



## **Criminalization of Truancy in Texas: Prosecution of “Failure to Attend School” in Adult Criminal Courts**

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As part of Texas Appleseed’s work around the criminalization of minor school misbehavior,<sup>1</sup> Appleseed has researched “failure to attend school” – a truancy offense that in Texas is prosecuted as a misdemeanor in adult criminal courts. Many of Appleseed’s concerns surrounding “failure to attend school” cases are similar to those we’ve expressed regarding the use of ticketing and court referrals for other school-based misbehavior. Specifically:

- Criminalization of truancy and use of formal court interventions is an ineffective method of ensuring students will return to school – and often acts to further alienate students from school.
- Fining students is an ineffective intervention that may ultimately place stress on families that are already under significant financial strain.

### **Failure to Attend School Cases in Texas**

In Texas, youth are subject to compulsory school attendance laws, which require children to attend school from the time that they are six years old until their 18<sup>th</sup> birthday.<sup>2</sup> Enforcement provisions are included in both the Education Code and Family Code.

“Failure to Attend School” (FTAS) is a Class C misdemeanor located in the Education Code.<sup>3</sup> It shares the same elements as “truancy,” a “Child in Need of Supervision” (CINS) offense found in the Family Code.<sup>4</sup> A child may be charged with either the CINS offense of truancy or the Class C “failure to attend school” if he or she misses 10 or more days within a six-month period or three or more days within a four-week period.<sup>5</sup>

While the CINS offense of truancy is processed through the juvenile court system, municipal and justice courts – adult criminal court forums – have original jurisdiction

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<sup>1</sup> See Texas Appleseed, *Texas’ School to Prison Pipeline: Ticketing, Arrest & Use of Force in Schools* (2010); Texas Appleseed, *Ticketing & Arrest Data Update* (2012).

<sup>2</sup> Tex. Educ. Code §25.085.

<sup>3</sup> Tex. Educ. Code §25.094.

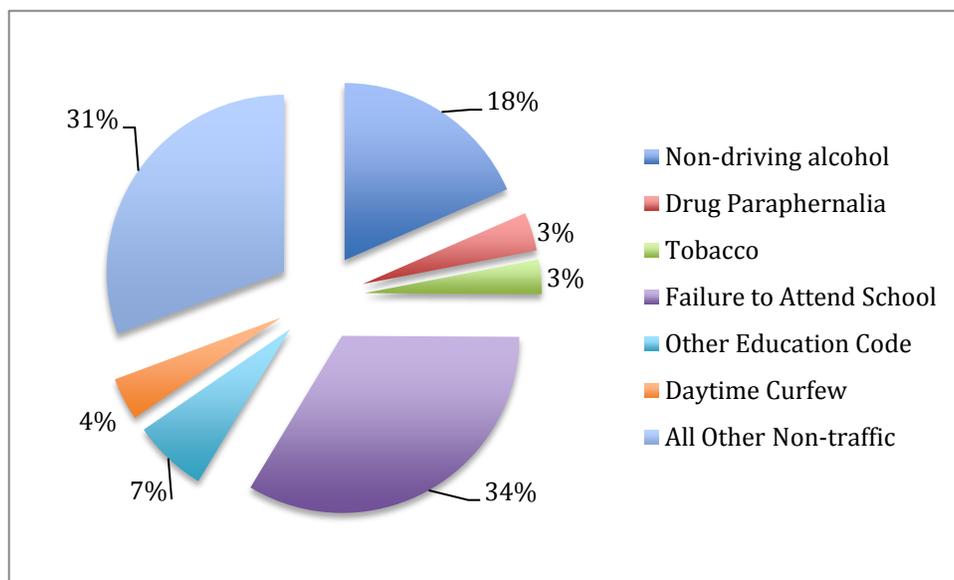
<sup>4</sup> Tex. Fam. Code §51.03(b)(2).

