

11th JUDICIAL DISTRICT; FREMONT, PARK, CHAFFEE and CUSTER COUNTIES,
STATE OF COLORADO

CHIEF JUDGE DIRECTIVE 16-02

CONCERNING THE USE OF DETENTION IN TRUANCY CASES

HISTORY:

Senate Bill 15-184, as enacted by the Colorado General Assembly and signed into law by Governor Hickenlooper, seeks to reduce the use of detention as a sanction in truancy cases and recommends that truancy courts only use detention as a sanction of last resort. Recognizing that the best methods to reduce truancy and its underlying causes will differ in each community, SB 15-184 contemplates a meeting of community stakeholders in each judicial district to create a policy for addressing truancy cases that seeks alternatives to the use of detention as a sanction.

This Chief Judge Directive will serve as that policy.

Historically in the 11th Judicial District, only four school districts in two counties have utilized the filing of truancy cases pursuant to C.R.S. 22-33-108. These school districts are Fremont RE-1 (Canon City), Fremont RE-2 (Florence) Chaffee R-32 (Salida) and Chaffee R-31 (Buena Vista). Court monitoring of truancy is not used in Custer County and is used sporadically in Park County.

The undersigned Chief Judge held two meetings to address the specific issue of detention in truancy cases as well as to discuss, in more broad terms, how truancy is dealt with in the respective counties and school districts.

Present at a meeting held in Salida on January 12, 2016 were representatives and principals from the several schools in Chaffee County, a representative from the Office of the District Attorney, a representative from the Chaffee County Department of Human Services, a representative from the local mental health care agency and former Chief Judge of the 10th Judicial District, Dennis Maes. This group will meet again on March 4, 2016.

Present at a meeting held in Canon City on February 8, 2016 were legal representatives for the school districts, a representative from the local mental health care agency, the Senate Bill 94 coordinator, a representative from the local substance abuse treatment agency, the truancy officer for school district RE-1 and the two District Court judges who sit in Fremont County. This group will meet again on April 4, 2016. Fremont County has a dedicated truancy board and that board will also be included in all future meetings.

DISCUSSION REGARDING TRUANCY IN GENERAL:

Both groups came to similar conclusions about how to view truancy and agreed upon certain strategies to address truancy. These conclusions and strategies, in and of themselves, should help reduce the use of detention in the truancy setting. These conclusions and strategies include:

- Truancy is often a symptom of a more deeply rooted problem with the student, her family or both. Truancy Courts should be structured like other specialty courts and adopt evidence based practices. The Courts should utilize a more holistic approach to addressing truancy and should try to figure out and address the cause of the truancy instead of reacting to the truant.
- To that end, the Court should include in the process as many supports as appropriate and possible. This could include DHS, mental health treatment providers, substance abuse treatment providers, probation officers (if applicable), mentors, coaches, teachers with whom the student has a bond and additional family members. The Court should facilitate communication and interaction between all stakeholders and hear from any interested party.
- Children are short-term thinkers and react best to events that are not too far in the future. The current one time per month truancy schedule is not ideal for this type of thinking. Therefore the Courts need to be flexible and willing to schedule truancy cases on a more frequent basis. It will be more meaningful to a child if she knows she will be seeing a judge in a week rather than a month.
- To that end, in Chaffee County, cases will be docketed at any time the school district requests and will receive priority on the docket. In Fremont County, all truancy cases will now be assigned to one Division of the District Court. That Division has committed to setting a designated truancy docket one time per week. All students on the docket will stay for the entire proceedings so that they may see the consequences of both compliance and noncompliance with valid court orders.
- Early intervention is important and therefore truancy should be addressed at every school level, including elementary school. If a student is truant at a young age, it is often a sign that the parents, and not the student, are the issue.
- To that end, the Courts have invited the principals of the several elementary schools to participate in future meetings.
- The Court should utilize and exhaust intermediate sanctions before considering detention.
- To that end the Court should utilize sanctions including, but not limited to, verbal admonishment, community service, essay writing, curfew, electronic monitoring, tracking and completing homework at a monitored location. The Court should also utilize kudos such as verbal congratulations, gift cards, certificates of accomplishment, and reduced court appearances.

DISCUSSION AND DIRECTIVE INVOLVING DETENTION:

It shall be the policy of the 11th Judicial District that detention should only be used in cases where the student is a danger to himself or to others or, as a last resort, when the student habitually disregards a valid court order. Detention may also be used if the student is sentenced for direct punitive contempt based upon their conduct in the courtroom in accordance with C.R.Civ.P. Rule 107(b) or if the student fails to appear for court proceedings.

It is therefore Ordered that detention may only be utilized in the following manner in truancy cases:

1. The student is sentenced for direct punitive contempt based upon their behavior in the courtroom in accordance with C.R.Civ.P. Rule 107(b)
2. The student is detained on a warrant for failure to appear at any court proceeding for which they have notice. The judicial officer shall make full inquiry into the reason for the failure to appear and shall make every attempt to avoid the issuance of a warrant. A judicial officer may stay a warrant based upon the student's prior history with the Court and cooperation with the proceedings overall. If a warrant is issued in this situation, it shall be the policy of the 11th Judicial District and there shall be a rebuttable presumption that the warrant will mandate the release of the student to her parent, guardian or legal custodian.
3. The student is sentenced after a finding of indirect punitive contempt based upon a knowing and willful violation of a valid court order and one or more of the following is present:
 - a. The student is being sentenced on a second or successive contempt citation and the Court is convinced that the student will continue to refuse to follow the valid court order and change their behavior.
 - b. The student demonstrates additional behaviors above and beyond non-attendance and these behaviors pose a danger to the student, the community, or both.

It is further Ordered that:

1. Any sentence to detention cannot exceed five days C.R.S. 22-33-108(7)(c).
2. Judicial officers are encouraged to utilize form JDF 561 in order to comply with Rule 3.8 of the Colorado Rules of Juvenile Procedure and to make a clear record regarding why the use of detention is appropriate in a particular case.

3. Any judicial officer who utilizes detention in a truancy case will inform the Chief Judge in writing. The Chief Judge will keep a record of how often detention was used, what sentences were imposed and whether detention impacted the student's subsequent behavior.
4. A judicial officer will not sentence a student to detention unless the prosecuting attorney or the school district representative has complied with all procedures required pursuant to C.R.S. 22-33-108.

Done in Salida, Colorado on February 18, 2016

___/s/ Patrick W. Murphy_____

Patrick W. Murphy

Chief Judge, 11th Judicial District