

**STATE OF NEW MEXICO**  
**LEGISLATIVE EDUCATION STUDY COMMITTEE**

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September 24, 2015

**MEMORANDUM**

**TO:** Legislative Education Study Committee

**FR:** Leah Montaña and Kevin Force

**RE: STAFF REPORT: APPROACHES AND SOLUTIONS FOR AT-RISK AND  
HABITUALLY TRUANT STUDENTS**

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**INTRODUCTION**

Truancy is an issue with which all schools and state governments must contend; indeed, research has found a link between truancy and both delinquency and the risk of dropping out of school. In New Mexico, despite action by the Legislature and school reform measures, habitual truancy remains a serious issue. For example, according to the Public Education Department (PED fact sheet on truancy for school year 2013-2014, habitual truancy rates were:

- 11.54 percent for elementary school students;
- 18.76 percent of middle school students;
- 22.29 percent of high school students; and
- 16.27 percent of the total student body, a 2.63 percent increase over the previous year.

For the committee's review, this staff report outlines the Legislative Education Study Committee's (LESC) background regarding the issue of truancy, including:

- current provisions in law;
- committee discussion and legislative history; and
- recent legislation.

## CURRENT PROVISIONS IN LAW

The *Compulsory School Attendance Law* establishes requirements for school attendance and student truancy. Among its provisions, the law:

- requires students to attend school until they reach the age of majority (18 years old) or graduate from high school, unless otherwise exempted;
- defines the ages at which a child is required to begin school and may legally drop out of school, as well as the number of unexcused absences that a student must accrue to be considered truant;
- requires school officials to provide notice to parents of three or more successive absences from school;
- includes misdemeanor sanctions against parents who are found to cause the student's nonattendance at school;
- if a student remains truant even after notice, requires that the student be reported to probation services for investigation of whether the student is neglected or from a family in need of services, according to the *Children's Code*;
- defines the terms:
  - "habitual truant," which means a student who has accumulated the equivalent of 10 or more days of unexcused absences in a school year;
  - "unexcused absence," which means an absence from school for which the student does not have a valid excuse; and
  - "a student in need of early intervention," which means a student who has accumulated five unexcused absences; and
- requires every district to report truancy and habitual truancy rates to PED and to document efforts made to keep truants in school.

## COMMITTEE DISCUSSION AND LEGISLATIVE HISTORY

The LESC has held a longstanding interest in the issue of truancy, having heard testimony and introduced legislation to address the topic several times over the course of recent years. During the 2003 interim, for instance, the LESC convened a work group to study the issues of truancy, with a focus on keeping kids in school, and on state statutes related to school attendance. As a result of the work group's recommendations, during the 2004 regular legislative session, the LESC endorsed legislation that amended the *Compulsory School Attendance Law* to:<sup>1</sup>

- define the terms "truant," "habitual truant," and "unexcused absence";
- require local school boards to:
  - establish attendance and truancy policies that provide early identification of attendance problems and intervention measures to prevent truancy, and that prohibit

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<sup>1</sup> While this legislation (HB 106a, *Enforcement of Habitual Truancy*; Laws 2004, Ch. 28, Sections 22-12-2 and 22-12-7 through 22-12-8) lost LESC endorsement when it was substituted by the House Judiciary Committee, the final version of the legislation was substantially similar to that introduced by the LESC.

- out-of-school suspension and expulsion from being used as a punishment for truancy;
  - to report truancy rates to PED; and
  - to require written notice to the parent, guardian, or custodian of a student who is habitually truant;
- designate the local juvenile probation office as the lead referral agency for habitual truancy;
- allow charges against a parent to be filed in magistrate court or district court; and
- provide for the suspension of an habitual truant's driver's license by the Children's Court for up to 90 days for the first finding of habitual truancy, and for up to one year for a subsequent finding.

Since the completion of that work group's efforts, the committee has addressed the issue of truancy on several occasions, during both the interim and legislative session, ultimately resulting in several amendments to the *Compulsory School Attendance Law* as a result of LESC-endorsed legislation:

- In 2008, at the request of the Chair, the LESC Director convened a work group, including representatives from the Children, Youth and Families Department (CYFD), PED, LESC staff, and other stakeholders, to review statute, policy, and school practice, and provide policy recommendations to the committee.
- In 2009, the committee endorsed legislation, which was ultimately passed and signed by the Governor, to amend the *Compulsory School Attendance Law* and the *Children's Code* to:
  - replace the term "truant" with "student in need of early intervention" and define it as a student who has accumulated five unexcused absences within a school year;
  - include private schools in attendance intervention and notification requirements;
  - require written parental notices of habitual truancy to include information for the parent to meet school authorities to develop intervention strategies to keep the student in school;
  - allow the probation services office to send a written notice to a parent, directing the parent and the student to discuss potential services for the student or the family;
  - allow withdrawal from school only after exhausting intervention efforts;
  - require schools to document any steps taken to notify and meet with parents of habitual truants, as well as the intervention strategies implemented to keep the student in school;
  - allow schools to create policies allowing referral to the probation services office of students who consistently are absent without excuse for one class period or for less than one-half day; and
  - require PED to compile reports on rates of unexcused absences and habitual truancy, and to verify that the information is being reported consistently.
- In 2011, LESC-endorsed legislation amended the law to clarify that the definition of "habitual truancy" means a student who has accumulated the equivalent of 10 *days* or more of unexcused absences within a school year.
- In 2012, the LESC heard testimony from the University of New Mexico Center for Education Policy Research demonstrating a statistically significant correlation between

habitual truancy and academic proficiency, as well as risk-related behaviors, for students in Albuquerque Public Schools.<sup>2</sup> For example:

- chronic absence in kindergarten was shown to lower academic achievement in fifth grade for economically disadvantaged students;
- attendance in ninth grade is an accurate predictor for potential graduation for students of all economic backgrounds; and
- habitual truants are more likely to engage in high-risk behaviors such as drug use, sex, and suicidal ideation.

## RECENT LEGISLATION

During the 2015 legislative session, HB 117, *No Driving for Certain Students*, was introduced to provide for the suspension or postponement of driving privileges of school-aged person in violation of the *Compulsory School Attendance Law*. While HB 117 failed to pass both chambers, it was passed by the House of Representatives, but ultimately failed to be reported out of the Senate Judiciary Committee. Identical legislation, SB 85, *No Driving for Certain Students*, was introduced in the Senate, but failed to leave the chamber. Both bills were substituted in their respective Education Committees, and CS/HB 117 was amended on the House Floor.

Among its provisions, CS/HB 117a proposed to:

- amend the section of the *Compulsory School Attendance Law* that addresses enforcement of suspension or denial of driving privileges, as well as appeals;
- create a new section of the *Public School Code* to address the issue of data collection and reporting; and
- create a new section of the *Motor Vehicle Code* setting forth procedures for the Motor Vehicle Division to follow regarding the disposition of students' driving privileges.

Also related to the subject of truancy was HB 271a, *CYFD & PED Information Sharing*, which was introduced during the 2015 legislative session to create a new section of the *Public School Code* and amend a section of the *Abuse and Neglect Act*. While HB 271a failed to pass, it proposed to:

- require CYFD and PED to establish procedures for sharing data and reporting outcomes, including requiring that:
  - CYFD supply PED with contact information for each student; and
  - PED inform districts of students who have been placed in the custody of CYFD or, alternatively, that PED allow CYFD staff direct access to PED's data system;
- require PED to issue an annual report of educational status of students in custody of CYFD;

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<sup>2</sup> Please see *Truancy in New Mexico: Attendance Matters*, University of New Mexico Center for Education Policy Research, December 2012, at: <http://www.nmlegis.gov/lcs/lesc/lescdocs/briefs/December2012/Item%2011%20-%20Truancy%20in%20New%20Mexico%20%28December%202012%29.pdf>.

- require PED to establish rules on procedures for sharing education records with CYFD staff; and
- include PED employees among those parties to whom records of abuse and neglect may be disclosed.

