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## Juvenile Law

### The Evolution of Colorado's School Attendance Laws: Moving Toward Prevention and Restoration

by Jenna Zerylnick

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**This article provides an overview of Colorado's School Attendance Law of 1963, reviews the history of truancy reduction efforts in Colorado and status offense reform, and examines the recent evolution of Colorado law related to compulsory school attendance.**

Like many other states on a mission to improve education quality, Colorado is a hotbed for education reform. Discourse about the Common Core State Standards currently dominates the national education scene. Forty-four U.S. states, including Colorado, have adopted the Common Core State Standards.<sup>1</sup> As a result, Colorado has enacted substantial changes to statewide K-12 math and language arts curriculum standards and assessment practices.<sup>2</sup> School funding issues also recently garnered attention in Colorado as a result of the Colorado Supreme Court's *Lobato* decision, which held that the state's education funding scheme is constitutional, to voters rejecting Amendment 66, a proposed income tax hike that was projected to increase revenue for education by \$950 million.<sup>3</sup>

The topic of this article is a less-publicized but highly progressive state-level education policy reform—the recent evolution of Colorado's compulsory school attendance laws. This article provides a basic overview of the School Attendance Law of 1963, explains reforms to Colorado's compulsory attendance laws designed to bring a restorative and preventative approach to truancy reduction, and discusses the practical implications of these legislative changes.

#### Truancy and Why it Matters

"Truancy" is generally defined as a specific number of unexcused absences from school by a student during the ages of compulsory school attendance.<sup>4</sup> States and school districts further define truancy and specify how many unexcused absences may occur before a student is considered truant.<sup>5</sup> Colorado law classifies a child as a habitual truant after four unexcused absences in a month or ten unexcused absences in a year.<sup>6</sup>

The collateral effects of truancy are well documented.<sup>7</sup> Research shows that truancy is often an early indicator that a student is headed toward delinquency, substance abuse, teen pregnancy, social isolation, educational failure, employment problems, and poverty and dependence on public assistance.<sup>8</sup> In a study on dropouts in five Colorado districts, available data showed that in three of the districts, half or more dropouts were chronically absent during the ninth grade.<sup>9</sup> A study on truancy in Denver Public Schools found that at least 50% of dropouts were chronically truant and 60% of students who left the district for juvenile incarceration were chronically truant.<sup>10</sup>

Truancy is a gateway offense in that truancy often generates involvement of multiple local agencies and service systems.<sup>11</sup> Many truant juveniles have drug or alcohol problems, mental or emotional issues, special education needs, or experience with abuse or neglect at home.<sup>12</sup> These problems are often uncovered amid a truancy proceeding. Truancy also impacts students without attendance problems by reducing meaningful instruction hours for all students when teachers are forced to spend time and resources trying to improve student attendance then playing catch-up with truant students when they return to school.<sup>13</sup>

Another related term, "chronic absenteeism," typically refers to the total number of missed school days, including both excused and unexcused absences.<sup>14</sup> Schools are beginning to acknowledge chronic absenteeism in addition to truancy, because research illustrates the negative impact of absence from school regardless of whether the missed days are labeled excused versus unexcused.<sup>15</sup>

#### Overview of Colorado's School Attendance Law

Colorado has a reputation for being a "pioneer in juvenile justice."<sup>16</sup> In 1899, Colorado passed its first version of a compulsory school attendance law, "An Act to Compel the Elementary Education of Children in School Districts of the First and Second Class."<sup>17</sup> This Act was the first law in Colorado to differentiate juveniles from adults.<sup>18</sup> Colorado's current compulsory school attendance scheme was passed in 1963, entitled "School Attendance Law of 1963."<sup>19</sup> The law has remained in place since then, albeit with amendment and revision.

## **Compulsory Attendance Provisions**

Colorado's school attendance law mandates attendance by children ages 6 through 16.<sup>20</sup> Yearly hourly attendance requirements differ by grade level.<sup>21</sup> The same hourly requirements apply to students enrolled in online school.<sup>22</sup> Certain individuals are exempt from compulsory attendance requirements, such as: ill or injured students; students enrolled at independent or parochial schools; students absent due to physical, mental, or emotional disability; individuals who have been suspended, expelled, or denied admission; students pursuing a work-study program under supervision of a public school; and homeschooled individuals.<sup>23</sup> Schools must be in session for at least 160 days per school year, unless the commissioner of education gives a school-specific prior approval to open for fewer days.<sup>24</sup>

Each school district is responsible for monitoring student attendance.<sup>25</sup> School districts must designate at least one employee to act as an attendance officer, or school districts may appoint the probation officer of the court of record in the county where the district is located to serve as attendance officer.<sup>26</sup> The law requires the attendance officer, in appropriate cases, to counsel students and parents, to investigate the causes of nonattendance, and to report nonattendance to the local board of education or the attorney representing the school district to enforce the compulsory attendance requirements.<sup>27</sup>

Each school district must adopt and implement policies and procedures concerning elementary and secondary school attendance, including a written policy setting forth the district's attendance requirements.<sup>28</sup> The attendance policy must provide for excused absences and specify the maximum number of unexcused absences a student can accumulate before the district may initiate judicial proceedings.<sup>29</sup> The policy may include appropriate penalties for unexcused absences.<sup>30</sup> Also, school districts must adopt policies and procedures for working with children who are habitually truant. Such policies must provide for the development of attendance improvement plans.<sup>31</sup>

