

7-1-2007

## Must Utah Imprison its Parents and Children?: Alternatives to Utah's Compulsory Attendance Laws

Gilbert Bradshaw

Follow this and additional works at: <https://digitalcommons.law.byu.edu/jpl>



Part of the [Education Law Commons](#)

---

### Recommended Citation

Gilbert Bradshaw, *Must Utah Imprison its Parents and Children?: Alternatives to Utah's Compulsory Attendance Laws*, 22 BYU J. Pub. L. 229 (2007).

Available at: <https://digitalcommons.law.byu.edu/jpl/vol22/iss1/5>

This Comment is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Brigham Young University Journal of Public Law by an authorized editor of BYU Law Digital Commons. For more information, please contact [hunterlawlibrary@byu.edu](mailto:hunterlawlibrary@byu.edu).

---

---

## Must Utah Imprison its Parents and Children?: Alternatives to Utah's Compulsory Attendance Laws

### I. INTRODUCTION

With public school administrators under increasing financial pressure to fill the seats of their classrooms, an administrator can crack down on children who have been consistently tardy or absent from class by sending them to truancy court. The truancy court, staffed by a juvenile judge, issues a court order to public school students requiring them to attend class. Following the issuance of that order, if that child misses class again, that child is in violation of a court order—and after being charged with “contempt of court,” the public school administration sends that child to juvenile detention. Once in juvenile detention, the staff strips, showers, and searches the body cavities of the child. The staff then places the child in felon’s attire where the child will spend a few nights in a cold, dark cellblock.

That child then assumes the role of a convicted criminal—complete with cafeteria duty (followed by more strip searches), reform classes, and a daily “hour of large muscle group movement”—a requirement imposed by the State of Utah.<sup>1</sup>

Where are the child’s parents in this scenario? With the recidivism rates of delinquent youth on the rise—and indeed, with staggering statistics that indicate that juvenile detention facilities tend to become “Criminal Schools,” and with very real possibility of inmate mental/emotional/sexual abuse of long-term juvenile detainees,<sup>2</sup> should the child’s parents be involved in the decision to send their child to what is, in effect, a prison? What about legal counsel? Are there other methods that could be used to punish a child?

When children’s lives could be at stake, what role do parents’ rights play in school’s punishment of their children? What kind of legal due process are they afforded under the Constitution?

---

1. Interview with Debbi Wawro, Director, Slate Canyon Juvenile Detention Center, in Provo, Utah (Feb 6, 2007).

2. See ROBERT C. FELLMETH, *CHILD RIGHTS & REMEDIES: HOW THE U.S. LEGAL SYSTEM AFFECTS CHILDREN*, (2d ed., Atlanta: Clarity Press, 2006); Peter W. Greenwood, *Responding to Juvenile Crime: Lessons Learned*, in 6:3 *THE FUTURE OF CHILDREN: THE JUVENILE COURT* 77 (Richard E. Behrman, M.D., ed., 1996).

For example, in the Juvenile detention hearing of Tyson's case, the parents said, "We signed off on mediation and we want Tyson to get out so we can do this." The judge is obligated to let the child go in that circumstance. The statute says that the child is to be held if that child is harmful to him/herself, society, or if that child is at risk of flight. In addition to being a harm to self, society, or the risk of flight, the statute further states that lock-up is still appropriate if the parents are not capable of maintaining those risks at an acceptable level.<sup>3</sup>

Should a school district be bound by the same degree of scrutiny that binds a juvenile judge? Should the school only send a child to truancy court for violating a court order if the parents are not capable of maintaining their child's risks at an acceptable level?<sup>4</sup>

The United States Supreme Court has held parental rights to be the oldest of the most fundamental liberty interests recognized in the United States.<sup>5</sup> The Due Process Clause of the 14th Amendment should bind a school district—at least give the parent of a juvenile who is about to be sent to juvenile detention the decision as to whether their child should be imprisoned for truancy.

Additionally, since Utah law prohibits corporal punishment in schools and in the juvenile detention facilities,<sup>6</sup> the most severe penalty imposed on a juvenile offender is imprisonment. Once the child has been

---

3. *Troxel v. Granville*, 530 U.S. 57 (2000); *Schall v. Martin*, 467 U.S. 253, 265 (1984) (children should not be removed from parents unless "parental control falters").

4. *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944) ("[T]he family itself is not beyond regulation.").

5. *Meyer v. Nebraska*, 262 U.S. 390, 399, 401 (1923) (holding that the fundamental right to control education of one's child is constitutionally protected); *see, e.g., Troxel*, 530 U.S. at 66 ("In light of . . . extensive precedent, cannot now be doubted that the Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children."); *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997) ("In a long line of cases, we have held that, in addition to the specific freedoms protected by the *Bill of Rights*, the 'liberty' specially protected by the Due Process Clause includes the right[] . . . to direct the education and upbringing of one's children . . .")(citation omitted); *Santosky v. Kramer*, 455 U.S. 745 (1982) (discussing "[t]he fundamental liberty interest of natural parents in the care, custody, and management of their child"); *Quilloin v. Walcott*, 434 U.S. 246, 255 (1978) ("We have recognized on numerous occasions that the relationship between parent and child is constitutionally protected."); *Parham v. J. R.*, 442 U.S. 584, 602 (1979) ("Our jurisprudence historically has reflected Western civilization concepts of the family as a unit with broad parental authority over minor children. Our cases have consistently followed that course."); *Stanley v. Illinois*, 405 U.S. 645, 651 (1972) ("It is plain that the interest of a parent in the companionship, care, custody, and management of his or her children 'comes to this Court with a momentum for respect lacking when appeal is made to liberties which derive merely from shifting economic arrangement.'" (alteration in original)) (citation omitted); *Wisconsin v. Yoder*, 406 U.S. 205, 232 (1972) ("The history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children. This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition.").

6. UTAH ADMIN. CODE r. 277-608-2(B) (2007) ("The purpose of this rule is to prohibit the use of corporal punishment in the public schools of Utah.").

imprisoned, the state has used its heaviest artillery. If imprisonment fails to deter the child for truancy, then no meaningful punishment remains.

Utah law compels public school administrators to follow a host of procedures when dealing with habitually truant youth.<sup>7</sup> In addition to an obligation to counsel repeatedly with the minor at the first signs of habitual truancy, the administrator must adjust the curriculum and schedule to meet the student's individual needs, and counsel with the minor and the parents together.<sup>8</sup> Additionally, Utah mandates, "A continuum of intervention strategies shall be made available to assist students whose behavior in school is repeatedly short of reasonable expectations. Earnest and persistent effort shall be made to resolve individual discipline problems within the *least restrictive school setting*."<sup>9</sup>

Although the legislature has a long-standing policy towards discipline within the "least restrictive school setting," the newly amended Utah Code restricts both the juvenile offender and their parents by actually empowering Utah school districts to place a juvenile's parents in lock-up for up to six months and can fine them nearly \$2,000.<sup>10</sup>

Since it is too early to see how this new legislation will take form, the best way to incorporate Utah's legislative intent into actual practice would be to assume that the legislation is intended to give parents the expansive rights guaranteed by the United States Supreme Court case law. The United States Supreme Court has long upheld parent's rights as a fundamental right guaranteed by the Constitution. Utah state courts extend that tradition in Utah. Utah legislators have followed suit by passing a host of laws designed to incorporate multifaceted techniques into truancy prevention. These techniques could include, but are not limited to, parental involvement, parent-teen mediation, counseling, and the establishment of parents' centers within the public school system. Utah public school administrators could implement these techniques using socially and fiscally responsible methods and thereby avoid sending children to juvenile detention while encouraging meaningful change within the individual child and within that child's family.

