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Education and Its Discontents: The Decriminalization of Truancy and the School-to-Prison Pipeline in Texas.

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RECENT DEVELOPMENT

EDUCATION AND ITS DISCONTENTS: THE DECRIMINALIZATION OF TRUANCY AND THE SCHOOL- TO-PRISON PIPELINE IN TEXAS

STEVEN E. GILMORE*

*“So that the truant boy may go steady with the State,
So that in his spine a memory of wings
Will make his shoulders tense & bend
Like a thing already flown
When the bracelets of another school of love
Are fastened to his wrists,
Make a law that doesn’t have to wait
Long until someone comes along to break it.”¹*

— Larry Lewis

I. Introduction.....	230
II. The School-to-Prison Pipeline	231
III. Truancy in the Lone Star State	234
A. H.B. 2398: The Courts	235
B. H.B. 2398: The Schools	237
IV. Conclusion	239

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1. Larry Lewis, *Make a Law So That the Spine Remembers Wings*, POETRY, Feb. 2014, at 405.

I. INTRODUCTION

In the summer months of 2013, erstwhile Texas Governor Rick Perry was gifted the opportunity to pass bi-partisan legislation that would officially abolish the criminalization of truancy in the State of Texas.² Sadly enough for the children and young adults suffering the ill-effects of the then-present truancy laws, Governor Perry elected to veto the bill.³ Yet it seemed at the time all but certain that Governor Perry would sign the law, so much to the degree that State Senator John Whitmire claimed he had information which led him to conclude that the veto had been issued by mistake.⁴ While the machinations giving rise to Governor Perry's refusal to enact the legislation are not entirely clear,⁵ proponents of the bill would go on to find another unlikely ally on the right side of the center political line. On June 18, 2015, current Governor Greg Abbott signed H.B. 2398 into law,⁶ which effectively ended the longstanding reign of judicial terror upon the lives of young men, women, and children for the offense of truancy in Texas schools.⁷ Schools will now be tasked with addressing truancy matters with preventative and rehabilitative measures, rather than with the penal capacity of the state.⁸

Staggering in its breadth, H.B. 2398 amounts to nearly 100 pages of sweeping changes to the array of Texas laws and regulations concerning truancy violations.⁹ The Texas Family Code, Penal Code, Code of Criminal Procedure, and the Education Code are all chiefly affected by H.B. 2398, with multiple sections now amended, newly created, and others completely eliminated.¹⁰ The manner in which courts, school districts,

2. Terri Langford, *Schools, Courts Worry about New Truancy Law*, TEXAS TRIBUNE (July 12, 2015), <http://www.texastribune.org/2015/07/12/schools-courts-worry-about-truancy-law/>.

3. *Id.*

4. Mike Ward, *Senator says Perry vetoed his bill by mistake*, STATESMAN (June 20, 2013, 4:45 PM), <http://www.statesman.com/news/state-regional-govt-politics/senator-says-perry-vetoed-his-bill-by-mistake/nYQzB/>.

5. Matthew Haag, *Supporters of Texas truancy bill angered by Gov. Rick Perry's veto*, DALLAS MORNING NEWS (June 13, 2013, 12:21 PM), <http://www.dallasnews.com/news/politics/state-politics/20130614-supporters-of-texas-truancy-bill-angered-by-gov.-rick-perrys-veto.ecc>.

6. Tex. H.B. 2398, 84th Leg., R.S. (2015); Patrick Svitek, *Abbott Signs Bill Decriminalizing Truancy*, TEXAS TRIBUNE (June 19, 2015), <https://www.texastribune.org/2015/06/19/texas-decriminalize-truancy-after-abbott-signs-bil/>.

7. See Langford, *supra* note 2 (noting House Bill 2398 will eliminate criminal court hearings and adult jail time for truants, and exemplifying the horrors of previous truancy laws through the story of a fifteen-year-old truant).