<sup>5</sup> Tex. Educ. Code §25.094; Tex. Fam. Code §51.03(b)(2).

over “failure to attend school” cases.<sup>6</sup> Thus, many of the protections that apply in juvenile courts – including broad confidentiality provisions, appointment of counsel, specific protections related to waiver of rights, etc – do not apply in “failure to attend” cases prosecuted in justice and municipal courts.<sup>7</sup>

A. Statewide Data

Statewide, a high percentage of all Class C cases prosecuted against juveniles in municipal or justice courts are “failure to attend school” cases. In fiscal year 2012, there were 64,997 cases filed in justice courts and 11,881 cases filed in municipal courts.<sup>8</sup> These 76,000 cases make up just over one third of all Class C cases filed.<sup>9</sup>



In addition, there are two specialized truancy courts (created through the Constitutional County Court system) – one in Dallas County and another in Fort Bend County – that do not report their data to the State. Dallas County’s data shows another 36,000 cases referred to that court system in 2012. We do not have data for the Fort Bend court.

While districts may opt instead to file a case against a student’s parent(s), far fewer cases are filed for “Parent Contributing to Nonattendance.”<sup>10</sup> In 2012, only 53,048 cases were

<sup>6</sup> See Tex. Code Crim. Procedure Chapter 45.

<sup>7</sup> See Ryan Kellus Turner & Mark Goodner, *Passing the Paddle: Nondisclosure of Children’s Criminal Cases*, Juvenile Law Section, State Bar of Texas (2010); Ryan Kellus Turner, *Ticketing, Confidentiality, and Special Education Issues*, Juvenile Law Section, State Bar of Texas (2012)

<sup>8</sup> Texas Office of Court Administration, 2012 Annual Report (2013).

<sup>9</sup> *Id.*; there were roughly 229,000 Class C cases filed against juveniles in municipal and justice courts in 2012.

<sup>10</sup> See Tex. Educ. Code §25.093.

filed against parents in justice courts and 4,312 cases filed against parents in municipal courts.<sup>11</sup>

**B. District-level Data**

Texas Appleaseed has “failure to attend school” data, received through open records requests, for nine school districts. The data reveals varying patterns of enforcement, when compared to attendance rates and enrollment.

**“Failure to Attend School” & “Parent Contributing”  
Cases Filed in Eight Districts 2010-11<sup>12</sup>**

<b>District</b>	<b>Enrollment</b>	<b>Attendance Rate</b>	<b>FTAS (Student)</b>	<b>Rate/1,000 Students</b>	<b>Parent Contributing</b>
Cypress-Fairbanks ISD	105,860	95.6%	1,702	16	1,921
Dallas ISD	156,784	94.8%	23,442	221	10,330
Fort Bend ISD	68,710	96.8%	8,120	118	277
Fort Worth ISD	81,511	94.9%	1,744	21	1,021
Houston ISD	198,690	95.5%	21,019	105	(didn’t break out)
Humble ISD	35,678	95.3%	516	14	N/A
Northside ISD	94,632	94.8%	2,455	25	2,515
Plano ISD	55,294	96.6%	604	10	604
San Antonio ISD	54,894	93.6%	2,414	43	6,976

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<sup>11</sup> *Id.*

<sup>12</sup> The number of cases filed by these districts likely declined in the 2011-12 school year, due to age restrictions placed on “failure to attend” by the Texas legislature in 2011. Statewide data shows a significant decline. During FY 2011, there were 119,341 “failure to attend” cases filed against students in municipal or justice courts. Thus, approximately 42,000 fewer cases were filed after the new restriction went into effect, representing a 36 percent reduction in cases filed in fiscal year 2012.

There does not appear to be any particular pattern, based on this sample. The number of cases filed does not seem to correlate to attendance rates (in other words, it is not necessarily the case that districts with lower attendance rates are filing more cases), nor does it seem to strictly correlate to the size of the district's enrollment.

At the campus level, the majority of the cases are filed against high school students. Very few cases are filed against students in elementary school, which is to be expected since elementary schools tend to have higher attendance rates than middle or high schools. However, even at the middle and high school campuses, some schools appear to be using FTAS more aggressively than others.