This paper will examine the long-standing history of broad parental authority in United States Supreme Court jurisprudence, followed by a discussion of parental rights as interpreted by the Utah state judiciary. This paper will then discuss truancy in general and reasons for habitual

---

7. UTAH CODE ANN. § 53A-11-103; UTAH ADMIN. CODE r. 277-607-(1)-(5); UTAH ADMIN. CODE r. 277-609-(1)-(4).

8. UTAH CODE ANN. § 53A-11-103(a), (c), (d).

9. UTAH ADMIN. CODE r. 277-609-4 (emphasis added).

10. UTAH CODE ANN. § 53A-11-101(3).

truancy. The paper will then examine Utah's compulsory attendance statutes highlighting a common response to truancy: placing the child in juvenile detention. Utah's newly amended statute authorizes charging the child's parents with a Class B Misdemeanor to compel attendance in public schools in Utah. A class B misdemeanor, punishable by imprisonment for up to six months and a fine of \$1,000, is not the least restrictive alternative to fulfilling the governmental interest of public school attendance.<sup>11</sup> This paper proposes legal and equitable alternatives to imprisonment of the habitually truant child and alternatives to parental imprisonment, demonstrating the fact that the newly amended legislation, which causes a parent to suffer the harmful effects of a Class B misdemeanor is not in harmony with the long-standing tradition of U.S. and Utah legal tradition because it is harmful to the parent, child, and society in general to subject them to the degrading effects of jail time.

## II. AN OVERVIEW OF PARENTS' RIGHTS

### A. *History of Parents' Rights in the U.S. Supreme Court*

The Supreme Court has clearly indicated that parental rights are of utmost importance and protected by the Constitution.<sup>12</sup> Parents should be able to influence a public school administrator's decision to place a child in the custody of the state for simply being truant—especially in the case of a first time offender.<sup>13</sup> Recent legal commentators have defined parents as “agents who occupy a position of special confidence, superiority, or influence, and thus are subject to strict and non-negotiable duties of loyalty and reasonable diligence in acting on behalf of their principals[, their children].”<sup>14</sup> Surely, if a school nurse must get parental

---

11. *Id.* §§ 76-3- 203, 208, 301.

12. *See generally* cases cited *supra* note 7.

13. *See* Carl E. Schneider, *Moral Discourse and the Transformation of American Family Law*, 83 MICH. L. REV. 1803 (1985) (outlining the long-standing legal tradition of non-interference in the family); Marsha Garrison, *Why Terminate Parental Rights?*, 35 STAN. L. REV. 423 (1983) (Relying on studies showing that the loss or absence of a continuous, permanent relationship with a parental figure is associated with higher rates of juvenile delinquency and psychological disturbance, child care experts have called for changes in child welfare law and practice to ensure that children have the opportunity to form and maintain such relationships. Some commentators have even suggested that the child has a constitutional right to a permanent home).

14. Elizabeth S. Scott and Robert E. Scott, *Parents as Fiduciaries*, 81 VA. L. REV. 2401, 2402 (1995); *see also* Francis J. Catania Jr. *Accounting to Ourselves for Ourselves: An Analysis of Adjudication in the Resolution of Child Custody Disputes*, 71 NEB. L. REV. 1228 (1992); Ira C. Lupu, *The Separation of Powers and the Protection of Children*, 61 U. CHI. L. REV. 1317 (1994); Barbara Bennett Woodhouse, *Hatching the Egg: A Child-Centered Perspective on Parents' Rights*, 14 CARDOZO L. REV. 1747 (1993) (arguing that gestational and social parenting should receive legal protection, while the fact of biological parenthood should be given less emphasis than it has traditionally been given). *But see* Katharine T. Bartlett, *Re-Expressing Parenthood*, 98 YALE L.J.

consent to administer medical treatment to a child,<sup>15</sup> then it follows that a school principal should be required to obtain consent to send a child to juvenile detention for the weekend. Shouldn't a parent be warned, reminded, and then notified that their child is going to spend the weekend in prison should that child be tardy, ill, or otherwise absent from class? What role do parental rights, whether religious, political, or cultural, play in the lockup of their child?<sup>16</sup> What role do parental rights play in their own lock-up if they cannot control their own child?

The United States Supreme Court held in *Meyer v. Nebraska* that the "liberty" protected by the Due Process Clause of the U.S. Constitution includes the right of parents to "establish a home and bring up children . . . [and] to control the education of their own."<sup>17</sup> In a later decision, the Court reaffirmed *Meyer* in *Pierce v. Society of Sisters*, holding that parents have the right to "direct the upbringing and education of [the] children under their control."<sup>18</sup> Recently, in the 2000 term, the Supreme Court again reaffirmed the role of parental rights in the decision of *Troxel v. Granville*, holding that "[i]t is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder."<sup>19</sup> The Court further held that "the Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children."<sup>20</sup>

### B. History of Parents' Rights in Utah

Utah has a long-standing legal tradition of upholding parents' rights to the utmost degree. The Supreme Court of Utah held in 1978 that "[d]eprivation of parental rights is a drastic remedy, which should be

---

293 (1988) (advocating an emphasis on parental responsibilities rather than parental rights); James G. Dwyer, *Parents' Religion and Children's Welfare: Debunking the Doctrine of Parents' Rights*, 82 CAL. L. REV. 1371 (1994).

15. See Nathan Hershey, *The Law and the Nurse: Minors and Consent*, 68 THE AM. J. OF NURSING 2396, 2397-98 (1968) (discussing the fact that nurses need the consent of parents to administer any treatment to minors).

16. See generally Ruth Jonathan, *Choice and Control in Education: Parental Rights, Individual Liberties, and Social Justice*, 37 BRITISH J. OF EDUC. STUD. 321 (1989) (arguing that increased individual liberty adds social awareness and decreases crime and poverty).

17. 262 U.S. 390, 399-401 (1923).

18. 268 U.S. 510, 534-35 (1925) ("The child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations.").

19. 530 U.S. 57, 65-66 (quoting *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944)).

20. *Id.* at 66.

resorted to only in extreme cases; where it is clearly manifested the home cannot or will not correct the evils which exist. The severing of family ties is a step of utmost gravity both socially and economically.”<sup>21</sup> A few years later, the Utah Supreme Court held that for a parent to be deprived of parental rights, a showing of unfitness, abandonment, or substantial neglect must be made; otherwise it violates the “Utah Constitution and the Ninth Amendment of the United States Constitution.”<sup>22</sup>

The Supreme Court of Utah repeated its earlier positions in the 1981 ruling of *In re Castillo* stating that the termination of parental rights cannot “be decreed without giving serious consideration to the prior and fundamental right of a parent to rear his child” and the right of children to be reared by their respective parents.<sup>23</sup> The court mandated that parental rights can only be relinquished after a showing of “clear and convincing evidence.”<sup>24</sup>

However, in spite of the Utah Supreme Court rulings, in 1996 the Utah legislature enacted the “Juvenile Court Act of 1996” which allowed a peace officer to take a minor into custody if “there is reason to believe” that the minor is “absent from school without legitimate or valid excuse”<sup>25</sup> without notifying the minor’s parents.<sup>26</sup>

The fact that parents are not notified that their child is taken into custody is the damaging part of this particular bill. At this initial stage, parents are not notified. Instead, the peace officer notifies (1) a public school administrator, (2) a person designated by the local school board to return the child to school, or (3) a receiving center established by the school board for truant youth.<sup>27</sup> The peace officer notifies the parents only when the child refuses to return to school, refuses to go with the person designated by the local school board to return him or her to

---

21. *In re Walter B*, 577 P.2d 119, 124 (Utah 1978); see also Robert H. Mnookin, *Foster Care—In Whose Best Interest?*, 43 HARV. EDUC. REV. 599 (1973) (reporting that social workers are often reluctant to terminate parental rights because to do so not only is seen as a drastic measure, but it requires a separate legal proceeding with more stringent standards than required for initial removal); David J. Herring, *Inclusion of the Reasonable Efforts Requirement in Termination of Parental Rights Statutes: Punishing the Child for the Failures of the State Child Welfare System*, 54 U. PITT. L. REV. 139 (1993).

22. *In re J.P.*, 648 P.2d 1364, 1373 (Utah 1982) (“The integrity of the family and the parents’ inherent right and authority to rear their own children have been recognized as fundamental axioms of Anglo-American culture, presupposed by all our social, political, and legal institutions. ‘To protect the [individual] in his constitutionally guaranteed right to form and preserve the family is one of the basic principles for which organized government is established . . . .’”) (citations omitted).

