



November 15, 2016

*Governor Wolf signed new truancy legislation into law on Thursday, November 3, 2016. The new provisions take effect at the start of the 2017-18 school year. This factsheet highlights important provisions of the new law relating to the rights of families, and obligations and roles of schools, courts, and children and youth agencies. Key departures from the prior truancy law are in red.*

**The law clearly states that the purpose of Pennsylvania's truancy law is** to improve school attendance and deter truancy "through a comprehensive approach to consistently identify and address attendance issues as early as possible with credible intervention techniques" in order to:

- **Preserve the unity of the family** whenever possible as the underlying issues of truancy are addressed.
- **Avoid possible entry of children into foster care, the loss of housing** and other unintended consequences of disruption of an intact family unit.
- **Confine a parent or guardian for truancy-related offense only as a last resort** and for a minimum amount of time.

It is critical that all of those who apply the new law—schools, law enforcement officers, children and youth agencies (CYS), advocates and practitioners, and judges—do so in accordance with these principles, which are rooted in evidence-based best-practices to prevent and reduce truancy.

**Definition of "truant."** The new law explicitly defines "truant" as a child subject to compulsory school laws "having three (3) or more school days of unexcused absence during the *current* school year." *The prior law did not define "truant."*

**New definition for "habitual truancy."** The new law streamlines the definition of "habitual truancy." Under the new law, "habitual truancy" is defined as a child subject to compulsory school laws "having six (6) or more school days of unexcused absences during the *current* school year." Therefore, a child is habitually truant once he or she accumulates six unexcused absences during the course of the school year. These absences do not need to run consecutively.

**Charter schools.** The law *substantially changes* the way in which charter and cyber charter schools address student attendance by shifting responsibility from an authorizing school district to the charter school:

- Every charter school, including cyber charters, must establish an attendance policy. A charter's attendance policy *may differ* from the policy of the school district in which the child resides. Therefore, parents must be notified of their child's charter school attendance policy.
- Charter and cyber charters must now report unexcused absences directly to the Pennsylvania Department of Education (PDE) through the Pennsylvania Information Management System (PIMS).

- **Charter and cyber charter schools are now responsible for filing citations with magisterial district courts or referring truancy to the local CYS agency.** That is because the law makes the provisions regarding the filing of citations expressly binding on charter schools. This does not preclude charter and cyber charter schools from participating in truancy elimination and reduction programs operated by the local school district or CYS agency. *This is a significant change from the prior law. Previously, the law and PDE policy required charters to report school attendance and unexcused absences to a child's school district of residence, whose obligation it was to file a citation in court.*

**Procedure when child is truant** (three unexcused absences). *The new law creates two new "procedural" requirements.* The first pertains to procedures schools must follow when a child is "truant"; the second pertains to the procedures a school must follow when a child is "habitually truant."

The law expressly **requires** schools to **notify in writing** the person in parental relation with a child within **ten (10) school days** of the child's third unexcused absence that the child has been "truant." This notice:

- **Must** include a description of the consequences that will follow if the child becomes habitually truant in the future;
- **Must** be in the mode and **language of communication preferred by the person in parental relation**; and
- **May** include the offer of an attendance improvement conference.

If the child continues to be truant and incurs additional absences after this notice has issued, **the school must offer the student and parent a student attendance improvement conference.** (See discussion of student attendance improvement conferences, *infra*.)

**Procedure when child is habitually truant** (accumulates six unexcused absences). Like the old law, the procedure schools must follow when a child is habitually truant depends on the age of the child. *Under the prior law, the critical age was thirteen (13). Now, the critical age is fifteen (15).*

◆ **Habitually truant children under fifteen years of age.** If a habitually truant child is under fifteen (15), the school **must** refer the child to **either**: (1) a school-based or community-based attendance improvement program **or** (2) the county CYS for services or possible disposition as a dependent child under the Juvenile Act. Additionally, the school **may** file a citation against the parent of a habitually truant child under fifteen (15) in a magisterial district court.

◆ **Habitually truant children fifteen years of age and older.** If a habitually truant child is fifteen (15) or older, the school must either: (1) refer the child to a school-based or community-based attendance improvement program **or** (2) file a citation against the student **or** parent in a magisterial district court. If a habitually truant child aged fifteen (15) or older incurs additional absences after a school refers that child to an attendance improvement program or the child refuses to participate in an attendance improvement program, the school **may** refer the child to the county CYS agency for possible disposition as a dependent child.

