



SB 07-50 (Truancy) Symposium Report and Implementation Guide

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COLORADO STATE COURT ADMINISTRATOR'S OFFICE
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EXECUTIVE SUMMARY

SB 07-50 now permits non-attorney school district employees to represent school districts in truancy proceedings. On September 14, 2007 the Colorado State Court Administrator's Office hosted a multi-disciplinary symposium to examine the new law and best practices. Participants examined data and best practices at both the local and national levels, specifically pertaining to the issue of representation of school districts by non-attorneys in truancy proceedings. The result of this analysis was to identify successful practices to be presented to jurisdictions implementing this legislation statewide.

The recommendations are summarized as follows:

Recommendation #1: In jurisdictions where school districts will have truancy officers or other non-attorney representing the school district, the local stakeholders should consider how contempt proceedings will be handled so as to avoid due process challenges.

Recommendation #2: Convene a group of stakeholders to devise a community response to truancy prevention and reduction. Programs that support attendance, attachment and achievement while providing for increased family involvement, youth and parent accountability, and the coordination and integration of other programs and services will lead to greater youth successes. Community stakeholders may include law enforcement, courts, schools, SB 94 committees (juvenile services planning committees) and social services.

Recommendation #3: Courts should devise written protocols explaining local practices and procedures for handling truancy cases. The Court should also review the protocols with stakeholders and communicate the Court's expectations to the parties.

Recommendation #4: Courts must adhere to all provisions set forth in Colorado Juvenile Rule of Procedure 3.8 when sentencing a truant to detention. The failure of the court to properly administer the Valid Court Order process set forth in C.J.R.P 3.8 will result in financial sanctions against the State.

Recommendation #5: Receive technical assistance from others. Judge Dennis Maes and Magistrate Rebecca Moss (now in Douglas County) started a truancy reduction program in Pueblo that is now recognized as one of the best in the country. Other jurisdictions have also implemented successful practices that they are willing to share. Further, the Colorado Juvenile Justice and Delinquency Prevention Council will prepare a technical assistance request for the Office of Juvenile Justice and Delinquency Prevention to fund ten days of technical assistance to be provided by the National Center for School Engagement to assist Colorado statewide in identifying best practices and action steps.

I. Introduction

During the Sixty-Sixth Session of the Colorado General Assembly, Senate Bill 07-50 (hereinafter “SB 07-50”) was passed and signed into law on March 22, 2007. The new law enables non-attorneys designated by school boards to file and prosecute truancy petitions in the district court under the School Attendance Law of 1963, § C.R.S. 22-33-101 to 22-33-205. Testimony on SB 07-50 indicated that the law would assist juveniles by bringing youth in need of state intervention to the attention of the court. Testimony reflected that some school districts refrained from hiring attorneys to represent the school district in truancy actions because of budget concerns. The new law offers the potential of eliminating the cost associated with retaining legal counsel.

Prior to the passage of the law, numerous juvenile judges and magistrates across Colorado were asked to review and provide comment on SB 07-50. Almost all of the judicial officers commented that truancy matters merit significant attention, and that intervening at an earlier stage in a youth’s life, as in a truancy case, is far preferable to waiting until a youth is more deeply entrenched in state proceedings, as in delinquency or dependency and neglect cases. Some responded that increasing a school district’s access to the court in truancy matters was an important and a positive goal that outweighed other considerations. Others responded however that 1) the law encroached on the Colorado Supreme Court’s exclusive jurisdiction to regulate the practice of law, thus violating the separation of powers; and 2) that the filing and prosecution of truancy petitions by non-attorneys presented unique training challenges, particularly when the prosecution of contempt citations can result in the incarceration of the juveniles or adults involved.

At the request of a number of judicial officers and other stakeholders, the Colorado State Court Administrator’s Office convened this symposium to consider implementation of SB 07-50 as well as related truancy issues. Participants included judges, magistrates, judicial staff, school officials, attorneys, district attorneys, criminal justice experts, and educational experts. The composition of symposium participants was intended to provide for a holistic and multi-disciplinary analysis of the new law, providing the best opportunity to reach practical solutions that would assist judicial districts implementing the new law statewide.