23. 632 P.2d 855, 856 (Utah 1981).

24. *Id.* at 857.

25. UTAH CODE ANN. § 78-3a-113(1)(e) (2007).

26. See *id.* § 53A-11-105.

27. *Id.* § 53A-11-105(2)(a)-(c).

school *and* the child refuses to go to the receiving center.<sup>28</sup> The passage of the “Juvenile Court Act of 1996” diverges from Utah’s longstanding tradition of upholding parental rights as discussed earlier in this paper.

In 2006, the Supreme Court continued this new legislative trend that limited parental rights in *Uzelac v. Thurgood*, holding that while parents have a constitutional right to make personal choices in family life, which begins with their right to marry and continues in their control of their child’s education, citing dicta, “the family itself is not beyond regulation.”<sup>29</sup> The Court continued, “[t]he state as *parens patriae* has a ‘wide range’ of authority that may ultimately limit parental autonomy in raising children.”<sup>30</sup> Citing to the 1923 U.S. Supreme Court case of *Meyer v. Nebraska*, the Supreme Court of Utah argued that “[t]he U.S. Supreme Court has long upheld the state’s use of its *parens patriae* authority to . . . mandate school attendance.”<sup>31</sup> Finally, the Court gave legislative deference,<sup>32</sup> arguing that further limitations include endangerment of health or well-being, allegations of child abuse, lack of demonstrated parenting skills, financial inability of a parent to provide, preference of a mature child, incarceration of the parent, or “any other criteria the court determines relevant to the best interests of the child.”<sup>33</sup>

### III. WHY ARE CHILDREN TRUANT?

There are many complex reasons behind truancy.<sup>34</sup> One reason is that social pressures to skip school are more tempting than the delayed rewards received by attending school.<sup>35</sup> Unfortunately, there are no

28. *Id.* § 53A-11-105(3).

29. 144 P.3d 1083, 1085, 1087 (Utah 2006) (quoting *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944)).

30. *Id.* (emphasis added).

31. *Uzelac v. Thurgood*, 144 P.3d 1083, 1087 (Utah 2006) (quoting *Meyer v. Nebraska*, 262 U.S.390, 400 (1923) (“acknowledging importance of education enforced in most states to compulsory education laws.”)). Interestingly, the Utah Supreme Court follows this trend in the February 2007 case, *Jones v. Barlow*, issuing a ruling where a former lesbian who had entered into a civil union was involved in a bitter custody battle with her ex-partner over her biological child. 154 P.3d 808 (2007). The biological mother of the child became a Christian and left the homosexual relationship but the other woman sued for rights to the child. *Id.* The Utah Supreme Court ruled in the case of *Jones v. Barlow* and denied the unrelated woman any parental rights over the child of her former partner. *Id.*

32. See UTAH CODE ANN. § 30-3-34(2).

33. *Uzelac*, 144 P.3d at 1096 n.9 (quoting UTAH CODE ANN. § 30-3-34(2)(o)).

34. See generally Sean Gabb, *Truancy in the United States: A Brief Overview*, in ISSUES IN SCHOOL ATTENDANCE AND TRUANCY (Dennis O’Keeffe & Pat Stoll eds., London: Pitman Press, 1995), available at <http://www.seangabb.co.uk/academic/usatruan.htm>.

35. See Jane Corville-Smith, et al., *Distinguishing Absentee Students from Regular Attenders: The Combined Influence of Personal, Family, and School Factors*, 27 J. OF YOUTH & ADOLESCENCE 629 (1998).

current statistics on truancy. Due to the lack of this data, professionals look at the number of truancy-related court filings to gauge the number of truant youth.<sup>36</sup> Thus far, there has been no consensus reached as to what causes truancy, but scholars generally suggest that truant youth simply do not want to subject themselves to the rigors of school, so they choose to skip school and participate in various forms of recreational activity.<sup>37</sup>

According to juvenile court statistics gathered by the Office of Juvenile Justice and Delinquency Prevention (OJJDP), the number of petitioned truancy cases increased 92%, from just over 20,000 in 1987 to almost 40,000 in 1996.<sup>38</sup> It is not clear to what extent these trends reflect an increase in the incidence of truancy versus an increase in the propensity of schools to send truants to court.

In a Utah Law Review article, Brigham Young University Law Professor David Dominguez outlines three hypothetical cases for truancy.<sup>39</sup> He writes,

In the hypothetical case, a child has failed to attend school for medical reasons but cannot produce a doctor's note excusing the absence, as required by school policy, because the child's family circumstances do not provide a means to visit a doctor. If the indigent child is extremely lucky, a mediator or lawyer will volunteer to resolve the matter, explain to the school that financial hardship (or cultural/language barriers or lack of transportation) made it unthinkable for the family to visit a doctor, and get the parties to agree to certain terms and conditions to improve the child's attendance. The case gets settled. But, no one addresses the real issue: Why is there no school-based advisory group to contact the family and to review the legitimacy

---

36. See JOANNA ZORN HEILBRUNN, PIECES OF THE TRUANCY JIGSAW PUZZLE: A LITERATURE REVIEW, NAT'L CENTER FOR SCH. ENGAGEMENT, 2 (2007), <http://www.schoolengagement.org/TruancyPreventionRegistry/Admin/Resources/Resources/120.pdf>.

37. Alison L. Bryant & Marc A. Zimmerman, *Examining the Effects of Academic Beliefs and Behaviors on Changes in Substance Use Among Urban Adolescents*, 94 J. OF EDUC. PSYCHOLOGY 621 (2002); Jareld G. Bachman et al., *Explaining Recent Increases in Students' Marijuana Use: Impacts of Perceived Risks and Disapproval, 1976 through 1996*, 88 AM. J. OF PUB. HEALTH 887 (1998); see also Bulletin, Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice, *Truancy Reduction: Keeping Students in School* (Sept. 2001), [http://www.ncjrs.gov/html/ojjdp/jbul2001\\_9\\_1/contents.html](http://www.ncjrs.gov/html/ojjdp/jbul2001_9_1/contents.html).

38. HOWARD N. SNYDER & MELISSA SICKMUND, JUVENILE OFFENDERS AND VICTIMS: 1999 NATIONAL REPORT 166-69 (1999), <http://www.ncjrs.gov/html/ojjdp/nationalreport99/toc.html> (the same data show the rate of truancy petitions of young people aged ten or older increased 97% among black students, 70% among white students, and 11% for students of other races); see also TRAVIS HIRSHI, CAUSES OF TRUANCY (University of California Press, 1969).

39. David Dominguez, *Equal Justice From a New Perspective: The Need for a First-Year Clinical Course on Public Interest Mediation*, 2006 UTAH L. REV. 995, 995-96.

of these medical excuses before the family is subject to truancy enforcement?

In a second hypothetical case, the enforcement proceeding is at the mediation stage and the mediator, as is customary at these sessions, asks the parent—a single mother with four more children, all younger than the truant—to say something she likes best about her teenage child. “Nothing,” she replies, “I can’t think of anything that I like about her. I have another daughter in the hospital and all this one can think about is herself.” After an awkward silence, the mediator proceeds with the session, finally getting the daughter to agree to buy an alarm clock and wake up in time for school and getting the mother to agree to drive her daughter to school by a certain time. The case gets resolved but no one raises the hard question: Who will help this single mom before the rest of the children are placed at risk of chronic absenteeism, truancy infractions, or worse?