**In all cases, regardless of age, where a school refers a habitually truant child to a magisterial district court or CYS, the school must provide verification that it convened and held a student attendance improvement conference.**

Consistent with evidence-based best practices, the law defines “school-based or community-based attendance improvement program” as a “***program designed to improve school attendance by seeking to identify and address the underlying reasons for a child’s absence.***” ***While such a program may include an educational assignment to an alternative education program, it explicitly does not include referral to an Alternative Education for Disruptive Youth (AEDY) program under Article XIX.***

**Schools must create attendance improvement plans prior to referring truancy to the courts.** The new law requires that schools convene attendance improvement conferences to create ***individualized plans*** to address and reduce a student’s truancy prior to referring the matter to law enforcement or the courts. This means that if a school takes legal action against a student or parent for truancy without having first convened an attendance improvement conference and creating a plan, the matter is procedurally flawed and may be dismissed. ***This is a critical and substantial change from the prior law which did not require schools to convene or create attendance improvement plans at any time, let alone before filing a citation in court.***

**The new law defines “school attendance improvement conference”** as a “conference where the child’s absences and reasons for the absences are examined in an effort to improve attendance, with or without additional services.” The law requires schools to invite the following individuals to the conference:

- The child.
- The person in parental relation to the child.
- Other individuals identified by the person in parental relation who may be a resource (e.g. a grandparent, sibling, family friend, advocate, community member, etc.).
- Appropriate school personnel.
- Recommended service providers (e.g. case managers, behavioral health providers, probation officers, children and youth practitioners, etc.).

The school **must** hold the conference even if the parent declines to participate or fails to attend after the school provides ***advance written notice*** and ***makes attempts to communicate via telephone***. There is no legal requirement for either the child or parent to attend an attendance improvement conference. The school must document the outcome of any attendance improvement conference in a written attendance improvement plan. Schools may not take further legal action to address unexcused absences until after the date of the scheduled attendance improvement conference has passed.

Attendance improvement conferences must not be perfunctory warnings that further absences will result in legal action against the student or parent. **Schools must create attendance improvement plans in conformity with the overriding purposes of the law as set forth in the preamble, discussed *supra*.**

**Schools cannot impose discipline for truant behavior that excludes the student from the classroom.** The new law forbids schools from imposing discipline that excludes a student from the classroom on a student for truant behavior. Specifically, the law states that “schools shall not expel or impose out-of-school suspension,

disciplinary reassignment or transfer for truant behavior.”<sup>1</sup> *This is a critical change that will not only reduce schools’ over-reliance on punitive and exclusionary discipline measures, but will end the practice of pushing truant students further away from school through ineffective exclusions. This provision also applies to charter and cyber charter schools.*

**Procedure in magisterial district courts.** The new law clarifies the procedure that must be followed when schools refer cases of habitual truancy to the magisterial district courts. *Such explicit procedures were not delineated in the prior law.*

◆ **Venue** is determined based on the location of the school in which the child is enrolled.

◆ **Notices.** A magisterial district court must provide notice of the hearing to the following:

- The school.
- The person in parental relation.
- The local CYS agency.

◆ **Burden of proof.** *The new law substantially alters and clarifies the burden of proof that applies at a trial on a truancy citation.* At the trial with respect to the citation, the burden, at all times, is on the school to prove beyond a reasonable doubt the following:

- The child was habitually truant;
- While subject to the compulsory attendance law;
- Without “justification.”

This standard aligns with the definition of habitual truancy in the Juvenile Act. The Superior Court has held that the **Juvenile Act places the burden on the Government to prove each of these three elements.**<sup>2</sup> *This means that the school must prove each of these elements, including that the habitual truancy was not justified.* There is no burden on a student or parent to put forth evidence that the habitual truancy was justified. Of course, a student or parent may still put forth evidence that the habitual truancy was justified. **If the school fails to prove that the habitual truancy was not justified, the school cannot carry its burden.**

◆ **Affirmative defenses.** Student and parent-respondents may put forth evidence of an “affirmative defense” that justifies the habitual truancy. For example, at least one court has held that a student has a right to present evidence of her disability to justify her habitual truancy.<sup>3</sup> Additionally, the law continues to permit parents to present an affirmative defense that he or she took every reasonable step to ensure the child’s attendance at school. Affirmative defenses must be proven by a preponderance of the evidence.

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<sup>1</sup> As stated earlier, this means that part of the Pennsylvania’s law providing for assignments to AEDY programs is no longer valid as it relates to assignments to AEDY for “habitual truancy.”

<sup>2</sup> *In re C.M.T.*, 861 A.2d 348, 352-55 (Pa. Super. Ct. 2004).

<sup>3</sup> *Id.* at 355-57.

◆ **Relevant evidence.** The new law explicitly states that, at sentencing, the judge must permit the school, parent, or student to present relevant information that will assist the judge in making an informed decision regarding the appropriate sentence. This is important because, as discussed *infra*, the new law affords considerable discretion to local judges in determining the most appropriate penalty in conformity with the purposes of the law.

**Provides discretion to local magistrates to choose the appropriate punishment.** *The new law reforms the penalty provisions of the statute to provide local judges with considerable discretion to impose appropriate penalties in individual cases.* Penalties should, of course, be imposed in accordance with the principles of the law as set forth in the preamble, discussed *supra*.