### **Overly Punitive Approaches to Truancy, including Fines, are Ineffective**

While “meaningful sanctions” are encouraged in truancy programs, overly punitive sanctions or fines are not considered effective.<sup>13</sup> In Texas, a report on truancy in Tarrant County by the National Center for School Engagement found that harsh disciplinary practices – and sanctions for truancy that withheld learning – served to further alienate students and were counterproductive.<sup>14</sup> Instead, the Tarrant County report recommends discipline that addresses the root cause of infraction and against discipline that withholds learning as punishment for truancy or tardy attendance.<sup>15</sup>

Similarly, a study of the use of ticketing and fines for truancy in Los Angeles found these sanctions ineffective because of their failure to address the root causes of attendance problems:

*[I]ssuing tickets is a blunt tool that does not actually address the root causes for a student's difficulties in getting to school. Many of the thousands of students in Los Angeles interviewed by the Community Rights Campaign, one of the organizations participating on the Task Force, reported a host of reasons for their struggle to get to school on time—their only means of transportation (the MTA bus) frequently runs late; they must walk their siblings to another school with a similar start time; they have a medical appointment; they are dealing with mental health issues; they have unaddressed special education needs or a chronic*

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<sup>13</sup> Chanelle Gandy & Jennifer Lee Schultz, *Increasing School Attendance for K-8 Students* 5 (Wilder Research 2007)(financial sanctions ineffective); U.S. Dep't of Justice, Office of Juvenile Justice and Delinquency Prevention (OJJDP), *Truancy Literature Review* 13; Educational Success and Truancy Prevention Workgroup, *Report to the Pennsylvania State Roundtable* (2012)(recommends against fines as ineffective); School Attendance Task Force, *A Comprehensive Approach to Improving School Attendance in Los Angeles County* (2012)(“while prosecution of students and parents may be appropriate in extreme cases...the Task Force was not able to identify any research supporting the efficacy of prosecution as a primary means to improve student attendance on a large scale.”).

<sup>14</sup> National Center for School Engagement, *“Teach from the Heart”*: *What Tarrant County Youth Want from Their Schools* 52, 55 (2012)(Tickets issued by school police “serve to alienate students...[and] steer youth away from the educational system into the criminal justice system.”); see also Tarrant County Juvenile Justice Truancy Planning Group, *Truancy Solutions: A Collaborative Plan for Schools, Police Departments, Community Agencies, and the Juvenile Justice System* (2012).

<sup>15</sup> National Center for School Engagement, *supra*.

*illness; they are being bullied; they are experiencing family problems at home; or students do not see the benefit of an education or feel connected to or safe at school. Younger students may be tardy as a result of their parents' oversleeping, their parents' mental health issues, or their parents' not understanding the importance of children attending school regularly.*

*In addition, the fear of enforcement for tardiness at the schoolhouse gate can cause young people (and their families) to make the choice to stay away from school if they might be late. As one twelfth-grade female student stated: "I take the bus to school. So if the bus is running late, I sometimes turn around and go home because I do not want to risk getting a truancy ticket."*

*Finally, citations result in the unnecessary criminalization and humiliation of youth, with students being detained, handcuffed, fingerprinted, put in the back seat of police cars, and searched.<sup>16</sup>*

Parents that Appleseed staff members have spoken to during court visits echo these findings, noting that because the burden of paying the fine was most likely to fall on the parent rather than the student, fines do not effectively encourage students to attend school. In addition, these fines can impose an intense hardship on families that may be struggling just to get by on limited income. Appleseed is aware of at least one parent who opted to pull her special education student out of school because she could not afford the fines that were being imposed as a result of repeated "failure to attend school" charges.

Despite research suggesting that fining students for truancy is counterproductive, Texas Appleseed's many visits to courts statewide shows that fines are often the first – and sometimes only – response to truancy. In many courts, the primary intervention is a fine, with youth who are referred to court for the first time required to pay a fine of \$100 or more (the fine for a "first time offender" varies from court-to-court), plus court costs of at least \$80. While they may be ordered into tutoring if their grades are low, and some courts offer community service in lieu of fines, in many jurisdictions these options are not available for families who may have restricted incomes.

