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TESTIMONY 2015

CSSB 106

Dear Members of the Committee,

My name is John Kreager. I am an attorney with the Texas Criminal Justice Coalition (TCJC). Thank you for allowing me this opportunity to present testimony in favor of CSSB 106. Successful reform of Texas' broken truancy system requires two big-picture elements: (1) decriminalization of the Class C misdemeanor called "failure to attend school"; and (2) requiring increased interventions by schools before they can refer a student to court for missing class. CSSB 106 contains both of these elements, and by decriminalizing truancy and shifting the responsibility to schools the bill will alleviate court dockets, reduce the burden on families, and help youth access the behavioral services they need to address the underlying causes of their absences.

[TEXAS HANDLES TRUANCY AS A MISDEMEANOR IN ADULT CRIMINAL COURT, WHICH IS INEFFECTIVE AND UNFAIRLY DISADVANTAGES STUDENTS AND FAMILIES](#)

In Texas, the vast majority of truancy cases are heard in adult criminal courts as a Class C misdemeanor called "failure to attend school" (FTAS).¹ Lawmakers gave Justice of the Peace and Municipal Courts the authority to hear FTAS cases in 1993 in an effort to alleviate the burden of truancy cases on juvenile court dockets. Like any other Class C misdemeanor, FTAS is an **adult criminal conviction** that carries up to a \$500 fine, gives the student a public criminal record, and can lead to arrest and incarceration if the fine remains outstanding when a student turns 17.²

Sadly, shifting truancy cases from juvenile courts to adult criminal courts has not corrected the magnitude of the school attendance problem. In 2014 alone, there were 88,063 FTAS complaints filed against students between Justice of the Peace and Municipal Courts, and the specialized truancy courts in Dallas and Fort Bend Counties.³ Also problematic, Justice of the Peace and Municipal Courts are designed to process large numbers of fine-only offenses like traffic offenses, not provide social services to needy individuals. The dedicated truancy courts in Dallas, for example, collect about \$2 million per year;⁴ and while some exceptional courts have developed successful truancy programs to address students' needs, most courts simply assign a fine and move on. This is despite the fact that **research indicates that the root causes of truancy often lie in family and community factors that are largely outside a student's control.**⁵

Nevertheless, the FTAS offense continues to subject students—who are indigent by definition as minors—to expensive fines that place a significant burden on low-income families. The legal and financial obligations imposed by adult criminal courts can cause students to miss further school time to appear at hearings. Further, Class C citations disproportionately impact certain student populations, including African-American students, Hispanic students,⁶ and students with intellectual disabilities.⁷

[WHILE TEXAS LAW PROHIBITS PLACING TRUANT STUDENTS IN SECURE FACILITIES, SEVERAL CONTEMPT OF COURT EXCEPTIONS SUBVERT THAT LAW AND ALLOW STUDENTS TO BE PUT IN CONFINEMENT](#)

In 1974, the U.S. Congress enacted the Juvenile Justice and Delinquency Prevention Act (JJDP), a federal law that prohibits the secure confinement of truants and other status offenders.⁸ In Texas, students who have a certain number of unexcused absences are susceptible to two different offenses: (1) "Failure to Attend School" (FTAS), a Class C misdemeanor that carries up to a \$500 fine in adult criminal court;⁹ and (2) "Truancy," a conduct in need of supervision (CINS) offense in the juvenile justice

system.¹⁰ In compliance with the JJDP, Texas law does not allow a student to be punished with a period of confinement in a secure facility for either offense.

However, in 1980, the JJDP was amended to add the “Valid Court Order” (VCO) Exception, which allows courts to punish status offenders who violate a court order related to a status offense with a term of secure confinement.¹¹ Texas law has recognized this exception through two different contempt of court mechanisms, one for each of the two truancy offenses. For FTAS, the exception is a delinquent conduct offense called “Contempt of Magistrate.”¹² For Truancy, Texas has its own version of the VCO Exception.¹³ Under either of these exceptions, a student who violates a court order related to a truancy offense—which could be something as simple as “stop missing school”—could be given a contempt offense and punished with a term of secure confinement.