This report and the accompanying materials are being provided to judicial officers and others to present an overview policy considerations and best practices in truancy with an eye to implementation of SB 07-50. Staff hopes that this report will assist individual judicial districts in the development of local policies and procedures that effectively implement the legislation.

The symposium addressed these specific issues:

A. Best Practices

Local and national data and best practices in truancy proceedings were presented. Heather MacGillivray of the National Center for School Engagement presented a comprehensive analysis of the effects of truancy on crime and subsequent court involvement.

The group also heard a presentation from Magistrate Rebecca Moss and Judge Dennis Maes on their successful truancy court in Pueblo. Attendees were encouraged by the success of this Colorado model and at the same time recognized that additional resources are imperative if Colorado is to take a more comprehensive approach to truancy matters.

B. Training

The symposium identified some of the training needs of school district staff responsible for representing school districts in truancy proceedings. The group reviewed training guides developed by individual districts, in particular Weld County and Adams County. These guides are incorporated as appendices for other districts to adapt according to local practices and culture.

C. The Role of the District Attorney

The symposium was also intended to examine the potential of authorizing district attorneys to represent school district in truancy proceedings. However, limited discussion of this topic revealed that this is not likely a viable solution statewide. Thus, this report does not explore this possibility.

II. Constitutional Considerations

It is within the sole province of the Supreme Court to regulate the practice of law in Colorado. It has been argued that 07-50 encroaches upon the Supreme Court's authority, and thus the separation of powers. John Gleason, Director of the Office of Attorney Regulation was asked to provide some background on SB 07-50 with an eye to identifying some of the policy considerations that were raised when the bill was presented during the legislative session. Mr. Gleason also indicated that the law could raise constitutional concerns or a complaint regarding the unauthorized practice of law. Others attendees questioned whether the bill would withstand constitutional scrutiny were the issue presented.

As the participants discussed, judicial districts will need to consider how to address the filing and prosecution of truancy petitions by non-attorneys. The prosecution of contempt citations can result in the incarceration of the juveniles or adults involved. For example, can the truancy officer represent the school district in a contempt action? Can the truancy officer bring the contempt action and then serve as a witness in the action? Adams County addresses this issue by bringing in attorneys at the contempt stage. Other counties are considering allowing non-attorneys to proceed in contempt actions once the non-attorneys have received specific training.

Recommendation #1: In jurisdictions where school districts will have truancy officers or other non-attorney representing the school district, the local stakeholders should consider how contempt proceedings will be handled so as to avoid due process challenges.

III. Best Practices in Truancy Prevention and Reduction

A. The National Center for School Engagement

Heather MacGillivray presented data on truancy prevention and reduction (Appendix A). Ms. MacGillivray works with the National Center for School Engagement “NCSE” which promotes truancy prevention and school success. The NCSE is an initiative of the Colorado Foundation for Families and Children and provides training, evaluation and technical assistance for truancy reduction and prevention programs.

Data was collected by NCSE from Denver Public Schools (DPS) from 2002 through 2005 to assess the prevalence of truancy. Ms. MacGillivray indicated that if similar data was collected from other school districts across Colorado that the results would likely be very similar. She also praised Denver Public Schools for seriously addressing the truancy issue and making the data available to others.

The results were as follows:

- ◇ Approximately 60% of students who left DPS for juvenile incarceration or detention were chronically truant.
- ◇ Approximately 60% of students who were expelled from DPS were chronically truant.
- ◇ Approximately 20% of students who left to be home schooled were chronically truant.
- ◇ Approximately 16% of students who attended more than one school in a school year was chronically truant.
- ◇ Approximately 13% of students whose exit code was “mutual consent (under the age of 16),” “runaway or other causes,” or “no trace of enrollment in another school” were chronically truant.
- ◇ Approximately 50% of students whose exit code was “dropout” were chronically truant.