Finally, also introduced in the 2015 legislative session was SB 37, *Social Workers in Certain Schools*, which, if passed, would have added a section to the *Public School Code* to create the Social Worker in Schools Pilot Project to supply social workers for public school students. Among its provisions, the bill would have provided counseling, crisis intervention, and prevention programs to help students address social and psychological issues that may inhibit their academic progress and lead to truancy or dropping out of school.

# GRANT COUNTY COMPREHENSIVE CONTINUUM OF YOUTH SERVICES

## YOUTH EDUCATIONAL PROGRAMS

RECEIVED  
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### SUCCESSSES

#### Truancy

- 743 total interventions
- 645 returned to school after 1<sup>st</sup> contact (87% success)
- 98 (13%) on attendance contracts
- 95 students maintained regular attendance
- 3 cases were filed on

#### JPO School (FY 2014-15)

- 13 students were diverted from expulsion
- 69 short-term suspension students maintained grades/credit

#### JPO Summer Schools

- 36 students (100%) recovered/maintained core credits
- 7 out of 8 students, who would have been retained, were transitioned from middle to high school

*Data compiled from JPO and school reports.*

### EXECUTIVE SUMMARY

The educational component of our continuum of services is focused on prevention. We recognize that issues of truancy and drop-outs are community issues and not just school or law enforcement issues. By partnering with local schools, families, local and state governments and the community, we can ensure that youth are provided with the best access to educational opportunities that set them up for future success. "Ensuring that our educational system is a doorway to opportunity- and not a point of entry to our criminal justice system-is a critical, and achievable, goal" (Attorney General Holder, 2011).

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*"The costs of truancy are high. Truancy has been clearly identified as one of the early indicators of delinquent behavior including drug use, high school dropout, suicidal thoughts and attempts and early sexual behavior".*

*– Office of Juvenile Justice Delinquency Prevention, 2010.*

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### COLLABORATION

#### PARTNERS

Schools  
Courts  
District Attorney  
Parents  
Students  
Juvenile Probation Office  
Juvenile Community Corrections  
Corre Caminos  
Child Protective Services

#### RESOURCES

Certified teachers  
Licensed counselors  
Laptops  
Meals  
Textbooks & supplies  
On-line learning  
Classroom  
Coordinator  
Transportation  
Funding

## TRUANCY PREVENTION PROGRAM

The primary focus of the Truancy Program is prevention which is a key component of the graduated intervention model (see District 6 model on page 4) to provide support for educational success. The model has been aligned with the state statute (Compulsory School Attendance Law: Article 12, Section 22-12-1 through 22-12-8), focusing on clarifying definitions of “truant” and “habitual truant”. Work has been done to align local school policies regarding unexcused absences, unexcused tardies, and further clarification on the process of filing on serious offenders (parents) who knowingly allow their child to miss school more than 10 days within a school year without a valid excuse. A mutual goal of the partnership program is to address the underlying causes of truancy at all grade levels in order to reach a 95% attendance rate for all schools within the county. Based on FY14-15 STARS report, Cobre Consolidated Schools combined attendance rate was 93.8% and Silver Consolidated Schools was 93.7%.

For over a decade each school district has provided one TPS, who process truancy referrals for grades K-12. “Truant” refers to students who are occasionally absent from or tardy for classes. “Habitual truant” means a student who has accumulated the equivalent of ten or more unexcused absences within a school year”. If needed, students are placed on a contract which outlines attendance expectations. At this point, attendance and grades are monitored. Throughout TPS involvement, youth and families are encouraged to take advantage of other available services such as: tutoring, community service, drug and alcohol testing, counseling, bus passes, surveillance and strengthening families groups. In extreme cases, the TPS will coordinate with required agencies to file on parents who knowingly allow their child to violate the State Compulsory School Attendance Law.

## TRUANCY PROCESS

1. At 3 unexcused absences, parent is sent a 3-day Notice of Absences (prevention).
2. At 5 unexcused absences, parent is sent a 5-day Notice of Absences (student in need of early intervention).
  - a. Student and parent enter into a 30-day attendance contract.
3. If student is on 30-day attendance contract and reaches 7 days, they are placed on an intensive attendance contract for the remainder of the school year.
4. If student is on an active attendance contract and reaches 10 days of unexcused absences, they are considered to be a “habitual truant”. The Compulsory School Attendance Law is enforced at this time.
  - a. Legal notice is sent, by certified mail or personal service, to parent/guardian for them to meet with school personnel to develop intervention strategies.
  - b. If unexcused absences continue, student is referred to the Juvenile Probation Office for investigation.
    - i. If truancy is determined to be caused by parent, the matter is referred to the District Attorney’s Office for investigation and filing of charges.

When the student returns to school and maintains regular attendance, their case is closed.

## AFTER SCHOOL TUTORING

Tutoring focuses on improving grades and is available to all youth in Grant County. Referrals are accepted from schools, TPS, Juvenile Probation Officers, as well as walk in clients. The program funds three tutors who are all certified and licensed teachers. Classes are held twice a week, Mondays and Wednesdays from 4:00 to 5:30 at the JPO Office. Attendance averages 10 to 15 students a week, providing each student with three hours of personal instruction per week with one of our instructors.



Students self-report that getting behind in school work is often linked to truant behavior. Therefore, assisting students to keep current with their school work is crucial to academic success and reduced truancy. We are gearing this program to meet individual educational needs. (Atwood and Croll 2006, Gonzales Richards and Creeley 2002, et al OJJD Programs Overview. Accessed 2015).

## JPO SCHOOL AND SUMMER SCHOOLS

JPO School was started as a service to provide credit recovery for students who have been expelled from a traditional school environment for a variety of reasons including behavioral issues, transition from Silver High School to the Opportunity School, and reintegration into the classroom. It provides educational requirements for students, keeping them enrolled in their respective schools, preventing them from falling further behind in their studies.

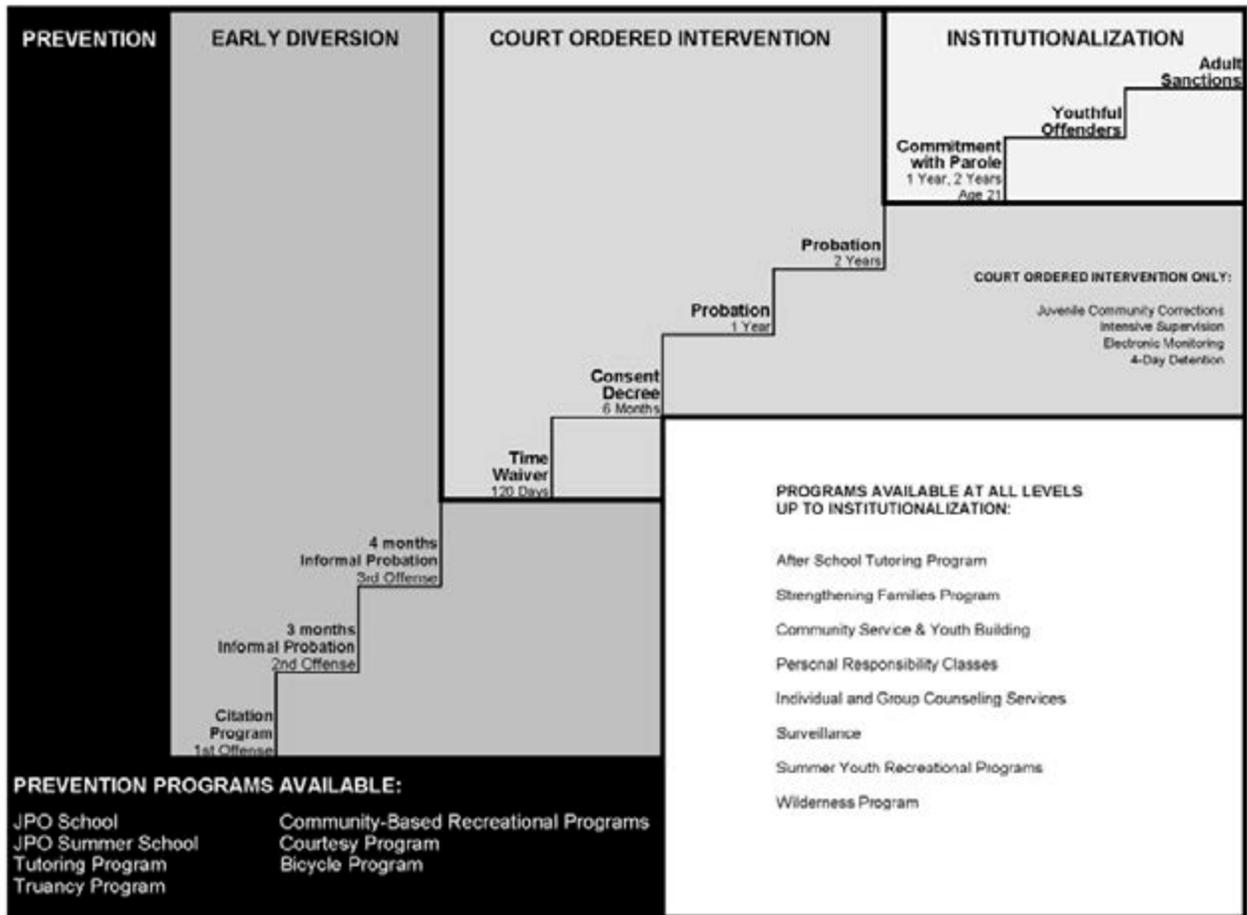
The “Provisional Expulsion” is an example of the positive benefits of true collaboration. Historically, after exhausting all disciplinary options, schools expel students for either a semester, a full school year, or permanently. An agreement was reached with collaborating partners to add one more step in the disciplinary process prior to a final decision for expulsion. The “Provisional Expulsion” temporarily transfers the student from the school’s campus to the JPO School, without dis-enrolling them. The student, if compliant, is allowed to transition back to regular school without loss of credit or grades. After implementing the “Provisional Expulsion” policy, no middle school or high school students were fully expelled for the FY2014-15 school year.

