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# REDUCING TRUANCY IN INDIANA: A BALANCED APPROACH

## I. INTRODUCTION

Education has long stood as a benchmark for promoting a healthy and productive society,<sup>1</sup> beginning as early as 3500 B.C. when early Egyptians preserved teachings with the first written language.<sup>2</sup> Indeed, education has been described as the “the most important function of state and local governments”<sup>3</sup> and has been a topic of discussion among ancient philosophers and Presidents alike.<sup>4</sup>

Because states, unlike the federal government, have a general police power, education in the United States is largely controlled by state and local governments.<sup>5</sup> As of 2012, every state has enacted varying laws regarding compulsory school attendance for students ranging from ages five to eighteen.<sup>6</sup>

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<sup>1</sup> See *Plyler v. Doe*, 457 U.S. 202, 223 (1982) (“By denying . . . children a basic education, we deny them the ability to live within the structure of our civic institutions, and foreclose any realistic possibility that they will contribute in even the smallest way to the progress of our Nation.”).

<sup>2</sup> See STEVEN ROGER FISCHER, *A HISTORY OF WRITING* 36 (2004).

<sup>3</sup> *Brown v. Bd. of Educ.*, 347 U.S. 483, 493 (1954); see also *Wisconsin v. Yoder*, 406 U.S. 205, 213 (1972) (stating a state’s responsibility in “providing public schools ranks at the very apex of [its] function.”).

<sup>4</sup> JAMES JOHNSON ET AL., *INTRODUCTION TO TEACHING: HELPING STUDENTS LEARN* 126 (2009) (providing the following quotation by Aristotle, an ancient Greek philosopher, “All who have meditated on the art of governing mankind have been convinced that the fate of empires depends on the education of youth.”); see also Barack Obama, Remarks by the President in State of the Union Address (Jan. 25, 2012), available at <http://www.whitehouse.gov/photos-and-video/video/2012/01/25/2012-state-union-address-enhanced-version#transcript> (calling for more effective and aggressive education of America’s youth).

<sup>5</sup> See U.S. CONST. amend. X (“The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”); *Policy Overview*, UNITED STATES DEPT’ OF EDUC., <http://www2.ed.gov/policy/landing.jhtml> (last visited Nov. 4, 2012).

<sup>6</sup> See U. S. DEP’T OF EDUC., *THE CONDITION OF EDUCATION 2012* 122–23 (Thomas Nachazel & Carolyn Yohn eds., 2012), available at <http://nces.ed.gov/pubs2012/2012045.pdf> [hereinafter *Condition*]. In his 2012 State of the Union address, President Obama called for every state to require students to remain in school until they graduate or turn eighteen years of age. Obama, *supra* note 4.

Formal schooling in the United States began in 1635 with the first public school, Boston Latin School.<sup>7</sup> Seven years later, perhaps in an attempt to preserve the religious beliefs held by the Puritans,<sup>8</sup> the Massachusetts Law of 1642 was enacted, requiring parents or masters to educate the children for whom they were responsible.<sup>9</sup> Shortly thereafter, Massachusetts enacted the Massachusetts Law of 1647, which required towns of a certain size to hire a schoolmaster to educate the children of the town in reading, writing, and grammar.<sup>10</sup> This Act marked the beginning of American society's interest in the general education of its children.<sup>11</sup>

In 1852, Massachusetts became the first state to adopt a state-wide compulsory school attendance law mandating school attendance for all children between the ages of eight and fourteen.<sup>12</sup> However, this law was ineffective because the school corporations lacked any enforcement authority.<sup>13</sup> This lack of authority began to change in the early 1900s with the advent of attendance offices in schools. These offices were charged with the mission and authority to intervene in cases of parents and students violating the compulsory attendance laws.<sup>14</sup>

Notwithstanding these elaborate statutory frameworks and complex administrative guidelines, truancy<sup>15</sup> is a major

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<sup>7</sup> See *First Public School Site and Ben Franklin Statue*, CITY OF BOSTON, <http://www.cityofboston.gov/freedomtrail/firstpublic.asp> (last visited Nov. 4, 2012); see also *About BLS*, BOSTON LATIN SCHOOL, <http://www.bls.org/history> (last visited Nov. 4, 2012).

<sup>8</sup> See Amy L. Matzat, *Massachusetts Education Laws of 1642 and 1647*, <http://www.nd.edu/~rbarger/www7/masslaws.html> (last visited Nov. 4, 2012); but see MICHAEL S. KATZ, *A HISTORY OF COMPULSORY EDUCATION LAWS* 11 (1976) (explaining that education was more of a survival mechanism on the part of the Puritan leaders brought on by the fact the communities were struggling to survive and thus failing to educate their children).

<sup>9</sup> See Matzat, *supra* note 8.

<sup>10</sup> See *id.*

<sup>11</sup> See *id.*

<sup>12</sup> See Vicky Grocke, *Compulsory Education*, <http://www.nd.edu/~rbarger/www7/compulso.html> (last visited Nov. 4, 2012) (describing the first penalty assessed by a city for a parent's failure to comply with the Compulsory Attendance statute, a twenty dollar fine).

<sup>13</sup> See *id.*; see also KATZ, *supra* note 8, at 18–19.

<sup>14</sup> KATZ, *supra* note 8, at 22.