Research demonstrates that the practice of locking truants up for contempt is counterproductive. Not only does it interrupt youths’ education by forcing them to miss even more days of school, it also stigmatizes youth and keeps them away from the home- and community-based solutions that have been shown to be more effective.¹⁴ Research also indicates that when truant youth are confined with youth who have committed much more serious offenses, truant youth can learn criminal behaviors that make it more likely they will commit unlawful acts in the future.¹⁵

KEY FINDINGS

- “Failure to Attend School” is a Class C misdemeanor that is heard in adult criminal courts, carries a fine of up to \$500, and is documented as a criminal (not juvenile) offense.¹⁶ Like any other Class C misdemeanor, **students are not entitled to be represented by an attorney** in these proceedings.
- Though schools are required to adopt truancy prevention measures, there are no minimum standards that these measures must adhere to in statute.¹⁷ This has led to **many school districts employing ineffective or superficial interventions**, instead relying on the court system to enforce compulsory school attendance.¹⁸
- Research demonstrates that the mere act of entering the formal justice system can negatively impact youth, **increasing their likelihood of future justice system involvement**, adding tension to the family dynamic, and stigmatizing them as “offenders” for conduct that is actually non-criminal.¹⁹
- Punitive sanctions—like fines or incarceration—have been shown to be ineffective at treating truancy and can actually **further alienate youth from school**.²⁰
- Students who face persistent complications with the school disciplinary system are more likely to **drop out or become involved with the juvenile justice system**.²¹
- Confining truant students for violating court orders related to the truancy—which can be as basic as “do not miss any more school days”—is against best practice. Nationally, 20% of status offenders put into facilities through these exceptions are placed in units with youth who have committed murder or manslaughter.²² **Placement of truants in these facilities jeopardizes youths’ safety and increases the likelihood of future delinquency though learned criminal behavior.**²³

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT CSSB 106 BY SENATOR WHITMIRE

- **CSSB 106 repeals “failure to attend school” as an adult criminal offense, as well as the juvenile truancy offense, and creates a new civil truancy offense with original jurisdiction in Justice of the Peace and Municipal Courts.** Under this civil offense, CSSB 106 provides students with new procedural protections that are inherent to civil cases, such as the right to a jury trial, advising them of their rights, and the right to appeal. Critically, CSSB 106 will allow students to be represented by an attorney, and will allow the court to appoint a guardian ad litem if the student does not have a parent or other adult looking out for their best interests. This fixes a huge problem with the current system, where students are in adult criminal courts on “failure to attend school” charges but cannot be represented by an attorney to help them in their defense.
- **CSSB 106 removes the \$500 fine for truancy offenses that is unfairly burdening the low-income families overwhelmingly affected by these cases.** Instead of fining students, CSSB 106 allows courts to refer them to various community-based programs and other services to meet their needs. The court may also sentence the child to complete up to 50 hours of community service.
- **CSSB 106 requires schools to employ truancy intervention procedures that are designed to keep as many students as possible away from the court system.** At its core, truancy is a school problem. Texas law should reflect this by holding schools primarily responsible for their students’ attendance. CSSB 106 accomplishes this by requiring schools to implement truancy prevention measures before they can refer a student to court. These interventions include a behavior improvement plan, referral to counseling, or school- or community-based services to address the students’ needs. These measures will be implemented by a truancy prevention facilitator, who can be an existing school district employee. Importantly, CSSB 106 takes the great step of requiring the Texas Education Agency (TEA) to develop minimum standards and best practices for truancy prevention measures, and it gives TEA the authority to sanction schools that fail to comply with those standards. Implementing interventions before sending students to court will substantially reduce the burden that “failure to attend school” cases currently place on the court system by handling more of these cases in schools.
- **CSSB 106 provides for the automatic expunction of truancy records, and removes the fee requirement for filing for an expunction.** Like any publicly available criminal history, a “failure to attend school” record can make it difficult for students to move on with their lives and successfully apply to college, find employment, or secure housing. While these records can be expunged under existing law, that process is cumbersome, limited, and requires a fee. Many youth do not go through these procedures, and others simply cannot meet the requirements or afford the fee. Automatic expunction corrects these problems and prevents a truancy record from unfairly disadvantaging students as they apply to college or for jobs, or try to obtain housing in the future.
- **CSSB 106 strictly prohibits truant students from being punished in secure correctional facilities through contempt of court exceptions.** CSSB 106 effectively eliminates application of either Contempt of Magistrate or the VCO Exception to sentence youth to post-adjudication secure confinement in truancy cases. This is in line with best practice, as it removes the dangers that youth with low-level offenses like truancy face when put in secure facilities with more delinquent youth. While some may argue that confinement is appropriate given that contempt of court is a separate offense from truancy, it bears remembering that a youth would not be involved with the court at all but for the original truancy offense. These contempt exceptions are already sparingly used, and CSSB 106 gets it right by removing the possibility that the exceptions come back into common use.

