

Increase Attendance and Reduce Overcriminalization in Texas Schools

Bill Analysis: Senate Bill 1234 (as filed)

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Key Findings

- Texas law penalizes truancy under two wholly separate sections of the code, as a Class C misdemeanor and as a status offense.
- The use of Class C misdemeanors to respond to truant behavior is not connected to an increase in attendance rates, and overburdens courts with cases unconnected to public safety.
- Senate Bill 1234, as filed, proposed to eliminate the least effective truancy response, the Class C misdemeanor offense, and require schools to take measures to increase attendance prior to court referral.

Introduction

Under current law, the offense of failure to attend school for 10 or more days or parts of days within a six-month period in the same school year or on three or more days or parts of days within a four-week period is both a Class C misdemeanor offense under Section 25.094 of the Education Code and conduct indicating a need for supervision (or CINS) under Section 51.03(b)(2) of the Family Code.

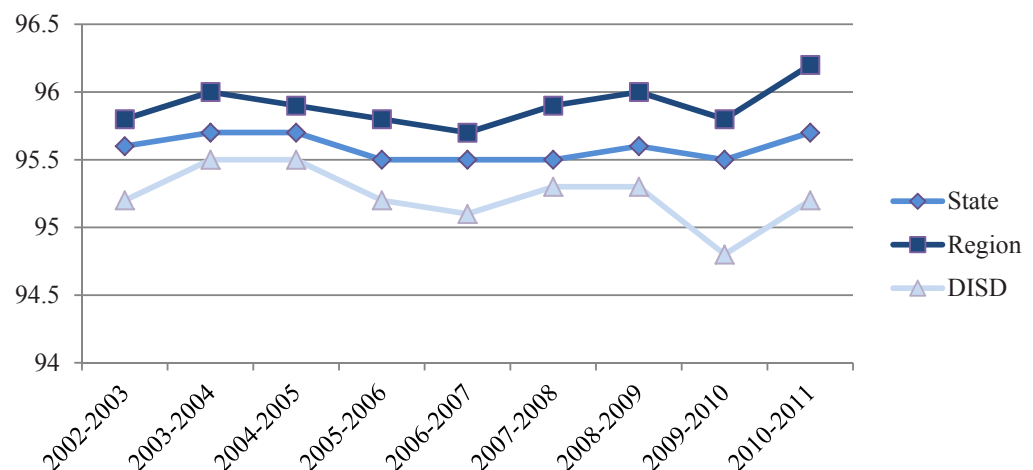
In practice, a juvenile is not prosecuted for both offenses. In counties with populations less than 100,000, the offense is exclusively handled under the CINS offense per Section 51.03(g) of the Family Code; in larger counties, courts may prosecute the Class C misdemeanor offense in a justice of the peace or municipal court or waive the case to the juvenile court for handling under the CINS offense.

Senate Bill 1234 seeks to streamline Texas law by eliminating the Class C misdemeanor offense for a failure to attend school under the Education Code and making the CINS offense the sole method of addressing students' failure to attend school.

Fines Alone are Ineffective

The Class C misdemeanor offense was used over 100,000 times in the 2012 fiscal year against students, and over 50,000 times against parents. Despite this high rate of usage, there is little evidence that Class C misdemeanor tickets are effective in reducing or addressing truancy. For example, the Dallas Independent School District (DISD) issued 23,442 failure to attend tickets to students, one of the higher rates as a proportion of their student body in Texas. However, their attendance rates remain below statewide attendance rates in Texas as well as those of Region 10, which includes DISD. *continued on back*

Annual Attendance Rates for Texas, Region 10, and DISD



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This is because the fine attached to a Class C misdemeanor ticket, which is capped at \$500, does little, if anything, to address the underlying behavioral or social issues that caused the failure to attend in the first place. A Class C misdemeanor ticket and a fine does not force a student to attend school—it only compels attendance in court. This is a secondary but significant collateral consequence to the use of Class C misdemeanor citations to combat truancy. In addition to being ineffective in combatting educational absenteeism, the use of Class C misdemeanors forces the student to miss a day of school, the student’s parent or guardian to miss a day of work to attend court, and in most cases the parent is likely to simply pay the fine. Ultimately, it is not clear what, if anything, the student has learned about his or her behavior and nothing about the importance of attending school.

In addition, court dockets are overrun with these Class C misdemeanor tickets for failure to attend school, inhibiting courts’ efforts to deal with true public safety risks and drawing down on court resources for issues that could be resolved outside of the justice system. Therefore, Texas taxpayers pay twice: once for the court resources unnecessarily used and again when the fine failed to address the truancy.

Seeking Effective Truancy Prevention

Senate Bill 1234 attempts to increase the use of effective truancy prevention in three significant ways.