Ms. MacGillivray also presented national data indicating a high correlation between truancy and delinquent behavior. She posited that truancy is a community problem that requires a community response. In order to prevent and reduce truancy, Ms. MacGillivray suggested that jurisdictions should consider developing programs that include a broad range of stakeholders from the schools, courts, law enforcement and social services. She reported that community based programs in demonstration sites such as Seattle, Jacksonville, Honolulu, Tacoma have shown to be very successful in reducing and preventing truancy. The focal points of these programs are attendance, attachment to school and achievement in school. The National Center for School Engagement can consult with courts and schools in communities looking to reduce truancy.

Additionally, jurisdictions interested in developing and implementing successful truancy reduction programs should consider reviewing a paper authored by Lorenzo Trujillo of the University of Colorado Law School titled “School Truancy: A Case Study of a Successful Truancy Reduction Model in the Public Schools.”¹ The article defines the truancy problem, outlines the process of developing and implementing a truancy reduction program and provides cost savings information and other program related data for a program developed in Adams County School District 14, Colorado (Appendix B).

B. Pueblo County Truancy Reduction Program

Judge Dennis Maes’ and Magistrate Rebecca Moss’ Truancy Reduction Program in Pueblo County has been identified by NCSE as one of the top three truancy reduction models in the nation.² Information about their program was presented to give courts an idea of comprehensive solutions to addressing truancy in the community. The encouraging aspects of this program are that the program was administered using existing resources, it calls upon community cooperation to achieve its goals and it has been extremely successful in reducing truancy.

The program was started when the court became frustrated with the number of students who were being expelled from school for chronic truancy. Chief Judge Dennis Maes and Magistrate Rebecca Moss met to discuss the truancy problem and agreed to make truancy top priority in their court and instituted four best practices:

- ◇ Strong judicial leadership in the community when addressing truancy issues;
- ◇ Close collaboration between the school and the court to discuss the implementation of best practices;
- ◇ Regular and frequent court reviews of truancy cases;
- ◇ Cultivation of community support for truancy reduction efforts.

The program began with a focus on Keating High School in 2005. Initial efforts focused on the at-risk population that demonstrated parent problems and sibling patterns. Eventually, the court changed terminology in truancy court to include “educational neglect” and began to focus on holding parents accountable while providing the family support services.

Following the first year of the program, a meeting was convened with the school to review data from the program. The successful results left the school wanting greater access to the court. Collaboratively the court and school identified common goals and action steps. The process was as follows:

- ◇ The school created a more intensive attendance policy. The school began to initiate truancy actions upon the fourth unexcused absence and required school contact with family with

¹ School Truancy: A Case Study of Successful Truancy Reduction Model in the Public Schools University of California at Davis, Journal on Juvenile Law and Policy, Vol. 10, Winter 2006, No. 1 pp. 69-95. (2006).

² See the National Center for School Engagement at <http://www.schoolengagement.org/index.cfm/Welcome>.

every unexcused absence. In turn, the court prioritized the truancy docket and scheduled truancy cases up to four times per week. The court currently reviews all cases within two weeks of filing.

- ◇ A strengths-based approach for handling cases was devised and incentives were developed to support the students' strengths.
- ◇ Grant-funded community advocates were assigned to students to provide tutoring, mentoring, transportation to students. The community advocates also submitted written reports to the court prior to court reviews, maintained statistics and conducted fundraising for incentives. After four years, the school district began fully funding the program.
- ◇ The program instituted ongoing evaluation of a student's academic performance.
- ◇ The judicial officers decided to use detention only as a last resort.
- ◇ The court began requiring all truants to write essays that identify their own strengths. The court focused on these strengths throughout the process.
- ◇ The judicial officers made themselves available with the goal of getting students back into school. The students were permitted to contact the court if they needed it.
- ◇ Once the model was established, the judicial officers went public in the community through radio and TV ads, news releases and speaking at community meetings. The community gave donations, incentives, and volunteered. The local newspaper funded a truancy video. Catholic Charities administers all evaluations and offers free mental health services. Senate Bill 94 created low cost drug treatment.
- ◇ The judicial officers worked to set expectations high, and to encourage members of the community to refuse to accept truancy as the norm.

Recommendation #2: Convene a group of stakeholders to devise a community response to truancy prevention and reduction. Programs that support attendance, attachment and achievement while providing for increased family involvement, youth and parent accountability, and the coordination and integration of other programs and services will lead to greater youth successes i.e. law enforcement, courts, schools, Juvenile Services Planning Committees (SB 94), and social services.

