454  Criminal Complaint Against Parent Having Control of a Minor Attending Special Continuation Education Class	Misdemeanor	Adult Criminal Court	The Parent or Guardian fails to compel attendance of the minor.	1 <sup>st</sup> Conviction - \$50 fine  2 <sup>nd</sup> and Subsequent Convictions - \$50-\$500 fine and/or 5-25 days in county jail	The school district refers the parent for filing.
Penal Code section 272(a)  Contributing to the Delinquency of a Minor	Misdemeanor	Adult Criminal Court	The parent or legal guardian shall have duty to exercise reasonable care, supervision, protection, and control of a child under the age of 18.  They must omit to act or act in a manner that would cause or encourage the minor to come	\$2,500 fine  AND/OR one year imprisonment in the county jail	Note that this statute does not require that the minor actually be file on – it only requires that the action or the omission of the action would tend to bring

			within the provisions of Welfare and Institutions Code section 601 OR would cause or manifestly tend to cause the minor to remain a person within the provisions of Welfare and Institutions Code section 601.		the minor within the provisions of Welfare and Institutions Code section 601
Penal Code section 270.1 - Becomes operative on January 1, 2011	Misdemeanor	Adult Criminal Court	<p>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.</p> <p>Student is subject to compulsory full-time education or compulsory continuation education.</p> <p>Pupil is a chronic truant as defined in Section 48263.6 of the Education Code.</p> <p>Has failed to reasonably supervise and encourage the pupil's school attendance.</p> <p>Has been offered language accessible support services to address the pupil's truancy</p>	<p>\$2,000 fine</p> <p>AND/OR one year imprisonment in county jail</p> <p>OR a court created deferred entry of judgment Program</p> <p>The statute specifies that the defendant cannot be punished under both 270.1 and 272.</p>	