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FACT SHEET 2015

HB 110

## Remove the Loophole that Allows Students to Be Punished in Secure Correctional Facilities for Missing School

### 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.<sup>1</sup> 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;<sup>2</sup> and (2) “Truancy,” a conduct in need of supervision (CINS) offense in the juvenile justice system.<sup>3</sup> 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.<sup>4</sup> 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.”<sup>5</sup> For Truancy, Texas has its own version of the VCO Exception.<sup>6</sup> 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.<sup>7</sup> 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.<sup>8</sup>

### KEY FINDINGS

- For either the adult Class C misdemeanor of “Failure to Attend School” (FTAS) or the juvenile CINS offense of “Truancy,” a court may **not** order a disposition of secure confinement.<sup>9</sup>

However, each of these two statutes that criminalize missing school has a corresponding **exception that allows for the confinement of truant students through contempt of court**. For FTAS, the exception is the delinquent conduct “**Contempt of Magistrate**,”<sup>10</sup> for Truancy, the exception is the **VCO Exception**.<sup>11</sup>

- 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.<sup>12</sup> **Placement of truants in these facilities jeopardizes youths’ safety and increases the likelihood of future delinquency though learned criminal behavior.**<sup>13</sup>

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## KEY FINDINGS (CONTINUED)

- Texas judges are naturally shifting away from using exceptions to confine students. While in 2007, Texas was among the top three states with the highest rate of youth confinement through use of the VCO Exception—making up 60% of nationwide uses of the exception along with Kentucky and Washington—**Texas courts’ use of the VCO Exception has plummeted in recent years.**<sup>14</sup> In 2013, according to the Texas Juvenile Justice Department, **only one youth was put into secure confinement pursuant to the VCO Exception, and only 14 youth statewide were placed in post-adjudication facilities for Contempt of Magistrate.**<sup>15</sup>

## COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT HB 110 BY REPRESENTATIVE WHITE

**HB 110 strictly prohibits truant students from being punished in secure correctional facilities through contempt of court exceptions.** HB 110 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 HB 110 gets it right by removing the possibility that the exceptions come back into common use.

## **Citations**

<sup>1</sup> 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.

<sup>2</sup> Tex. Educ. Code § 25.094.

<sup>3</sup> Tex. Family Code § 51.03(b)(3).

<sup>4</sup> Ibid.

<sup>5</sup> Tex. Family Code § 51.03(a)(2).

<sup>6</sup> Tex. Family Code § 54.04(n).

<sup>7</sup> National Juvenile Justice and Delinquency Prevention Coalition, *Promoting Safe Communities: Recommendations for the 113<sup>th</sup> Congress*, (2013), 6.

<sup>8</sup> Ibid.

<sup>9</sup> “In a disposition under this title . . . a status offender may not, under any circumstances other than as provided under Subsection (n), be placed in a post-adjudication secure correctional facility.” Tex. Family Code § 54.04(o)(2).

<sup>10</sup> Tex. Family Code § 51.03(a)(2).

<sup>11</sup> <sup>11</sup> Tex. Family Code § 54.04(n).

<sup>12</sup> Nancy Gannon Hornberger, *Improving Outcomes for Status Offenders in the JJDP 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).

<sup>13</sup> 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](http://www.juvjustice.org/sites/default/files/resource-files/National%20Standards%20for%20the%20Care%20of%20Youth%20Charged%20with%20Status%20Offenses%20FINAL_0.pdf).

<sup>14</sup> Coalition for Juvenile Justice, *Deinstitutionalization of Status Offenders (DSO): Facts and Resources*, (2007), <http://sph.lsuhscc.edu/Websites/lsupublichealth/images/pdf/iphj/SOLibrary3.pdf>.

<sup>15</sup> Texas Juvenile Justice Department (TJJD) response to data request.