**Changes in the penalty scheme: Increased fines and reduced jail time for truancy.** *The new law substantially changes the penalties that judges may impose on students and parents for violating the compulsory school attendance law by imposing new progressive fines and reducing jail time.*

◆ **Increased fines up to \$750.** *The new law significantly increases the amount of money a judge may fine a student or parent for habitual truancy.* The old law permitted a magistrate to fine a student or parent up to \$300 per offense. *The new law states that a person convicted of habitual truancy may be fined: (1) up to \$300 per offense, with court costs, for the first offense; (2) up to \$500 per offense, with court costs, for the second offense; and (3) up to \$750 per offense, with court costs, for a third and any and all subsequent offenses.*

**HOWEVER**, the new law defines “offense” as “each **citation** filed under Section 1333.1 for a violation of the requirement for compulsory school attendance . . . *regardless of the number of unexcused absences averred in the citation.*” *This is an important clarification absent in the old law. This means that fines must be limited to the citation, not the number of unexcused absences alleged in the citation.* For instance, if a school files a citation against a parent alleging that in the month of October, the parent’s child was illegally absent ten (10) days, and the magistrate finds that the parent violated the compulsory school attendance law, the magistrate may only fine the parent up to \$300, if it is the parent’s first offense. In the past, because of ambiguity in the law, some magistrates assumed that they had authority to fine a parent up to \$3000 in that situation (\$300 per illegal absence). **This is an important clarification that limits the imposition of excessive and crippling fines on poor families.**

*\*It is critical that magistrates responsibly exercise the discretion afforded to them under the law in imposing penalties. In meting out punishment for truancy in accordance with the guiding principles of the law, discussed *supra*, magistrates should rarely and uncommonly fine students and parents at the statutory maximum. Such fines not only have devastating collateral consequences for poor families, but are contraindicated to reduce truancy.*

◆ **Jail reduced to three days.** *The new law reduces jail time to three days, from five days, and adds additional safeguards to ensure that poor families are not jailed for their inability to pay.* The new law states that a court **may** jail a parent who fails to pay a fine or completed court-ordered community service for a period not to exceed three days in any one case. That means that no matter what a parent should never be in jail for more than three days.

*A judge may jail a parent only if (1) the court makes a specific finding that the parent had the ability to pay the fine or complete the community-service and (2) that parent's non-compliance was willful.* These safeguards seek to ensure that poor families, who face obstacles to compliance with fines and community service, are not jailed for their poverty, a practice that is not only oppressive but contraindicated by evidence-based research on truancy reduction best practices. **NOTE: The failure of a student to comply with a fine or costs associated with court must not be considered a "delinquent act" under the Juvenile Act.**

♦ **Referral to CYS for second conviction in three years.** Under the new law, if a parent or student is convicted a second time for habitual truancy within three years, the court must refer the child to CYS for services or possible disposition as a dependent child under the Juvenile Act.

♦ **Provides judges with discretion on whether to send the Department of Transportation a certified record of a student's conviction for license suspension.** The prior law **required** magistrates to send a record of a student's certified conviction to the Department of Transportation (DOT); *the new law provides local judges with discretion on whether to forward a student's conviction to DOT.* While the law still requires DOT to suspend a child's license, *the discretion the new law affords to magistrates should limit the number of students whose licenses are suspended for truancy.*

**Restoration of driving privileges is more fair to students.** Where a student's license has been suspended, he or she may seek to have his or her eligibility restored by providing DOT with a form that indicates that (1) the child has attended school for a period of at least two months after the first conviction or four months after the second conviction without an unexcused absence or tardy; or (2) is subject to exception to the compulsory school attendance law; or (3) has graduated from school. *The prior law did not provide students with an opportunity to seek license restoration.* The new law's restoration option provides an incentive to students to increase attendance.

**All students are eligible for an occupational limited license.** *In contrast to the prior law, the new law provides that students who have been convicted of violating the compulsory school attendance laws and had their licenses suspended may apply for an occupational limited license pursuant to 75 Pa.C.S. § 1553 in order to get to and from work or school.* Thus, even a student whose license has been suspended may drive to school if he or she applies for and receives an occupational limited license. This removes a potential barrier to school attendance.

**Streamlined process for expungement.** *The prior law simply did not provide for the expungement of records. Under the new law, a child who has been convicted of habitual truancy may apply for an expungement. The court must grant a child's application if (1) the child has earned a high school diploma, a Commonwealth secondary diploma, or another PDE-approved equivalent, or is subject to an exception to compulsory school attendance and (2) the child has satisfied any sentence imposed by the court with respect to the conviction,* including payment of fines and costs. If a court grants an expungement application, the court must also order DOT to expunge all administrative records related to the convictions. Courts should make students aware of the opportunity to seek an expungement throughout the dispositional process.