## OUTCOMES

- Educational impact:
  - 87% of students returned to regular school attendance after the first TPS contact.
  - All 13 expelled students, who attended JPO School, maintained credit with a 3.28 GPA.
  - 36 Summer School students recovered/maintained core credits.
  - 7 middle school students transitioned to high school and increased their math skills by 2-3 grade levels (pre-post testing results).

- Economic impact: Based on 13 provisional expulsions and 98 habitually truant students, the economic impact of disenrolling these students would conservatively cost local school districts \$614,000.00.
- Community impact: A 42% reduction in delinquency recidivism in the last five years.

**DISTRICT 6 – GRANT COUNTY MODEL**  
**JUVENILE JUSTICE CONTINUUM**  
**GRADUATED INTERVENTIONS**



**Bianca Padilla, Program Coordinator**  
**Juvenile Probation Office - P.O. Box 1444 - Silver City, NM 88062**  
**Phone: 575-538-2061, Ext. 42303**  
**[biancam.padilla@state.nm.us](mailto:biancam.padilla@state.nm.us)**

HOUSE EDUCATION COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 117

52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015

AN ACT

RELATING TO PUBLIC EDUCATION; PROVIDING FOR THE SUSPENSION OR  
POSTPONEMENT OF DRIVING PRIVILEGES OF SCHOOL-AGE PERSONS WHO  
ARE IN VIOLATION OF THE COMPULSORY SCHOOL ATTENDANCE LAW.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 22-12-7 NMSA 1978 (being Laws 1967,  
Chapter 16, Section 175, as amended) is amended to read:

"22-12-7. ENFORCEMENT OF ATTENDANCE LAW--HABITUAL  
TRUANTS--PENALTY--SUSPENSION OR DENIAL OF DRIVING PRIVILEGES--  
APPEAL TO SCHOOL DISTRICT, DEPARTMENT AND DISTRICT COURT.--

A. Each local school board and each governing body  
of a charter school or private school shall initiate the  
enforcement of the provisions of the Compulsory School  
Attendance Law for students enrolled in their respective  
schools.

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underscored material = new  
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1           B. To initiate enforcement of the provisions of the  
2 Compulsory School Attendance Law against ~~[an]~~ a student who is  
3 a habitual truant, a local school board or governing body of a  
4 charter school or private school or its authorized  
5 representatives shall give written notice of the habitual  
6 truancy by mail to or by personal service on the parent of the  
7 student subject to and in noncompliance with the provisions of  
8 the Compulsory School Attendance Law. The notice shall include  
9 a date, time and place for the parent to meet with the local  
10 school district, charter school or private school to develop  
11 intervention strategies that focus on keeping the student in an  
12 educational setting.

13           C. If unexcused absences continue after written  
14 notice of habitual truancy as provided in Subsection B of this  
15 section has occurred, the student shall be reported to the  
16 juvenile probation ~~[services]~~ office of the judicial district  
17 where the student resides for an investigation as to whether  
18 the student shall be considered to be a neglected child or a  
19 child in a family in need of services because of habitual  
20 truancy and thus subject to the provisions of the Children's  
21 Code. The juvenile probation ~~[services]~~ office may send a  
22 written notice to a parent of the student directing the parent  
23 and student to report to the juvenile probation ~~[services]~~  
24 office to discuss services for the student or the family. ~~[In~~  
25 ~~addition to any other disposition, the children's court may~~

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1 ~~order the habitual truant's driving privileges to be suspended~~  
2 ~~for a specified time not to exceed ninety days on the first~~  
3 ~~finding of habitual truancy and not to exceed one year for a~~  
4 ~~subsequent finding of habitual truancy.]~~

5 D. If, after review by the juvenile probation  
6 office where the student resides, a determination and finding  
7 is made that the habitual truancy by the student may have been  
8 caused by the parent of the student, then the matter [~~will~~]  
9 shall be referred by the juvenile probation office to the  
10 district attorney's office or any law enforcement agency having  
11 jurisdiction for appropriate investigation and filing of  
12 charges allowed under the Compulsory School Attendance Law.  
13 Charges against the parent may be filed in metropolitan court,  
14 magistrate court or district court.

15 E. A parent of the student who, after receiving  
16 written notice as provided in Subsection B of this section and  
17 after the matter has been reviewed in accordance with  
18 Subsection D of this section, knowingly allows the student to  
19 continue to violate the Compulsory School Attendance Law [~~shall~~  
20 ~~be~~] is guilty of a petty misdemeanor. Upon the first  
21 conviction, a fine of not less than twenty-five dollars  
22 (\$25.00) or more than one hundred dollars (\$100) may be  
23 imposed, or the parent of the student may be ordered to perform  
24 community service. If violations of the Compulsory School  
25 Attendance Law continue, upon the second and subsequent

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1 convictions, the parent of the student who knowingly allows the  
2 student to continue to violate the Compulsory School Attendance  
3 Law [~~shall be~~] is guilty of a petty misdemeanor and shall be  
4 subject to a fine of not more than five hundred dollars (\$500)  
5 or imprisonment for a definite term not to exceed six months or  
6 both.

7 F. [~~The provisions of this section shall apply~~  
8 ~~beginning July 1, 2004.~~] Starting with the 2016-2017 school  
9 year, when a student in grade eight through twelve accumulates  
10 ten or more unexcused absences in a school year and becomes a  
11 habitual truant:

12 (1) a school shall give to the student's  
13 parent a notice of noncompliance with the Compulsory School  
14 Attendance Law containing:

15 (a) the name, date of birth and address  
16 of the student;

17 (b) a statement that the student is in  
18 noncompliance with the Compulsory School Attendance Law due to  
19 habitual truancy and the number and dates of unexcused  
20 absences; and

21 (c) notice of the opportunity for the  
22 student and the student's parent to request an optional meeting  
23 with the school principal or head administrator within two  
24 weeks to: 1) commit to the student returning to school and  
25 complying with the Compulsory School Attendance Law; 2) contest

1 the occurrences and number of the student's unexcused absences;  
2 3) provide evidence that the student is no longer subject to  
3 the Compulsory School Attendance Law; or 4) request a hardship  
4 waiver pursuant to department rule to fulfill unavoidable  
5 employment or family medical caregiving duties;