The school attendance law explicitly places responsibility for school attendance on parents:

The general assembly hereby declares that two of the most important factors in ensuring a child's educational development are parental involvement and parental responsibility. The general assembly further declares that it is the obligation of every parent to ensure that every child under such parent's care and supervision receives adequate education and training. Therefore, every parent of a child who has attained the age of six years on or before August 1 of each year and is under the age of seventeen years shall ensure that such child attends the public school in which such child is enrolled in compliance with this section.<sup>32</sup>

## **Pre-Court Involvement**

When a school identifies a student as habitually truant, the school must develop a plan to improve the student's attendance.<sup>33</sup> The school district cannot initiate court proceedings to compel attendance unless the district first implements a plan that meets the requirements of CRS § 22-33-107(3) and the child's habitual truancy continues after implementation of the plan.<sup>34</sup> The law encourages school personnel to work with the child's parents and a local community services group when evaluating the reasons for the child's truancy and developing the plan.<sup>35</sup>

Before filing a truancy case, a school district must give the child and parents written notice that the district will initiate proceedings if the child's habitual truancy continues.<sup>36</sup> The school district may use a notice letter or the initial petition to provide the statutory notice, and the notice must state the date on which the district will file the petition.<sup>37</sup> The filing date in the notice must be at least five days after the date notice is given.<sup>38</sup> The notice must state the provisions of the School Attendance Law with which the child must comply, and that the school district will not initiate proceedings if the child complies with the identified provisions before the district files.<sup>39</sup> In other words, the child has a five-day window to cure and avoid initiation of a judicial proceeding by not incurring any unexcused absences after receipt of the written notice.

## **Judicial Proceedings to Enforce Compliance With Attendance Requirements**

When a student's habitual truancy continues after implementation of a § 22-33-107(3) plan and the school district's notice of intent to file a truancy petition, state law requires school districts, "as a last-resort approach," to initiate judicial action to compel attendance.<sup>40</sup> Juvenile courts have jurisdiction over proceedings to compel school attendance.<sup>41</sup> Venue is proper in the judicial district in which a child resides or is present.<sup>42</sup> If a child moves out of the judicial district in which a truancy case was initiated, the court has discretion to retain the case or transfer venue.<sup>43</sup> If a court transfers venue, the court must submit the entire file, including all documents and reports, to the receiving court. The receiving court must proceed with the case as if the petition to compel attendance were originally filed in that district.<sup>44</sup>

In truancy proceedings, the court has the discretion to appoint counsel for the child as well as a guardian *ad litem* to represent the child's best interests.<sup>45</sup> Once the truancy petition is properly before the court, the parties either will stipulate that the child did not attend school as provided by law, or the court will conduct an evidentiary hearing on the petition. If the school district establishes that the child did not attend school as provided by law, the court may enter an order against the child and/or the parents requiring the child to attend school as provided by law and/or compelling the parents to take reasonable steps to ensure the child's attendance.<sup>46</sup> If the court enters an order requiring the child to attend school as provided by law, the order must also require the child and parents to comply with the § 22-33-107(3) plan previously created.<sup>47</sup>

Although the statutory scheme does not set forth specific procedural requirements for monitoring compliance with court orders, after ordering compliance with the law and the § 22-33-107(3) plan, courts typically set truancy cases for review. When a child and/or parent violates a valid court order, the court has two options to address the issue: order assessment for neglect or issue a show-cause order as to why the student should not be held in contempt.<sup>48</sup> The factual scenario at hand will determine which route the court opts to take. The age of the student and the degree of parental involvement often affect the decision as to whether a contempt proceeding or neglect assessment is more appropriate.

When a court enters a show cause order, the parties may stipulate that the child and/or parents are in contempt and enter an agreement regarding sanctions. If the parties do not enter a stipulation, the court conducts an evidentiary show cause hearing.<sup>49</sup> Such a hearing typically consists of the school district presenting evidence of the existence of a valid court order and evidence that the child's and/or parents' violation of the order was willful, knowing, and voluntary.<sup>50</sup> In most cases, the school attendance officer testifies about the child's attendance. The child and parents may present evidence showing that the child and/or parents did not violate the court order or that a violation was not willful, knowing, and voluntary, and therefore not contemptuous. The child and/or parents may hire a lawyer at any time during a truancy proceeding, and on the entry of a show cause order, the child and parents may be entitled to court-appointed counsel due to the risk of incarceration as a contempt sanction.<sup>51</sup>