Eliminating the Class C Offense

The first necessary action to create a statewide truancy redress model is to eliminate the ineffective and redundant section of Texas law that permits the Class C misdemeanor citation for a failure to attend school. Senate Bill 1234 first eliminates Section 25.094 and Section 25.093 from the Edu-

cation Code. Those sections permitted the Class C misdemeanor citation of a student for the failure to attend school and of a parent for contributing to the student’s truancy, respectively. Senate Bill 1234 goes on to strike out other sections of Texas law that referred to those sections.

A Tiered Response in the School

The failure to attend school can often be easily addressed by in-school preventions and interventions. This can sometimes be as simple as contacting the student’s parent or guardian and ascertaining the cause of the absenteeism. At times more intensive in-school responses may be required. Senate Bill 1234 states that before a school can turn to the justice system to handle a student’s failure to attend, the school must first attempt a tiered in-school response. Specifically, the school may:

- Issue a warning letter to the student and his or her parent or guardian, or
- Impose a behavior contract or school-based community service on the student, or
- Refer the student to counseling, community-based services, or other in-school or out-of-school services aimed at addressing the truancy issue.

Any one or more of these options may include parental participation if necessary. These options all represent more effective approaches to combating truancy than a fine-only citation.

The Foundation has researched the implementation of the tiered response for other types of potentially more serious behavior in the school system in Clayton County, Georgia that pioneered its use. The Foundation’s August 2012 research brief, [“Expelling Zero-Tolerance: Reforming Texas School Discipline for Good.”](#) found that a tiered in-school approach reduced referrals to court by 67 percent, reduced the incidence of weapons found on campus by 73 percent, and led to an increase in graduation rates of 20 percent.

Indeed, Waco Independent School District, using a grant for the Office of the Governor, Criminal Justice Division, began using the tiered discipline model for varying types of misbehavior, and attained a 77 percent reduction in ticketing in just one year.

This approach would be an effective response to truancy. By involving the parents and sending the student to community service or counseling, as appropriate, something which is far more likely to affect the student's behavior than a parent or guardian paying a fine, the student is more likely to resolve social or familial issues producing truancy or behavioral issues.

Also, many districts such as Fort Bend Independent School District have truancy officers who work in the schools and contact the household if the student is not there by the late morning. If necessary, they go to the household to find the student and discuss the issue with the student and parent. In one case, the student did not attend because he did not have clothing and the truancy officer solved that issue and got the student to school.

If Necessary: A Juvenile Justice Resolution

Finally, Senate Bill 1234 permits a school, after attempting an in-school truancy response without success, to refer the student to the juvenile court for a CINS offense. This method of judicial intervention is much more conducive to resolving the truancy issue than a fine-only Class C misdemeanor citation.

Under an adjudication in juvenile court that a student has engaged in a CINS offense, the court has broad authority to order the student into counseling, programming, community service, compel parental action or abstention from injurious action, or a wide variety of other tools available

to the juvenile court that a municipal court or justice of the peace court either does not have access to or is prohibited from employing in some cases.

If after assessing the extent of the truancy and the underlying problems responsible for that, current law allows the court to put the youth on juvenile probation, in which case the youth would, to the extent he or she is able to pay, be responsible for a monthly fee of \$15 to help defray the cost of supervision. In contrast to a one-time fine of \$500 paid by the parent that does not help pay for the cost of the intervention, this is a reasonable amount that many youths can pay and is directly connected to the supervision they require. Although a CINS offense can result in probation, unlike a delinquent conduct referral to juvenile court or a Class C misdemeanor, it does not create an offense record that can burden the youth in the future.

For this reason, the more effective in-school truancy intervention should be coupled with the more effective juvenile court truancy intervention, as set out by Senate Bill 1234.

Conclusion

The Foundation's research indicates that a tiered response is most effective for changing student behavior. Streamlining Texas' overlapping truancy laws to focus on the CINS offense would ensure courts have more tools to address the causes of student absenteeism, rather than simply relying on a fine typically paid by the parent. ★

Endnotes

¹ Texas Office of Court Administration, 2012 Annual Report (2013).

² Ibid.

³ Deborah Fowler, "Criminalization of Truancy in Texas: Prosecution of 'Failure to Attend School' in Adult Criminal Courts," Texas Appleseed (on file with author).

⁴ Jeanette Moll and Henry Joel Simmons, "Expelling Zero-Tolerance: Reforming Texas School Discipline for Good," Texas Public Policy Foundation (Aug. 2012).

About the Author

Jeanette Moll is a juvenile justice policy analyst in the Center for Effective Justice at the Texas Public Policy Foundation.

Prior to joining TPPF, she served as a legislative aide in the Wisconsin Legislature, where she dealt with various policy issues, media affairs, and constituent outreach.

Moll earned a B.A. in Political Science from the University of Wisconsin-Madison. She then earned a J.D. from the University of Texas School of Law, where she served on the board of the Texas Review of Litigation and interned with a federal bankruptcy judge, a Texas appellate court judge, and a central Texas law office. She is a member of the State Bar of Texas.

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