6 (2) a school district or charter school shall  
7 give to the student's parent and the motor vehicle division of  
8 the taxation and revenue department a state-provided  
9 certification of noncompliance with the Compulsory School  
10 Attendance Law no less than thirty days after the notice of  
11 noncompliance with the Compulsory School Attendance Law is sent  
12 to the parent pursuant to Paragraph (1) of this subsection if  
13 the student remains noncompliant, unless the student has been  
14 granted a hardship waiver pursuant to Item 4) of Subparagraph  
15 (c) of Paragraph (1) of this subsection prior to the issuance  
16 of a state-provided certification of noncompliance;

17 (3) upon the motor vehicle division's receipt  
18 of a state-provided certification of noncompliance with the  
19 Compulsory School Attendance Law, the motor vehicle division  
20 shall suspend or deny the issuance of an instruction permit,  
21 driver's license or provisional license to a student pursuant  
22 to the Motor Vehicle Code until the student reaches the age of  
23 eighteen years; and

24 (4) following the suspension or denial of an  
25 instruction permit, driver's license or provisional license,

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1 the student may:

2 (a) request a meeting with the school  
3 district or charter school to provide evidence supporting a  
4 request that the school district or charter school provide to  
5 the motor vehicle division a certification that the student is  
6 in compliance with or is no longer subject to the Compulsory  
7 School Attendance Law;

8 (b) appeal the school district's or  
9 charter school's determination by requesting a hearing and  
10 final decision from the department pursuant to its rules; and

11 (c) appeal the department's final  
12 decision to the district court for the county in which the  
13 student resides pursuant to Section 39-3-1.1 NMSA 1978."

14 SECTION 2. A new section of the Public School Code is  
15 enacted to read:

16 "[NEW MATERIAL] REPORTING.--No later than November 15,  
17 2017 and each subsequent year, the department, in collaboration  
18 with the motor vehicle division of the taxation and revenue  
19 department and school districts and charter schools, shall  
20 submit an annual statewide report to the governor, the  
21 legislative education study committee and the legislative  
22 finance committee on the implementation of the Compulsory  
23 School Attendance Law. The annual statewide report shall  
24 include to the extent available:

25 A. aggregate data for each middle school, high

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1 school, school district and charter school regarding  
2 implementation of Subsection F of Section 22-12-7 NMSA 1978 and  
3 Section 3 of this 2015 act, including:

4 (1) the number of students who accumulated the  
5 equivalent of ten days or more of unexcused absences within a  
6 school year;

7 (2) the number of state-provided  
8 certifications of noncompliance issued pursuant to the  
9 Compulsory School Attendance Law;

10 (3) the number of students who were denied the  
11 issuance of or incurred the suspension of an instruction  
12 permit, driver's license or provisional license due to  
13 noncompliance with the Compulsory School Attendance Law and the  
14 number of:

15 (a) students who had more than one  
16 denial or suspension; and

17 (b) instruction permits, driver's  
18 licenses or provisional licenses that were denied or suspended  
19 and were subsequently granted or reinstated as a consequence of  
20 compliance with the Compulsory School Attendance Law; and

21 (4) the number of hardship waivers granted  
22 pursuant to Item 4) of Subparagraph (c) of Paragraph (1) of  
23 Subsection F of Section 22-12-7 NMSA 1978; and

24 B. an evaluation of any improvement in academic  
25 achievement attributable to implementation of the Compulsory

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1 School Attendance Law, including, to the extent applicable, for  
2 each middle school, high school, school district and charter  
3 school:

4 (1) the students' mathematics assessment  
5 scores;

6 (2) the students' English language arts  
7 assessment scores;

8 (3) the four-year cohort graduation rate; and

9 (4) the most recent grade received under the  
10 A-B-C-D-F Schools Rating Act."

11 SECTION 3. A new section of the Motor Vehicle Code is  
12 enacted to read:

13 "[NEW MATERIAL] AUTHORITY OF DIVISION TO SUSPEND LICENSE  
14 OF SCHOOL-AGE PERSON.--

15 A. The division is authorized:

16 (1) upon receipt of a state-provided  
17 certification of noncompliance with the Compulsory School  
18 Attendance Law, pursuant to Section 22-12-7 NMSA 1978, to  
19 suspend or deny the granting of an instruction permit, driver's  
20 license or provisional license, without a preliminary hearing,  
21 of a school-age person as defined in Section 22-1-2 NMSA 1978  
22 until the school-age person reaches the age of eighteen years;  
23 and

24 (2) upon receipt of a state-provided  
25 certification that the school-age person is in compliance with

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1 or is no longer subject to the Compulsory School Attendance  
2 Law, to:

3 (a) reinstate a suspended instruction  
4 permit, driver's license or provisional license of a school-age  
5 person; or

6 (b) grant an instruction permit,  
7 driver's license or provisional license to a school-age person  
8 pursuant to the Motor Vehicle Code.

9 B. The division may adopt and promulgate rules to  
10 implement the provisions of this section."

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underscored material = new  
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LEGISLATIVE EDUCATION STUDY COMMITTEE  
BILL ANALYSIS

Bill Number: CS/HB 117a

52nd Legislature, 2nd Session, 2015

Tracking Number: .199486.2

Short Title: No Driving for Certain Students

Sponsor(s): Representative Jimmie C. Hall

Analyst: Kevin Force *KFP*

Date: March 14, 2015

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HOUSE EDUCATION COMMITTEE SUBSTITUTE FOR HB 117

AS AMENDED

House Floor Amendment Number 1:

- changes the title of the bill to reflect that driving privileges of school-age persons may be suspended or “denied,” rather than “postponed”;
- extends to students’ guardians in addition to their parents notice of:
  - noncompliance with the *Compulsory School Attendance Law*; and
  - the opportunity to request an optional meeting with the school principal or head administrator; and
- extends to students’ parents or guardians, rather than only to the students, the opportunity to:
  - request a meeting with the school district or charter school to provide evidence supporting a request that the school district or charter school give the Motor Vehicle Division a certification that the student is no longer subject to the *Compulsory School Attendance Law*;
  - appeal the determination of truancy by requesting a hearing and final decision from the Public Education Department (PED), according to department rule; and
  - appeal PED’s final decision to the district court for the county in which the student resides.

Original Bill Summary:

CS/HB 117 proposes to amend the *Compulsory School Attendance Law* and the *Motor Vehicle Code* to provide for the suspension or postponement of driving privileges of school-aged persons in violation of the *Compulsory School Attendance Law*. Specifically:

- Section 1 of the bill amends the section of the *Compulsory School Attendance Law* that addresses enforcement;

- Section 2 creates a new section of the *Public School Code* to address the issue of data collection and reporting; and
- Section 3 creates a new section of the *Motor Vehicle Code* setting forth procedures for the Motor Vehicle Division (MVD) to follow regarding the disposition of students' driving privileges.

**Section 1. [Suspension or denial of driving privileges, and appeals]:**

Beginning with school year 2016-2017, when a student in grades 8 through 12 accumulates 10 or more unexcused absences (habitual truancy):

- a school must give the student's parent a notice of noncompliance with attendance laws, including notice of the opportunity to request a meeting with the school principal or head administrator to:
  - commit to returning to school;
  - contest the occurrences and number of alleged absences;
  - provide evidence that the student is no longer subject to the *Compulsory School Attendance Law*; or
  - request a hardship waiver according to PED rule in order to fulfill unavoidable employment or family medical care-giving duties;
- no fewer than 30 days after transmittal of the notice of noncompliance, a school district or state-chartered charter school shall provide to the parent and the MVD certification of noncompliance, if the student remains noncompliant, unless the student has received a hardship waiver;
- upon receipt of the certification of noncompliance, the MVD must suspend or deny the issuance of an instruction permit, driver's license, or provisional license to the student; and
- after suspension or denial of driving privileges, the student may request a meeting with the district or charter school for the student to:
  - provide evidence supporting certification from the district or charter school to the MVD that the student is either no longer subject to or in compliance with the attendance laws;
  - appeal the district or charter school's finding of noncompliance by requesting a hearing and final decision from the Public Education Department (PED); and
  - appeal the department's final decision to the district court.