In a third hypothetical case, an immigrant child’s Spanish-speaking parents tell him that he will not go to school on certain days because they need him, as the family’s only English speaker, at administrative hearings, at the hospital, and at other such appointments. Once the family is served with a summons to appear at truancy school, the immigrant parents, who are undocumented, fear their attendance may lead to apprehension and deportation and they refuse to attend, which in turn results in more complicated legal proceedings for the child before the juvenile court. Fortunately, a lawyer steps forward and gets the case dismissed before the child’s placement in secure confinement. Everyone involved moves on with life. Yet no one addresses the underlying questions: How and why did the legal process get so far, and whose responsibility is it, in light of the case, to better inform the immigrant community on Utah’s Compulsory Attendance Law, giving them fair warning and understanding of the statute’s importance?<sup>40</sup>

Reading these hypothetical situations, one can appreciate the fact that the poverty stricken or undocumented have much more difficulty accounting for lost time—and other emergencies which are excuses not found as often among the affluent.<sup>41</sup> As Dominguez points out, Utah’s Compulsory Attendance Law requires (1) both parties, (i.e., the school

---

40. *Id.*; see also Joyce L. Epstein & Steven B. Sheldon, *Present and Accounted For: Improving Student Attendance Through Family and Community Involvement*, 95 J. OF EDUC. RES. 308 (2002); Brian J. Smith, *Marginalized Youth, Delinquency, and Education: The Need for Critical-I Interpretive Research*, 32 THE URBAN REV. 293 (2000).

41. James A. Twaite & Diane Tirado-Lampert, *Outcomes of Mandated Preventive Services Programs for Homeless and Truant Children: A Follow-up Study*, 42 SOCIAL WORK 11 (1997).

and the truant student) to work together; and (2) involvement of community assistance to correct the child's truancy "problem" within the child.<sup>42</sup>

The Utah Code defines a "habitual truant" as a school-aged minor who: (1) is at least twelve years old; (2) has missed a class or class period five times without a valid excuse; and (3) is either truant at least ten times during the school year or fails to cooperate with the efforts of school authorities to resolve the attendance problem.<sup>43</sup> It follows that a "truant" student is one who refuses to regularly attend school without valid reasons—not a student who may have a myriad of poverty or health induced problems that cause them to be absent from school.

#### IV. JUVENILE DETENTION: THE CURRENT SOLUTION TO HABITUAL TRUANCY

A very common result of juvenile detention hearings is the incarceration of a child for "habitual truancy." Once the minor is absent without a valid excuse five or more times during the school year,<sup>44</sup> the court then has the ability to issue a court order that the child attend classes, which, if violated, will result in a detention of the child in a juvenile prison cell for contempt of court or failing to obey a court order.<sup>45</sup>

Perhaps the question should be asked, "Why would the school lock up kids for being truant?" Many administrators and government employees point to the fact that high truancy rates and chronic absenteeism indicate that a child is headed toward juvenile delinquency and a life of adult crime.<sup>46</sup>

However, there are other reasons that public school administrators try to crack down on truancy: federal and state funding. The No Child Left Behind Act of 2001 ("NCLB") requires public school administrators

---

42. UTAH CODE ANN. § 53aA-11-103(1), (6) (2004); *see also* UTAH ADMIN. CODE r. 277-609-4 (2004) ("A continuum of intervention strategies must be made available to assist students whose behavior in school is repeatedly short of reasonable expectations. Earnest and persistent effort shall be made to resolve individual discipline problems within the least restrictive school setting.").

43. UTAH CODE ANN. § 53A-11-101(2)(a) to (c) (2007).

44. *Id.* § 53A-11-101.5(4)(c)(ii).

45. *See* *People v. Sekeres*, 270 N.E.2d 7 (Ill. 1977) (truant child found in contempt and placed in correctional institution); *In re G.B.*, 430 N.E.2d 1096 (Ill. 1981) (truant child found in contempt, sentenced to detention center and placed on probation).

46. Dominguez, *supra* note 40, (referencing Ramona Gonzales & Tracy Godwin Mullins, *Addressing Truancy in Youth Court Programs*, in *SELECTED TOPICS ON YOUTH COURTS: A MONOGRAPH* 1, 5 (Tracy Godwin Mullins ed., 2004), available at <http://www.youthcourt.net/publications/monograph.pdf>; *see generally* Janet Boeth Jones, Annotation, *Truancy as Indicative of Delinquency or Incurability, Justifying Commitment of Infant or Juvenile*, 5 A.L.R.4th 1211 (1981).

to report attendance, among other things, to receive federal funding.<sup>47</sup> Legal commentators suggest that NCLB “increases [the] likelihood that lower income, especially poor minority students, will be targeted for removal from school to artificially inflate the numbers reported to federal government.”<sup>48</sup>

The Utah State Office of Education requires public schools to develop a truancy policy that compels children to attend school.<sup>49</sup> This policy plays a significant part in the public school’s “annual fiscal year-end report” filing.<sup>50</sup> The Utah Administrative Code encourages the public school to collect funds from truant students—without the option of a fee waiver for low-income students—the justification being that, “truancy citations are similar to repayment for destruction of school property.”<sup>51</sup>

Utah’s compulsory attendance laws are much like other state compulsory attendance laws. Most states have enacted statutes allowing school-aged children to be arrested and confined in juvenile detention if deemed “habitually truant.”<sup>52</sup> Because a truant child can be arrested, courts typically hold that there must be “articulable, relevant, and objectively verifiable facts justifying a truancy detention.”<sup>53</sup> For example, in California, a minor’s “youthful appearance and carrying a book bag” while walking within three miles of a school that was in session justified the officer’s arrest of the child.<sup>54</sup>

In many states, local ordinances augment the effect of state statutes by prohibiting school age children to be in public places while school is in session. For example, in *Colon-Berezin v. Giuliani*, a New York case, the court held that a police officer had probable cause to detain a teenager when she was unable to produce her school program card or explain her failure to do so while she was in a public place.<sup>55</sup>

A majority of states holds that the truancy must be habitual to authorize detainment of a child. Utah reserves habitual truancy for

---

47. No Child Left Behind Act of 2001, 20 U.S.C. § 6301 (2002).

48. Dominguez, *supra* note 40 at 996–97; see also James E. Ryan, *The Perverse Incentives of the No Child Left Behind Act*, 79 N.Y.U. L. REV. 932, 969–70 (2004) (arguing that NCLB has undesired effects that result in harsh “zero tolerance” and other coercive policies).

49. UTAH ADMIN. CODE r. 277-607-3 (2007); UTAH CODE ANN. §§ 53a-11-101 to -105 (2007).

50. UTAH ADMIN. CODE r. 277-607-3(F).

51. *Id.* r. 277-607-3(C).

52. See *In re Humberto O.*, 95 Cal. Rptr. 2d 248 (Ct. App. 2000) (The statute provided that “a peace officer . . . may arrest or assume temporary custody during school hours, of any minor subject to compulsory full-time education . . . found away from his or her home and who is absent from school.” A search was allowed incident to arrest).

53. *Id.* at 251.

54. *Id.*

55. *Colon-Berezin v. Giuliani*, 88 F. Supp. 2d 272 (S.D.N.Y. 2000).

minors who have more than five absences without a valid or legitimate excuse within a school year.<sup>56</sup> The Utah Administrative Code defines an absence to mean as little as “part of one school day” (which could be construed to mean as little as one class period) or as much as one full school day.<sup>57</sup> Likewise, the majority of states hold that the truancy must be habitual to authorize the detainment of a child.<sup>58</sup> A New York State court held, “proof of an isolated incident of truancy is not sufficient.”<sup>59</sup> In most states, the reasons for a child’s non-attendance must be intentional—some states requiring proof beyond a reasonable doubt.<sup>60</sup>

Furthermore, within the walls of the juvenile detention facility, there are classrooms where each student is compelled to attend school on a daily basis—forcing the child to comply with the Utah compulsory attendance laws.

#### V. LOCKING UP PARENTS: ANOTHER SOLUTION PROPOSED BY THE UTAH LEGISLATURE

The reformed rules (House Bill 207) signed into law in March 2007 propose another way for the Utah public schools to compel attendance: incarcerating the child’s parents if the child does not attend school. The amendment was intended to “try and put in some parental protections into the truancy program we have in our schools.”<sup>61</sup> After five absences, the parents will be required to meet with the administration, after which public school administrators will provide information and resources to the parents. After this meeting, if the child misses school five more times the parents will be subject to a class B misdemeanor.<sup>62</sup>

---

56. UTAH ADMIN. CODE r. 277-607-1(D).

57. *Id.* r. 277-607-1(A).