8. *Id.*

9. *Id.*

10. See e.g., Tex. H.B. 2398, 84th Leg., R.S. § 3 (amending Subchapter B, Chapter 45, CODE OF CRIMINAL PROCEDURE by adding two articles).

and the Texas Education Agency (TEA) are intended to handle truant students has been greatly altered as a result of the bill's passage. Parents, guardians, and students now await the impact and relief of these changes to truancy prevention and disciplinary enforcement.¹¹

In order to understand the extent to which the new laws and regulations may affect the lives of students and their parents, it will be important to first briefly examine the material consequences of the school-to-prison pipeline, along with truancy enforcement under the old regime. With that in mind, we can more clearly examine the changes enacted by H.B. 2398 in order to make predictions as to its likely impact, particularly with regard to children and parents in vulnerable or at-risk situations. In making these calculations, we must then consider whether the campaign against the school-to-prison pipeline is nearing its conclusion, or if this simply marks yet another chapter in a much broader struggle.

II. THE SCHOOL-TO-PRISON PIPELINE

For the uninitiated, the school-to-prison pipeline represents the systemic funneling of predominantly non-white at-risk children from the school system to the juvenile or adult prison system via the school and state's power to suspend, expel, issue citations, criminalize, prosecute, and even imprison students for various infractions.¹² This problem has reached the point of near ubiquity, as even the two most recent conservative Texas Supreme Court Chief Justices have levied critical remarks against carceral punishment for school children.¹³ At its furthest extreme, we have witnessed the infamous "cash for kids" bribery scheme in Pennsylvania, where former Luzerne County Judge Mike Ciavarella, Jr. received more than one million dollars from juvenile justice center developers in exchange for routing the students appearing before his court into those same juvenile facilities.¹⁴ For his involvement, Ciavarella received twenty-eight years imprisonment.¹⁵ Searching for inferential compari-

11. Langford, *supra* note 2.

12. TEX. APPLESEED, CLASS NOT COURTS: RECONSIDERING TEXAS' CRIMINALIZATION OF TRUANCY 1-2 (Mar. 2015), https://www.texasappleseed.org/sites/default/files/TruancyReport_All_FINAL_SinglePages.pdf.

13. Hon. Nathan L. Hecht, *The State of the Judiciary in Texas*, TXCOURTS.GOV (Feb. 18, 2015), <http://www.txcourts.gov/media/857636/state-of-the-judiciary-2015.pdf>; Hon. Wallace B. Jefferson, *Recognizing and Combating the "School-To-Prison" Pipeline In Texas*, NAT'L CTR. FOR STATE CTS. (2012), <http://www.ncsc.org/sitecore/content/microsites/future-trends-2012/home/Other-pages/SchoolToPrison-Pipeline-In-Texas.aspx>.

14. Eyder Peralta, *Pa. Judge Sentenced To 28 Years In Massive Justice Bribery Scandal*, NPR (Aug. 11, 2011, 11:29 AM), <http://www.npr.org/sections/thetwo-way/2011/08/11/139536686/pa-judge-sentenced-to-28-years-in-massive-juvenile-justice-bribery-scandal>.

15. *Id.*

sons, one could examine the degree to which Texas' financial fortunes have come as a result of its juvenile disciplinary policies,¹⁶ and might also note former Governor Perry's personal and political ties to private prison profiteering.¹⁷ Perry's top aides, former staff secretary Mike Toomey and others, secured between \$9–17.5 million in government contracts for private prisons and other private sector corporations.¹⁸ It's worth noting that Toomey was also a powerful lobbyist for the private prison industry and later for education reform and charter schools.¹⁹ Any conclusion one might reasonably infer from those observations might be at least plausible, particularly in light of Perry's decision to veto legislation specifically aimed at alleviating the deleterious effects of the school-to-prison pipeline.²⁰

The pipeline operates simultaneously in a less outwardly illicit fashion via zero tolerance policies and other in-school disciplinary measures.²¹ Schools, particularly charter programs, have adopted the “broken windows” theory of policing in the form of zero tolerance punishment for minor behavioral infractions.²² The “broken windows” theory posits that teachers and school administrators must “focus relentlessly on appropriate consequences for small issues in order to ensure that more significant negative behaviors are unlikely to occur.”²³ Notwithstanding the supposed wisdom of this stated purpose, it has been observed that some schools use expulsions and enforcement of other zero tolerance disciplinary measures as a means of “pushing out” students expected to un-

16. Jyoti Thottam, *In Texas, courts turn truancy cases into cash*, AL JAZEERA (May 21, 2015, 5:00 AM), <http://america.aljazeera.com/articles/2015/5/21/in-texas-courts-turn-truancy-cases-into-cash.html> (highlighting the fines imposed on children in truancy courts pay for the salaries of judges, clerks, and constables).