Additionally, Section 1 of the bill removes the option for the Children's Court to suspend an habitual truant's driving privileges for up to 90 days for a first finding of habitual truancy, and for up to one year for subsequent findings.

**Section 2. [New Section of the *Public School Code*: Reporting]**

Beginning in 2017, by November 15 of each year, PED, in collaboration with MVD, shall submit a report on the implementation of the *Compulsory School Attendance Law* to the Governor, the Legislative Education Study Committee (LESC), and the Legislative Finance Committee (LFC). The report must include:

- aggregate data for each middle school, high school, school district, and charter school, including the number of:
  - habitual truants within a school year;
  - certificates of noncompliance with the *Compulsory School Attendance Law* issued by the state;
  - students whose driving privileges were denied or suspended;
  - students who had more than one such denial or suspension; and
  - instruction permits, licenses, or provisional licenses that were granted or reinstated after students demonstrated compliance with the attendance law;
- an evaluation of any improved academic achievement that can be attributed to the implementation of the *Compulsory School Attendance Law*, including:
  - students' scores on mathematics and English language arts assessments;
  - the four-year cohort graduation rate; and
  - the most recent grade received by a school under the *A-B-C-D-F Schools Rating Act*.

**Section 3. [New Section of the *Motor Vehicle Code*: Authority of the Division to suspend the license of a school-age person]:**

The MVD is authorized to:

- suspend or deny a student's driver's license, instruction permit, or provisional license without a preliminary hearing upon receipt of certification of noncompliance with attendance laws from a school district, state-chartered charter school, or PED, until the person is 18 years old;
- upon receipt of certification that the student is in compliance with, or no longer subject to, the *Compulsory School Attendance Law*, grant or reinstate the student's instruction permit, driver's license, or provisional license; and
- adopt rules to implement these provisions.

**Fiscal Impact:**

CS/HB 117 does not contain an appropriation.

**Fiscal Issues:**

The recommendation of the LFC for public education funding for FY 16 increases General Fund spending by 2.6 percent and includes \$6.0 million to support district and charter school efforts to decrease truancy and dropouts.<sup>1</sup> Notably, according to a recent LFC evaluation:<sup>2</sup>

<sup>1</sup> Please see the Legislative Finance Committee FY2016 Budget Recommendations, at: <http://www.nmlegis.gov/lcs/lfc/lfcdocs/budget/2016RecommendVollI.pdf>.

<sup>2</sup> Please see *Public Education Department and Higher Education Department Cost Effective Options for Increasing High School Graduation and Improving Adult Education*, Report # 14-09, September 2014, at: <http://www.nmlegis.gov/lcs/lfc/lfcdocs/peraudit/Public%20Education%20Department%20and%20Higher%20Education%20Department%20CostEffective%20Options%20for%20Increasing%20High%20School%20Graduation%20and%20Improving%20Adult%20.pdf>.

- while New Mexico's graduation rate has increased, the state's dropout rate has experienced a corresponding increase, from 3.6 percent in FY 08 to 4.7 percent in FY 13, with more than half of the state's dropouts concentrated in just 25 schools; and
- increasing the state's annual graduation rate by just 10 percent would yield approximately \$700 million in net benefits to the students, taxpayers, and society as a whole over the course of these students' lifetimes.

As noted in the analysis from PED, while there are no financial allocations associated with CS/HB 117, the added administrative burden associated with the reporting requirements of Section 2 of the bill may, in turn, create additional costs.

According to the LFC's Fiscal Impact Report (FIR) of HB 47 (2014), a bill substantially similar to current CS/HB 117:

- PED will be required to promulgate rules at least for the determination of a school-age person's truancy and the administration of hearings and appeals. Depending upon the number of such appeals, PED may be significantly burdened.
- There may be increased administrative costs to PED and MVD.

The Administrative Office of the Courts (AOC) notes that:

- there will be a minimal administrative cost for statewide update, distribution, and documentation of statutory changes;
- additional fiscal impact on the judiciary would be proportional to the enforcement of this law; and
- new laws, amendments to existing laws, and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

### **Technical Issues:**

Section 1 of the bill, which proposes to amend the *Public School Code*, states that, upon certification of noncompliance with the *Compulsory School Attendance Law*, the MVD "shall" suspend or deny driving privileges, while proposed amendments to the *Motor Vehicle Code*, in Section 2, merely "authorize" the MVD to suspend or deny driving privileges.

Similarly, Section 3 "authorizes" but does not mandate MVD to promulgate rules for the implementation of the bill's provisions.

Currently, CS/HB 117 allows only the noncompliant student to request a hearing or appeal from the decision resulting in suspension of driving privileges; it does not allow not the student's parents to request such a hearing.

### **Substantive Issues:**

The provisions of CS/HB 117 align with research from the National Dropout Prevention Center/Network that identifies 15 effective strategies that have the most positive impact on the

dropout rate.<sup>3</sup> These strategies have been implemented successfully at all education levels and environments throughout the nation.

According to PED:

- in school year 2013-2014, 16.26 percent of New Mexico students were identified as “habitual truants,” meaning that they had accumulated 10 or more unexcused absences,<sup>4</sup> an increase of 3.0 percent over last year;
- currently, there are no clear penalties for habitual truants in grades 8-12;
- New Mexico saw chronic absenteeism particularly in fourth and eighth grades, where 26 percent of students reported missing three or more days of school in a month;
- the department would need to revise rules on attendance to be in alignment with new language, should CS/HB 117 be enacted; and
- while student attendance records are captured in the Student Teacher Accountability Reporting System (STARS), PED staff would need to enhance this system, in order to include referrals from other agencies.

The AOC notes that:

- judges currently use driving privileges as a tool in juvenile cases, but the provisions of the bill are unclear as to whether Children’s Court judges would receive pertinent information regarding a student’s driving privilege;
- the bill’s process for appeals from a decision revoking, suspending or denying a student’s driving privilege:
  - lacks established timelines; and
  - permits only the school-age person to request a hearing or appeal, but includes no parallel provision for the student’s parents; and
- the provisions of the bill that deal with notice of students’ noncompliance, as well as students’ requests for meetings or appeals, appear to apply only to students enrolled in public schools, although private and homeschooled students, as well as students of state institutions, are all also subject to the *Compulsory School Attendance Law*.

The Taxation and Revenue Department (TRD) notes that CS/HB 117 would necessitate:

- the creation of a new code for suspending current drivers;
- the creation of a new, non-driver record for anyone whose driving privilege is suspended but does not hold a current driver’s license or permit; and
- promulgation and implementation of regulations for hearings when a student disputes the certification of noncompliance provided to MVD.

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<sup>3</sup> See, generally, <http://www.dropoutprevention.org/effective-strategies>. See also *15 Effective Strategies for Improving Student Attendance and Truancy Prevention*, Relmer and Smink, National Dropout Prevention Center/Network, College of Health, Education and Human Development, Clemson University, April 2005, at: <http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CCAQFjAA&url=http%3A%2F%2Fwww.ct.gov%2Fopm%2Flib%2Fopm%2FCJPPD%2FCJJyd%2FJydPublications%2FataStrategies.doc&ei=2prSVKX2JIHwggSQ0IPIBQ&usg=AFQJCNGotXzMWnIF7pilJLnN-RFvx4PyqA&bvm=bv.85142067,d.eXY>. (Noting a California program where revocation of drivers’ licenses, until improvement is shown, has resulted in annual diminution in truancy rates.)

<sup>4</sup> Section 22-12-9(A)(1) NMSA 1978.

## **Background:**

The *Compulsory School Attendance Law* defines the term “habitual truant” as a student who has accumulated the equivalent of 10 or more days of unexcused absences in a school year. An “unexcused absence,” according to this law, means an absence from school or classes for which the student does not have an excuse allowed under the law, the rules of the local school board, the governing authority of a charter school, or a private school.

During the 2012 interim, the Center for Education Policy Research, at the University of New Mexico, testified before the LESC that more than 51,000 students in the state’s elementary, middle, and secondary schools were habitual truants in school year 2011-2012. Maps presented as part of this testimony illustrated that truancy rates vary widely among schools within given districts. This testimony also provided an overview of the entities that may take action in the enforcement of penalties for habitually truant students, including:

- the school of the truant student;
- PED;
- the Probation Services Office of the Children, Youth and Families Department (CYFD);
- the district attorney; and
- law enforcement agencies.