58. See *Chi. Bd. Of Educ. v. Kouba*, 354 N.E.2d 630 (Ill. App. Ct. 1976) (nine days of absences not sufficient to find child habitual truant); *People v. K.S.Y.*, 416 N.E.2d 736 (Ill. App. Ct. (1981) (one day insufficient).

59. *In re Lawrence T.*, 630 N.Y.S.2d 910, 911 (N.Y. Fam. Ct. 1995) (finding that child could not be considered an habitual truant where “one incident of truancy [was] alleged to have occurred before the child’s sixteenth birthday”).

60. *G.N. v. State*, 833 N.E.2d 1071 (Ind. Ct. App. 2005) (“A finding by a juvenile court adjudicating a child to be a delinquent for violation of the compulsory school attendance law must be based upon proof beyond a reasonable doubt.”); *In re Welfare of L.Z.*, 396 N.W.2d 214, 218, 221–22 (Minn. 1986) (habitual truancy implies “volitional conduct on the part of the child for which the child is responsible”); *Simon v. Doe*, 629 N.Y.S.2d 681, 682 (Fam. Ct. 1995) (child was not found to be in need of detention where refusal to attend school was based on school phobia).

61. Audio recording: 2007 General Legislative Session Floor Debates regarding House Bill 207, Day 9 (January 23, 2007) (statement of Eric Hutchings), available at <http://le.utah.gov/asp/audio/index.asp?Sess=2007GS&Day=0&Bill=HB0207&House=H>.

62. UTAH CODE ANN. § 53A-11-101.5(6) (2007).

The statute reads:

(3). A school administrator, a designee of a school administrator, or a truancy specialist may issue a notice of compulsory education violation to a parent of a school-age child if the school-age child is absent without a valid excuse at least five times during the school year.

(4). The notice of compulsory education violation, described in subsection (3);

(a). Shall direct the parent of the school-age child to:

(i). Meet with School authorities to discuss the school-age child's school attendance problems; and

(ii). Cooperate with the school board, local charter board, or school district in securing regular attendance by the school-age child;

(b). Shall designate the school authorities with whom the parent is required to meet;

(c). Shall state that it is a class B misdemeanor for the parent of the school-age child to intentionally or recklessly:

(i). Fail to meet with the designated school authorities to discuss the school-age child's school attendance problems; or

(ii). Fail to prevent the school-age child from being absent without a valid excuse five or more times during the remainder of the school year;<sup>63</sup>

A class B misdemeanor is unduly burdensome for five absences. Other class B misdemeanors in Utah include driving under the influence of alcohol or drugs,<sup>64</sup> enticing a minor over the Internet,<sup>65</sup> solicitation of a prostitute,<sup>66</sup> prostitution,<sup>67</sup> voyeurism,<sup>68</sup> unlawful sexual activity with a minor,<sup>69</sup> lewdness,<sup>70</sup> and sodomy<sup>71</sup>. A class B misdemeanor is punishable by imprisonment for up to six months and a fine of \$1,000 with an 85% surcharge payable to the court (for a total of \$1,850.00).<sup>72</sup>

---

63. *Id.* § 53A-11-101(3) to (4)(c)(ii).

64. *Id.* § 41-6a-502.

65. *Id.* § 76-4-401 (3)(d).

66. *Id.* §§ 76-10-1313(2), 76-10-1303(2).

67. *Id.* § 76-10-1302(2).

68. *Id.* § 76-9-702(7)(5).

69. *Id.* § 76-5-401(3).

70. *Id.* § 76-9-702(2) (lewdness is defined as having sexual intercourse or sodomy, exposure of genitalia, or masturbating in either (1) public areas or (2) in front of another who is 14 years of age or older).

71. *Id.* § 76-5-403(3).

72. *Id.* §§ 76-3-301, 76-3-203, 76-3-208.

---

---

The Utah State Office of Education prepared a memorandum in support of House Bill 207, the bill that ratified the class B misdemeanor imposition on parents, and the updated changes—specifically applauding the imposition of criminal sanctions on parents who do not force their children to attend school. The memorandum argues,

The focus is on COOPERATION between parents and schools.

With increasing federal and state emphasis [on] student achievement—and commensurate punishments and rewards for schools—schools MUST have the tools to compel attendance and the law must give certain unresponsive parents incentives to work with schools on student attendance issues.”<sup>73</sup>

The memorandum also argues, “There are ample due process and parents’ rights protections.”<sup>74</sup> The memorandum leads one to think the imposition of the class B misdemeanor came directly from the Utah State Office of Education because of the unwavering support given to the issue.

If the statute truly is intended to be cooperative, as the Utah State Office of Education asserts, then it raises the question: Will the parent be more effective in compelling their child to attend school while incarcerated or while forced to work overtime to pay the high court fees? If the parents are unable to ensure their child’s perfect attendance while free, would jail time for the child’s parents help the family resolve their difficulty or are the potential court fees and jail time simply going to add more weight to a struggling family’s shoulders?

Another critical question is: Is the potential six-month parental detention simply a scare tactic to shape up the parents and coerce parental involvement? It seems likely that the only parents who will feel the full impact of the class B misdemeanor sentencing are going to be undocumented immigrants and their families who will not only be fined and imprisoned, but possibly deported.<sup>75</sup>

One hopes that the legislature did not realize they put such potentially damning language into the amended statute. Representative Hutchings admitted the bill was “not perfect,” and called for “suggestions” to modify the bill. It would be more reasonable if the bill

---

73. SCHOOL TRUANCY AND COMPULSORY EDUCATION AMENDMENTS: H.B. 207, STATEMENT, UTAH STATE OFFICE OF EDUCATION, <http://www.schools.utah.gov/law/leg2007/Talking%20Points%20Files/School%20Truancy%20and%20Compulsory%20Education%20Amendments.pdf> (last visited, April 26, 2007) (emphasis in original).

74. *Id.*

75. Interview with Joan Watt, Appellate Attorney, Salt Lake Legal Defenders Association, in Salt Lake City, Utah (Apr. 3, 2007).

had called for an infraction or some other less serious crime, which carries a lighter punishment for the parent.

VI. UTAH LEGISLATIVE INTENT: MANDATING ALTERNATIVE INTERVENTION STRATEGIES FOR PUBLIC SCHOOL ADMINISTRATOR

Although it seems unduly burdensome to actually lock up parents for their child's failure to attend school, the Utah legislature has provided language in other code sections that allow and encourage school administrators to use creative means to provide meaningful encouragement for parents and children to work together to attend school.

The Utah legislature's interpretation is similar to the above-mentioned articles by David Dominguez. Utah law compels public school administrators to follow a host of procedures when dealing with habitually truant youth.<sup>76</sup> In addition to an obligation to counsel repeatedly with the minor at the first signs of habitual truancy, the administrator must adjust the curriculum and schedule to meet the student's individual needs, and counsel with the minor and the parents together.<sup>77</sup> The Utah Legislature has attempted to solve the problems of the hypothetical situations proposed by Dominguez by adding in a provision that allows parents to excuse absences more liberally.<sup>78</sup>

The legislature has implemented several different defenses that parents can use when they negotiate with public school administrators including illness, family death, approved school activities, disability accommodations, or "any other excuse established as valid by a local school board, local charter board, or school district."<sup>79</sup>

Additionally, Utah law mandates that "[a] continuum of intervention strategies shall be made available to assist students whose behavior in school is repeatedly short of reasonable expectations. Earnest and persistent effort shall be made to resolve individual discipline problems within the *least restrictive school setting*."<sup>80</sup> Empowerment and involvement of parents in the child's reformation and rehabilitation process would be the "least restrictive school setting." Furthermore, it would enhance the child's overall self-worth because opening the channels of communication among family members would foster more

---

76. UTAH CODE ANN. § 53a-11-103 (2007); UTAH ADMIN. CODE r. 277-607-(1) to -(5); UTAH ADMIN. CODE r. 277-609-(1) to -(4).

77. UTAH CODE ANN. § 53A-11-103(2)(e) (2007).

78. *Id.* § 53A-11-101(9).

79. *Id.* §§ 53A-11-101(9)(a) to (e).