In addition, students may be left with a criminal conviction that can have lasting consequences or pose barriers to future educational opportunities, military service, or job prospects. While it is possible for youth to have a "failure to attend school" charge expunged, the ability to expunge a conviction is limited by Chapter 45.055 of the Code of Criminal Procedure to students who have only one offense, or students who can show that they have a high school degree or GED.<sup>17</sup> Confidentiality provisions do apply to

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<sup>16</sup> School Attendance Task Force, *supra*, at 7; *see also*, Annette Fuentes, *The Truancy Trap*, The Atlantic (September 5, 2012)(discussing Texas system and quoting Joanna Heilbrunn, senior research and policy analyst at the National Center for School Engagement, "[T]here is always a reason a kid is not in school, and just fining the family doesn't do anything. Most families are low income and the barriers stem from income issues.").

<sup>17</sup> Tex. Code Crim. Proc. §45.055.

juvenile Class C cases, but only if the youth is convicted and they have satisfied the judgment in their case.<sup>18</sup> Thus, if a youth is given deferred adjudication, their case remains a matter of public record even if they comply with all the court's orders.<sup>19</sup>

Of particular concern to Texas Appleseed is the use of arrest and jail or detention with students who are considered to be in "contempt" for failing to pay fines or abide by the court's order in a "failure to attend" case. While "get tough" approaches are often cited as serving a "wake-up call," recent research disproves this approach to adolescent misbehavior.<sup>20</sup> Indeed, the juvenile justice systems in many states have begun a movement away from "get tough" approaches after two decades' experience has proven them to be an ineffective method of intervention. Most important to this discussion, several studies now link arrest and court involvement as placing a student at heightened risk of dropout.<sup>21</sup>

While there is no statewide collection of data showing the total number of youth arrested or jailed on contempt charges related to a "failure to attend school" case, in Dallas County, alone, data provided to Texas Appleseed by the Dallas Truancy Courts indicates that in fiscal year 2012, close to 5,000 warrants were issued, and more than 1,700 were served. In addition, 67 youth were jailed or held in Letot Center, and 280 youth were placed into direct contact with the Dallas County Juvenile Department. Anecdotally, Texas Appleseed has been told that arrest and jail time are used in other jurisdictions, as well, and the ACLU of Texas lawsuit in Hidalgo County and recent media coverage bears this out.<sup>22</sup>

In 2010, media coverage of youth jailed under a provision of Texas law that allowed students between the ages of 18 and 21 to be prosecuted for "failure to attend school," even though they weren't subject to compulsory education laws, led the legislature to repeal this provision.<sup>23</sup> While educators complain that they have no enforcement

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<sup>18</sup> Tex. Code Crim. Proc. §45.0217.

<sup>19</sup> Ryan Kellus Turner, *Ticketing, Confidentiality, and Special Education Issues*, at 4.

<sup>20</sup> See Models for Change, *Research on Pathways to Desistance* (2012), available at [http://www.macfound.org/media/article\\_pdfs/PATHWAYSREPORT.PDF](http://www.macfound.org/media/article_pdfs/PATHWAYSREPORT.PDF) (longitudinal study showing incarceration increases chances of juvenile re-offense and that substance abuse and community based treatment more effectively promotes pro-social attitudes and behavior).

<sup>21</sup> David S. Kirk & Robert J. Sampson, *Juvenile Arrest and Collateral Educational Damage in the Transition to Adulthood*, 86 *Sociology of Education* 36 (2013)(arrested students substantially more likely to drop out of school); Gary Sweeten, *Who Will Graduate? Disruption of High School Education by Arrest and Court Involvement*, 23 *Justice Quarterly* 462, 473, 478-9 (2006)(finding one school-based arrest doubles the likelihood that the student will drop out; if the student appears in court, the likelihood nearly quadruples); Jon Gunnar Bernburg & Marvin D. Krohn, *Labeling, life chances, and adult crime: The direct and indirect effects of official intervention in adolescence on crime in early adulthood*, 41 *Criminology* 287-318 (2003)(juvenile justice involvement increases likelihood of dropping out by 3.6 times).