This testimony added that truancy is a symptom of three general factors:

- individual challenges, such as low academic performance, low educational aspirations, boredom with school, drug use, or pregnancy;
- relational challenges, such as a lack of caring adults, bullying, or a lack of participation in school sports and activities; and
- structural challenges, such as weak truancy policies, institutional racism and discrimination, and low-income families.

According to the Education Commission of the States (ECS):<sup>5</sup>

- Twenty-seven states have some policy connecting student attendance, behavior, and achievement to driving privileges:
  - seventeen states condition driving privileges on compliance with school attendance requirements;
  - four states combine academic performance and attendance requirements as conditions of driver’s license eligibility;
  - three states will revoke a student’s driving privilege based on suspensions, expulsions, and other safety infractions;
  - two states will revoke a student’s driving privilege based on attendance infractions and suspensions, expulsions, or other safety infractions; and
  - one state places conditions on driving privileges based upon compliance with attendance, behavior, and academic performance.

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<sup>5</sup> <http://www.ecs.org/clearinghouse/60/10/6010.pdf>

- State policymakers should consider that, for many teenagers, driving is real currency, and promoting this privilege as a reward for attending and succeeding in school resonates with many students.
- Districts and schools may incur administrative costs in collaborating with the MVD, but the policies can still be relatively low-cost.

**Committee Referrals:**

HEC/HTPWC/SEC/SJC

**Related Bills:**

HB 271 *CYFD & PED Information Sharing*

SB 37 *Social Workers in Certain Schools*

CS/SB 85 *No Driving for Certain Students*

SB 331 *Las Cruces School Juvenile Probation & Parole*





SENATE EDUCATION COMMITTEE SUBSTITUTE FOR  
SENATE BILL 85

52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015

AN ACT

RELATING TO PUBLIC EDUCATION; PROVIDING FOR THE SUSPENSION OR  
POSTPONEMENT OF DRIVING PRIVILEGES OF SCHOOL-AGE PERSONS WHO  
ARE IN VIOLATION OF THE COMPULSORY SCHOOL ATTENDANCE LAW.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 22-12-7 NMSA 1978 (being Laws 1967,  
Chapter 16, Section 175, as amended) is amended to read:

"22-12-7. ENFORCEMENT OF ATTENDANCE LAW--HABITUAL  
TRUANTS--PENALTY--SUSPENSION OR DENIAL OF DRIVING PRIVILEGES--  
APPEAL TO SCHOOL DISTRICT, DEPARTMENT AND DISTRICT COURT.--

A. Each local school board and each governing body  
of a charter school or private school shall initiate the  
enforcement of the provisions of the Compulsory School  
Attendance Law for students enrolled in their respective  
schools.

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1           B. To initiate enforcement of the provisions of the  
2 Compulsory School Attendance Law against ~~[an]~~ a student who is  
3 a habitual truant, a local school board or governing body of a  
4 charter school or private school or its authorized  
5 representatives shall give written notice of the habitual  
6 truancy by mail to or by personal service on the parent of the  
7 student subject to and in noncompliance with the provisions of  
8 the Compulsory School Attendance Law. The notice shall include  
9 a date, time and place for the parent to meet with the local  
10 school district, charter school or private school to develop  
11 intervention strategies that focus on keeping the student in an  
12 educational setting.

13           C. If unexcused absences continue after written  
14 notice of habitual truancy as provided in Subsection B of this  
15 section has occurred, the student shall be reported to the  
16 juvenile probation ~~[services]~~ office of the judicial district  
17 where the student resides for an investigation as to whether  
18 the student shall be considered to be a neglected child or a  
19 child in a family in need of services because of habitual  
20 truancy and thus subject to the provisions of the Children's  
21 Code. The juvenile probation ~~[services]~~ office may send a  
22 written notice to a parent of the student directing the parent  
23 and student to report to the juvenile probation ~~[services]~~  
24 office to discuss services for the student or the family. ~~[In~~  
25 ~~addition to any other disposition, the children's court may~~

1 ~~order the habitual truant's driving privileges to be suspended~~  
2 ~~for a specified time not to exceed ninety days on the first~~  
3 ~~finding of habitual truancy and not to exceed one year for a~~  
4 ~~subsequent finding of habitual truancy.]~~

5 D. If, after review by the juvenile probation  
6 office where the student resides, a determination and finding  
7 is made that the habitual truancy by the student may have been  
8 caused by the parent of the student, then the matter [~~will~~]  
9 shall be referred by the juvenile probation office to the  
10 district attorney's office or any law enforcement agency having  
11 jurisdiction for appropriate investigation and filing of  
12 charges allowed under the Compulsory School Attendance Law.  
13 Charges against the parent may be filed in metropolitan court,  
14 magistrate court or district court.

15 E. A parent of the student who, after receiving  
16 written notice as provided in Subsection B of this section and  
17 after the matter has been reviewed in accordance with  
18 Subsection D of this section, knowingly allows the student to  
19 continue to violate the Compulsory School Attendance Law [~~shall~~  
20 be] is guilty of a petty misdemeanor. Upon the first  
21 conviction, a fine of not less than twenty-five dollars  
22 (\$25.00) or more than one hundred dollars (\$100) may be  
23 imposed, or the parent of the student may be ordered to perform  
24 community service. If violations of the Compulsory School  
25 Attendance Law continue, upon the second and subsequent

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1 convictions, the parent of the student who knowingly allows the  
2 student to continue to violate the Compulsory School Attendance  
3 Law ~~[shall be]~~ is guilty of a petty misdemeanor and shall be  
4 subject to a fine of not more than five hundred dollars (\$500)  
5 or imprisonment for a definite term not to exceed six months or  
6 both.

7 F. ~~[The provisions of this section shall apply~~  
8 ~~beginning July 1, 2004.]~~ Starting with the 2016-2017 school  
9 year, when a student in grade eight through twelve accumulates  
10 ten or more unexcused absences in a school year and becomes a  
11 habitual truant:

12 (1) a school shall give to the student's  
13 parent a notice of noncompliance with the Compulsory School  
14 Attendance Law containing:

15 (a) the name, date of birth and address  
16 of the student;

17 (b) a statement that the student is in  
18 noncompliance with the Compulsory School Attendance Law due to  
19 habitual truancy and the number and dates of unexcused  
20 absences; and

21 (c) notice of the opportunity for the  
22 student and the student's parent to request an optional meeting  
23 with the school principal or head administrator within two  
24 weeks to: 1) commit to the student returning to school and  
25 complying with the Compulsory School Attendance Law; 2) contest

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1 the occurrences and number of the student's unexcused absences;  
2 3) provide evidence that the student is no longer subject to  
3 the Compulsory School Attendance Law; or 4) request a hardship  
4 waiver pursuant to department rule to fulfill unavoidable  
5 employment or family medical caregiving duties;

6 (2) a school district or charter school shall  
7 give to the student's parent and the motor vehicle division of  
8 the taxation and revenue department a state-provided  
9 certification of noncompliance with the Compulsory School  
10 Attendance Law no less than thirty days after the notice of  
11 noncompliance with the Compulsory School Attendance Law is sent  
12 to the parent pursuant to Paragraph (1) of this subsection if  
13 the student remains noncompliant, unless the student has been  
14 granted a hardship waiver pursuant to Item 4) of Subparagraph  
15 (c) of Paragraph (1) of this subsection prior to the issuance  
16 of a state-provided certification of noncompliance;

17 (3) upon the motor vehicle division's receipt  
18 of a state-provided certification of noncompliance with the  
19 Compulsory School Attendance Law, the motor vehicle division  
20 shall suspend or deny the issuance of an instruction permit,  
21 driver's license or provisional license to a student pursuant  
22 to the Motor Vehicle Code until the student reaches the age of  
23 eighteen years; and

24 (4) following the suspension or denial of an  
25 instruction permit, driver's license or provisional license,

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1 the student may:

2 (a) request a meeting with the school  
3 district or charter school to provide evidence supporting a  
4 request that the school district or charter school provide to  
5 the motor vehicle division a certification that the student is  
6 in compliance with or is no longer subject to the Compulsory  
7 School Attendance Law;

8 (b) appeal the school district's or  
9 charter school's determination by requesting a hearing and  
10 final decision from the department pursuant to its rules; and

11 (c) appeal the department's final  
12 decision to the district court for the county in which the  
13 student resides pursuant to Section 39-3-1.1 NMSA 1978."

