

Class, Not Court

Reconsidering Texas' Criminalization of Truancy

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EXECUTIVE SUMMARY





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March 2015

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Texas Appleseed Mission

Texas Appleseed's mission is to promote social and economic justice for all Texans by leveraging the skills and resources of volunteer lawyers and other professionals to identify practical solutions to difficult systemic problems.

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Acknowledgements

We are very grateful to our team of staff and interns for their significant contributions to this report, including Texas Appleseed Pro Bono and New Projects Director **Gabriella McDonald**, former Staff Attorney **Jacques Ntonme**, former Staff Attorney **Karla Vargas**, former Interim Staff Attorney **Meredith Takahashi**, as well as interns **Megan Randall**, **Maxwelle Sokol** and **Nkemjika Okafor**.

We are also particularly grateful to **Dustin Rynders**, Supervising Attorney of Education Team, Disability Rights Texas, for his contributions to the report. We are also grateful to the advocates, attorneys, and others who have worked alongside Texas Appleseed in addressing the problem of truancy in Texas and whose work and ideas have informed this report, including **Meredith Parekh** (Disability Rights Texas), **Mani Nezami** (Earl Carl Institute, Thurgood Marshall School of Law), **Sarah Guidry** (Earl Carl Institute, Thurgood Marshall School of Law), **Hannah Benton** (National Youth Law Center), **Michael Harris** (National Youth Law Center), **John Kreager** (Texas Criminal Justice Coalition), **Jennifer Carreon** (Texas Criminal Justice Coalition), **Derek Cohen** (Texas Public Policy Foundation), **Marc Levin** (Texas Public Policy Foundation), **Peter McGraw** (Texas RioGrande Legal Aid), **Kathryn Newell** (Texas RioGrande Legal Aid), **Margaret Clifford** (University of Texas School of Law), and **Patricia Arthur**. We would also like to thank the many attorneys who have represented students charged with truancy on a pro bono basis, including those from **The Vernon Law Group, PLLC**, **Hunton & Williams LLP**, and **Vinson & Elkins LLP**.

Finally, we are deeply appreciative of the students, parents, and community members who have shared their stories with Texas Appleseed and with the public. Many have also determinedly worked to change the way truancy is handled in their own schools and school districts.

Texas Appleseed's School-to-Prison Pipeline Project is generously supported by **Atlantic Philanthropies**; **Public Welfare Foundation**; **The Brown Foundation, Inc.**; **Simmons Foundation**; and **Houston Endowment**.

The reforms last Session did not extend to truancy and attendance laws, which, while intended to keep kids in school, often operate to keep them out. The theory is that the threat of punishment will incentivize attendance. **But when almost 100,000 criminal truancy charges are brought each year against Texas schoolchildren, one has to think, this approach may not be working.** Playing hooky is bad, but is it criminal? A better, more effective solution may be for schools and courts alike to provide prevention and intervention services for at-risk children to actually achieve the goal: getting them back in school. This has led the Texas Judicial Council, a policy-making body for the Judiciary, to call for decriminalizing the failure to attend school. The stakes are high. Our children are our most precious treasures and our future. Education is the key to their success.

CHIEF JUSTICE NATHAN L. HECHT

THE STATE OF THE JUDICIARY IN TEXAS
PRESENTED TO THE 84TH LEGISLATURE

FEBRUARY 18, 2015

EXECUTIVE SUMMARY

Texas Appleseed has studied, reported, and advocated for reform on many facets of the school-to-prison pipeline, including suspension and expulsion practices, school-based arrests, and ticketing for minor, school-based offenses. The school-to-prison pipeline refers to the policies and practices of schools and law enforcement that unnecessarily funnel children away from school through disengagement and dropout, and increase the likelihood that students will become involved in the juvenile and adult criminal justice systems. This report—*Class, Not Court: Reconsidering Texas’ Criminalization of Truancy*—continues Texas Appleseed’s school-to-prison pipeline work by delving into how Texas’ approach to truancy is driving more children away from school and into the adult criminal courts. The report explores causes of truancy, evaluates the current approaches to addressing truancy, highlights the disproportionate impacts of truancy charges on certain groups of students, and makes recommendations for ways that the Texas Legislature, the Texas Education Agency (TEA), and school districts can increase attendance and help children in a meaningful way.

