



**WISCONSIN LEGISLATIVE COUNCIL
AMENDMENT MEMO**

2005 Assembly Bill 821

**Assembly Substitute Amendment
1, as Amended by Assembly
Amendment 1 to Assembly
Substitute Amendment 1**

Memo published: January 13, 2006

Contact: Joyce L. Kiel, Senior Staff Attorney (266-3137)

2005 Assembly Bill 821 relates to conditions that must be satisfied before a proceeding relating to habitual truancy may be brought.

CURRENT LAW

Under current law, a pupil subject to the compulsory attendance laws is an “habitual truant” if the pupil is absent from school without an acceptable excuse for part or all of five or more days on which school is held during a school semester. A proceeding may be brought *against a child* who is habitually truant alleging that the child is a juvenile in need of protection or services or, if a municipality has enacted an ordinance prohibiting habitual truancy, alleging violation of the ordinance. Criminal proceedings may be brought *against a child’s parent or guardian* for failure to cause a child who is subject to the compulsory attendance laws to attend school regularly, unless excused.¹

Except as noted below, before any proceeding relating to habitual truancy may be brought against a child or against a child’s parent or guardian, the school’s attendance officer must provide evidence that appropriate school personnel have done all of the following within the school year in which the truancy occurred:

1. Met with the child’s parent or guardian to discuss the child’s truancy or attempted to meet with the child’s parent or guardian and received no response or were refused.

¹ In addition, current law provides a criminal penalty for any person 17 years of age or older who knowingly encourages or contributes to the truancy of a person 17 years of age or under. [s. 948.45, Stats.] This could be applied to anyone, including those who are not the child’s parent or guardian.

2. Provided an opportunity for educational counseling to the child to determine whether a change in the child's curriculum would resolve the child's truancy and have considered curriculum modifications under s. 118.15 (1) (d), Stats.
3. Evaluated the child to determine whether learning problems may be a cause of the child's truancy and, if so, have taken steps to overcome the learning problems, except that the child need not be evaluated if tests administered to the child within the previous year indicate that the child is performing at his or her grade level.
4. Conducted an evaluation to determine whether social problems may be a cause of the child's truancy and, if so, have taken appropriate action or made appropriate referrals.

The *exceptions* to the required activities are that:

- School personnel are not required to satisfy the condition of meeting with the parent or guardian under *item 1., above*, if the meeting with the parent or guardian requested in the notice sent to the parent or guardian when the child first becomes an habitual truant is not held within 10 school days after the notice was sent.
- The conditions set forth in *items 2. to 4., above*, do not apply if the school attendance officer provides evidence that appropriate school personnel were unable to carry out the activities due to the child's absences from school.

2005 ASSEMBLY BILL 821

Proceeding Against a Child Under 12 Years of Age

If a child is under 12 years of age, Assembly Bill 821 provides that the activities in *items 2. to 4., above* (educational counseling, learning problem evaluation, and social problem evaluation), need *not* be conducted before a proceeding may be brought against the child. However, unless an exception applies (as under current law),² the bill requires that appropriate school personnel complete these activities before a dispositional order is granted in a proceeding against a child under 12 years of age.

With respect to a child under 12 years of age, the bill does *not* change current law with respect to *item 1., above*. Thus, unless an exception applies (as under current law),³ before a proceeding against the child for habitual truancy may be brought, school personnel must have met with the child's parent or guardian to discuss the child's truancy or attempted to meet with the child's parent or guardian and received no response or were refused.

² The applicable exception is that appropriate school personnel were unable to carry out the activities due to the child's absences from school.

³ The applicable exception is that the meeting following the habitual truancy notice to the parent or guardian was not held within 10 days after the notice was sent.

Proceeding Against a Child 12 Years of Age or Older

The bill does *not* change current law with respect to bringing a proceeding against a child who is 12 years of age or older. This means that, unless an exception applies (as under current law), all of the activities in *items 1. to 4., above*, must be performed before a proceeding may be brought against a child 12 years of age or older.

Proceeding Against a Child's Parent or Guardian

The bill's relating clause and analysis indicate that the bill changes current law with respect to the four activities that must be performed, unless an exception applies, before a proceeding may be brought against the parent or guardian of a child under 12 years of age based on habitual truancy. However, the language of the bill does *not* change current law with respect to proceedings against parents or guardians. This means that, unless an exception applies (as under current law), all of the activities in *items 1. to 4., above*, must be performed before a proceeding may be brought against a child's parent or guardian--regardless of whether the child is over or under 12 years of age.

Effective Date

The bill provides that it applies to trancies that occur during or following the 2006-07 school year.

ASSEMBLY SUBSTITUTE AMENDMENT 1 TO ASSEMBLY BILL 821

Assembly Substitute Amendment 1 to Assembly Bill 821 makes the following changes to the bill:

- With respect to proceedings against a child under 12 years of age based on habitual truancy, retains the provisions in the bill that if a child is under 12 years of age, the activities in *items 2. to 4., above* (educational counseling, learning problem evaluation, and social problem evaluation), need *not* be performed before a proceeding may be brought against the child. However, unless an exception applies (as under current law), the substitute amendment provides that before any dispositional order may be granted in a proceeding against a child under 12 years of age, the school attendance officer must provide evidence that appropriate school personnel completed these activities. (In contrast, the bill provides that, unless an exception applies (as under current law), appropriate school personnel must complete these activities before a dispositional order is granted in a proceeding against a child under 12 years of age. The bill implies that the court may enter a dispositional order even if the activities have not been completed and that school personnel could potentially be penalized under s. 118.16 (7), Stats., for failing to timely complete the activities. The substitute amendment specifies that, unless an exception applies (as under current law), the court cannot enter the dispositional order unless the activities have been completed.)
- Changes the bill's relating clause and analysis to eliminate any reference to changing current law with respect to proceedings against a child's parent or guardian based on the child's habitual truancy. This does not substantively change the provisions of the bill.

- Uses a different drafting approach than the bill as the substitute amendment creates a new subsection in s. 118.16, Stats., to separate out the provisions relating to a child under 12 years of age with respect to habitual truancy proceedings against the child. This does not substantively change the provisions of the bill.

ASSEMBLY AMENDMENT 1 TO ASSEMBLY SUBSTITUTE AMENDMENT 1

As noted above, the substitute amendment creates a new subsection in s. 118.16, Stats., to separate out provisions relating to a child under 12 years of age with respect to habitual truancy proceedings against the child. Assembly Amendment 1 to the substitute amendment is a technical amendment that includes cross-references to the newly created subsection. It does not substantively change the provisions in either the substitute amendment or the bill.

LEGISLATIVE HISTORY

Assembly Substitute Amendment 1 to 2005 Assembly Bill 821 was offered by Representative Krusick. The Assembly Committee on Education introduced Assembly Amendment 1 to the substitute amendment. The committee recommended adoption of Assembly Amendment 1 to the substitute amendment on a vote of Ayes, 11; Noes, 1. The committee recommended adoption of Assembly Substitute Amendment 1, as amended, on a vote of Ayes, 11; Noes, 1. The committee recommended passage of the bill, as amended, on a vote of Ayes, 11; Noes, 1.

JLK:jal:wu:rv