14 SECTION 2. A new section of the Public School Code is  
15 enacted to read:

16 "[~~NEW MATERIAL~~] REPORTING.--No later than November 15,  
17 2017 and each subsequent year, the department, in collaboration  
18 with the motor vehicle division of the taxation and revenue  
19 department and school districts and charter schools, shall  
20 submit an annual statewide report to the governor, the  
21 legislative education study committee and the legislative  
22 finance committee on the implementation of the Compulsory  
23 School Attendance Law. The annual statewide report shall  
24 include to the extent available:

25 A. aggregate data for each middle school, high

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1 school, school district and charter school regarding  
2 implementation of Subsection F of Section 22-12-7 NMSA 1978 and  
3 Section 3 of this 2015 act, including:

4 (1) the number of students who accumulated the  
5 equivalent of ten days or more of unexcused absences within a  
6 school year;

7 (2) the number of state-provided  
8 certifications of noncompliance issued pursuant to the  
9 Compulsory School Attendance Law;

10 (3) the number of students who were denied the  
11 issuance of or incurred the suspension of an instruction  
12 permit, driver's license or provisional license due to  
13 noncompliance with the Compulsory School Attendance Law and the  
14 number of:

15 (a) students who had more than one  
16 denial or suspension; and

17 (b) instruction permits, driver's  
18 licenses or provisional licenses that were denied or suspended  
19 and were subsequently granted or reinstated as a consequence of  
20 compliance with the Compulsory School Attendance Law; and

21 (4) the number of hardship waivers granted  
22 pursuant to Item 4) of Subparagraph (c) of Paragraph (1) of  
23 Subsection F of Section 22-12-7 NMSA 1978; and

24 B. an evaluation of any improvement in academic  
25 achievement attributable to implementation of the Compulsory

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1 School Attendance Law, including, to the extent applicable, for  
2 each middle school, high school, school district and charter  
3 school:

4 (1) the students' mathematics assessment  
5 scores;

6 (2) the students' English language arts  
7 assessment scores;

8 (3) the four-year cohort graduation rate; and

9 (4) the most recent grade received under the  
10 A-B-C-D-F Schools Rating Act."

11 SECTION 3. A new section of the Motor Vehicle Code is  
12 enacted to read:

13 "[NEW MATERIAL] AUTHORITY OF DIVISION TO SUSPEND LICENSE  
14 OF SCHOOL-AGE PERSON.--

15 A. The division is authorized:

16 (1) upon receipt of a state-provided  
17 certification of noncompliance with the Compulsory School  
18 Attendance Law, pursuant to Section 22-12-7 NMSA 1978, to  
19 suspend or deny the granting of an instruction permit, driver's  
20 license or provisional license, without a preliminary hearing,  
21 of a school-age person as defined in Section 22-1-2 NMSA 1978  
22 until the school-age person reaches the age of eighteen years;  
23 and

24 (2) upon receipt of a state-provided  
25 certification that the school-age person is in compliance with

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1 or is no longer subject to the Compulsory School Attendance  
2 Law, to:

3 (a) reinstate a suspended instruction  
4 permit, driver's license or provisional license of a school-age  
5 person; or

6 (b) grant an instruction permit,  
7 driver's license or provisional license to a school-age person  
8 pursuant to the Motor Vehicle Code.

9 B. The division may adopt and promulgate rules to  
10 implement the provisions of this section."

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**LEGISLATIVE EDUCATION STUDY COMMITTEE  
BILL ANALYSIS**

**Bill Number:** CS/SB 85

**52nd Legislature, 2nd Session, 2015**

**Tracking Number:** .199487.2

**Short Title:** No Driving for Certain Students

**Sponsor(s):** Senator Craig W. Brandt

**Analyst:** Kevin Force *KF*

**Date:** March 17, 2015

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**SENATE EDUCATION COMMITTEE SUBSTITUTE FOR SB 85**

**Bill Summary:**

CS/SB 85 proposes to amend the *Compulsory School Attendance Law* and the *Motor Vehicle Code* to provide for the suspension or postponement of driving privileges of school-aged persons in violation of the *Compulsory School Attendance Law*. Specifically:

- Section 1 of the bill amends the section of the *Compulsory School Attendance Law* that addresses enforcement;
- Section 2 creates a new section of the *Public School Code* to address the issue of data collection and reporting; and
- Section 3 creates a new section of the *Motor Vehicle Code* setting forth procedures for the Motor Vehicle Division (MVD) to follow regarding the disposition of students' driving privileges.

**Section 1. [Suspension or denial of driving privileges, and appeals]:**

Beginning with school year 2016-2017, when a student in grades 8 through 12 accumulates 10 or more unexcused absences (habitual truancy):

- a school must give the student's parent a notice of noncompliance with attendance laws, including notice of the opportunity to request a meeting with the school principal or head administrator to:
  - commit to returning to school;
  - contest the occurrences and number of alleged absences;
  - provide evidence that the student is no longer subject to the *Compulsory School Attendance Law*; or
  - request a hardship waiver of the Public Education Department (PED) rule in order to fulfill unavoidable employment or family medical care-giving duties;
- no fewer than 30 days after transmittal of the notice of noncompliance, a school district or state-chartered charter school shall provide to the parent and the MVD certification of noncompliance, if the student remains noncompliant, unless the student has received a hardship waiver;

- upon receipt of the certification of noncompliance, the MVD must suspend or deny the issuance of an instruction permit, driver's license, or provisional license to the student; and
- after suspension or denial of driving privileges, the student may:
  - request a meeting with the district or charter school for the student to provide evidence supporting certification from the district or charter to the MVD that the student is either no longer subject to or in compliance with the attendance laws;
  - appeal the district or charter school's finding of noncompliance by requesting a hearing and final decision from PED; and
  - appeal the department's final decision to the district court.

Additionally, Section 1 of the bill removes the option for the Children's Court to suspend an habitual truant's driving privileges for up to 90 days for a first finding of habitual truancy, and one year for subsequent findings.

**Section 2. [New Section of the *Public School Code: Reporting*]**

Beginning in 2017, by November 15 of each year, PED, in collaboration with MVD, shall submit a report on the implementation of the *Compulsory School Attendance Law* to the Governor, the Legislative Education Study Committee (LESC), and the Legislative Finance Committee (LFC), which is to include:

- aggregate data for each middle school, high school, school district, and charter school, including the number of:
  - habitual truants within a school year;
  - certificates of noncompliance with the *Compulsory School Attendance Law* issued by the state;
  - students whose driving privileges were denied or suspended;
  - students who had more than one such denial or suspension; and
  - instruction permits, licenses, or provisional licenses that were granted or reinstated after students demonstrated compliance with the attendance law; and
- an evaluation of any improved academic achievement that can be attributed to the implementation of the *Compulsory School Attendance Law*, including:
  - students' scores on mathematics and English language arts assessments;
  - the four-year cohort graduation rate; and
  - the most recent grade received by a school under the *A-B-C-D-F Schools Rating Act*.

**Section 3. [New Section of the *Motor Vehicle Code: Authority of the Division to suspend the license of a school-age person*]:**

The MVD is authorized to:

- suspend or deny a student's driver's license, instruction permit, or provisional license without a preliminary hearing upon receipt of certification of noncompliance with attendance laws from a school district, state-chartered charter school, or PED, until the person is 18 years old;

- upon receipt of certification that the student is in compliance with, or no longer subject to, the *Compulsory School Attendance Law*, grant or reinstate the student's instruction permit, driver's license, or provisional license; and
- adopt rules to implement these provisions.

**Fiscal Impact:**

CS/SB 85 does not contain an appropriation.