In the event of a contempt finding, the court may impose sanctions.<sup>52</sup> Contempt sanctions in a truancy case may include, but are not limited to, the following: community service to be performed by the child; supervised activities; participation in services for at-risk students as described in § 22-33-204; and incarceration for up to five days.<sup>53</sup> The court also has discretion to order "other activities having goals that shall ensure that the child has an opportunity to obtain a quality education."<sup>54</sup> Examples of such activities include court-ordered Senate Bill 94 supervision, wearing an ankle monitor, and court-ordered writing assignments.<sup>55</sup> As a contempt sanction for a parent, the court may impose a fine up to but not more than \$25 per day or confine the parent in the

county jail until the parent complies with the order.<sup>56</sup>

## **Evolving Perspectives and Increased Attention to the Implications of Truancy**

School attendance is a critical issue in modern education reform due to the increasing prevalence of truancy and its negative consequences.<sup>57</sup> Although it is nearly impossible to devise an accurate national truancy rate because of the different state definitions of truancy, state truancy rates across the nation are alarmingly high.<sup>58</sup> Articles featured in *The Denver Post* have highlighted striking statistics about local truancy rates—for example, indicating that in the 2006–07 school year, 20% of all Denver Public School students missed more than twenty days of school.<sup>59</sup> Recently, truancy has garnered increased national and local attention as a problem worth fixing.<sup>60</sup>

### **National Attention on Truancy Reform**

Modern school attendance research focuses on gathering meaningful data on nationwide truancy rates and causes of truancy.<sup>61</sup> Research-based recommendations discourage draconian punishment for truancy and instead encourage the use of evidence-based lesser interventions and improved access to multidisciplinary services to treat the underlying reasons for truancy.<sup>62</sup> States are recognizing that prevention, identification, and treatment of truancy requires collaboration between schools and communities.<sup>63</sup>

The national call for truancy reform is embedded in the evolving recognition of the need for significant status offense reform.<sup>64</sup> Truancy is categorized as a status offense, which is defined as a "non-criminal infraction that would not be an offense but for the youth's status as a minor."<sup>65</sup> For decades, lawmakers have differentiated status offenders from juvenile delinquents. In 1974, the U.S. Congress enacted the Juvenile Justice and Delinquency Prevention Act (JJDP), encouraging states to limit court involvement and detention sentences for status offenders.<sup>66</sup> The JJDP initially prohibited the locked placement of youth charged with status offenses; however, in 1980, Congress revised the JJDP by adding a valid court order (VCO) exception, which gives judges the authority to place status offenders in detention for violation of a VCO.<sup>67</sup> The JJDP contains procedural requirements that must be followed when a juvenile is taken into custody for violation of a status offense.<sup>68</sup> Although some states have prohibited use of the VCO exception to detain juvenile status offenders, more than half of U.S. states still allow detention of status offenders via the VCO exception.<sup>69</sup> Colorado implements the procedural requirements of the federal VCO exception in Colorado Rule of Juvenile Procedure Rule 3.8, which applies to truancy proceedings.<sup>70</sup>

Policymakers continue to recognize treatment of status offenses, including truancy, as an area of juvenile law in need of reform.<sup>71</sup> In December 2013, the Coalition for Juvenile Justice released a new set of national standards concerning status offenses. The standards provide policy and practice recommendations to reduce court involvement in status offenses.<sup>72</sup> The standards promote complete prohibition of detention orders for status offenders and instead recommend the use of support services and least-restrictive placement options.<sup>73</sup> Research demonstrates that detaining status offenders is not only ineffective—because detention's punitive nature does not address the underlying cause of non-delinquent status offense behavior—but often harms juveniles.<sup>74</sup> Detention can harm juveniles because commingling status offenders with delinquent juveniles who have committed serious crimes increases the likelihood of criminal behavior by mere status offenders.<sup>75</sup>

### **Recognition of the Need for Reform in Colorado**

Colorado—specifically Denver—is the site of groundbreaking truancy research conducted by the National Center for School Engagement (NCSE).<sup>76</sup> A long history of collaboration to improve school attendance exists among Denver's juvenile stakeholders.<sup>77</sup> This concerted effort to reduce truancy began in the mid-90s when a Department of Human Services attorney recognized that individuals receiving social services were often involved with multiple agencies.<sup>78</sup> Thereafter, Denver juvenile stakeholders established committees and projects to explore truancy reduction, with a focus on collaboration and coordination among agencies.<sup>79</sup> These discussions reached a point where participants realized that there was a dearth of data needed to inform effective policy changes.<sup>80</sup> The result was a focused research project on truancy conducted by the NCSE and the Creative Options Committee.<sup>81</sup>

The study relied on quantitative data, as well as observations, interviews, and focus groups involving juvenile stakeholders and truancy experts from across the country.<sup>82</sup> The study resulted in the NCSE's 2006 report titled "Truancy in Denver: Prevalence, Effects, and Interventions."<sup>83</sup> Researchers devised a framework that integrated both quantitative and qualitative data gathered in the study and included perspectives from key players in the truancy arena, such as school administrators, teachers, students, and parents.<sup>84</sup> The study concluded with a list of more than fifteen specific recommendations related to school attendance, including but not limited to: increased public awareness of the prevalence of truancy and its societal impact; a full continuum of supports and sanctions to address truancy; consistent enforcement of attendance policies; and clear leadership and a community-wide response.<sup>85</sup>

Denver juvenile stakeholders' progressive discussions and the NCSE's research were early indications of a shift in Colorado's truancy reduction paradigm. Additional evidence of changing perspectives about compulsory attendance is the fact that as early as 1999, at least two Colorado school districts voluntarily created innovative early intervention protocols to improve attendance and reduce the number of truant students funneled into court, long before legislative revisions mandated that schools implement such early intervention protocols.<sup>86</sup>

