

NEW TRUANCY LAWS EFFECTIVE ON JANUARY 1, 2011

I.

Introduction

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. These laws will not become effective until January 1, 2011. These new laws did not overrule the existing truancy statutes. They remain effective both now and after January 1, 2011.

II.

New Education Code section 48263.6

New Education Code section 48263.6 reads as follows:

“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.”

III.

New Penal Code section 270.1

New Penal Code section 270.1 reads as follows:

“(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 non state 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.”

IV.

What You Need to Know About the New Law and the Old Law

1. The new law does not overrule the old law. The previously existing Education and Penal codes defining truancy and the penalties for truancy, for both parents and pupils, remain in force.
2. The new Penal code section 270.1 targets parents and guardians of “chronically truant” students who are of the age of 6 and above and are in grades 1 through 8.
3. The new Penal Code section 270.1 requires that the parent or guardian fail to supervise the pupil and fail to encourage school attendance. The student had to have missed 10% or more school days in the school year without valid excuse and had to have been offered language appropriate services during any meeting that was held to address truancy. That means that every single meeting held to address truancy must be conducted with language appropriate services.
4. The new Education Code section 48263.6 created a third definition of truancy as being absent 10% or more school days in the school year without valid excuse.
5. If a parent or guardian is charged in a criminal case relating to truancy, they can be charged with both Penal Code section 272 and 270.1. However, they can only be punished for one of the charges, not both. Prosecutors can elect which section to charge, or can charge both.
6. The punishment for a violation of Penal Code section 270.1 is a two-thousand dollar fine and/or a year in county jail. In lieu of a fine and jail, the defendant may agree to a deferred entry of judgment and perform a diversion program. The statute provides that the courts may create diversion programs for parents of truant minor pupils. At this time, there are no diversion programs.
7. The new law does not come into effect until January 1, 2011.