17. Tim Murphy, *Flush With Prison Industry Dollars, Rick Perry Pushed Privatized Prisoner Care*, MOTHER JONES (Sept. 1, 2011, 5:00 AM), <http://www.motherjones.com/politics/2011/09/rick-perry-prison-privatization>.

18. Jason Cherkis & Paul Blumenthal, *Rick Perry's Former Staffers Made Millions As Lobbyists*, HUFFINGTON POST (Sept. 16, 2011, 1:54 PM), http://www.huffingtonpost.com/2011/09/16/texas-governor-rick-perry-staffers-lobbyists_n_966072.html.

19. Murphy, *supra* note 17; Patricia Kilday Hart, *Charter schools prompt fierce political battle*, HOUSTON CHRONICLE (Feb. 23, 2013, 8:25 PM), <http://www.houstonchronicle.com/news/kilday-hart/article/Charter-schools-prompt-fierce-political-battle-4303239.php>.

20. Langford, *supra* note 2.

21. See TEX. APPLESEED, *TEXAS' SCHOOL-TO-PRISON PIPELINE: DROPOUT TO INCARCERATION—THE IMPACT OF SCHOOL DISCIPLINE AND ZERO TOLERANCE 1* (2007), <https://www.texasappleseed.org/sites/default/files/01-STPPReport2007.pdf> (explaining how zero tolerance policies remove thousands of juveniles from the classroom and inevitably introduce them to the justice system).

22. Owen Davis, *Punitive Schooling*, JACOBIN (Oct. 17, 2014), <https://www.jacobinmag.com/2014/10/punitive-schooling/>.

23. *Id.*

derperform in standardized testing.²⁴ In Houston, Texas, truancy enforcement is the preferred method of “pushing out” students with educational disabilities.²⁵ Often enough, it has been observed that expulsions tend to lead to either drop out or introduction into the juvenile justice system, which then is likely to result in a heightened risk of interaction with the adult prison system, where over 80% of the adult inmate population is composed of school dropouts.²⁶ The enforcement of zero tolerance policies ensures regular contact between the school resource officers and students, which greatly increases the likelihood of students suffering physical harm at the hands of those officers.²⁷ Borrowing another tactic from law and order ideology, schools have become increasingly inclined toward creating a penal atmosphere—replete with a standing guard of armed school resource officers,²⁸ metal detectors,²⁹ surveillance cameras and other student tracking methods,³⁰ and even solitary confinement rooms.³¹ Such tactics are disproportionately employed in schools hosting predominantly poor and non-white students.³²

24. Monica Disare, *Moskowitz to face tough questions after reports of schools pushing out kids*, CHALKBEAT (Oct. 29, 2015, 5:15 PM), <http://ny.chalkbeat.org/2015/10/29/moskowitz-to-face-tough-questions-after-reports-of-schools-pushing-out-kids/#.VnLdVuJTbLN>; Leah Binkovitz, *Houston, other school districts cited for pushing out special-needs students*, HOUSTON CHRONICLE (Nov. 5, 2015, 8:13 PM), <http://www.houstonchronicle.com/news/houston-texas/houston/article/Houston-other-school-districts-cited-for-pushing-6613547.php>.

25. Binkovitz, *supra* note 24.

26. TEX. APPLESEED, *supra* note 21, at 1–2.

27. Mary Anne Henderson & Brian Platt, *Counter-Insurgency in the Classroom*, JACOBIN (Nov. 5, 2015), <https://www.jacobinmag.com/2015/11/ben-fields-stratford-assault-school-to-prison-resource-officer/> (discussing incidents of police violence in schools wherein students were assaulted, and concluding the reality is “once cops are on campus, they are in control”).