Texas Appleseed’s research for this report included analysis of truancy data collected from courts, TEA, and the state’s largest school districts, as well as countless interviews and conversations with families and stakeholders involved in Texas’ current system. The report was also informed by more than two years of court observations by Texas Appleseed attorneys in urban, suburban, and rural counties all over the state. Among the problems our research uncovered:

- **Texas currently prosecutes more than twice the number of truancy cases prosecuted in all other states combined.** These students are sent to *adult criminal* courts, unlike almost all other states, which send them to civil juvenile courts.
- While some Texas school districts have implemented effective school- and community-based programs to address truancy, these approaches are not the norm. Children rarely get the individualized attention that research suggests is most effective in intervening with truant youth.

- Four in five children sent to court for truancy are economically disadvantaged, according to TEA—yet fines are the most common sanction for children charged with truancy.
- Due process protections are often ignored in the courts where these cases are prosecuted, with children (who are rarely represented by counsel) pleading guilty or no contest to charges they often do not understand, even when they may have a valid defense.
- In some jurisdictions, judges order children charged with truancy to withdraw from school and take the GED; this resulted in 6,423 court-ordered dropouts who failed the test over a three-year period—a number likely to grow significantly in the face of plunging passage rates for the GED.
- African-American and Hispanic students are overrepresented in truancy cases statewide, as are special education students. Finding more effective ways to intervene with these youth is critical, since these students are among those most vulnerable to poor educational outcomes.

Another major concern revealed by Texas Appleseed’s research was that many school districts do not report their truancy data to TEA, though they are required to do so, and some do not even track this data themselves. This calls into question whether schools are keeping data and information most helpful to determining how to target prevention and intervention efforts.

Texas is a leader in other areas of juvenile justice and education reform, and can lead the way when it comes to prioritizing effective alternatives to its over-reliance on criminal courts to intervene with students who may be disconnected from school. This report outlines policy recommendations at the state and local levels that will get Texas back on track to utilizing effective responses, while also highlighting promising programs in Texas and other states that have proven successful in addressing truancy. The importance of changing Texas’ current practices cannot be overstated.

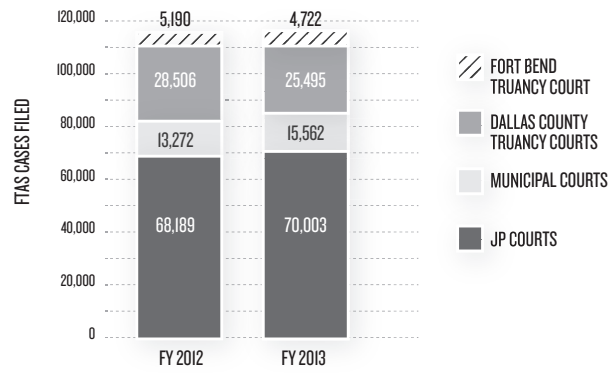
FREQUENTLY ASKED QUESTIONS ANSWERED BY THIS REPORT

WHAT IS TRUANCY?

Truancy is the accumulation of unexcused absences in excess of those allowed by state law. Texas’ compulsory school laws require children to attend school from the age of six until their 18th birthday. When a child accumulates unexcused absences for three days or parts of days within a four-week period, the school may refer the child to court for truancy. When a child accumulates unexcused absences for 10 days or parts of days within a six-month period, the school must file a complaint in juvenile or adult criminal court regardless of any ongoing intervention.

Though truancy charges may be filed in juvenile court as a “Conduct in Need of Supervision” (CINS) offense, they are more often filed in justice (JP) or municipal courts, which are adult criminal courts, as “Failure to Attend School” (FTAS), the Class C misdemeanor offense named in the Education Code. While approximately 1,000 cases were filed in juvenile courts for the CINS offense of truancy in 2013, more than 115,000 FTAS cases were filed in adult criminal court forums in the same year. This high number of filings makes Texas an outlier—fewer than 50,000 truancy cases were filed in the juvenile courts of all other states combined.