## **Colorado's Truancy Reform Provisions**

Originally enacted in 1963, Colorado's School Attendance Law has undergone recent legislative changes increasing its emphasis on a restorative and preventative approach to truancy reduction. The most substantial legislative overhaul occurred in August 2013,<sup>87</sup> but Colorado's Legislature began taking steps to maximize preventative efforts and minimize court involvement as early as 1997, with the establishment of the Expelled and At-Risk Student Services (EARSS). This program dedicated state dollars to assist in providing educational and support services to expelled students, students at-risk of expulsion, and students at risk of habitual truancy.<sup>88</sup> In 2009, SB 09-256 increased appropriations for the EARSS program by 15.8% and mandated that at least one-half of this increased appropriation go to applicants that provide services and supports "designed to reduce the number of truancy cases requiring court involvement."<sup>89</sup>

Legislative findings in 2011 indicated that Colorado lawmakers contemplated a departure from largely punitive truancy policies:

- (1) The best practice for addressing truancy is a graduated approach that includes early intervention; and (2) Certain school districts and courts have worked cooperatively to design a continuum of approaches that have demonstrated success in reducing truant behavior.<sup>90</sup>

Also in 2011, the Colorado Legislature encouraged school districts to consider the use of judicial proceedings to compel school attendance a last resort approach.<sup>91</sup> Notably, the 2011 legislature specifically made findings that detention and incarceration of minors who commit no offense other than truancy:

- (1) confines within the state juvenile justice system minors who have committed no criminal offenses and who may be physically and emotionally unprepared for the stress of this system . . . and (2) contributes to the caseloads of the courts.<sup>92</sup>

The 2013 legislative changes formalize the goal of reducing court involvement in truancy by mandating that schools implement and document early interventions to improve attendance before initiating judicial action and placing a five-day limit on detention sentences for truant juveniles.<sup>93</sup> The following sections explain these changes to Colorado's school attendance laws.

### **Early Triage and the Required § 22-33-107(3) Plan**

The 2013 revisions to the School Attendance Law of 1963 place more responsibility on school districts to monitor and intervene in attendance problems in their early stages.<sup>94</sup> Before 2013, the School Attendance Law did not acknowledge chronic absence. The new law encourages school districts to establish procedures to identify chronically absent students and implement best practices and research-based strategies to improve chronically absent student attendance.<sup>95</sup>

Another 2013 amendment to the School Attendance Law encourages schools to analyze and address the underlying causes of a child's truancy, as opposed to merely tallying absences and notifying parents of the same.<sup>96</sup> Before 2013, CRS § 22-33-107(3)(a)(II) (b) provided that a district's policies concerning habitually truant students may include the following:

1. developing a plan with the goal of assisting the child to stay in school;
2. notifying parents in writing at the beginning of each school year of the parents' obligations related to school attendance and requesting that parents acknowledge awareness of the obligations in writing;
3. obtaining a telephone number or other means of contacting a parent during the school day for every child; and
4. establishing a system to notify parents when a child is absent and the school has received no indication that the parent is aware of the absence.<sup>97</sup>

In 2013, language was added to this list of suggested policies for working with habitual truants encouraging the development of

[p]rocedures to monitor the attendance of each child enrolled in the school district to identify each child who has a significant number of unexcused absences and to work with the local community services group and the child's parent to identify and address the likely issues underlying the child's truancy, including any nonacademic issues.<sup>98</sup>

The revised law places additional procedural requirements on school districts to demonstrate interventions attempted before resorting to court.<sup>99</sup> Before 2013, implementation of an attendance improvement plan was not a statutory prerequisite to initiating court action. Now, to establish a petition to compel attendance, a school district must submit the following evidence to the court: (1) the child's attendance record before and after the point at which the child was identified as habitually truant; (2) whether the child was identified as chronically absent and, if so, the strategies the school district used to improve the child's attendance; (3) the interventions and strategies used to improve the child's attendance before school or school district personnel created the child's plan described in § 22-33-107(3); and (4) the child's plan and the efforts of the child, the child's parent, and school or school district personnel to implement the plan.<sup>100</sup>

### **Collaboration Between Schools and Outside Agencies**

The 2013 amendments to the School Attendance Law explicitly encourage schools to work with a local community services group when analyzing the cause of a student's truancy and developing the attendance improvement plan.<sup>101</sup> CRS § 22-33-107(3)(a)(II) defines "local community services group" as:

the local juvenile services planning committee created pursuant to section 19-2-211, C.R.S., the local collaborative management group created by a memorandum of understanding entered into pursuant to section 24-1.9-102, C.R.S., or another local group of public agencies that collaborate with the school district to identify and provide support services for students.<sup>102</sup>

Section 22-33-107 creates a bridge between schools and local community groups/outside agencies that helps families to access multidisciplinary support services.