28. Erik Eckholm, *With Police in Schools, More Children in Court*, N.Y. TIMES (Apr. 12, 2013), http://www.nytimes.com/2013/04/12/education/with-police-in-schools-more-children-in-court.html?_r=0; Jaeah Lee, *Chokeholds, Brain Injuries, Beatings: When School Cops Go Bad*, MOTHER JONES (July 14, 2015, 5:00 AM), <http://www.motherjones.com/politics/2015/05/police-school-resource-officers-k-12-misconduct-violence>.

29. Jonathan Lemire, *New York City's schools debate removing metal detectors*, L.A. TIMES (Nov. 22, 2015, 3:00 AM), <http://www.latimes.com/local/education/la-na-nyc-schools-metal-detectors-20151122-story.html>.

30. Will Oremus, *Texas School District Drops RFID Chips, Will Track Kids With Surveillance Cameras Instead*, SLATE (July 17, 2013, 1:01 PM) http://www.slate.com/blogs/future_tense/2013/07/17/texas_northside_school_district_drops_rfid_tracking_privacy_not_the_main.html.

31. Jay Hathaway, *Texas Elementary School Accused of Locking Boy up in a “Focus Room,”* GAWKER (May 18, 2015, 11:45 AM), <http://gawker.com/texas-elementary-school-accused-of-locking-boy-up-in-a-1705213850>.

32. See Henderson & Platt, *supra* note 27 (identifying schools most likely to have police presence are those with a majority of poor and non-white students).

III. TRUANCY IN THE LONE STAR STATE

In 2001, Texas' 77th Legislature criminalized the excessive accumulation of unexcused absences by the offense known as "Failure to Attend School" (FTAS).³³ An FTAS offense was a Class C misdemeanor, typically triggered upon ten unexcused absences from school within a six-month period, or three or more unexcused absences within a four-week period.³⁴ Class C misdemeanor offenses are adjudicated in municipal courts and justice of the peace courts, which allow judges a veritable panoply of penal remedies to impose at their discretion.³⁵ Alternatively, truant students could be referred to juvenile court on the lesser utilized charge of "Conduct in Need of Supervision" (CINS).³⁶ A CINS charge can be levied for a number of various offenses, including truancy, and places the minor child within the jurisdiction of the juvenile court.³⁷ In 2013, only 1,000 CINS cases were filed related to truancy, compared with 115,000 FTAS charges filed that same year.³⁸ In general, Texas prosecuted more FTAS cases in justice of the peace and municipal courts than all other cases in juvenile courts statewide.³⁹ In addition, authorities could charge the student's parents with "Parent Contributing to Nonattendance" (PCN), also a Class C misdemeanor, for the child's conduct, giving rise to an FTAS offense.⁴⁰ As with FTAS charges, each PCN charge carried with it the possibility of receiving a final conviction for a criminal offense and potential fine of up to \$500 per case.⁴¹ Approximately 81,400 PCN offenses were filed in Texas against the parents of truant children in 2013.⁴²

33. TEX. EDUC. CODE ANN. § 25.094 (West 2001), *repealed by* Act of June 18, 2015, Tex. H.B. 2398, 84th Leg., R.S. § 41(1), eff. Sept. 1, 2015; *see also* TEX. CRIM. PROC. CODE ANN. art. 45.054 (West 2001), *repealed by* Act of June 18, 2015, Tex. H.B. 2398 84th Leg., R.S. § 41(1), eff. Sept. 1, 2015 (providing the court procedures by which punishment would be assessed).

34. TEX. FAM. CODE ANN. § 51.03(b)(2) (West 2001).

35. TEX. APPLESEED, *supra* note 12, at 5–6 (describing the range of punishments applied by the courts, which included forcing the child to drop out and take the GED—which resulted in 6,423 failed GED exams by forced drop outs from 2011–2013—fining the student up to \$500 per truancy offense, order tutoring, suspend driver's license, community service, impose counseling, substance abuse programs, GPS monitoring, drug testing, and even disclosure of all social media passwords so that the court may monitor the student's online activity).

36. *Id.* at 2.

37. *Id.*

38. *Id.*

39. *Id.* at 40.