<sup>22</sup> See Cindy Horswell, *Charges dropped against honor student jailed for truancy*, *Houston Chronicle*, May 30, 2012; American Civil Liberties Union of Texas, *ACLU of Texas Sues Hidalgo County, Challenges Debtors Prison for Truant Teens*, July 27, 2010, available at <http://www.aclutx.org/2010/07/27/place-holder-headline-4/>

<sup>23</sup> Forrest Wilder, *School House Rock*, *Texas Observer*, April 1, 2010 (quoting Ken Seeley, president and CEO of the National Center for School Engagement, "My God that's horrible...That's very unusual. It begs to be a class-action suit."), available at <http://www.texasobserver.org/school-house-rock/>.

mechanism that would allow them to hold youth who opt to attend school after turning 18 responsible for truancy, the Education Code does allow schools to un-enroll students after five or more unexcused absences.<sup>24</sup> While this may be perceived to be a blunt tool, jailing students is likely to have a chilling effect will only discourage youth who may be opting to return to school – or continue with school – after turning 18. Regardless, there is no research that supports the efficacy of such measures for any age youth and abundant research, discussed above, which indicates it is a counterproductive response to truancy.

## **Effective Programs Address the Root Causes of Truancy**

Studies of truancy have shown that a variety of factors contribute to attendance problems at school.<sup>25</sup> These factors not only include those associated with the individual student or family, but also include school factors.<sup>26</sup> Factors influencing school attendance range from poor school climate and inadequate identification of special education needs, to teen pregnancy, negative peer influence, child abuse or neglect, poor academic performance, low school attachment, and lack of self-esteem in students.<sup>27</sup>

Because the problems that lead to truancy are multi-faceted, there is no “one-size fits all” approach to solving truancy. The most successful programs tend to use a multi-faceted approach that combines school-based, community-based, and family-based interventions.<sup>28</sup> Research supports several key characteristics of successful approaches to reducing truancy:

- Broad-based collaboration
- Family involvement
- Meaningful incentives & sanctions or consequences
- Comprehensive approach & supportive context
- Ongoing school based truancy reduction programs
- Involvement of community resources<sup>29</sup>

Truancy prevention programs that have been researched and determined to be either evidence-based, or “promising,” include:

- Cognitive-behavioral therapy plus caregiver training
- Community-based problem solving courts
- Mediation & problem solving

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<sup>24</sup> Tex. Educ. Code §25.085(e).

<sup>25</sup> U.S. Dep’t of Justice, Office of Juvenile Justice and Delinquency Prevention (OJJDP), *Truancy Literature Review* (2009).

<sup>26</sup> *Id.* at 6.

<sup>27</sup> *Id.*

<sup>28</sup> Chanelle Gandy & Jennifer Lee Schultz, *Increasing School Attendance for K-8 Students* (Wilder Research 2007); Charles L. Johnson et al, *Transitions of Truants: Community Truancy Board as a Turning Point in the Lives of Adolescents*, *Journal of Juvenile Justice*, Vol. 1, Issue 2, pp.34-51 (OJJDP 2012).

<sup>29</sup> OJJDP, at 9; National Center for School Engagement, *Truancy Prevention in Action: Best Practices and Model Truancy Programs* (2005).

- Alternative educational programs (in a traditional school setting)
- Mentoring
- Behavioral programs<sup>30</sup>

Successful approaches to preventing students from dropping out of school address multiple risk factors, use more than one strategy, and are carefully developed based on current theory and research.<sup>31</sup>

Several Texas programs fall into the models that research supports as promising or effective. For example, the Williamson County Neighborhood Conference Committee is an example of a “community-based court” approach. Lubbock County and Arlington ISD use a “mediation and problem-solving” approach. Both types of programs have proven successful in these jurisdictions.

