

## Definition of a Truant as Published in the California Education Code

The California Legislature defined a truant in very precise language. In summary, it states that a student missing more than 30 minutes of instruction without an excuse three times during the school year must be classified as a truant and reported to the proper school authority. This classification and referral helps emphasize the importance of school attendance and is intended to help minimize interference with instruction. Effective January 1, 2013, the law was amended to authorize school administrators to excuse school absences due to the pupil's circumstances, even if the excuse is not one of the valid excuses listed in the California *Education Code (EC)* or the uniform standards established by the governing board of the district. The *EC* section that defines a truant reads as follows:

*EC* Section 48260 (a) A pupil subject to compulsory full-time education or to compulsory continuation education who is absent from school without a valid excuse three full days in one school year or tardy or absent for more than a 30-minute period during the school day without a valid excuse on three occasions in one school year, or any combination thereof, shall be classified as a truant and shall be reported to the attendance supervisor or to the superintendent of the school district.

(b) Notwithstanding subdivision (a), it is the intent of the Legislature that school districts shall not change the method of attendance accounting provided for in existing law and shall not be required to employ period-by-period attendance accounting.

(c) For purposes of this article, a valid excuse includes, but is not limited to, the reasons for which a pupil shall be excused from school pursuant to Sections 48205 and 48225.5 and may include other reasons that are within the discretion of school administrators and, based on the facts of the pupil's circumstances, are deemed to constitute a valid excuse.

### Definition of a Chronic Truant

Effective January 1, 2011, *EC* Section 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 ten percent or more of the school days 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 *EC* sections 48260, 48260.5, 48261, 48262, 48263, and 48291.

### First Notification Mandate

In addition to the reporting requirement, the law states that the school district must notify the parent or guardian of the truant by the most cost-effective method possible, and that the notification must include specific information related to the student's unexcused absences. The *EC* Section regarding notification reads as follows:

*EC* Section 48260.5: Upon a pupil's initial classification as a truant, the school district shall notify the pupil's parent or guardian, by using the most cost-effective method possible, which may include electronic mail or a telephone call:

- (a) That the pupil is a 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) For a pupil under 18 years of age but 13 years of age or older, 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 the parent or guardian accompany the pupil to school and attend classes with the pupil for one day. (Amended by Stats. 2018, Ch. 507, Sec. 8. (SB 816) Effective January 1, 2019.)

### Habitual Truant Mandate

The law further requires that after a student has been reported as a truant three or more times in one school year and after an appropriate school employee has made a conscientious effort to hold at least one meeting with the parent and the student, the student is deemed a *habitual* truant. The intent is to provide solutions for students who failed to respond to the normal avenues of school intervention, and the most cost-effective method possible should be used to notify the parent or guardian about the meeting at the school. The *EC* Section outlining habitual truancy reads as follows:

*EC* Section 48262: Any pupil is deemed an habitual truant who has been reported as a truant three or more times per school year, provided that no pupil shall be deemed an habitual truant unless an appropriate district officer or employee has made a conscientious effort to hold at least one conference with a parent or guardian of the pupil and the pupil himself, after the filing of either of the reports required by Section 48260 or Section 48261. For the purposes of this section, a conscientious effort means attempting to communicate with the parents of the pupil at least once using the most cost-effective method possible, which may include electronic mail or a telephone call.

### Interventions

When a student is a *habitual* truant, or is irregular in attendance at school, or is habitually insubordinate or disorderly during school, the student may be referred to a school attendance review board (SARB) or to the county probation department pursuant to *EC* Section 48263. The student may also be referred to a probation officer or district attorney mediation program pursuant to *EC* Section 48263.5. The intent of these laws is to provide intensive guidance to meet the special needs of students with school attendance problems or school behavior problems pursuant to *EC* Section 48320. These interventions are designed to divert students with serious attendance and behavioral problems from the juvenile justice system and to reduce the number of students who drop out of school.

### Penalties (Student)

The law provides schools and school districts with discretion regarding student penalties for truancy as long as they are consistent with state law. The penalties for truancy for students defined in *EC* Section 48264.5 become progressively severe from the first the time a truancy report is required through the fourth time a truancy report is required. The *EC* Section regarding penalties for students who are truant reads as follows:

*EC* Section 48264.5: Any minor who is required to be reported as a truant pursuant to Section 48260 or 48261 may be required to attend makeup classes conducted on one day of a weekend pursuant to subdivision (c) of Section 37223 and is subject to the following:

(a) The first time a truancy report is required, the pupil may be personally given a written warning by any peace officer specified in Section 830.1 of the *Penal Code*. A record of written warning may be kept at the school for a period of not less than two years, or until the pupil graduates or transfers, from that school. If the pupil transfers, the record may be forwarded to any school receiving the pupil's school records. A record of the written warning may be maintained by the law enforcement agency in accordance with that law enforcement agency's policies and procedures.