40. TEX. EDUC. CODE ANN. § 25.093 (West 2015).

41. TEX. YOUNG LAWYER'S ASS'N., TRUANCY GUIDE (2012), [http://www.tyla.org/tyla/assets/File/TruancyPamphletSB0162E0913P1WEB\(1\).pdf](http://www.tyla.org/tyla/assets/File/TruancyPamphletSB0162E0913P1WEB(1).pdf).

42. TEX. APPLESEED, *supra* note 12, at 41.

Revenue from fines and court costs in 2014 related to FTAS offenses—93,786 total FTAS offenses—was estimated to reach \$1,266,111.⁴³ As of 2014, Texas had been prosecuting truancy cases at double the rate of all other states combined.⁴⁴ FTAS offenses made up nearly half of all juvenile cases charged with non-traffic related Class C misdemeanors.⁴⁵ The bulk of those truancy charges—roughly 8%—were disproportionately enforced against economically disadvantaged or otherwise vulnerable children.⁴⁶ This created further complications for those children and their families in particular, as the most common sanction for truancy came in the form of monetary fines.⁴⁷ Contempt charges awaited the children and parents unable to cough up funds for the imposed fine, which may have then resulted in the child or parent’s arrest and incarceration.⁴⁸ As of 2015, at least 1,000 Texas students were ordered to spend time in jail on truancy-related charges, with twenty-two of that number occurring just in Dallas County since January of 2013.⁴⁹ The enforcement of truancy prevention by use of penal and carceral measures evinced a desire to “push out” the targeted students, as appears to be the case in Houston,⁵⁰ however, it has been difficult to conduct rigorous statistical scrutiny of truancy data because many schools submit truancy records that are inaccurate or incomplete, while others fail to submit any data at all.⁵¹

A. *H.B. 2398: The Courts*

The passage of H.B. 2398 comes as a great boon to the children and families most affected by the previous mechanisms of truancy enforcement. The offense known as “Failure to Attend School” has now been repealed, and all cross-references to former Education Code § 25.094 have been stricken from the books.⁵² Truancy offenses can no longer be filed in criminal courts, but must now be handled as civil matters in the newly designated truancy courts.⁵³ The truancy courts are composed of municipal courts, justice courts, and some constitutional county courts

43. See Fiscal Note, Tex. H.B. 2398, 84th Leg., R.S. (2015) (adjusting the revenue calculation in consideration of the fact that some do not pay the fine).

44. TEX. APPLESEED, *supra* note 12, at 1.

45. *Id.* at 40.

46. *Id.* at 2, 59–60.

47. *Id.* at 2, 62.

48. *Id.* at 63.

49. Langford, *supra* note 2.

50. Binkovitz, *supra* note 24.

51. TEX. APPLESEED, *supra* note 12, at 50.

52. Tex. H.B. 2398, 84th Leg., R.S. (2015); see also Langford, *supra* note 2 (commenting on the lack of uniform method of truancy data collection).

53. TEX. FAM. CODE ANN. § 65.004 (West 2015).

that have been given civil truancy jurisdiction.⁵⁴ For court purposes, the new civil offense is simply referred to as “truant conduct,” and the Family Code defines the offense and provides an affirmative defense, whereby the student has the burden to prove by a preponderance that the excessive absence in question was involuntary or that the absence should have been excused.⁵⁵ Because the truancy charges are no longer criminal in nature,⁵⁶ courts are restricted to solely non-carceral remedies should the student fail to meet their burden to excuse the absence in truancy court, or if the district (via the state) fails to prove beyond a reasonable doubt that the student engaged in truant conduct.⁵⁷ Further, and perhaps most significantly, all courts must order the expunction of all records related to the FTAS offense, irrespective of whether the charge resulted in a conviction, and without regard to whether the individual has even filed a petition for expunction.⁵⁸

Previously, courts could order a student found in contempt of court to report to jail, but the truancy court can no longer employ that method; however, the court may still order a parent or other party in direct contempt to confinement of no more than three days, and may also order no more than forty hours of community service.⁵⁹ Appeal of a truancy court decision vacates the order of the truancy court, and shall occur in juvenile court where a *de novo* trial may take place.⁶⁰ Appeal of the juvenile court decision may be brought the same as any other juvenile appeal.⁶¹ Appearance of counsel at trial and by appeal is permitted, though not by appointment.⁶²

As for charges brought under the still existing PCN offense, courts now have broader defined discretion to dismiss charges *sua sponte* based on what it determines would be in the best interests of justice.⁶³ In making this determination, the court is to evaluate each individual as to their likelihood of recidivism, and also for whether the explanation for their absence carries sufficient justification.⁶⁴ Though still a misdemeanor,⁶⁵ the

54. *Id.* § 65.004.