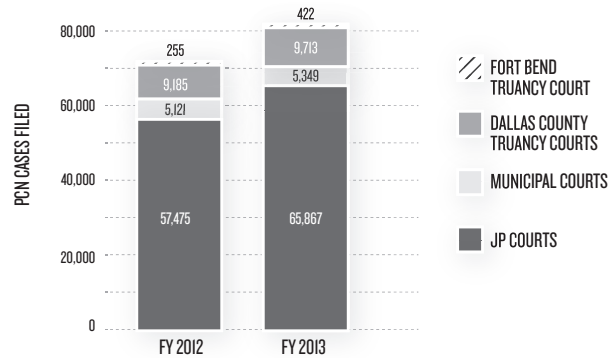
TOTAL STATEWIDE FTAS CASES IN ALL COURTS, FY 2012 & FY 2013



CAN CHARGES ALSO BE FILED AGAINST A PARENT?

The school also has the option of filing against one or both parents for Parent Contributing to Nonattendance (PCN), also a Class C misdemeanor, either in lieu of or in addition to filing against a student. Texas Appleseed’s research shows that while charges are more often filed against students, a large number of cases are also filed against parents. In many jurisdictions where Texas Appleseed attorneys observed court, charges were filed against one or both parents *in addition to* charges against the student.

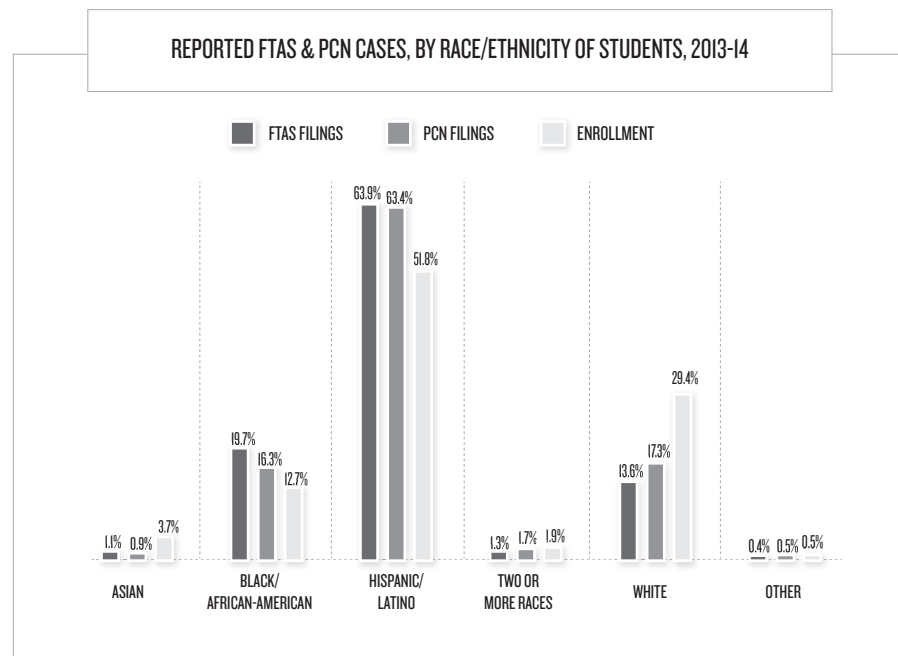
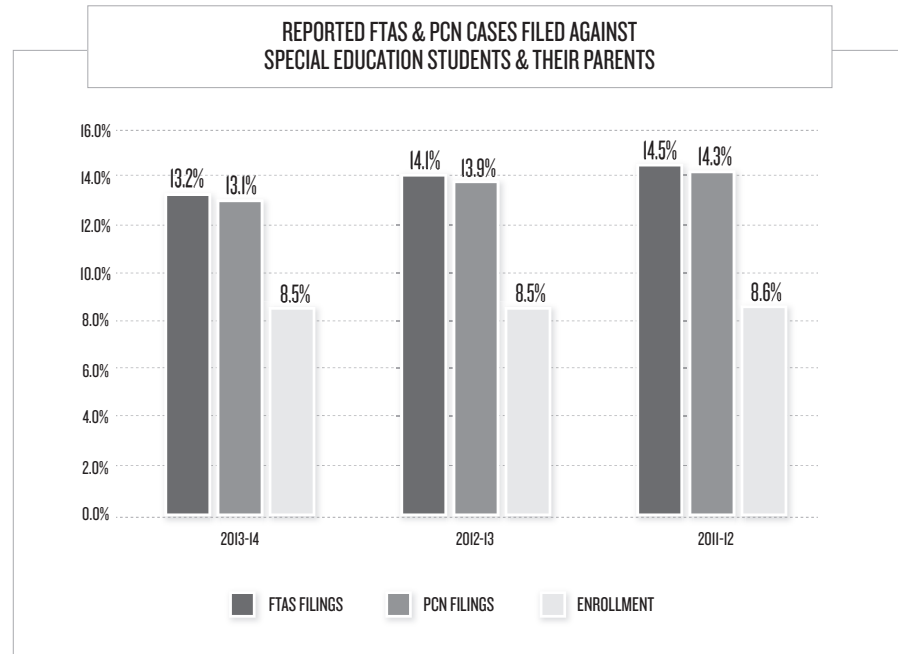
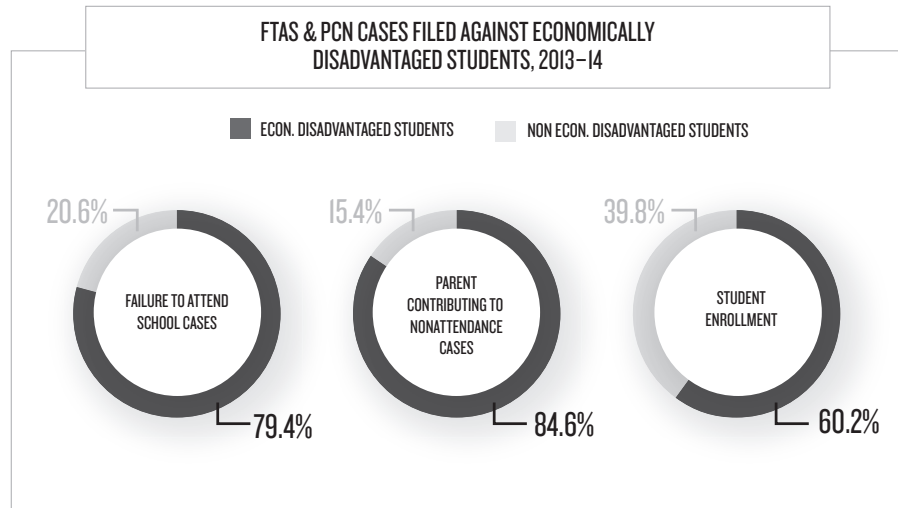
TOTAL STATEWIDE PCN CASES IN ALL COURTS, FY 2012 & FY 2013