80. UTAH ADMIN. CODE r. 277-609-4 (2007) (emphasis added).

---

---

love and nurturing in the home.

Generally, parents are the closest and most effective link to a child. The Utah Code empowers the courts to:

(b) order appropriate measures to promote guidance and control, preferably in the minor's own home, as an aid in the prevention of future unlawful conduct and the development of responsible citizenship;

...

(f) remove a minor from parental custody only where the minor's safety or welfare, or the public safety, may not otherwise be adequately safeguarded; and

(g) consistent with the ends of justice, act in the best interests of the minor in all cases and preserve and strengthen family ties.<sup>81</sup>

The parents are therefore the primary preference for the custody and discipline of the child. The court is required to strengthen family ties, unless those ties lead to an endangerment of the youth's safety, welfare or that of the community.

Parents, the primary custodians of their children, can create effective, long-lasting change in their children because they enjoy the plenary access to them. When parents are unable to effect reform within their home, many times instead of finding the necessary help, they simply become tired, and consequently unable to resolve the matters that can arise in the course of family living. Many parents need help to fulfill their responsibility to the state, the courts, and the community.

What creative solutions can Utah public school administrators offer their students and parents to provide "a continuum of intervention strategies" for the truant as well as accomplish the objectives set forth by the Utah State Office of Education ("USOE")? Not only have other states been successfully implementing techniques that offer an alternative to locking up the parents or children, but schools within Utah have successfully implemented these alternatives.

#### *A. Alternative #1: Parent-Teen Mediation*

The Utah legislature's newly amended truancy statutes direct public school administrators to provide "truancy mediation" and to give the parents the option of voluntarily participating in truancy mediation.<sup>82</sup> The statute also reads that the public school administrators shall provide

---

81. UTAH CODE ANN. §§ 78-3a-102(5)(b), (f), (g).

82. *Id.* § 53A-11-103(2)(g).

parents with “a list of resources available to assist the parent in resolving the school-age minor’s attendance problems”—a typical solution offered by a certified mediator.<sup>83</sup> Mediation can be a useful tool in helping parents and teenagers develop meaningful communication.

Consider the following example: Rachel was placed in juvenile detention on February 5, 2007 for allegedly missing class at Spanish Fork High School. Her medication makes it very difficult for her to go to her morning classes, so the principal put her on a contract to attend classes. Rachel missed classes, and received multiple violations. Her truancy violations resulted in a court order for her to attend school. On the first day Rachel missed after the court order was issued, the school police officer picked her up at her house, arrested her, and took her to the juvenile detention center in Provo, Utah.

Rachel’s mother Kathryn, in her hopes for Rachel to “get her act together,” agreed to attend mediation sessions with Rachel. Likewise, in her hopes to get out of juvenile detention, Rachel agreed to mediation with Kathryn.

In Rachel’s first meeting with a mediator, Rachel acknowledged that she and her mother have difficulty getting along because they “think differently” about things. Rachel said that they have minimal communication on a daily basis. Kathryn expressed similar difficulties with Rachel. Kathryn said that her daughter causes all sorts of problems. Many of Rachel’s problems have been removed from her record (like the time she beat up a thirty-year-old neighbor and had to take anger management classes, or the time that she was caught stealing cigarettes). Her mother also said that Rachel’s friends broke into their house and stole make-up, jewelry, and shampoo while Rachel’s family was out of town.

A week later, in their first mediation, Rachel came in and acted very irritable towards Kathryn. She had completely given up on going to school or getting an education. After a long and arduous mediation, Rachel agreed (1) to a follow-up mediation, (2) to make dinner for Kathryn every Tuesday and Sunday night, (3) to study at least four hours weekly, and (4) to attend school for thirty days without absences. Kathryn agreed to help Rachel for four hours every week with her homework and to reinstate Rachel’s cell phone privileges if Rachel kept her end of the deal (which had been previously taken away due to her behavioral problems).

The following week, though Rachel had not attended every day of school, Kathryn noted considerable more effort on Rachel’s part—

---

83. *Id.* § 53A-11-103(2)(h).

---

---

especially in her homework. The mediators continued to work with Rachel, noting small victories during the second and third follow-up mediation sessions.

When Kathryn and Rachel attended their fourth weekly session of mediation, the mediators noticed how happy Rachel looked. Rachel committed to write a note to Kathryn every day (and Kathryn committed likewise), to stop using profanity, and to control her anger. Rachel also agreed to role-play with the mediators—something that she had previously refused to do.

At the sixth and final mediation session, the mediator expressed apprehension before the session that Rachel's release from her home detention program could have thrown off her progress. The mediator reported, "Our initial concern was that Rachel was going to get back into trouble as soon as she was released again. However, big changes occurred. The night after she was released she went out with her friends, but came home at 11:20 and even apologized to her mom for being twenty minutes late (and had additionally called in advance to tell her she would be coming home late)."<sup>84</sup> Kathryn expressed her approval of Rachel's responsible behavior—especially because during the initial mediation sessions Kathryn complained that Rachel lingered with her friends until 3:00 a.m. or later without calling to check in.

Mediation reportedly had other benefits. The mediator reported that Rachel even implemented the communication strategies in the mediations to diffuse potential conflicts. Kathryn mentioned that with the immediate challenges for her, it seems that mediation has effectively helped. Kathryn postulates that it might be because Kathryn can point to an authority above herself when she asks for cooperation from Rachel. Kathryn mentioned that the mediation techniques are effective on her other children as well and she uses them often. She even uses them to communicate more effectively with her divorced spouse.

The reason that the legislature mandates truancy mediation in one of the steps of truancy intervention can be seen in this example because the progress is so visible. Although mediation is not a foolproof plan for every child, a plethora of research conducted over several years suggest that youth mediation is effective, and therefore often a viable alternative to detention of either the parent or the child.<sup>85</sup>

---

84. Letter from the mediator to author (April 3, 2007) (on file with author).

85. JUDITH M. FERRARA, *PEER MEDIATION: FINDING A WAY TO CARE*, (1996) (presents the viewpoint of an educator on how mediators in a K–5 grade school dealt with the culture of violence around them, by creating a sense of community); *PEACEBUILDING FOR ADOLESCENTS: STRATEGIES FOR EDUCATORS AND COMMUNITY LEADERS* (Linda Rennie Forcey & Ian M. Harris eds., 1999) (presents proactive strategies for educators and community leaders to deter adolescent violence arguing for a more humane response by teaching young people to value peace, to learn to manage

*B. Alternative #2: Parent Centers in Public Schools*

Many states have successfully taken a community-based approach by establishing parent centers to combat truancy in public schools. In July 1996, the United States Department of Education and the United States Department of Justice jointly prepared a “Manual to Combat Truancy” citing parental involvement in school as a more important factor in reducing truancy than “zero-tolerance” or “police intervention” policies.<sup>86</sup>

The best-documented example of successful parent centers comes from A.J. Reynolds, a researcher at the University of Wisconsin at Madison who has studied the Chicago Child-Parent Center (“CPC”) Program over a period of four decades. The CPC Program is a multi-state, federally funded intervention operating in the Chicago public schools, targeting the public schools in the inner-city areas.<sup>87</sup>

Research in the CPC Program has “indicated that participation beginning in preschool is associated with several behavioral outcomes that predict later economic and social well-being—including higher cognitive skills, greater school achievement, and improved consumer skills—and with lower incidence of school remedial services in early adolescence.”<sup>88</sup> Some of the otherwise necessary services reduced by the program include, among other things, truancy intervention programs, and