Citations

¹ Tex. Educ. Code § 25.094.

² Deborah Fowler, *Criminalization of Truancy in Texas: Prosecution of “Failure to Attend School” in Adult Criminal Courts*, Texas Appleseed, 6.

³ Legislative Budget Board (LBB), *Texas State Government Effectiveness and Efficiency Report: Selected Issues and Recommendations* (January 2015), 10.

⁴ John W. Whitehead, *Move Over, Traffic Court, It’s Time for a New Money-Making Scheme—School Truancy Laws Jail Parents and Levy Excessive Fines*, The Rutherford Institute (March 4, 2013).

⁵ LBB, *Texas State Government Effectiveness and Efficiency Report*, 3.

⁶ Texas Appleseed, *Texas’ School-to-Prison Pipeline: Ticketing, Arrest, & Use of Force in Schools, How the Myth of the “Blackboard Jungle” Reshaped School Disciplinary Policy*, December 2010.

⁷ *Ibid.*

⁸ A status offender, as defined by Tex. Family Code § 51.02(15), is “a child who is accused, adjudicated, or convicted for conduct that would not, under state law, be a crime if committed by an adult.” These offenses include truancy, as well as running away from home and violation of curfew.

⁹ Tex. Educ. Code § 25.094.

¹⁰ Tex. Family Code § 51.03(b)(3).

¹¹ *Ibid.*

¹² Tex. Family Code § 51.03(a)(2).

¹³ Tex. Family Code § 54.04(n).

¹⁴ National Juvenile Justice and Delinquency Prevention Coalition, *Promoting Safe Communities: Recommendations for the 113th Congress*, (2013), 6.

¹⁵ *Ibid.*

¹⁶ Texas Education Code § 25.094 and Texas Penal Code § 12.23.

¹⁷ Tex. Educ. Code § 25.0915.

¹⁸ LBB, *Texas State Government Effectiveness and Efficiency Report*, 1.

¹⁹ Coalition for Juvenile Justice, *National Standards for the Care of Youth Charged with Status Offenses* (2013), 51-52.

²⁰ LBB, *Texas State Government Effectiveness and Efficiency Report*, 2.

²¹ Council of State Government, *Breaking School Rules: A Statewide Study of How School Discipline Relates to Students’ Success of Juvenile Justice Involvement*, July 2011.

²² Nancy Gannon Hornberger, *Improving Outcomes for Status Offenders in the JJDP A Reauthorization. Juvenile and Family Justice Today* (2010), citing Sedlak, A. J., & McPherson, K. S., *Conditions of confinement: Findings from the Survey of Youth in Residential Placement*. Washington, DC: Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice (May 2010).

²³ Coalition for Juvenile Justice, *National Standards for the Care of Youth Charged with Status Offenses*, (2013), 10, http://www.juvjustice.org/sites/default/files/resource-files/National%20Standards%20for%20the%20Care%20of%20Youth%20Charged%20with%20Status%20Offenses%20FINAL_0.pdf.