ARE SOME STUDENTS AFFECTED MORE THAN OTHERS?

Texas Appleseed’s review of both TEA data and data from the largest school districts in the state showed certain groups of students are disproportionately affected by Texas’ truancy laws:

- Students classified as “economically disadvantaged,”
- Special education students, and
- African-American and Hispanic students.



HOW ARE JP AND MUNICIPAL COURTS DIFFERENT THAN JUVENILE COURTS?

Juvenile courts in Texas, and across the country, have a different focus than adult criminal courts. They were created to focus on rehabilitation rather than simply punishment, with the understanding that because of their age, children have the capacity to change and grow out of poor decision-making.

For this reason, juvenile courts are civil rather than criminal and include a lot of protections meant to ensure that young people are not stigmatized as a result of their involvement with the courts. There are broader confidentiality laws for cases that go through juvenile courts than cases that are processed in JP and municipal courts. In addition, indigent children who go to juvenile courts are entitled to appointed counsel, whereas children sent to the JP and municipal courts are not appointed counsel. More often than not, in JP and municipal courts, children are faced with having to appear, plead, present defenses, and advocate for themselves without any legal representation, and often with little to no review of the rights guaranteed to them, what the pleas mean, and the consequences associated with each. This is an especially difficult process for children with special education needs, who represent 1 out of every 8 FTAS cases filed.

Following the child's plea, a judge either schedules the case for a later court date with a prosecutor if the student pleads not guilty or, for the majority of students who plead guilty or no contest, the judge immediately orders sanctions including fines, as well as options like community service or mandatory tutoring.

