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New Report Finds Inconsistent and Unfair Texas Truancy Policies Disproportionately Hurt Low-Income Kids and Students of Color

Judges Are Using Questionable Sanctions in Response to Truancy Charges, Including Forcing Students to Drop Out of School and Take the GED

AUSTIN, Texas – A flawed and inequitable patchwork of truancy policies and practices in Texas schools and courts disproportionately harm economically disadvantaged children, African-American and Hispanic students, and those with disabilities. Texas judges are even forcing students charged with truancy to drop out of school and take GED exams they are ill-equipped to pass, according to a report released today by Texas Appleseed.

The report, *Class, Not Court: Reconsidering Texas' Criminalization of Truancy*, found that Texas filed approximately 115,000 truancy cases in 2013 — more than twice the number of truancy cases in all other states *combined*. Four in five children sent to court for truancy were found to be economically disadvantaged, meaning they are eligible for free and reduced lunch, and are least able to afford steep fines typically levied in response to truancy charges. Failure to pay fines, which can run as high as \$500, can result in an arrest warrant and even incarceration.

Judges have wide discretion in how they respond to truancy, sometimes with alarming consequences, according to the study. Sanctions may range from mandatory counseling or community service to requirements that fall outside of legal statute and may be against the law. These include punishments such as requiring students to wear an ankle GPS monitor, submit to drug testing or disclose social media passwords so the judge can view personal messages and accounts.

Judges also are permitted to order students to “unenroll” or essentially drop out of school and take the GED high school equivalency exam, a particular challenge for special education students who make up a significant percentage of students charged with truancy. Texas Appleseed found that over the course of three years,

6,423 students, one in five of whom were special education students, were ordered to take the GED and failed.

“The current, court-centered approach to addressing truancy is not working,” said Deborah Fowler, executive director of Texas Appleseed. “Court intervention, particularly for children who have had no previous experience with the criminal justice system, increases the likelihood that they will drop out and enter the school-to-prison pipeline.” The study found that attendance rates have not significantly improved in Texas schools despite the extraordinarily high number of court filings for truancy.

Under Texas law a school may refer children to court for truancy if they accumulate unexcused absences for three days within a four-week period and *must* file a Failure to Attend School (FTAS) Class C misdemeanor charge when a child accumulates unexcused absences for 10 days within a six-month period. The school also has the option of filing a charge of Parent Contributing to Nonattendance (PCN) against one or both parents. Charges against students and parents are most often adjudicated by the Justice of the Peace or municipal court — both of which are adult criminal courts.

Only Texas and Wyoming send truancy cases to adult criminal courts, while most states use their juvenile courts. Children sent to adult courts have no right to an attorney and typically must advocate for themselves without legal representation.

Among the report’s other key findings:

- There is no evidence to support the notion that most truant children are simply “skipping class.” Instead a variety of factors, most of which are not in the student’s control, usually lead to truancy, including responsibility for taking care of a sick parent, homelessness, being a victim of bullying and having undiagnosed special education needs.
- African-American, Hispanic and special needs students are disproportionately represented among students charged with FTAS. In the 2013-14 school year, almost 20 percent of reported FTAS court referrals statewide involved African-American students, even though they make up less than 13 percent of all students; 64 percent involved Hispanic students who represent 52 percent of the total student population, and 13 percent were special education students who make up 8.5 percent of students.
- Many school districts do not report data on truancy to the Texas Education Agency as required, or even track the data at all. Despite the incomplete data, a picture emerged where prosecuting children for truancy has become common practice for districts. Two counties in Texas — Dallas County and Fort Bend County — have established specialized truancy courts, which are problematic since they reinforce an overreliance on the courts rather than school-based interventions that research shows keeps kids in school. Among the 20 largest school districts, Dallas ISD and San Antonio ISD had the highest rates of combined FTAS and PCN filings, at more than 29,000 and 12,000 respectively.

The new research comes nearly two years after Texas Appleseed, along with two other advocacy groups, filed a complaint with the U.S. Department of Justice charging that the practice of prosecuting truancy as a crime constitutes “cruel and unusual punishment” in violation of students’ Eighth Amendment constitutional rights. A decision by the Justice Department on whether to launch an investigation is expected shortly.

Texas Appleseed is calling on policymakers and school districts to act quickly to decriminalize truancy and enact a system of prevention and intervention so students with multiple unexcused absences don’t routinely end up in court.

“In the vast majority of cases, the school, working with the student and family, could address the truancy problem if it made meaningful attempts to do so,” said Mary Schmid Mergler, director of Texas Appleseed’s School-to-Prison Pipeline Project. “Instead, schools often pass the responsibility to courts that are not designed, equipped or trained to provide meaningful assistance to students and their families.”

Legislators, school districts and the Texas Education Agency should adopt a range of reforms, according to the report. These include:

- Decriminalize truancy so that it is no longer adjudicated as a crime in adult criminal court. Misdemeanor charges of FTAS and PCN should be eliminated from the Texas Education Code and truancy should be treated as a Children in Need of Supervision offense with no fines or criminal convictions.
- Make all court referrals discretionary so that schools can determine when a referral to juvenile court is appropriate and are not required to send students to court after 10 or more unexcused absences in a six-month period.
- Require effective school-based truancy prevention and intervention. School districts should employ a system of graduated or tiered interventions triggered by a certain number of unexcused absences.
- Require schools to produce complete data on truancy in a timely manner. The Texas Education Agency should downgrade the status of districts that fail to report complete data.

Such reforms would align with broad changes to school discipline policies in Texas and nationwide aimed at reducing the number of suspensions and expulsions and replacing harsh discipline practices with positive and constructive approaches that keep kids in school. As part of these efforts, a number of states are currently considering revisions to existing truancy laws, and others — including Louisiana, Florida and Georgia — have already enacted changes focused on making court response a last resort and instituting intervention and prevention measures.

“Texas should follow the lead of a growing number of states that recognize students who miss school frequently need help — not a court date,” said Fowler.

RESOURCES:

- Executive Summary:
http://www.texasappleseed.net/index.php?option=com_docman&task=doc_download&gid=1209&Itemid=
- Overall Report with Executive Summary:
http://www.texasappleseed.net/index.php?option=com_docman&task=doc_download&gid=1208&Itemid=
- Infographic:
http://www.texasappleseed.net/index.php?option=com_docman&task=doc_download&gid=1210&Itemid=

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