



John Kreager, Policy Fellow
Work: (512) 441-8123, ext. 104
Cell: (310) 850-2881
jkreager@TexasCJC.org
www.TexasCJC.org

Stop Treating Truancy as an Adult Criminal Offense

Decriminalizing Truancy and Shifting the Responsibility to Schools Will Alleviate Court Dockets, Reduce the Burden on Families, and Help Youth Access Behavioral Services

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 in Justice of the Peace and Municipal Courts.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

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.⁸ 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.⁹ This has led to **many school districts employing ineffective or superficial interventions**, instead relying on the court system to enforce compulsory school attendance.¹⁰
- 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.¹¹

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KEY FINDINGS (CONTINUED)

- Punitive sanctions—like fines or incarceration—have been shown to be ineffective at treating truancy and can actually **further alienate youth from school**.¹²
- Students who face persistent complications with the school disciplinary system are more likely to **drop out or become involved with the juvenile justice system**.¹³

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTIONS

- **We support legislation that repeals “failure to attend school” as a criminal offense, but allows Justice of the Peace and Municipal Courts to continue to hear truancy cases as Child in Need of Supervision (CINS) offenses.** Eliminating “failure to attend school” as an adult criminal offense would require all truancy cases to fall under the existing CINS offense in the juvenile justice system. Under CINS, students and their families would have access to remedial services designed to address their underlying needs, which are simply not available for Class C misdemeanors. Because juvenile courts are still unable to handle an influx of truancy cases, Justice of the Peace and Municipal Courts would sit as proxies of the juvenile court to hear these CINS offenses and order juvenile court programming. This solution would remove the trappings of criminality from student behavior, get students and families the services they need, and leave in place the few Justice of the Peace and Municipal Courts with exceptional truancy programs.
- **We support legislation that requires schools to employ a progressive sanctions model that must meet certain statutory minimums for school attendance violations, and that is 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. To meet this goal, schools should be required to implement a progressive sanctions model for truancy cases. These models, which must meet certain minimum requirements (e.g., implementation of a behavioral contract, school-based community service, home visits, and counseling), are designed to address students’ underlying causes of truant behavior and make court referral an option of last resort. This would substantially reduce the burden that “failure to attend school” cases currently place on the court system.

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

⁹ Tex. Educ. Code § 25.0915.

¹⁰ LBB, *Texas State Government Effectiveness and Efficiency Report*, 1.

¹¹ Coalition for Juvenile Justice, *National Standards for the Care of Youth Charged with Status Offenses* (2013), 51-52.

¹² LBB, *Texas State Government Effectiveness and Efficiency Report*, 2.

¹³ Council of State Government, *Breaking School Rules: A Statewide Study of How School Discipline Relates to Students’ Success of Juvenile Justice Involvement*, July 2011.