The law allows schools to choose which local community services groups or agencies to work with in creating a § 22-33-107(3) plan.<sup>103</sup> A local juvenile services planning committee typically consists of juvenile stakeholders in a community,<sup>104</sup> and a primary function of these committees is to plan for allocation of resources for juvenile services within a judicial district.<sup>105</sup> The legislature encourages such committees to include programs with restorative justice components.<sup>106</sup>

The second type of local community services group—a local-level interagency oversight group (IOG)—is a relatively new creature of statute in Colorado.<sup>107</sup> In 2004, the Colorado Legislature enacted CRS § 24-1.9-102 to establish a more uniform collaborative management system for children and families receiving child welfare services to improve service quality and reduce costs.<sup>108</sup> CRS § 24-1.9-102 allows local agencies, organizations such as mental health centers and family resource centers, and county departments of social services to enter memoranda of understanding to promote collaboration and coordination of services to families who could benefit from multi-agency services.<sup>109</sup> IOGs can be a valuable resource for school districts, because an IOG's main function—collaboration and coordination of services—is directly in line with schools' task of enhancing families' access to outside agencies to develop individualized multidisciplinary attendance plans.

### **Legislative Limitation of Detention Orders for Juveniles**

In 2013, the Colorado Legislature imposed a statutory five-day limit on juvenile detention sentences in truancy cases.<sup>110</sup> This amendment was enacted in the face of significant constitutional questions regarding the legislature's ability to limit the court's inherent contempt powers.<sup>111</sup> In 1990, the Colorado Legislature amended CRS § 22-33-108 to prohibit incarceration in truancy proceedings.<sup>112</sup> In 1991, the Colorado Supreme Court struck down the amendment as an unconstitutional abrogation of the judiciary's inherent contempt power.<sup>113</sup> In 2002, the school attendance law was amended to codify the Colorado Supreme Court's holding allowing incarceration of truants as a contempt sanction.<sup>114</sup> In 2011, the legislature explicitly recognized the courts' power to sanction minors for contempt, including the use of detention and incarceration sanctions, as an inherent power of the court that may not be abrogated by the legislature.<sup>115</sup> The 2013 five-day limit represents the first legislative attempt to limit the court's authority to use detention to enforce contempt sanctions since 1990.

### **Expanded GED Eligibility**

Previously under Colorado law, the minimum age to sit for the general educational development tests or GED was 17.<sup>116</sup> The School Attendance Law allowed 16-year-olds to take the GED only if the child provided evidence that a GED was necessary for the child to participate in an educational or vocational program.<sup>117</sup> The revised 2013 law expands the circumstances in which a 16-year-old may take the GED.<sup>118</sup>

Now, a 16-year-old is eligible for the GED if a court finds that obtaining a GED is in the child's best interests based on: (1) the number of credits the student has earned toward high school graduation and the number needed to graduate; (2) the outcome of previous credit recovery and school reengagement plans, if any, created for the student by the school in which the student was recently enrolled; and (3) the desires of the student and parent concerning returning to school or sitting for the GED.<sup>119</sup> Allowing a child to take the GED at 16 instead of continuing in school can be beneficial when a child experiences events that hinder his or her ability to earn school credit. For some children, taking the GED is a more realistic means to obtaining a positive educational outcome than continuing in school.

## Educational Services for Detained Juveniles

Another recent legislative change related to compulsory school attendance is found in the Children's Code rather than the Education Code.<sup>120</sup> Previously, Colorado law did not contain specific requirements regarding the quantity and quality of educational services provided to incarcerated juveniles.<sup>121</sup> The law merely required school districts to provide teachers, books, or equipment necessary for the proper education of detained juveniles when requested by a juvenile court.<sup>122</sup> Now, the Children's Code states that while detained juveniles are exempt from compulsory attendance requirements, the legislature intends that the juvenile detention facility and school district in which the facility is located cooperate to ensure that detained juveniles receive a number of hours of educational services comparable to that required by CRS § 22-33-104 and that such educational services align with and enable juveniles to meet state model content standards for a juvenile's identified grade level.<sup>123</sup>

## Unresolved Questions and Opportunity for Advocacy

Although they clarified some aspects of truancy proceedings, the revisions to Colorado's school attendance laws leave other questions unanswered and raise new questions. First, these changes do not address ongoing questions about the duration of a juvenile court's jurisdiction over truancy proceedings. The School Attendance Law has never addressed termination of the truancy court's jurisdiction, and a bright line rule concerning continuing jurisdiction in truancy cases has yet to be established.<sup>124</sup> Compulsory school attendance requirements end at age 17, but some courts maintain ongoing jurisdiction even after a formerly truant student reaches the age of 17 and into the student's young adulthood.

Similarly, because the law does not state when a petition should be dismissed for compliance with the court-ordered plan, questions remain about whether a court can and should maintain jurisdiction over a child subject to compulsory school attendance laws who is now attending school. These issues present a tension between the court's inherent authority to enforce its orders, the state's *parens patriae* interest in protecting and promoting the best interests of children, students' due process rights, and the clear legislative intent to minimize court involvement in truancy proceedings.

Similarly, questions abound regarding the constitutionality of the legislative five-day limit on juvenile detention sentences. As discussed above, the Colorado Supreme Court decided that an absolute legislative ban on incarceration of juveniles in truancy proceedings is unconstitutional.<sup>125</sup> Thus, the issue created by the 2013 revision is whether the statutory five-day limit on incarceration is also an unconstitutional abrogation of the court's inherent contempt power, or whether the five-day limit is a reasonable legislative regulation.<sup>126</sup> These issues present important opportunities for litigation for attorneys appearing in truancy court, whether they serve as guardians *ad litem* representing the best interests of the student, the attorney charged with protecting the student's due process rights, or the school district attorney responsible for enforcing compliance with the district's school attendance policies.