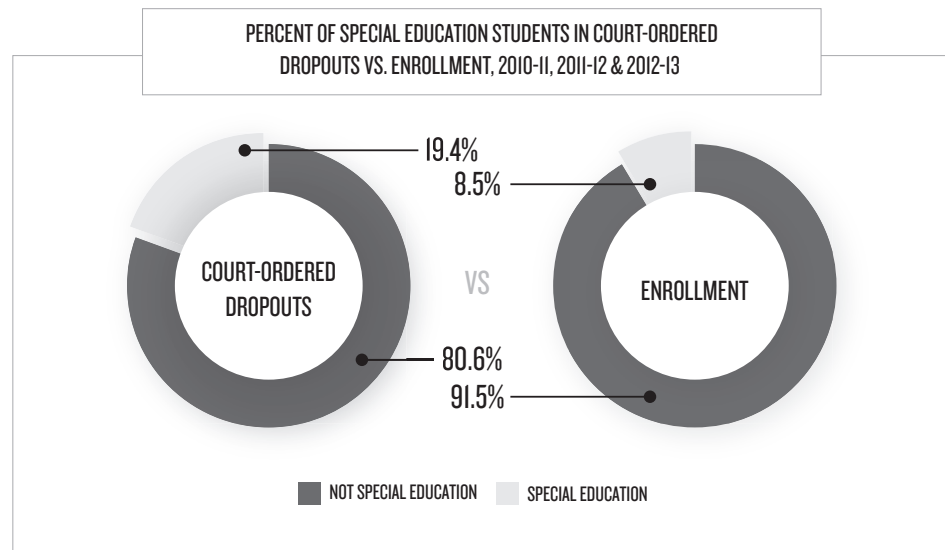
WHAT ARE THE CONSEQUENCES OF A TRUANCY CONVICTION?

Fines, which can range up to \$500, as well as court costs, are issued in a majority of cases filed against students and parents. If a child is unable to pay the fines and court costs, he or she could face arrest and incarceration once the child turns 17 years old. Parents charged with PCN face the same possibility of incarceration if they do not pay fines. Other failures to obey the judge's orders or appear on the scheduled date may also lead to arrest and confinement.

Convictions in truancy cases result in a criminal record. Opportunities to have the conviction expunged from one's record are available, but only in limited circumstances. Criminal convictions can lead to a loss of opportunity related to higher education, future employment or military enrollment.

Judges may also order students to attend school going forward without any unexcused absences or tardies, suspend a student's driver's license, order a student to attend tutoring, order community service, or order students to attend any one of a wide range of programs for substance abuse, counseling, parenting, or anything else the judge believes to be in the child's best interest. However, because an individualized assessment of a child's needs has rarely occurred, children are not often referred to programs that would address their needs and the underlying causes of truancy. Texas Appleseed has heard from parents about arguably illegal requirements imposed by judges beyond what the statute provides—punishments such as requiring students to wear an ankle GPS monitor, submit to drug testing, or disclose all social media passwords so the judge could view their personal messages and accounts.

One particularly troubling sanction that judges may order in truancy cases is that students drop out of school and take the General Educational Development (GED) test. In other words, **courts in Texas are ordering children to drop out of school as a punishment for not going to school.** Over a three-year period, 6,423 students who were ordered to drop out and take the GED then failed the GED test. This number does not include data for 2014, a year when the passage rate for the GED dropped significantly due to changes to the test. Special education students, in particular, are overrepresented in the group of students ordered to drop out who then failed the GED, accounting for 1 in 5 court-ordered dropouts.



ARE SCHOOLS REQUIRED TO ATTEMPT TO IMPROVE A STUDENT'S ATTENDANCE BEFORE SENDING A STUDENT TO COURT?

