

**LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS**

Bill Number: CS/HB 240

52nd Legislature, 2nd Session, 2016

Tracking Number: .203748.2

Short Title: School Attendance Law Early Warning System

Sponsor(s): Representatives Jimmy C. Hall and James G. Townsend

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**HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 240**

Bill Summary:

The House Judiciary Committee Substitute for HB 240 would amend the *Compulsory School Attendance Law* to provide for an early warning system for habitual truancy. The bill defines “truancy prevention team” and requires all public schools that have a habitual truancy rate of more than 10 percent to hire a “truancy prevention coach,” who is responsible for developing and implementing prevention measures. Beginning in the 2017-2018 school year, when students in grades 8 through 12 accumulate 10 or more absences, the bill establishes procedures for the revocation or withholding of a student’s driver’s license, provisional license, or instruction permit.

Fiscal Impact:

CS/HB 240 does not contain an appropriation.

The requirement that schools with high truancy rates hire truancy and dropout coaches will impact school district and charter school operating budgets; however, the caveat that this requirement is subject to the availability of funds keeps it from becoming an unfunded mandate to the schools.

House Appropriations and Finance Committee substitute for HB 2 & 4, which passed the House, appropriates \$12.5 million for interventions and supports for students, struggling schools, and parents, including district and charter school efforts to decrease truancy and dropout.

According to the Fiscal Impact Report (FIR) from the Legislative Finance Committee (LFC):

- in FY14 and FY15, PED requested \$500,000 from the General Fund for a dropout prevention program;
- in FY14, the Legislature appropriated \$500,000 for the program, and in FY15 the Legislature included dropout prevention as part of a \$2.9 million appropriation for college preparation and career readiness;
- in FY14, PED spent \$300,000 to provide professional development to educators on early warning systems, before New Mexico’s system was developed; and

- PED contracted for \$200,000 with an outside provider to support the development of the early warning tool, currently being developed internally by the department.

According to PED, using data from the 2014-2015 school year, 89 schools in the state have a habitual truancy rate over 15 percent. Currently, the truancy and dropout prevention coach program provides \$60,000 for truancy and dropout prevention coaches for salaries and benefits; however, there is an outstanding need of \$5.3 million for truancy and dropout prevention coaches. The bill provides for these coaches when resources are made available.

According to a recent LFC program evaluation:

- while New Mexico's graduation rate has increased, the state's dropout rate has experienced a corresponding increase, to 4.7 percent in FY13 from 3.6 percent in FY08, 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.

Additionally, the Public Education Department (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 on the number of habitual truants and the number of such appeals, PED may be significantly burdened. Processing documentation for denial, suspension, and reinstatement of driver's licenses and instruction permits may also result in increased administrative costs to the Motor Vehicle Division (MVD).

At a Glance:

- Beginning in the 2016-2017 school year, all public schools are to implement PED's early warning system to identify students in danger of becoming an habitual truant or of dropping out.
- Schools with habitual truancy rates of more than 10 percent must hire a truancy and dropout prevention coach, subject to availability of funding.
- CS/HB 240 proposes procedures for determining whether a student is in danger of habitual truancy or dropping out, and gives MVD authority to suspend or deny the granting of a driver's license to an habitual truant.
- Reasonable exemptions are allowed for students with special circumstances, including unavoidable employment or family medical care giving, through hardship waivers.

Detailed Bill Provisions:

CS/HB 240 amends the *Compulsory School Attendance Law* to require all public schools to implement the PED early warning system to use data systems to identify students in danger of becoming habitual truants or dropping out of school by considering, among other potential factors, grades, absences, and behavior citations. Beginning in the 2016-2017 school year, for a student who accumulates:

- three or more unexcused absences, the school district or charter school will notify the parent about the unexcused absences;
- five or more unexcused absences, a truancy prevention team will meet with the student and parents to develop a written attendance plan; and

- ten or more unexcused absences, the school district or charter school will notify the parent that the student has become an habitual truant.

The bill defines a “truancy prevention team” as a group that includes a school administrator, a licensed school employee, and one or more of:

- a school employee who is responsible for monitoring attendance and addressing unexcused absences;
- a municipal, county, state, tribal, or federal official; or
- a member of organizations that support students at risk of becoming habitually truant or dropping out of school.

CS/HB 240 requires each public school with a habitual truancy rate of more than 10 percent to hire a truancy and dropout prevention coach who shall be responsible for:

- developing and implementing truancy prevention measures and conducting meetings with students and parents;
- identifying students in need of attendance intervention, and developing and using programs and systems to increase their engagement and improve their attendance;
- developing and implementing a tiered system of support, based on student’s level of need;
- incorporating family and community involvement; and
- monitoring the progress of students receiving truancy prevention assistance.

CS/HB 240 would also require a student to be reported to the probation services office of the judicial district in which the student resides for an investigation to determine whether the student in question shall be considered to be neglected or in need of services due because of habitual truancy rendering them subject to the provisions of the *Children’s Code*.

The bill also establishes procedures to suspend or deny a habitual truant’s driver’s license. Beginning in the 2017-2018 school year, when a student in eighth through 12th grade accumulates 10 or more absences:

- 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 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 PED, which shall then give to MVD, a certification of noncompliance, if the student remains noncompliant and has not received a hardship waiver.
- Upon receipt of the certification of noncompliance, MVD must suspend or deny the issuance of an instruction permit, driver’s license, or provisional license to the student.