The procedural protections set forth in the 2013 revisions provide greater opportunities for advocacy and discovery for guardians *ad litem* and counsel. In addition to being able to argue for limits in detention sentences as discussed above, lawyers representing the interests of children now have grounds to scrutinize the statutory notice provided before the initiation of the court and the adequacy of the § 22-33-107(3) plan. They can advocate for investigations of neglect when it appears that such issues may be contributing to a child's absenteeism. They can argue for restorative sentences and plans and play an active role in reaching out to community resources that may be able to mitigate the issues impacting a truant student's attendance.

Because the School Attendance Law grants schools discretion as to the content of the school districts' policies and procedures for working with habitually truant students policies, attorneys representing school districts have a unique opportunity to codify best practices for preventing and responding to truancy.<sup>127</sup> Practical ways school districts can implement procedures concerning habitual truants include disseminating letters or brochures explaining the district's attendance policies to parents at the beginning of the school year, using an automated phone call system to notify parents of unexcused absences, sending notice letters to parents when a student obtains a certain number of absences, creating a strong working relationship with local community groups and agencies, and drafting written attendance plans or contracts based on meetings with students, parents, and/or local community groups to memorialize the school's efforts to improve a student's attendance.<sup>128</sup>

Although the School Attendance Law explicitly encourages collaboration between schools and outside agencies, a resulting practical concern is confidentiality. Schools should remain cognizant of HIPAA, FERPA, 42 CFR Part 2, and other privacy rights held by students and parents.<sup>129</sup> Beyond obtaining agency-specific written consent from a parent and child, a potentially useful tool to address information sharing among multiple agencies is the standardized "Authorization-Consent to Release Information" form recently created by the Colorado Children and Youth Information Sharing (CCYIS) Initiative.<sup>130</sup>

School districts and attorneys representing truants should recognize that the new School Attendance Law's emphasis on early intervention and collaboration presents an opportunity to engage in holistic and individualized treatment of troubled youth. Truancy proceedings often uncover other problems plaguing a habitual truant. Between schools' collaboration with local community services groups and the court's jurisdiction to order a neglect assessment by social services amid a truancy proceeding, the School Attendance Law is a mechanism to advance child welfare as opposed to existing for the sole purpose of punishment.

## Conclusion

The recent evolution of Colorado's school attendance laws brings a restorative approach to truancy reduction by schools and courts. Local research and reform efforts made by Colorado's juvenile stakeholders are consistent with national policy trends on status offense treatment. The new law requires schools to engage in a proactive effort to identify and address collateral causes of truancy, and leaves the court system to function as a backstop only after lesser interventions have failed. The School Attendance Law still requires school districts to file judicial proceedings to enforce compliance with state compulsory attendance law; however, schools must first employ best practices and research-based strategies in an effort to improve attendance, and the law encourages schools to view court as a last resort. The evolution of Colorado's school attendance laws is just one example of Colorado's gradual departure from zero-tolerance policies in schools.

### Notes

1. Common Core State Standards Initiative, [www.corestandards.org/in-the-states](http://www.corestandards.org/in-the-states).
2. Colorado Department of Education, "Common Core State Standards as a part of the Colorado Academic Standards," [www.cde.state.co.us/contentareas/ccss\\_in\\_the\\_colorado\\_standards](http://www.cde.state.co.us/contentareas/ccss_in_the_colorado_standards).
3. See *Lobato v. State*, 304 P.3d 1132 (Colo. 2013); The Denver Channel.com Team, "Amendment 66 Fails; Voters Reject \$1 billion education tax that would have created two-tier tax rate" (Nov. 5, 2013), [www.thedenverchannel.com/news/local-news/amendment-66-trailing-63-percent-to-37-percent-in-early-returns](http://www.thedenverchannel.com/news/local-news/amendment-66-trailing-63-percent-to-37-percent-in-early-returns).
4. Seeley *et al.*, "Guidelines for a National Definition of Truancy and Calculating Rates," *National Center for School Engagement* 2 (Aug. 2006), [www.schoolengagement.org/TruancyPreventionRegistry/Admin/Resources/Resources/GuidelinesforaNationalDefinitionofTruancyandCalculatingRates.pdf](http://www.schoolengagement.org/TruancyPreventionRegistry/Admin/Resources/Resources/GuidelinesforaNationalDefinitionofTruancyandCalculatingRates.pdf).
5. *Id.*
6. CRS § 22-33-107(3)(a)(I).
7. See Rivkin and McGee, "No Child Left Behind? Representing Youth and Families in Truancy Matters," *Clearinghouse REVIEW* J. of

Poverty Law and Policy 276, 277 (Nov.–Dec. 2013).

8. *Id.*; National Center for School Engagement, "Truancy in Denver: Prevalence, Effects, and Interventions" 3 (Aug. 2006), [www.schoolengagement.org/TruancyPreventionRegistry/Admin/Resources/Resources/TruancyInDenverPrevalenceEffectsandInterventions.pdf](http://www.schoolengagement.org/TruancyPreventionRegistry/Admin/Resources/Resources/TruancyInDenverPrevalenceEffectsandInterventions.pdf).