55. *Id.* § 65.003.

56. *Id.* § 65.003(b).

57. TEX. EDUC. CODE ANN. § 25.0951 (West 2015).

58. TEX. CRIM. PROC. CODE ANN. art. 45.0541 (West 2015).

59. TEX. FAM. CODE ANN. § 65.253.

60. *Id.* § 65.151(b).

61. *Id.* § 65.151(c).

62. *Id.* § 65.153.

63. TEX. CRIM. PROC. CODE ANN. art. 45.0531 (West 2015).

64. *Id.* art. 45.0531.

65. Terri Langford, *New Truancy Law Set to Put Pressure on Schools, Parents*, TEXAS TRIBUNE (Aug. 8, 2015), <http://www.texastribune.org/2015/08/08/new-truancy-law-puts-pressure-schools/>.

offense itself is now punishable by fine only, and a schedule of fine ceilings per offense has been included in the applicable section of the Education Code itself.⁶⁶ No longer may courts levy fines up to \$500 per offense, but must now follow a schedule of fines that is capped at \$100 for the first offense and increases per subsequent PCN violation.⁶⁷ As schools and the courts struggle with adapting to the changes, a concern is that the number of parents charged with PCN offenses may increase post-H.B. 2398.⁶⁸

B. *H.B. 2398: The Schools*

The internal procedures and practices the schools must implement have been greatly impacted by the passage of H.B. 2398. Upon the third unexcused absence, the school district must issue a warning letter that informs the student of possible enrollment revocation after accumulating more than five unexcused absences.⁶⁹ Though schools maintain discretion to revoke enrollment of truant students with more than five unexcused absences in a given semester, the school may no longer do so on a day in which the student is physically present at school.⁷⁰ As an alternative to revoking the student's enrollment, the district may implement a "behavior improvement plan" to enforce compulsory attendance requirements.⁷¹ This behavior improvement plan is outlined in the truancy prevention measures provided in section 25.0915 of the Education Code.⁷² The section intends for these measures to restrict the need for referral to truancy court and to be imposed proactively—before the student accumulates excessive unexcused absences—and directs the school to collaborate with the student and the student's parents in devising the means to address the issue and prevent future unexcused absences.⁷³ The school may refer the student to counseling or other "in-school or out-of-school services aimed at addressing the student's truancy,"⁷⁴ impose school-based community service,⁷⁵ or even refer the student to truancy court;⁷⁶ however, the school cannot refer the student to truancy court if the unexcused absences were the result of pregnancy, status within the state foster pro-

66. TEX. EDUC. CODE ANN. § 25.093 (West 2015).

67. *Id.*

68. Langford, *supra* note 65.

69. TEX. EDUC. CODE ANN. § 25.085.

70. *Id.* §§ 25.085, 25.087.

71. *Id.* § 25.0915(a-1)(A).

72. *Id.*

73. *Id.*

74. *Id.* § 25.0915(a-1)(2).

75. *Id.* § 25.0915(a-1)(B).