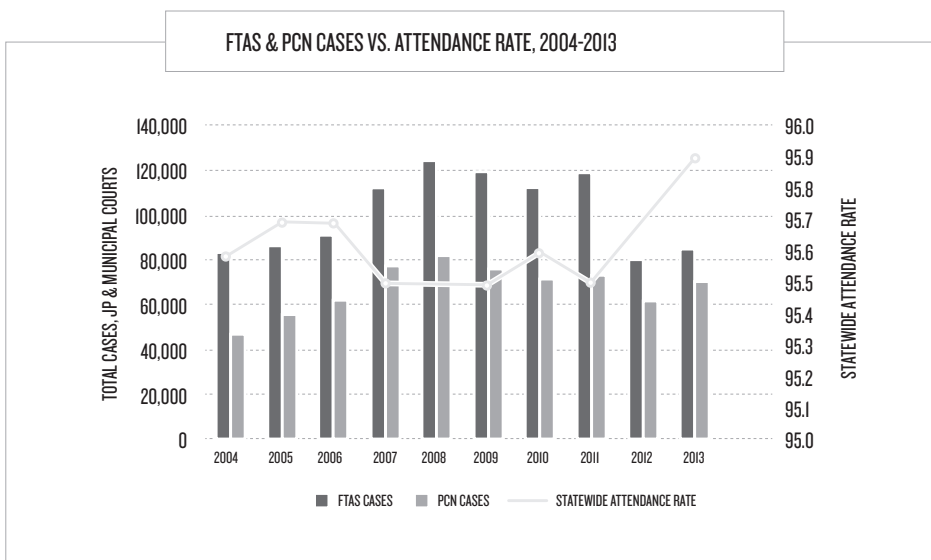
By law, schools must implement truancy prevention measures before charging children with FTAS. However, the law does not delineate what these measures must entail so in practice, they are often meaningless. Schools may merely attempt a phone call or letter to the student's parent, without any inquiry into a child's circumstances and needs, in order to meet the law's requirements. Schools often ignore the fact that there are a number of serious, underlying causes of truancy related to family, school, and personal factors, which may include a student having to take care of a sick parent, being the victim of bullying, or having un- or under-diagnosed special education needs. The myth that most truant children are simply "skipping class" has been debunked.

Effective solutions are those that address these underlying factors, and in most cases, the school, the student and the student's family could address the truancy problem if schools made meaningful attempts to do so. Yet, schools often pass the responsibility on to courts—courts that are generally not designed, equipped or trained to provide meaningful assistance to students and their families. Once a child is in court, many judges routinely fail to make even a cursory inquiry into the causes of truancy. Rather, they issue sanctions that may fail to meaningfully address a student's issues.

DOES RELYING ON COURTS TO ADDRESS TRUANCY WORK?

The current, court-centered approach to addressing truancy is not working—students are criminalized at an alarmingly high rate, often for behavior that is completely out of their control. Other indicators like attendance rates have not significantly improved despite the high numbers of court filings. Texas Appleseed’s own data analysis shows little relationship between the rate at which districts send children to court for truancy and their attendance, graduation and dropout rates. To the extent they are related, higher truancy filing rates are weakly associated with lower attendance and graduation rates and higher dropout rates.

Research indicates that overly punitive responses to truancy, including fines, actually exacerbate the problems that truancy alone creates. Additionally, court involvement, particularly for children who have had no previous experience with the criminal justice system, increases the likelihood of dropout. Court involvement also increases the likelihood that children will be funneled into the juvenile justice system and, eventually, into the adult criminal justice system for more serious offenses. Initial and subsequent escalating court involvement can also lead to negative feelings toward school, poor academic performance, and stress within families.



ARE THERE DIFFERENCES BETWEEN COURTS AND SCHOOL DISTRICTS IN THE WAY TRUANCY IS HANDLED?

School-level absence and tardy policies, district-level court referral guidelines, and court-level sanctions imposed for truancy vary widely in Texas, creating a patchwork of unpredictable policies and practices. While one school may require absence notes to only be submitted in writing in order to be excused, another may require parents to personally call in to explain an absence. While one district may encourage schools to only file charges against a parent rather than the truant child, another district may require that charges always be filed against both the student and his or her parents, after only a few absences. While some courts may offer community service in lieu of fine payment, others may assess the \$500 maximum on both the student and his or her parents.

What *is* consistent across Texas is that FTAS and PCN charges occur far too frequently, are meaningless solutions to truancy’s underlying causes, and disproportionately impact African-American and Hispanic students, students who are economically disadvantaged, and students with special education needs.

ARE THERE SCHOOL DISTRICTS THAT ARE IMPLEMENTING SUCCESSFUL PROGRAMS?

A handful of districts have implemented research-based programs to address truancy. These programs share some key components, including collaboration between youth, their families, school officials, and community service providers, as well as a comprehensive approach that accounts for the multiple factors that contribute to truancy. Additionally, successful approaches to truancy reduction often involve a tiered intervention model, in which successively more intensive interventions are applied to students as their number of unexcused absences increases. An initial intervention may involve a meeting with the family and signing an attendance contract, while more intensive interventions may include referral to school- or community-based treatment programs. Court is used only as a last resort.