9. Mac Iver *et al.*, "Advancing the 'Colorado Graduates' Agenda: Understanding the Dropout Problem and Mobilizing to Meet the Graduation Challenge," *The Center for Social Organization of Schools at John Hopkins University* 12 (Oct. 2009), [dkfoundation.org/sites/default/files/files/AdvancingColoradoGraduatesAgenda-10-2009.pdf](http://dkfoundation.org/sites/default/files/files/AdvancingColoradoGraduatesAgenda-10-2009.pdf).

10. National Center for School Engagement, *supra* note 8 at 23, 24; Meyer, "Denver truancy court's careful help leads kids back to classrooms," *The Denver Post* (Oct. 25, 2010), [www.denverpost.com/ci\\_16425102](http://www.denverpost.com/ci_16425102); Augé, "Denver schools seek restorative solution to age-old truancy problem," *The Denver Post* (Dec. 28, 2012), [www.denverpost.com/ci\\_22271575/denver-schools-seek-restorative-solution-age-old-truancy](http://www.denverpost.com/ci_22271575/denver-schools-seek-restorative-solution-age-old-truancy).

11. National Center for School Engagement, *supra* note 8 at 3.

12. *Id.*

13. *Id.* at 27.

14. Balfanz and Byrnes, "Chronic Absenteeism: Summarizing What We Know from Nationally Available Data" 3 (2012), [new.every1graduates.org/wp-content/uploads/2012/05/FINALChronicAbsenteeismReport\\_May16.pdf](http://new.every1graduates.org/wp-content/uploads/2012/05/FINALChronicAbsenteeismReport_May16.pdf).

15. *Id.* at 4.

16. PBS, "Timeline Crime and Punishment for Juveniles," [www.pbs.org/wgbh/pages/frontline/whenkidsgetlife/etc/cron.html](http://www.pbs.org/wgbh/pages/frontline/whenkidsgetlife/etc/cron.html).

17. The "School Law," Act of April 12, 1899, ch. 136, 1899 Sess. Laws 340.

18. King, "Colorado Juvenile Court History: The First Hundred Years," 32 *The Colorado Lawyer* 63 (April 2003).

19. See CRS 22-33-101, Laws 1963, HB 17, § 1.

20. CRS § 22-33-104(1)(a).

21. See CRS § 22-33-104(1)(a)(I) to (IV).

22. CRS § 22-33-104(1)(c).

23. CRS § 22-33-104(2).

24. CRS § 22-33-104(1)(b).

25. See CRS § 22-33-107(1).

26. CRS § 22-33-107(1).

27. *Id.*

28. CRS § 22-33-104(4)(a).

29. CRS § 22-33-104(4)(a) and (b).

30. CRS § 22-33-104(4)(a).

31. See CRS § 22-33-107(3)(b).

32. CRS § 22-33-104(5)(a).

33. CRS § 22-33-107(3)(b).

34. See CRS § 22-33-108(5)(b).

35. CRS § 22-33-107(3)(II)(b).

36. CRS § 22-33-108(5)(b) and (c).

37. *Id.*

38. *Id.*

39. *Id.*

40. See *id.*

41. CRS § 22-33-108(1).

42. CRS § 22-33-108(1.5)(a).

43. CRS § 22-33-108(1.5)(b).

44. CRS § 22-33-108(1.5)(c).

45. CRS §§ 19-1-105(2) and -111(2)(b).

46. CRS § 22-33-108(6).

47. *Id.*

48. See CRS § 22-33-108(7)(a).

49. See CRS § 22-33-108(7)(a) and (b).

50. See *In re Marriage of Cyr and Kay*, 186 P.3d 88 (Colo.App. 2008); *People v. Kriho*, 996 P.2d 158 (Colo.App. 1999), *cert. denied* (Colo. 2000).

51. See *Lobb v. Hodges*, 641 P.2d 310 (Colo.App. 1982).

52. CRS § 22-33-108(7)(b).

53. *Id.*; CRS § 22-33-108(7)(c).