**Fiscal Issues:**

The recommendation of the LFC for public education funding for FY 16 increases General Fund spending by 2.6 percent and includes \$6.0 million to support district and charter school efforts to decrease truancy and dropouts.<sup>1</sup> Notably, according to a recent LFC evaluation:<sup>2</sup>

- while New Mexico's graduation rate has increased, the state's dropout rate has experienced a corresponding increase, from 3.6 percent in FY 08 to 4.7 percent in FY 13, with more than half of the state's dropouts concentrated in just 25 schools; and
- increasing the state's annual graduation rate by just 10 percent would yield approximately \$700 million in net benefits to the students, taxpayers, and society as a whole over the course of these students' lifetimes.

As noted in the analysis from PED, while there are no financial allocations associated with CS/SB 85, the added administrative burden associated with the reporting requirements of Section 2 of the bill may, in turn, create additional costs.

According to the LFC's Fiscal Impact Report (FIR) of HB 47 (2014), a bill substantially similar to the current CS/SB 85:

- PED will be required to promulgate rules at least for the determination of a school-age person's truancy and the administration of hearings and appeals. Depending upon the number of such appeals, PED may be significantly burdened.
- There may be increased administrative costs to PED and MVD.

The Administrative Office of the Courts (AOC) notes that:

- there will be a minimal administrative cost for statewide update, distribution, and documentation of statutory changes;
- additional fiscal impact on the judiciary would be proportional to the enforcement of this law; and
- new laws, amendments to existing laws, and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

<sup>1</sup> Please see the Legislative Finance Committee FY2016 Budget Recommendations, at: <http://www.nmlegis.gov/lcs/lfc/lfcdocs/budget/2016RecommendVollI.pdf>.

<sup>2</sup> Please see *Public Education Department and Higher Education Department Cost Effective Options for Increasing High School Graduation and Improving Adult Education*, Report # 14-09, September 2014, at: <http://www.nmlegis.gov/lcs/lfc/lfcdocs/perfaudit/Public%20Education%20Department%20and%20Higher%20Education%20Department%20CostEffective%20Options%20for%20Increasing%20High%20School%20Graduation%20and%20Improving%20Adult%20.pdf>.

### **Technical Issues:**

Section 1 of the bill, which proposes to amend the *Public School Code*, states that, upon certification of noncompliance with the *Compulsory School Attendance Law*, the MVD “shall” suspend or deny driving privileges, while proposed amendments to the *Motor Vehicle Code*, in Section 2, merely “authorize” the MVD to suspend or deny driving privileges.

Similarly, Section 3 “authorizes” but does not mandate MVD to promulgate rules for the implementation of the bill’s provisions.

Currently, CS/SB 85 allows only the noncompliant student to request a hearing or appeal from the decision resulting in suspension of driving privileges, but not the student’s parents.

### **Substantive Issues:**

The provisions of CS/SB 85 align with research from the National Dropout Prevention Center/Network that identifies 15 effective strategies that have the most positive impact on the dropout rate.<sup>3</sup> These strategies have been implemented successfully at all education levels and environments throughout the nation.

According to the PED analysis of the original bill:

- in school year 2013-2014, 16.26 percent of New Mexico students were identified as “habitual truants,” meaning that they had accumulated 10 or more unexcused absences,<sup>4</sup> an increase of 3.0 percent over last year;
- currently, there are no clear penalties for habitual truants in grades 8-12;
- New Mexico saw chronic absenteeism particularly in fourth and eighth grades, where 26 percent of students reported missing three or more days of school in a month;
- the department would need to revise rules on attendance to be in alignment with new language, should CS/SB 85 pass the Legislature and be signed by the Governor; and
- while student attendance records are captured in the Student Teacher Accountability Reporting System (STARS), PED staff would need to enhance this system, in order to include referrals from other agencies.

The AOC, in its analysis of the original bill, notes that:

- judges currently use driving privileges as a tool in juvenile cases, but the provisions of the bill are unclear as to whether Children’s Court judges would receive pertinent information regarding a student’s driving privilege;
- the bill’s process for appeals from a decision revoking, suspending, or denying a student’s driving privilege:

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<sup>3</sup> See, generally, <http://www.dropoutprevention.org/effective-strategies>. See also *15 Effective Strategies for Improving Student Attendance and Truancy Prevention*, Reimer and Smink, National Dropout Prevention Center/Network, College of Health, Education and Human Development, Clemson University, April 2005, at: <http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=OCCAQFjAA&url=http%3A%2F%2Fwww.ct.gov%2Fopm%2Flib%2Fopm%2FCJPPD%2FCJJyd%2FJydPublications%2FataStrategies.doc&ei=2prSVKX2JIHwggSQ0IPBQ&usg=AFQJCNGotXzMWnlf7piJLnN-RFvx4PyqA&bvm=bv.85142067,d.eXY>. (Noting a California program where revocation of drivers’ licenses, until improvement is shown, has resulted in annual diminution in truancy rates.)

<sup>4</sup> Section 22-12-9(A)(1) NMSA 1978.

- lacks established timelines; and
  - permits only the school-age person to request a hearing or appeal, but includes no parallel provision for the student's parents; and
- the provisions of the bill that deal with notice of students' noncompliance, as well as students' requests for meetings or appeals, appear to apply only to students enrolled in public schools, although private and homeschooled students, as well as students of state institutions, are all also subject to the *Compulsory School Attendance Law*.

The Taxation and Revenue Department (TRD) analysis of the original SB 85 notes that the bill would necessitate:

- the creation of a new code for suspending current drivers;
- the creation of a new, non-driver record for anyone whose driving privilege is suspended but does not hold a current driver's license or permit; and
- promulgation and implementation of regulations for hearings when a student disputes the certification of noncompliance provided to MVD.

**Background:**

The *Compulsory School Attendance Law* defines the term "habitual truant" as a student who has accumulated the equivalent of 10 or more days of unexcused absences in a school year. An "unexcused absence," according to this law, means an absence from school or classes for which the student does not have an excuse allowed under the law, the rules of the local school board, the governing authority of a charter school, or a private school.

During the 2012 interim, the Center for Education Policy Research, at the University of New Mexico, testified before the LESC that more than 51,000 students in the state's elementary, middle, and secondary schools were habitual truants in school year 2011-2012. Maps presented as part of this testimony illustrated that truancy rates vary widely among schools within given districts. This testimony also provided an overview of the entities that may take action in the enforcement of penalties for habitually truant students, including:

- the school of the truant student;
- PED;
- the Probation Services Office of the Children, Youth and Families Department;
- the district attorney; and
- law enforcement agencies.

This testimony added that truancy is a symptom of three general factors:

- individual challenges, such as low academic performance, low educational aspirations, boredom with school, drug use, or pregnancy;
- relational challenges, such as a lack of caring adults, bullying, or a lack of participation in school sports and activities; and
- structural challenges, such as weak truancy policies, institutional racism and discrimination, and low-income families.

According to the Education Commission of the States:<sup>5</sup>

- Twenty-seven states have some policy connecting student attendance, behavior, and achievement to driving privileges:
  - seventeen states condition driving privileges on compliance with school attendance requirements;
  - four states combine academic performance and attendance requirements as conditions of driver's license eligibility;
  - three states will revoke a student's driving privilege based on suspensions, expulsions, and other safety infractions;
  - two states will revoke a student's driving privilege based on attendance infractions and suspensions, expulsions, or other safety infractions; and
  - one state places conditions on driving privileges based upon compliance with attendance, behavior, and academic performance.
- State policymakers should consider that, for many teenagers, driving is real currency, and promoting this privilege as a reward for attending and succeeding in school resonates with many students.
- Districts and schools may incur administrative costs in collaborating with the MVD, but the policies can still be relatively low-cost.

**Committee Referrals:**

SEC/SJC

**Related Bills:**

CS/HB 117a *No Driving for Certain Students* (Identical)

HB 271a *CYFD & PED Information Sharing*

SB 37 *Social Workers in Certain Schools*

SB 331 *Las Cruces School Juvenile Probation & Parole*

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<sup>5</sup> <http://www.ecs.org/clearinghouse/60/10/6010.pdf>