Major Policy Recommendations

Texas must do better by its students. The state must move away from a system that sends 115,000 truancy cases—disproportionately filed against low-income students, special education students and students of color—to adult criminal court each year, doing nothing to help improve students’ school attendance. Interventions that occur outside of the court system will provide the greatest benefit, and the state must move toward a system where schools, students and families solve truancy problems, and court is used only as a last resort. Based on conclusions from existing research and the findings presented in this report, Texas Applesed recommends the following policy changes.

Legislative Recommendations

1. DECRIMINALIZE FAILURE TO ATTEND SCHOOL & PARENT CONTRIBUTING TO NONATTENDANCE

Truancy should no longer be adjudicated as a crime in the adult criminal courts. To achieve this, the Class C misdemeanors of Failure to Attend School (FTAS) and Parent Contributing to Nonattendance (PCN) should be eliminated from the Texas Education Code. Truancy would then be treated as a Children in Need of Supervision (CINS) offense, and the current fines and criminal convictions associated with the offense would be eliminated.

2. MAKE ALL COURT REFERRALS DISCRETIONARY

Schools should not be mandated by law to file a complaint against a student for 10 or more absences in a six-month period, but should retain the discretion to determine whether the court referral is appropriate in each case after at least as many absences. For example, if an intervention is improving a student’s attendance, but the student is still occasionally absent, the school may decide that continued intervention is more helpful than court referral. In such a case, court referral may put the student at odds with the school and make the student entirely unreceptive to further intervention.

Furthermore, the option to file a complaint against a student after three unexcused absences in a four-week period should be eliminated. Rather than court referral, three unexcused absences should trigger truancy intervention measures.

3. REQUIRE EFFECTIVE SCHOOL-BASED TRUANCY PREVENTION & INTERVENTION

A referral to court should only be used as a last resort. To accomplish this, the law should require that the truancy prevention and intervention measures employed by school districts are meaningful and effective. School districts should be required to employ a system of graduated or tiered interventions triggered by a certain number of unexcused absences. The interventions should increase in intensity if the student continues to accumulate unexcused absences despite the interventions, and should be based on best practices and diversion programs that have proven successful. If the graduated interventions fail to improve a student's attendance, the school district could then choose to refer the child to juvenile court.

4. REQUIRE DEVELOPMENT OF STANDARDS FOR SCHOOL-BASED INTERVENTIONS & SUBMISSION OF TRUANCY INTERVENTION PLANS

The Texas Education Agency (TEA) should be required to develop standards for the types of truancy prevention and intervention measures attempted before a court referral is made. School districts that fail to implement interventions meeting these standards, as well as districts that send a high percentage of students to court for truancy, should then be required to submit school-based truancy intervention plans to TEA for their approval to reduce the number of court referrals.

5. PROHIBIT THE USE OF DETENTION OR CONFINEMENT AS A RESULT OF TRUANCY

The law should be amended to eliminate the Valid Court Order exception, so that the juvenile courts are prohibited from detaining any juvenile as a result of contempt stemming from an underlying truancy charge. Additionally, so long as truancy cases are adjudicated in JP and municipal courts, those courts should be prohibited from confining any individual, even those who have reached the age of criminal responsibility, for contempt of an order stemming from a truancy charge.

6. PROHIBIT SUSPENSION AS PUNISHMENT FOR TRUANCY OR NONATTENDANCE

Current Texas law allows for schools to suspend children to punish them for truancy or other categories of nonattendance (cutting class, leaving campus, etc.). School districts are sending students to in-school suspension or out-of-school suspension for being tardy to class or missing class or school entirely. Suspension does nothing to address the underlying issues with a truant student and fails to improve attendance, and schools should not be permitted to use it to punish truancy or absence from school or class.

7. PROHIBIT COURT-ORDERED DROPOUT AS A CONSEQUENCE FOR TRUANCY

Enforcement of compulsory school attendance laws should be designed to encourage students to regularly attend school—not push them out of school entirely when they have attendance problems. The law should be amended so that courts cannot order students charged with truancy to unenroll from school and take the GED. This authority is leading to thousands of dropouts annually. Such an order is particularly inappropriate for special education students, whose passage of the GED is even less likely than their peers.