54. CRS § 22-33-108(7)(b).

55. Augé, *supra* note 10; Meyer, *supra* note 10.

56. CRS § 22-33-108(8).
57. See Rivkin and McGee, *supra* note 7 at 277.
58. *Id.*; Augé, *supra* note 10.
59. See, e.g., Augé, *supra* note 10; *The Denver Post* Editorial Board, "Truancy Court as a Last Resort," *The Denver Post* (Jan. 20, 2013), [www.denverpost.com/ci\\_22397138/truancy-court-last-resort](http://www.denverpost.com/ci_22397138/truancy-court-last-resort); Meyer, *supra* note 10.
60. See Rivkin and McGee, *supra* note 7 at 276-77.
61. See Balfanz and Byrnes, *supra* note 14 at 3-8.
62. See National Center for School Engagement, *supra* note 8 at 3; Coalition for Juvenile Justice, "National Standards for the Care of Youth Charged with Status Offenses" 10 (2013), [www.juvjustice.org/our-work/safety-opportunity-and-success-project/national-standards-care-youth-charged-status](http://www.juvjustice.org/our-work/safety-opportunity-and-success-project/national-standards-care-youth-charged-status).
63. Coalition for Juvenile Justice, *supra* note 62 at 10.
64. *Id.*
65. *Id.*
66. *Id.* at 11.
67. *Id.*
68. See 42 USC § 5633, Sec. 223(a)(23).
69. See Coalition for Juvenile Justice, *supra* note 62 at 11.
70. See Colorado Rule of Juvenile Procedure 3.8, Committee Comment; CRS § 22-33-108(3).
71. See Coalition for Juvenile Justice, *supra* note 62.
72. *Id.* at 3.
73. *Id.* at 102, 97.
74. *Id.* at 12.
75. *Id.*
76. See National Center for School Engagement, *supra* note 8 at 3.
77. *Id.*
78. *Id.*
79. *Id.*
80. *Id.*
81. *Id.* at 4.
82. *Id.*
83. *Id.*
84. *Id.* at 7-8.
85. *Id.* at 54-56.
86. See National Dropout Prevention Center/Network, "Model Program: Pueblo City Schools Project Respect Truancy Reduction Program," [www.dropoutprevention.org/modelprograms/show\\_program.php?pid=279](http://www.dropoutprevention.org/modelprograms/show_program.php?pid=279); Kids and Court: A Project of the CBA, "Appendix A: Adams County—The Truancy Reduction Project," [www.cobar.org/index.cfm/ID/2660/subID/9036/DPWKC/Appendix-A:-Adams-County-%E2%80%93-The-Truancy-Reduction-Project](http://www.cobar.org/index.cfm/ID/2660/subID/9036/DPWKC/Appendix-A:-Adams-County-%E2%80%93-The-Truancy-Reduction-Project).
87. See 2013 Colo. Legis. Serv. Ch. 335 (HB 13-1021).
88. Colorado Department of Education, "Expelled and At-Risk Student Services (EARSS)," [www.cde.state.co.us/dropoutprevention/p\\_earss](http://www.cde.state.co.us/dropoutprevention/p_earss).
89. *Id.*; SB 09-256 (changes codified at CRS § 22-33-205(4)).
90. CRS § 22-33-108, Laws 2011, Ch. 58, § 1.
91. *Id.*
92. *Id.*
93. See 2013 Colo. Legis. Serv. Ch. 335 (HB 13-1021); CRS §§ 22-33-101 *et seq.*
94. See CRS §§ 22-33-107 and -108.
95. See CRS § 22-33-104(4)(b.5).
96. See CRS § 22-33-107(3)(b)(I.5).
97. CRS § 22-33-107(3)(a)(II)(b)(II) and (IV) (2012).
98. CRS § 22-33-107(3)(a)(II)(b)(I.5).
99. See CRS § 22-33-108(5)(d)(I) to (IV).
100. *Id.*
101. See CRS § 22-33-107(3)(a)(II)(b).
102. CRS § 22-33-107(3)(a)(II).
103. See *id.*
104. CRS § 19-2-211.
105. See *id.*

106. *Id.*
107. See CRS § 24-1.9-102.
108. See CRS § 24-1.9.101 (2004).
109. CRS § 24-1.9-102.
110. CRS § 22-33-108(7)(c).
111. See CRS § 22-33-108(7)(b) (2013); CRS § 22-33-108, Laws 2011 Ch. 58, § 1; CRS § 22-33-108(7) (1990); *In the Interest of JES*, 817 P.2d 508 (Colo. 1991).
112. See CRS § 22-33-108(7) (1990).
113. See *JES*, 817 P.2d at 509 and 512.
114. See CRS § 22-33-108(7) (2002).
115. Laws 2011, Ch. 58, § 1(3).
116. See CRS § 22-33-104.7 (1992).
117. *Id.*
118. See CRS § 22-33-104.7 (2013).
119. CRS § 22-33-104.7(2)(a).
120. See CRS § 19-2-402 (2013).
121. See CRS § 19-2-402 (2009).
122. *Id.*
123. See CRS § 19-2-402(3)(a)(I) and (II) (2013).
124. See CRS §§ 22-33-101 *et seq.* Cf. CRS § 19-3-205(1) (providing that a juvenile court's jurisdiction in a dependency and neglect proceeding continues until the child becomes 21, unless jurisdiction is terminated earlier by court order).
125. See *JES*, 817 P.2d at 508, 512.
126. *Id.*
127. CRS § 22-33-107(3)(b).
128. See *generally* CRS § 22-33-107(3)(b).
129. See Colorado Department of Human Services, "Colorado Children and Youth Information Sharing Collaborative," [www.colorado.gov/cs/Satellite/CDHS-ChildYouthFam/CBON/1251639782979](http://www.colorado.gov/cs/Satellite/CDHS-ChildYouthFam/CBON/1251639782979). See, e.g., The Health Insurance Portability and Accountability Act of 1996 (HIPAA), P.L. No. 104-191, 110 Stat. 1936 (1996); Family Education Rights and Privacy Act (FERPA), 20 USC § 1232g; 34 CFR Part 99; Confidentiality of Alcohol and Drug Abuse Patient Records, 42 CFR Part 2.
130. See *id.*

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