76. *Id.* § 25.0915(a-1)(2).

gram, homelessness, or status as the “principal income earner for the student’s family.”⁷⁷ Referrals to truancy court are subject to strict filing requirements, and the court must dismiss if the school’s referral fails to meet the criteria outlined in 25.0915(c) of the Education Code.⁷⁸ The school may also file a complaint against a student’s parent, but will have the burden of proving criminal negligence by the parent, and the complaint will be subject to similarly strict filing requirements.⁷⁹

In order to implement the truancy prevention measures, all school districts are required to employ a juvenile case manager, or to designate an existing employee to serve as a truancy prevention facilitator, who must meet with the truancy court’s case manager or other designee on at least an annual basis to discuss the effectiveness of truancy prevention measures.⁸⁰ The trouble here is that these requirements and other responsibilities to develop and implement truancy prevention programs are being foisted upon the school districts without any assurances that school funding will be increased to meet the new standards.⁸¹ Naturally, issues of funding are likely to disproportionately affect the poorer school districts.⁸²

The TEA has been tasked with assisting the schools in developing truancy prevention programs.⁸³ The TEA is to establish a set of best practices and rules setting the baseline standard for truancy prevention measures to be met by the school district, as well as sanctions to be imposed should a school fail to comply with those standards.⁸⁴ Among the accepted truancy prevention measures to be developed in conjunction with TEA guidelines, the school districts must now implement one of the following: (1) a forty-five day (or less) behavior improvement plan that identifies the prohibited conduct committed by the student,⁸⁵ as well as specifies penalties for additional violations;⁸⁶ (2) in-school community

77. *Id.* § 25.0915(a-3)(1)–(4).

78. *Id.* § 25.0915(c).

79. *Id.* § 25.0951(b).

80. *Id.* § 25.0915(d)–(e).

81. Langford, *supra* note 2.

82. See Al Kauffman, *Texas Supreme Court has opportunity to improve public education*, MYSA (Aug. 30, 2015, 2:38 PM), <http://www.mysanantonio.com/opinion/commentary/article/Texas-Supreme-Court-has-opportunity-to-improve-6471713.php> (discussing the inequity of school finance, funding, and the disparate impact on poorer school districts).

83. TEX. EDUC. CODE ANN. § 25.0915(f)–(g).

84. *Id.*

85. *Id.* § 25.0915(a-1)(A)(i)–(ii).

86. *Id.* § 25.0915(a-1)(A)(iii).

service;⁸⁷ or (3) counseling or similar intervention designed specifically to address the truant conduct.⁸⁸

IV. CONCLUSION

Given the recent enactment of this legislation, only effective since September 1, 2015, it remains to be seen what material effect these new measures will have on Texas schools, students, and their families. Undoubtedly, this fresh stance on truancy will be a welcome improvement for students, particularly those whose records will no longer be tainted by prior criminal convictions for truancy offenses. Nonetheless, there remains some cause for concern moving forward. The changes to the existing laws and the requirement for additional or redesignated staffing do not come with a mandate for additional funding. Further, with the ever-increasing emphasis on improving standardized testing scores, it is unclear whether schools will be adversely affected as a result of keeping students enrolled that may have otherwise been expelled. The additional emphasis on the district to employ peace officers to serve as attendance officers contributes to the rapidly mounting problem of dangerous and excessive confrontations between students and law enforcement officers on school campuses. Lastly, though the changes provide greater latitude to the schools and courts in exercising their discretion to tailor truancy prevention measures, H.B. 2398 provides comparatively little as to definitive guidance. There are no defined incentives for compliance beyond the minimum standards. Without more clearly articulated direction, it is possible the schools may revert to their prior means of truancy prevention, or to impose new measures that are merely perfunctory in nature. With these concerns in mind, it is necessary that parents and education activists continue to press for greater reforms, particularly as it relates to lessening the interference of the coercive arm of the state. The school-to-prison pipeline is a systemic issue that requires fundamental change. Decriminalizing truancy is merely a single step toward dismantling the school-to-prison pipeline. Focus is likewise owed to rectifying the inequities of school finance to maximize the potential of all students, and to ensure all school districts are sufficiently financially supported in order to provide the necessary services parents and students need to ensure attendance. Parents should inquire as to the district's truancy prevention plan, involve themselves in the process as much as possible, and raise questions if the district employs no more than the minimum requirements. Further, parents and educators must rally against the use of law enforcement on campus, as regular interaction between students and po-

87. *Id.* § 25.0915(a-1)(B).

88. *Id.*

lice increases the likelihood of harm to students and risk of eventual carceral punishment. Those concerns notwithstanding, there is much to celebrate here. At the very least, it appears children will no longer be made criminals simply because they were absent, and that is some victory.