---

their own conflicts, and to live more peacefully through mediation); David Oliver Mendelsohn, *Mediation: A Gang Prevention Strategy*, MCS CONCILIATION Q., Winter 1991, at 5–6; Calvin Morrill et al., *Telling Tales in School: Youth Culture and Conflict Narratives*, 34 L. AND SOC’Y REV. 521 (2000) (approaches youth conflict and violence from a youth-centered perspective drawn from cultural studies of young people and sociological research); see also MARK D. BENNETT & MICHELE S.G. HERMANN, *THE ART OF MEDIATION*, (1996); DANIEL BOWLING & DAVID HOFFMAN, *BRINGING PEACE INTO THE ROOM* (2003); CHRISTOPHER MOORE, *THE MEDIATION PROCESS: PRACTICAL STRATEGIES FOR RESOLVING CONFLICT* (2004); Richard Delgado, *ADR and the Dispossessed: Recent Books About the Deformalization Movement*, 13 L & SOC. INQUIRY 145 (1988); Michael Lewis, *Advocacy in Mediation: One Mediator’s View*, 2 DISP. RES. MAG. 7 (Fall 1995). See generally American Bar Association, Section of Dispute Resolution, <http://www.abanet.org/dispute/home.html> (professional association of lawyers and law students interested in mediation and other forms of ADR); Center for Analysis of Alternative Dispute Resolution, <http://www.caadrs.org> (abstracts of empirical studies of court-related ADR programs); Center for the Study of Dispute Resolution, University of Missouri, <http://www.law.missouri.edu/csdr/about/> (references to information and other academic ADR Websites); Conflict Resolution Information Source, Conflict Research Consortium, University of Colorado, <http://www.crinfo.org> (information and referral sources on a wide variety of ADR issues); Federal ADR Network, [http://www.adr.af.mil/general/guide\\_adr.doc](http://www.adr.af.mil/general/guide_adr.doc) (a comprehensive list of ADR Websites).

86. U.S. DEPARTMENT OF EDUCATION & U.S. DEPARTMENT OF JUSTICE, *MANUAL TO COMBAT TRUANCY* (1996), available at <http://www.ed.gov/pubs/Truancy/index.html>.

87. See ARTHUR J. REYNOLDS, *SUCCESS IN EARLY INTERVENTION: THE CHICAGO CHILD-PARENT CENTERS* (2000).

88. ARTHUR J. REYNOLDS ET AL., *AGE 21 COST-BENEFIT ANALYSIS OF THE TITLE I CHICAGO CHILD-PARENT CENTERS* (2002) (presented at the annual meeting of the Society for Prevention Research in Washington, D.C. 2001).

truancy officers, making CPC Programs ideal for cutting community's costs.<sup>89</sup>

Furthermore, Reynolds conducted a cost-benefit analysis and found that the CPC Program was fiscally responsible at all levels of involvement.<sup>90</sup> Using data from a cohort of children born in 1980, Reynolds followed their progress over a twenty-year period, and found that the benefits of the program significantly exceeded costs—returning to society more than \$7 per \$1 invested into the program.<sup>91</sup> Reynolds's study consisted of “an investigation of the life-course development of 1,539 children from low-income families; 93 percent are black and 7 percent are Hispanic.”<sup>92</sup>

Major components of the program include outreach activities, home visitation, and resource materials available for checkout to students. Additionally, “an intensive parent program that includes “participating in parentroom activities[,] volunteering in the classroom, attending school events and field trips,” and a program designed to help the parents obtain their high school diploma.<sup>93</sup> Other aspects of the program include “health and nutrition services, health screenings for the entire family, speech therapy, and nursing and meal services.”<sup>94</sup>

Although it is arguable that the benefits could simply be derived from the abundance of resources available to the CPC Program participants, many researchers argue that the critical element is parental involvement. Researchers have argued, “[f]amilies must be included in the intervention program for the students to sustain the cognitive benefits of early intervention.”<sup>95</sup> Judy Temple estimates that high parental involvement in the CPC Program “is associated with a lower probability of high school dropout by 3 percentage points.”<sup>96</sup> Reynolds found that extended intervention programs such as the CPC Program “encourage stability in school and home learning environments.”<sup>97</sup>

Another researcher to study the low-income CPC Program found that a “strong relationship was found between CPC parent and home support

---

89. *Id.*

90. *Id.* at 35.

91. *Id.* at abstract.

92. *Id.* at 3.

93. *Id.* at 9.

94. *Id.* at 11.

95. A.A. Benasich, J. Brooks-Gunn & B.C. Clewell, *How do Mothers Benefit From Early Intervention Programs?*, 13 J. OF APPLIED DEVELOPMENTAL PSYCHOL. 311 (1992).

96. Judy A. Temple, *Can Early Intervention Prevent High School Dropout?: Evidence From the Chicago Child-Parent Centers*, 35 URBAN EDUC. 31, 46 (2000).

97. Arthur J. Reynolds & Judy A. Temple, *Extended Early Childhood Intervention and School Achievement: Age Thirteen Findings from the Chicago Longitudinal Study*, 69 CHILD DEV. 231, 244 (1998).

for academic achievement.”<sup>98</sup> Conrad and Eash reported that CPC Program schools enjoy higher parental attendance at the center, and have the “intended effects of increasing the parents’ willingness and ability to support the academic achievement of their children” while “enrich[ing] their home environments in ways that are supportive of enhanced school achievement.”<sup>99</sup> They also noted that increased parental attendance at the center is a factor in increasing parental ambitions for “academic” achievement.<sup>100</sup>

*1. Examples of other modern child parent center programs*

The Buffalo public school system started the Buffalo Parent Center in 1989. Parents in the school district asked for “a place of [their] own; something we can access seven days a week.”<sup>101</sup> Center activities include family literacy training, parenting education, computer training, and tips on helping with homework. Except for adult education classes, all learning activities at the center are designed so that parents and children can participate together. Resources include two computer labs (with more than 90 computer workstations), a discovery room complete with a hands-on science center, and a robotics laboratory.<sup>102</sup> The center gives families access to a wide variety of musical instruments so that parents and children can take music lessons together. The center also has a computer checkout system, where families can borrow one of the center’s 140 computers for up to six weeks.

The Buffalo Public School District is responsible for 48,000 children. Fifty-nine percent of its students qualify for the federal Free Lunch Program. Fifty-three percent of the students are African American, ten percent Hispanic, and three percent of the students are Native American.<sup>103</sup> The parent center employs thirty staff members, including specialists in adult and early childhood education, English teachers, reading teachers, computer technicians and teachers, and home liaisons. The center boasts twenty-five to forty families in attendance in a

---

98. Kendon J. Conrad & Maurice J. Eash, *Measuring Implementation and Multiple Outcomes in a Child-Parent Center Compensatory Education Program.*, 20 AM. EDUC. RES. J. 221, 233 (1983).

99. *Id.*

100. *Id.*

101. JANIE E. FUNKHOUSER ET AL., FAMILY INVOLVEMENT IN CHILDREN’S EDUCATION: SUCCESSFUL LOCAL APPROACHES A-9 (1997) (Buffalo Parent Center: A Large Urban School District Gives Parents a Place of their Own), available at <http://www.ed.gov/pubs/FamInvolve/buffalo.html>.

102. *Id.*

103. *Id.*

---

---

typical evening.<sup>104</sup>

The Buffalo Parent Center families also value learning while spending time together by hosting parent and student field trips. The center staff gives tours, answers questions, gives free bus tokens for return trips, and “sells itself” to the students and parents.<sup>105</sup>

The Buffalo Parent Center notes significant success, including:

Parents now support and motivate one another to play a greater role in the educational lives of their children. Staff remark that “new parents are embraced by other parents” and often meet outside of the center to organize family events together. “Parents become a community and a support network,” says one staff member. Several students who participate in the center’s tutoring program with their parents have gone on to become tutors for younger children in the program. Each year the Parent Center surveys parents who participate in the Take Home Computer Program, an activity that serves children identified by their classroom teacher as being “most in need” of supplemental academic help. A survey of the participants in the 1994-95 program indicated that 44 percent of parents reported that the program had a “significant” effect on their child’s motivation toward learning; 52 percent indicated some effect. Virtually all parents reported noticeable or significant improvements in their children’s math and reading skills, and 64 percent reported that the program had significantly enhanced their child’s knowledge of computers.<sup>106</sup>

Through the Center, parents learn how to help their child succeed academically and how to supplement their child’s education at home.