*Williamson County Neighborhood Conference Committee (NCC)*

The Neighborhood Conference Committee (NCC) of Williamson County consists of local citizens in the community providing services to students who are first-time truant offenders. The student and his/her family are referred to NCC by the local school district. The family meets with a panel of volunteers to establish the root of the truancy problem. Together the student, family, and the NCC panel develop a positive action plan. The action plan outlines the requirements that the student must successfully complete without having to go through a formal court hearing. It requires the student to develop a graduation plan, a career plan, and to participate in appropriate activities such as community service, mentoring, and/or expressing an apology to a victim. The action plan may also include referrals for support services such as parent/child mediations and parent groups. NCC also provides an avenue for expressing the community’s concern to the student to help the student generate a sense of responsibility and opportunities for personal growth and development. Information about the Williamson County NCC can be found on their website: <http://ncc.wilco.org/>

The Williamson County model is based on a successful program in Washington State, which was included in the MacArthur Foundations “Models for Change” initiative. The Washington State Truancy Boards were created as alternatives to formal court processing under that state’s “Becca law,” which – much like Texas – mandates court referral after a child misses a certain number of days of school (though in Washington, children are referred to the juvenile courts rather than adult criminal courts).<sup>32</sup> The MacArthur Foundation has created a short video about the model:

<http://www.modelsforchange.net/newsroom/432>

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<sup>30</sup> Gandy & Schultz, at 3-4; T. Klima et al, *What works? Targeted truancy and dropout programs in middle and high school* (Washington State Institute for Public Policy 2009).

<sup>31</sup> National Dropout Prevention Center, *Dropout Risk Factors and Exemplary Programs* (2007).

<sup>32</sup> See MacArthur Foundation, Models for Change Initiative, *Washington Models for Change Toolkit See 100% Success Rate in Implementation*, available at <http://www.modelsforchange.net/newsroom/433>.

A recent study showed the success of this approach in one of the Washington state locales, finding that the quantitative and qualitative data for a cohort of students served through the program showed that they were more likely to graduate and less likely to drop out than truant students in comparison groups.<sup>33</sup> The Williamson County NCC has had similar success, with only four of the 235 youth served through the program last year having a subsequent “failure to attend” referral.

### *Arlington ISD & North TX Dispute Resolution Center*

During the 2009 school year, Arlington ISD began a pilot program with Dispute Resolution Services (DRS), the agency with which Tarrant County contracts for mediation services. Part of the contract with the county includes working with local school districts to offer mediation services. In 2009, five AISD elementary schools, selected because of their lower Average Daily Attendance (ADA) rates were chosen by AISD administrators to participate in the project. Students with excessive absences or tardy attendance were referred to DRS. DRS acts as an independent non-biased third party to contact the parents of the student and set up a meeting with the parent and the school. DRS provides trained volunteer mediators who work with the school and the parent to find solutions to improve the student’s attendance. Often simple solutions such as assisting a parent with transportation, an alarm clock, or childcare are the answer. In other cases, impressing upon the family the importance of attendance and of their legal responsibility to ensure that their child attends school is all that is needed.

Data shows this is an effective approach to reducing unexcused absences. In the second year of the program, there were 1,719 absences prior to mediation. That number was reduced to 286 after mediation. In the same year, there were 3,271 “tardies” before mediation. That number was reduced to 675 after mediation. Currently, DRS reports that it has more than 200 currently trained and active mediators to bring to an expansion of the program. While the first year showed a 33 percent reduction in the number of absences, the second year showed an 80 percent reduction in the number of absences.

The Arlington ISD program is much like a Lubbock County program that uses mediation – through the County Office of Dispute Resolution – for truancy and other Class C offenses.<sup>34</sup>

## **Conclusion**

Texas’ system of using adult criminal courts and fines as a solution to truancy is not supported by research around “what works” for students alienated from schools. Texas should discontinue the use of adult courts and fines as sanctions and create incentives for schools to put meaningful interventions into place, like those that have already proven successful in Texas and elsewhere.

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<sup>33</sup> Charles L. Johnson et al, *Transitions to Truancy*, at 41.

<sup>34</sup> Lubbock County Office of Dispute Resolution, *Texas Youth Problem-Solving System* (2012)(on file with author).