



# SCHOOL & COLLEGE LEGAL SERVICES OF CALIFORNIA

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## LEGAL UPDATE

October 15, 2020

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

**From: Damara L. Moore, Senior Associate General Counsel** *DM*

**Subject: Changes in Truancy Laws**  
**Memo No. 63-2020**

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This Legal Update addresses recent changes to, and interpretations of, laws related to habitually truant students.

This year, the California Supreme Court answered two questions related to truancy proceedings.<sup>1</sup> The case involved a ninth grade student who was not referred to a school attendance review board (“SARB”) prior to the district attorney filing to make the student a ward of the court after the parent had received three truancy notices for at least 19 absences or tardies in less than one year. The first question before the Court was whether the use of a SARB process or a similar truancy mediation program is required for a juvenile court to have jurisdiction, i.e. authority to exercise control, over a student. The second question was whether the issuance of a fourth truancy report is required before a juvenile court may exercise jurisdiction over a minor on the basis of truancy.

The Court held that a juvenile court may exercise jurisdiction in a formal wardship proceeding on the basis of the minor having “four or more truantries within one school year if a fourth truancy report has been issued to the attendance supervisor or the superintendent of the school district,” even if the minor has not been previously referred to a SARB or a similar truancy mediation program. The Court found that SARbing or other truancy mediation is not a prerequisite to initiating an action to make a student a ward of the court due to the student’s status as a habitual truant. The Court noted:

Both parties and amicus curiae [California Rural Legal Assistance] agree that students often fall into truancy for reasons beyond their control. [Citations] The Court of Appeal also opined

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<sup>1</sup> *In re A.N. v. A.N.* (2020) 9 Cal.5th 343.

that school officials “did everything they could and should do to educate—not abandon—A.N.” [Citation] But a SARB meeting was not held until A.N. had accumulated dozens of unexcused absences or tardies, and there is no evidence that any services were provided to her or her parents. When a habitual truant is adjudged a ward of the juvenile court but is never offered any services to address the underlying causes of his or her attendance problems, we question whether the statutory scheme functions as the Legislature expected.

In September 2020, perhaps in response to the Court’s statement, the Governor signed Assembly Bill 901 (“A.B. 901”),<sup>2</sup> which amended the Education Code and other laws related to truancy, and these changes go into effect January 1, 2021.<sup>3</sup> One change requires the district attorney and the probation officer to cooperate in determining whether another public agency, a community-based organization, the probation department, or the district attorney is best able to operate truancy mediation programs.<sup>4</sup> Another change allows a probation officer investigating the merit of a petition to make a student a ward of the court due to truancy, with consent of the minor and the minor’s parent or guardian, “to refer the minor to services provided by a health agency, community-based organization, *local educational agency*, an appropriate non-law-enforcement agency, or the probation department.”<sup>5</sup> (Emphasis added.) The statute further provides that “when in the judgment of the probation officer the interest of the minor and the community can be protected, the probation officer shall make a diligent effort to proceed under this section.”<sup>6</sup> The probation department may also provide services in lieu of the wardship, including “maintain[ing] and operat[ing] counseling and educational centers, or contract[ing] with community-based organizations or public agencies to provide vocational training or skills, counseling and mental health resources, *educational supports*, and arts, recreation, and other youth development services.”<sup>7</sup> (Emphasis added.)

Other changes in truancy laws affecting schools under A.B. 901 include:

- The bill eliminated the authority of the county superintendent of schools to petition the juvenile court on behalf of a habitually truant pupil in a county that has not elected to participate in a truancy mediation program such as SARB.
- The bill removes the authority of the juvenile court to adjudge a minor to be a ward of the court on the basis that the minor habitually refuses to obey the reasonable and proper orders or directions of school authorities. The bill instead requires a peace officer to refer a minor under their jurisdiction to a community-based resource, the probation department, a health agency, *a local educational agency*, or other governmental entities that may provide services.<sup>8</sup>

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<sup>2</sup> 2020 Cal. Legis. Serv. Ch. 323 (A.B. 901).

<sup>3</sup> A.B. 901 does not affect the holding in *In re A.N.*

<sup>4</sup> Effective January 1, 2020, Cal. Welf. & Inst. Code § 601.3(f).

<sup>5</sup> Effective January 1, 2020, Cal. Welf. & Inst. Code § 601.3(a).

<sup>6</sup> *Id.*

<sup>7</sup> Effective January 1, 2020, Cal. Welf. & Inst. Code § 601.3(d)(3).

<sup>8</sup> Effective January 1, 2020, Cal. Welf. & Inst. Code § 601(d).



In sum, the Legislature has attempted to provide additional resources to students and the agencies that work with truant students. School administrators may wish to familiarize themselves with these options when working with probation and the district attorney to correct habitual truant behavior.

Please contact our office with questions regarding this Legal Update or any other legal matter.

*The information in this Legal Update is provided as a summary of law and is not intended as legal advice. Application of the law may vary depending on the particular facts and circumstances at issue. We, therefore, recommend that you consult legal counsel to advise you on how the law applies to your specific situation.*

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