In New Mexico, the Rio Grande High School “has battled low test scores, high dropout rates, and discipline problems that culminated in a 1998 student riot” during which students and teachers were injured.<sup>107</sup> As a result, parents and administration established the Rio Grande Parent Center to improve the conditions at the high school. Volunteers (parents) arrange everything from guest speakers to providing help to high school students with college applications. Parents even coordinate prizes for students with outstanding grades and attendance. In 2002, students with perfect attendance were entered into a drawing at the end of the year. The grand prize? A new car donated by the volunteers at the center who made

---

104. *Id.*

105. *Id.*

106. *Id.*

107. Megan Arredondo, *Raven Parent Center Works to Improve Rio Grande High School*, THE ALBUQUERQUE TRIB., June 26, 2006, available at [http://www.abqtrib.com/albuquerque\\_neighborhoods/article/0,2565,ALBQ\\_19853\\_4804910,00.html](http://www.abqtrib.com/albuquerque_neighborhoods/article/0,2565,ALBQ_19853_4804910,00.html).

a collective effort to procure a car for the student body.<sup>108</sup>

## 2. *Implementation of a child-parent center program*

Joyce Epstein and John Hollifield, leading authorities in the area of CPC programs, outline six types of involvement that any successful CPC Program should target. The six types of involvement are: (1) parenting: the basic obligations of families; (2) communicating: the basic obligations of schools; (3) volunteering: family involvement at school; (4) learning at home: family involvement with children on academic activities; (5) decision making: family participation in school governance and advocacy; (6) collaborating with the community: exchanges with community organizations.<sup>109</sup> Low-income schools that implement these types of involvement will build a comprehensive school, family, and community partnership.

### C. *Alternative #3: School Counseling*

Another major reason that children are truant is because of mental illness.<sup>110</sup> It is unclear whether truants with mental illness are being sent to juvenile detention as opposed to mental institutions because of the lurking variables involved with data collection.<sup>111</sup> Overrepresentation of youth with mental illness in the juvenile justice system compared to the population at large may indicate that a high proportion of the youth being sent to the juvenile justice system for truancy have mental illness

---

108. *Id.*

109. Joyce L. Epstein & John H. Hollifield, *Title I and School-Family-Community Partnerships: Using Research to Realize the Potential*, 3 J. EDUC. FOR STUDENTS PLACED RISK 263, 271 (1996).

110. See PETE EARLEY, *CRAZY: A FATHER'S SEARCH THROUGH AMERICA'S MENTAL HEALTH MADNESS* (2006). See generally EDWARD M. HALLOWELL & JOHN J. RATEY, *DRIVEN TO DISTRACTION: RECOGNIZING AND COPING WITH ATTENTION DEFICIT DISORDER FROM CHILDHOOD TO ADULTHOOD* (1994) (arguing that one of the largest shame-induced feelings of ADD/ADHD is the embarrassment that accompanies being constantly late to appointments); see also EDWARD M. HALLOWELL & JOHN J. RATEY, *ANSWERS TO DISTRACTION* (1995) (recommending that a "coach" be assigned and funded by parents to help the ADD student with class attendance); EDWARD M. HALLOWELL & JOHN J. RATEY, *DELIVERED FROM DISTRACTION* (2005) (discussing the problems accompanying a student's lack of ability to attend class consistently); PATRICIA O. QUINN, *ADD AND THE COLLEGE STUDENT: A GUIDE FOR HIGH SCHOOL AND COLLEGE STUDENTS WITH ATTENTION DEFICIT DISORDER* (1994) (arguing that unless a student selects colleagues who are "ADD friendly," the risk of dropout is exponentially higher).

111. Reasons range widely for difficulty in data collection, examples are misdiagnoses, failure to diagnose, medicate, mistaking alcohol or drug abuse as criminal and not self-medication, children being labeled as stupid instead of learning-disabled, ESL students with learning disabilities and mental illness being unrecognized because of the language barrier, etc.

problems.<sup>112</sup> It follows that school counseling would be a more appropriate place to help these youth because they could more appropriately diagnose learning disabilities or other mental illnesses without punitive components.<sup>113</sup>

The Utah legislature is clear: counseling of the minor by school authorities is an important step in the disciplinary process.<sup>114</sup> Counseling for youth in the school system creates a safer, more educational environment for all schoolchildren because counseling can remove severe disturbances and can isolate problems that other methods fail to identify. The legislative mandate that all children with attendance problems receive counseling is important because many of the children who are truant qualify to receive accommodations by way of the Americans with Disabilities Act (ADA)—and the public school administrators will give them greater flexibility when they are truant from school. Under the new laws, Utah parents might be the largest beneficiaries of the ADA because they will stay out of prison if their disabled child does not attend school, and all other alternatives have failed.<sup>115</sup>

## VII. CONCLUSION

Although the legislature has a long-standing policy towards discipline within the “least restrictive school setting,” the newly amended Utah Code over restricts both the juvenile offender and their parents by actually empowering Utah school districts to place a juvenile’s parents in lock-up for up to six months and to fine them nearly \$2000.<sup>116</sup> This

---

112. See Dina D. Domalanta et al., *Prevalence of Depression and Other Psychiatric Disorders Among Incarcerated Youth*, 42 J. AM. ACAD. CHILD ADOLESCENT PSYCHIATRY 477 (2003); Jessica Ann Garascia, *The Price We are Willing to Pay for Punitive Justice in the Juvenile Detention System: Mentally Ill Delinquents and Their Disproportionate Share of the Burden*, 80 IND. L.J. 489, 504 (2005); Thomas L. Hafemeister, *Parameters and Implementation of a Right to Mental Health Treatment for Juvenile Offenders*, 12 VA. J. SOC. POL’Y & L. 61, 66–67 (2005); April Land, *Dead to Rights: A Father’s Struggle to Secure Mental Health Services for His Son*, 10 GEO. J. ON POVERTY L. & POL’Y 279, 280 (2003); Susan P. Leviton, *Children of Color with Mental Health Problems: Stuck in All the Wrong Places*, 2 MARGINS: MD. L.J. RACE, RELIGION, GENDER & CLASS 13, 27 (2002); Kasey Corbit, Student Author, *Inadequate and Inappropriate Mental Health Treatment and Minority Overrepresentation in the Juvenile Justice System*, 3 HASTINGS RACE & POVERTY L.J. 75, 81 (2005) (citing Special Investigation); Jacob Santini, *More Mentally Ill Teens Landing in Justice System; Mentally Ill Teens Waiting for Treatment*, SALT LAKE TRIB., Jan. 3, 2005, at A1.

113. Gene Griffin & Michael J. Jenuwive, *Using Therapeutic Jurisprudence to Bridge the Juvenile Justice and Mental Health Systems*, 71 U. CIN. L. REV. 65, 73 (2002).

114. UTAH CODE ANN. § 53A-11-103(2)(a) (2007). (Efforts include “counseling of the minor by school authorities.”).

115. The amended statutes provide for excuses because of mental and emotional disorders and any ADA-related condition.

116. UTAH CODE ANN. § 53A-11-101(3).

seems to be inconsistent with the long-standing legislative tradition of upholding rights for children and parents as well as implementing a “least restrictive means” standard to discipline school-age children.

One interpretation of the legislative intent regarding Utah’s compulsory attendance laws is to implement a variety of techniques into truancy prevention, including parental involvement, parent-teen mediation, counseling—including early diagnosis of learning and behavioral disorders—and even establishing parents’ centers within the Utah public schools. Certainly, imprisonment of youth or parents, although an effective short-term solution, can have long-term negative consequences that negate any quantifiable positive effects.

Utah public school administrators could implement these techniques using socially and fiscally responsible methods and thereby avoid sending children to juvenile detention while encouraging meaningful change within the individual child and within that child’s family.

*Gilbert Bradshaw\**

---

\* J.D. Candidate, J. Reuben Clark Law School, 2008, Brigham Young University; B.A. 2005, with honors, Brigham Young University. Special thanks to Professor David Dominguez for introducing me to the issue and for providing tireless direction and feedback; to Elizabeth Lisonbee for help locating sources; to Marin Turley Bradshaw for being such a great advocate of public interest law; to Ignacio Garcia for assistance on disproportionate impact studies; and to my colleague Yasser Sanchez for assistance in juvenile detention centers mentoring incarcerated youth.