(b) The second time a truancy report is required within the same school year, the pupil may be assigned by the school to an after school or weekend study program located within the same county as the pupil's school. If the pupil fails to successfully complete the assigned study program, the pupil shall be subject to subdivision (c).

(c) The third time a truancy report is required within the same school year, the pupil shall be classified a habitual truant, as defined in Section 48262, and may be referred to and required to attend, an attendance review board or a

truancy mediation program pursuant to Section 48263 or pursuant to Section 601.3 of the *Welfare and Institutions Code*. If the district does not have a truancy mediation program, the pupil may be required to attend a comparable program deemed acceptable by the school district's attendance supervisor. If the pupil does not successfully complete the truancy mediation program or other similar program, the pupil shall be subject to subdivision (d).

(d) The fourth time a truancy is required to be reported within the same school year, the pupil shall be within the jurisdiction of the juvenile court which may adjudge the pupil to be a ward of the court pursuant to Section 601 of the *Welfare and Institutions Code*. If the pupil is adjudged a ward of the juvenile court, the pupil shall be required to do one or more of the following:

- (1) Performance at court-approved community services sponsored by either a public or private nonprofit agency for not less than 20 hours but not more than 40 hours over a period not to exceed 90 days, during a time other than the pupil's hours of school attendance or employment. The probation officer shall report to the court the failure to comply with this paragraph.
- (2) Payment of a fine by the pupil of not more than one hundred dollars (\$100) for which a parent or guardian of the pupil may be jointly liable.
- (3) Attendance of a court-approved truancy prevention program.
- (4) Suspension or revocation of driving privileges pursuant to Section 13202.7 of the *Vehicle Code*. This subdivision shall apply only to a pupil who has attended a school attendance review board program, or a truancy mediation program pursuant to subdivision (c).

#### *Education Code Penalties (Parent)*

Penalties against parents apply when any parent, guardian, or other person having control or charge of any student fails to compel the student to attend school. The penalties against parents in *EC* Section 48293 (a) become progressively severe with a second and third conviction. The *EC* Section regarding penalties for parents of a truant reads as follows:

*EC* Section 48293 (a): Any parent, guardian, or other person having control or charge of any pupil who fails to comply with this chapter, unless excused or exempted there from, is guilty of an infraction and shall be punished as follows:

- (1) Upon a first conviction, by a fine of not more than one hundred dollars (\$100).
- (2) Upon a second conviction, by a fine of not more than two hundred fifty dollars (\$250).
- (3) Upon a third or subsequent conviction, if the person has willfully refused to comply with this section, by a fine of not more than five hundred dollars (\$500). In lieu of the fines prescribed in paragraphs (1), (2), and (3), the court may order the person to be placed in a parent education and counseling program.

*EC* Section 48293 (b): A judgment that a person convicted of an infraction be punished as prescribed in subdivision (a) may also provide for the payment of the fine within a specified time or in specified installments, or for participation in the program. A judgment granting a defendant time to pay the fine or prescribing the days of attendance in a program shall order that if the defendant fails to pay the fine, or any installment thereof, on the date it is due, he or she shall appear in court on that date for further proceedings. Willful violation of this order is punishable as contempt.

*EC* Section 48293 (c): The court may also order that the person convicted of the violation of subdivision (a) immediately enroll or re-enroll the pupil in the appropriate school or educational program and provide proof of enrollment to the court. Willful violation of an order under this subdivision is punishable as civil contempt with a

fine of up to one thousand dollars (\$1,000). An order of contempt under this subdivision shall not include imprisonment.

### *Penal Code Penalties (Parent)*

In addition to the *EC* penalties for parents in Section 48293, *Penal Code* Section 270.1 is effective January 1, 2011 and provides penalties for a parent or guardian of a pupil of six years of age or more who is in kindergarten or any of the grades from one to eight:

*Penal Code* Section 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 one to eight, 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 *EC*, 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 *EC*:

(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 *EC*, 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.