Pueblo County provides these recommendations to judicial officers and others managing truancy cases or devising truancy reduction programs:

- ◇ Keep the process simple.
- ◇ Consider hiring a process server to accomplish service.
- ◇ The judicial officer can and should ask questions of students and family.
- ◇ Develop mechanisms for school employees to inform the court of the students' behavior so that the court can be responsive.
- ◇ Judges are responsible for making sure that due process is observed in contempt proceedings, because of the possibility of incarceration.
- ◇ Devise a protocol that ensures parties are respectful in the courtroom.
- ◇ Communicate the courts expectations to all parties.
- ◇ The court should always work closely with school districts.
- ◇ Utilize the standard forms contained in Juvenile Rule of Procedure 3.8.
- ◇ Make sure to conduct advisements in age appropriate language.
- ◇ Consider mediation as another resource for open non-adversarial communication.

IV. Training Needs in Truancy Courts

The Symposium identified the training need with regard to Colorado Juvenile Rule of Procedure 3.8 and the Valid Court Order process established in Juvenile Justice and Delinquency Prevention Act of 1974.

The symposium participants agreed that both attorneys and non-attorneys appearing in truancy cases should possess a basic knowledge and understanding of court process and procedures related to truancy cases. Participants felt that the following information should be provided to attorneys or non-attorneys participating in truancy proceedings:

- ◇ Knowledge of the key stakeholders in truancy court;
- ◇ Knowledge of the issues at stake;
- ◇ Understanding of dependency and neglect law;
- ◇ Understanding of the availability of and access to services;
- ◇ Child development, family dynamics, medications, mental health issues;
- ◇ Ability to assess and make recommendations to judicial officer;
- ◇ Ability to communicate effectively in writing and verbally;
- ◇ Knowledge of the relevant law;
- ◇ Ability to relate to the parents;
- ◇ The process of prosecuting contempt;
- ◇ Ethical requirements;
- ◇ Direct exam, cross-examination and how to introduce documents;
- ◇ Philosophy regarding sentencing and sentencing options;
- ◇ Understanding of the impact of disproportionate Minority Representation;
- ◇ Knowledge of all relevant court protocol and procedure;
- ◇ The requirements of the Valid Court Order, Juvenile Rule of Procedure 3.8.

Practicing attorneys who represent school districts in multiple jurisdictions indicated that local practices in each jurisdiction tend to vary. This variance in practice at both the court and school district level appeared to make the formation and implementation of a standard statewide training protocol an unlikely solution to effectively addressing training needs. Therefore, the symposium agreed that existing protocols developed by local jurisdiction should be provided to both courts and school districts for consideration, modification and adoption as suits the needs of the individual jurisdiction. Two examples of training protocols are appended to assist jurisdictions in creating protocols and are described briefly below.

A truancy protocol developed by Assistant Dean Lorenzo Trujillo of the University of Colorado School of Law for the Seventeenth Judicial District containing form letters and pleadings is attached in Appendix B. Magistrate Rebecca Koppes-Conway devised a written protocol to explain the court process in Weld County which accompanied a truancy training program held in July 2007 and is attached as Appendix C. Attorneys and school representatives were invited to the training program in order to convey the expectations of the court to whoever was appearing. The court also designated a case manager responsible for communicating with all agencies involved in the truancy court. In cases in which abuse and neglect is suspected, the

schools are expected to make referrals to the Weld County Department of Human Services rather than pursuing a truancy action. With regards to detention of status offenders, the court has reached an agreement with the Weld County Sheriff to hold truants for a few hours and then release them, thereby avoiding the problems associated with the detention of status offenders and the overcrowding at youth detention centers.

The following practical training tips were also shared:

- ◇ Ensure all relevant stakeholders attend the training;
- ◇ Explain legal requirements and expectations before child is referred to the court;
- ◇ Identify the community resources that are available;
- ◇ Require court observation of parties prior to their appearance before the court on truancy matters;
- ◇ School should consider retaining an attorney to accompany non-attorneys at first court appearance;
- ◇ Review the instructions on the Supreme Court website for how to pursue contempt <http://www.courts.state.co.us/chs/court/forms/countycivilforms/jdf122.doc>;
- ◇ Require school board in advance to identify and notify the court of the one person who will represent the school district in court as set forth in statute;
- ◇ Train judicial assistants so they can explain the court processes to court users.