Texas Education Agency Recommendations

1. REQUIRE SCHOOLS TO PRODUCE DATA

School districts are already required to report truancy data to TEA through the Public Education Information Management System (PEIMS), and TEA may factor a district's failure to report data into its accreditation status, which TEA is responsible for determining. Given this authority, TEA should ensure that school districts are fully reporting data in a timely manner on truancy cases as required, and downgrade the status of those districts that fail to report complete data.

2. DEVELOP & HIGHLIGHT BEST PRACTICES

TEA already maintains a Best Practices Clearinghouse on a number of topics, one of which is dropout prevention. Given the strong link between truancy and dropout, TEA should include best practices from around the state addressing truancy in its Clearinghouse, so that school districts can learn from each other about the most effective ways to divert students from court while improving attendance.

School District Recommendations

1. RECOGNIZE THE CRITICAL ROLE OF SCHOOLS IN ADDRESSING TRUANCY

Regardless of whether truancy is decriminalized, school districts and campuses should undertake efforts to understand and address the truancy problems in their districts. A first step is to collect data about student absenteeism and truancy, including demographic data on the students who are absent and truant, as well as data on the effectiveness of school-based interventions. This data should be systematically collected and analyzed by the district, as well as made publicly available for parents and other interested parties. Schools should also map the resources and programs currently available for students within the school setting, as well as in the broader community, to determine what resources are already in place to address truancy and what needs improvement.

2. DEVELOP TRUANCY INTERVENTION MEASURES THAT PROVIDE INDIVIDUAL AND FAMILY-BASED ASSESSMENTS WITHIN A TIERED OR GRADUATED FRAMEWORK

School districts should develop meaningful truancy intervention measures based on best practices. At the lowest tier, schools need to implement truancy prevention measures, such as educating students and parents on the importance of school attendance and the links between attendance and dropout. When students accumulate unexcused absences, individualized interventions should begin that involve the student's family, such as a parent and student conference to develop solutions to the attendance problems, and

an attendance contract outlining the school's, student's and family's responsibilities. For those students who do not respond to low-level intervention, more intensive interventions that include individual and family assessments to identify the underlying causes of each student's absences from school may be necessary. These students should then be referred to appropriate services. In order to connect students with the services that they need, school districts should harness relationships with community service providers and other existing resources. Additionally, school districts should pay special attention to students with disabilities who already receive special education services and should work to identify those students who would benefit from such services.

3. AVOID THE USE OF SUSPENSION AS PUNISHMENT FOR NONATTENDANCE

Sending students to in-school suspension or out-of-school suspension for being tardy to class or missing class or school does nothing to address the underlying issues with a truant student and fails to improve attendance. Schools should not use suspension to punish truancy, absence, or tardiness from class but should instead devise sanctions, where appropriate, that require more learning, not less.

4. EVALUATE TRUANCY INTERVENTION MEASURES

Essential to any truancy intervention program or measure being implemented in a school district is an evaluation of the outcomes to determine whether the measures are effective. Primary to tracking effectiveness is collecting data on a student's attendance, but school districts should track other relevant variables, such as a student's grades, course failures, grade retention, and graduation or dropout, to see how well students are actually progressing.

5. REFER STUDENTS TO COURT ONLY AS A LAST RESORT

School districts and campuses should intervene to address truancy issues with children and their families directly, rather than relying on law enforcement or the court system to address their truancy problems. Filing a petition in court should be used only as a last resort, after the school's intervention measures fail to improve a student's attendance. This requires the development of meaningful interventions as discussed in the previous recommendation, but also a commitment on the part of the school administrators to keep kids out of court whenever possible and to redesign the interventions if they are failing.

Additionally, court referral should not signal to a school that the schools' involvement is no longer necessary. Schools should be particularly aware of the resources and services that a student who has been referred to court needs in the school setting, since these students may be the ones experiencing the most serious problems.

6. ADOPT POSITIVE, EVIDENCE-BASED APPROACHES TO SCHOOL DISCIPLINE AND IMPROVE SCHOOL CLIMATE

Punitive discipline models are expensive and ineffective and can exacerbate truancy problems by making students feel isolated and disengaged. Districts should adopt positive disciplinary models like PBIS and restorative justice that have been shown to improve student behavior across the board and reduce reliance on exclusionary discipline, hence improving student engagement and reducing truancy.