- 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.

CS/HB 240 also requires PED, with MVD, no later than November 15 of each year, to report annually to the governor, the Legislative Education Study Committee (LESC), and the LFC, on the implementation of the *Compulsory School Attendance Law*, including aggregate data for each middle school, high school, school district, and charter school for:

- the number of students who accumulate 10 or more unexcused absences during the school year;
- the number of certifications of noncompliance issued;
- the number of students who were denied or had their instructional permit, provisional license or driver’s license due to noncompliance with the *Compulsory School Attendance Law*, the number of certifications of noncompliance issued, as well as the number of students whose licenses or permits were subsequently granted or reinstated due to compliance with the law;
- an evaluation of any academic improvement attributable to implementation of the *Compulsory School Attendance Law*, including assessment scores for math and English language arts, the four-year cohort graduation rate, and the most recent grade the school received under the *A-B-C-D-F School Ratings Act*.

Finally, CS/HB 240 grants MVD the authority to suspend, or deny granting, an instruction permit, provisional license, or driver’s license, without preliminary hearing, of a student certified as noncompliant with the attendance law, as well as to reinstate or grant such permits and licenses after compliance with the law has been certified.

Substantive Issues:

The provisions of CS/HB 240 align with research from the National Dropout Prevention Center/Network that identifies 15 effective strategies that have the most positive impact on the dropout rate¹. These strategies have been implemented successfully at all education levels and environments throughout the nation.

According to PED:

- in the 2014-2015 school year, 14.7 percent of New Mexico students were identified as “habitual truants,” meaning a student who has accumulated 10 or more unexcused absences²;

¹ 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, which notes a California program where revocation of drivers’ licenses, until improvement is shown, has resulted in annual diminution in truancy rates.

² Section 22-12-9(A)(1) NMSA 1978.

- 83 percent of students who are chronically absent in Kindergarten and first grade are unable to read on-level by third grade, and students who cannot read on-level in third grade are four times more likely to drop out than their peers who do read on grade level;
- currently, there are no clear penalties for habitual truants in grades 8 through 12; and
- New Mexico saw chronic absenteeism particularly in grades 4 and 8, where 26 percent of students reported missing three or more days of school in a month.

A research study by Johns Hopkins University, which included a case study of Philadelphia schools, found four primary “distress signals” indicating increased likelihood of a student dropping out: failing math, failing English, having an attendance rate below 80 percent, and a final mark of “unsatisfactory” behavior in at least one class. In middle school, a sixth grade student who had even one of these signals had at least a 75 percent chance of dropping out of high school. Students who had more than one such indicator were even more likely to drop out. Further, the study indicated the earlier a student exhibits one of these signals, the more likely he or she is to drop out.

The study notes that the transition to high school is also a perilous time for many students, as even students doing moderately well in middle school might be thrown off by the additional and different demands of high school. Fully 80 percent of dropouts from the Philadelphia case study had sent a signal in either middle school or their freshman year of high school. Philadelphia has responded by piloting a middle school program that offers a three-tiered approach to truancy and dropout prevention:

1. The first tier consists of school-wide preventative measures, which can keep between 70 and 80 percent of students on the graduation track.
2. Second are targeted interventions aimed at the 10 to 20 percent of students who require more focused supports, such as signing attendance contracts.
3. The third tier focuses on intensive interventions for the 5.0 to 10 percent of students who need small group or one-on-one support.

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

- some statistical analyses indicate that New Mexico has one of the lowest graduation rates in the country; regardless of whether or not New Mexico is the worst in the country, the problem is substantial and continues to grow;
- the system that this bill would establish echoes many programs around the state that already address truancy and other student behavioral issues;
- this bill appears to formalize a team-oriented approach to truancy and dropout risk, providing a robust notice system, a data-driven risk identification system, and a due process system . . . features that less formal approaches to truancy lack; and
- the Children, Youth and Families Department (CYFD) juvenile justice offices have used a team approach that included school, family and community leaders to intervene informally when a student is accused of lower level crimes, and teen courts throughout the state use the same approach with students.

According to a recent LFC evaluation that assessed efforts around the state to increase the number of adults in New Mexico with a high school credential, including dropout prevention and recovery efforts at the public school level:

- more than half of the state’s dropouts are concentrated in 25 high schools;
- more than 11 percent of elementary students and more than 20 percent of middle and high school students are habitually truant; and
- efforts to reduce truancy might include social workers, case management, college-oriented programming, mentoring and counseling, and vocational training, all of which have demonstrated results reducing truancy and dropout rates.

Technical Issues:

Section 4 of CS/HB 240 states that, on certification of noncompliance with the *Compulsory School Attendance Law*, MVD “shall” suspend or deny driving privileges (page 11, lines 10-16), while proposed amendments to the *Motor Vehicle Code*, in Section 6, merely authorize but not require MVD (“may” on page 14, line 9) to reinstate suspended driving privileges or grant privileges previously denied when compliance is restored.

Currently, CS/HB 240 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.

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 the 2011-2012 school year. 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 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 States³:

- 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.

Related Bills:

*HB 29aa *Allow Local Government Curfew Ordinances*
SB 205 *School Attendance Law Early Warning System (Identical)*
SM 12 *Doña Ana Youth-Centered Programs*

³ <http://www.ecs.org/clearinghouse/60/10/6010.pdf>