Recommendation #3: Courts should devise written protocols explaining local practices and procedures for handling truancy cases. The Court should also review the protocols with stakeholders and communicate the courts expectations to the parties.

In designing local protocols, remember the requirements of the Valid Court Order process. Susan Davis, compliance monitor at the Division of Criminal Justice, indicated that in order to receive Juvenile Justice and Delinquency Prevention funds, Colorado must be in compliance with the Juvenile Justice and Delinquency Act of 1974 when detaining status offenders and specifically truants. She reported that when truants are committed to detention by the court, the process of completing a Valid Court Order as prescribed in Colorado Juvenile Rule of Juvenile Procedure 3.8 must be followed or Colorado will be deemed out of compliance with federal law. Colorado is only granted a limited number of exceptions, if the number of exceptions is exceeded federal funds are forfeited. Due to the potential negative impact of detaining truants combined with the increased number of truants statewide the issue of ordering truants into detention as a sanction in truancy cases was identified as an area where ongoing training is required for judges, magistrates, school attorneys and school officials.

Recommendation #4: Courts should adhere to all provisions set forth in Colorado Juvenile Rule of Procedure 3.8 when sentencing a truant to detention. The failure of the court to properly administer the Valid Court Order process set forth in C.J.R.P 3.8 can result in financial sanctions.

Jurisdictions seeking assistance with the development of protocols or training materials may also contact Bill DeLisio at bill.delisio@judicial.state.co.us or 303-837-3623.

V. Resources

Symposium attendees agreed that to effectively address truancy, a comprehensive, community response is required. Participants also agreed that a key barrier to a comprehensive response is the lack of dedicated resources and services targeting the truancy population.

Recognizing that successful truancy programs can be devised and implemented through collaboration, coordination and communication among school districts, courts, and others partners in the community, the symposium examined and discussed successful programs or techniques that are being utilized in the First Judicial District, Second Judicial District, Tenth Judicial District, Seventeenth Judicial District, Eighteenth Judicial District, Nineteenth Judicial District and Twentieth Judicial District. The efforts in these jurisdictions were applauded and were viewed as potential models for change, illustrating that immediate effort within existing resources can be undertaken by dedicated professionals to better address the needs of the truancy population.

However, the professionals around the table also shared their frustration with the fact that ongoing advocacy efforts were required to either secure short term grant funding or to persuade existing funding sources such as local and state SB 94 or juvenile services planning committees to allocate truancy reduction funding on an ongoing basis. Additionally, the provision of services by local departments of social/human services, probation departments, diversion programs, or other entities or programs to truants and their families is often tempered by the fact that their funding and resources are limited, and primarily intended to serve the delinquency and child welfare populations.

The group discussed that it appeared that families involved in the truancy court appear in delinquency or dependency court at a very high rate when the truant behavior is not addressed. The group expressed that truancy often predicts the eventual fate of a family or child, and that an inadequate system response to truancy will likely lead to more serious and negative outcomes such as abuse, neglect or criminal behavior. Because the costs associated with criminality, detention, out of home placement, and, child abuse and neglect routinely incur substantially greater cost to the community, and the tax payer than the cost of education; the symposium believed that the dedication of resources intended to address truancy holistically may reduce both the social and financial costs associated with these negative outcomes.

Strategies utilized in Truancy Reduction Programs to eliminate truant behavior such as referrals for assessments, substance abuse treatment, and mental health treatment or ordering electronic monitoring are not generally available to Colorado courts. Without access to resources and services the court is often left with two options: 1) place the truant in secure detention; or 2) order that a dependency and neglect petition be filed. In many instances these steps are not designed to be punitive but are seen as the only way to provide services to the truant or their family. Judicial officers attending the symposium reported that ordering truants into detention is an option they rarely use but are in some cases forced to consider.

VI. Next Steps

As provided above, jurisdictions should seek assistance from Judicial Districts that have implemented successful practices. Bill DeLisio at SCAO can assist with identifying those jurisdictions.

Further, Meg Williams of the Division of Criminal Justice indicated that Colorado's Juvenile Justice and Delinquency Prevention Council at the Colorado Division of Criminal Justice is a multi-disciplinary council dedicated to addressing delinquency prevention issues. She reported that the Council annually receives federal funding that is disbursed to communities throughout Colorado to support local programs designed to prevent delinquency. She reported that these funds potentially can be used to devise programs that offer truancy courts positive treatment alternatives and methods for managing truant.

The symposium supported the solution of organizing and holding regional meetings throughout the state so that the relevant and meaningful discussions concerning truancy could be held at the local level. The following issues were identified as issues that require closer examination at such events:

- ◇ The lack of specified sources of funding for truancy programs.
- ◇ The problems associated with existing funding that is routinely withdrawn after three or four years.
- ◇ Examine the goals and objectives of the various systems handling juveniles to determine if they are aligned or working at cross purposes.
- ◇ Examine links between the Governors P20 Education Coordinating Council and truancy reduction.
- ◇ Examine the use of House Bill 1451 funding to support truancy reduction programs?
- ◇ Examine if there is a need for truancy case managers to facilitate communication among the courts, schools and other stakeholders?
- ◇ Explore collaborative structures currently in place to manage truancy.
- ◇ Examine local Juvenile Information Exchange Agreements.

Recommendation #5: Receive technical assistance from others. Judge Dennis Maes and Magistrate Rebecca Moss started a truancy reduction program in Pueblo that is now recognized as one of the best in the country. Other jurisdictions have also implemented successful practices that they are willing to share. Further, the Colorado Juvenile Justice and Delinquency Prevention Council will prepare a technical assistance request for the Office of Juvenile Justice and Delinquency Prevention to fund ten days of technical assistance to be provided by the National Center for School Engagement to assist Colorado statewide in identifying best practices and action steps.

VII. Conclusion

The Truancy Symposium fostered dialogue about truancy and truancy-related matters as a first step in the process of identifying system improvements and potential actions steps towards those improvements.

The Symposium was successful in beginning a dialogue and illustrating the type of priority that is required to effectively address truancy in communities across Colorado. If the future efforts of Colorado's Juvenile Justice and Delinquency Prevention Council are successful in obtaining technical assistance funding to further examine truancy, Colorado can expect to experience more dialogue and greater attention to this issue in the coming months and years.

The symposium revealed the unique demographic, economic, geographic and political factors have a considerable impact on the court process and systems response to truancy in each community. The Symposium also underscored the importance of communication, collaboration and coordination of courts and schools at the local level in order to better handle truancy matters. Consensus revealed that ongoing training combined with written protocols that reflect the procedures and the expectations of the Court upon litigants benefit both attorneys and non-attorneys and lead to improved handling of truancy matters. The appendices in this document attempt to provide a blueprint for such a protocols; these protocols can be modified and utilized at the local level to standardize truancy practices.

Factually and practically, the Symposium revealed SB 07-50 does have the potential to reduce the cost of litigation for school districts and increase access to the courts. However, the law does not provide for improvements in resources and services available to schools, truant or courts. As Magistrate Addison Adams of Arapahoe County District Court explained, "A difference in outcomes will not occur due to SB 07-50. There are larger social issues at play that require more resources and collaboration among stakeholders, and detention is not a solution to truancy."

The Colorado State Court Administrator's Office thanks all of the professionals who attended the symposium, joined in the dialogue and shared their valuable experience and expertise. We would like to thank Magistrate Koppes Conway of Weld County and Lorenzo Trujillo, Assistant Dean of Students and Professional Programs of the University of Colorado School of Law, for sharing their protocols for the benefit of other judicial districts. Special thanks go to Meg Williams of the Division of Criminal Justice, Department of Public Safety, for offering the assistance of the Colorado Juvenile Justice and Delinquency Prevention Council and to Heather MacGillivray of the National Association of School Engagement for presenting national and state truancy data that helped to frame the discussion.