<sup>15</sup> There is no common definition for truancy. It is worth noting that whether the reason for missing school is excused or not, the student is not present for instruction. Therefore, while recognizing there is a distinction, this note will use the term truancy, which usually only refers to unexcused absences to include chronic absenteeism, which typically means missing ten percent or more of school without distinguishing between excused and unexcused absences. See TERRY SPRADLIN ET AL., ATTENDANCE AND

problem in public education. One report estimated that, in 1996, 150,000 out of one million New York public school students were absent on any given school day.<sup>16</sup> In 2004, truancy in the United States consisted of 35% of all status offenses among juveniles.<sup>17</sup> In 2009, 8% of high school seniors reported missing five or more days.<sup>18</sup> A 2011 U.S. Department of Education survey of students reported 7% of fourth graders and 6% of eighth graders were absent five or more days in the month preceding the survey.<sup>19</sup>

The national rate of chronic absenteeism has been estimated to be as high as 15%, or 7.5 million students.<sup>20</sup> This is a major problem because students who are truant are more likely to fall behind academically, drop out of high school, and even end up in prison.<sup>21</sup> The causes of truancy are many, but most can fit into four distinct categories: family factors, school factors, economic influences, and student variables.<sup>22</sup>

The purpose of this Note is to provide awareness and suggest solutions relating to truancy in Indiana by advocating for a balanced approach between using the Compulsory Attendance statutes for adjudicative purposes and using alternative strategies. First, Part II of this Note discusses the truancy problem in Indiana and across the United States by analyzing both the causes of truancy and the potential effects of truancy on students, schools, and communities. Second, Part III of this Note describes Indiana's framework for compulsory school attendance including an analysis of both the statutory framework and the case law interpretation of these statutes.

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CHRONIC ABSENTEEISM IN INDIANA: THE IMPACT ON STUDENT ACHIEVEMENT, 1 (2012), available at [http://www.attendanceworks.org/wordpress/wp-content/uploads/2012/07/EPB\\_Attendance\\_072312.pdf](http://www.attendanceworks.org/wordpress/wp-content/uploads/2012/07/EPB_Attendance_072312.pdf).

<sup>16</sup> CHARLES WALLS, ED. RES. INFO. CTR., NEW APPROACHES TO TRUANCY PREVENTION IN URBAN SCH., 2 (2003), available at <http://www.eric.ed.gov/PDFS/ED480916.pdf>.

<sup>17</sup> ANNE L. STAHL, OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, PETITIONED STATUS OFFENSE CASES IN JUVENILE COURTS, 2004 1 (2008), available at <https://www.ncjrs.gov/pdffiles1/ojjdp/fs200802.pdf>.

<sup>18</sup> *Condition, supra* note 6, at 72.

<sup>19</sup> *Id.*

<sup>20</sup> See ROBERT BALFANZ & VAUGHAN BYRNES, THE IMPORTANCE OF BEING IN SCHOOL: A REPORT ON ABSENTEEISM IN THE NATION'S PUBLIC SCHOOLS, 3 (2012), available at [https://getschooled.com/system/assets/assets/152/original/FINALChronicAbsenteeismReport\\_May16\\_executivesummary\\_withcover\\_20\\_1\\_.pdf?1337209810](https://getschooled.com/system/assets/assets/152/original/FINALChronicAbsenteeismReport_May16_executivesummary_withcover_20_1_.pdf?1337209810).

<sup>21</sup> See *infra* Part II.B.

<sup>22</sup> See *infra* Part II.A.

Lastly, Part IV of this Note provides a framework for improving school attendance through (1) better enforcement of the compulsory school attendance laws, including proposed statutory amendments and clarification of case law, and (2) the implementation of various alternative strategies and programs.

## II. THE TRUANCY PROBLEM

At the onset, it is helpful to make a distinction between attendance rates and truancy rates. Most states that use attendance rates as an additional indicator for showing adequate yearly progress under the Federal No Child Left Behind Act of 2001 (NCLB)<sup>23</sup> report attendance rates at around the 95% mark; however, these reports can be very deceiving.<sup>24</sup> Students with chronic absenteeism are masked by those students with perfect attendance.<sup>25</sup> Therefore, the state is merely reporting the average student's attendance rate. These reports do not shed any light as to the attendance rates of the students who are in real need of immediate attention—those missing school on a regular basis. For example, one 2012 report explained that even a school with an average daily attendance at 90% could have 40% of its students missing 10% of a school year, because different students comprise that 90% on different days.<sup>26</sup>

Since no single truancy definition exists across the United States, there are no nationwide truancy statistics.<sup>27</sup> For example, Maryland defines a truant as a student who has eighteen unexcused absences in a given semester, Texas defines a truant as a student who has ten unexcused absences within six months, and Florida defines a truant as a student

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<sup>23</sup> No Child Left Behind Act of 2001, Pub. L. No. 107-110, 115 Stat. 1425 (2001) (codified as 20 U.S.C. § 6301 (2006)); *see also infra* Part II.B.2. *See generally* James S. Liebman & Charles F. Sabel, *The Federal No Child Left Behind Act & The Post-Desegregation Civil Rights Agenda*, 81 N.C. L. Rev. 1703 (2003); Gershon M. Ratner, *Why the No Child Left Behind Act Needs To Be Restructured To Accomplish Its Goals And How To Do It*, UDC/DCSL L. REV. 1 (2007).

<sup>24</sup> *See* Jane Kronholz, *The Challenges of Keeping Kids in School*, 11 Education Next 32, 34 (2011), available at [http://educationnext.org/files/ednext\\_20111\\_Kronholz.pdf](http://educationnext.org/files/ednext_20111_Kronholz.pdf); *see also* SPRADLIN ET AL., *supra* note 15, at 3 (charting Indiana's attendance for past several years).

<sup>25</sup> *See* Kronholz, *supra* note 24, at 34.

<sup>26</sup> *See* BALFANZ & BYRNES, *supra* note 20, at 3.

<sup>27</sup> Kronholz, *supra* note 24, at 34.

who has ten unexcused absences in ninety calendar days.<sup>28</sup> Each state's truancy statistics would have to be compared with that state's truancy definition and converted to some common formula before any comparisons or generalizations can be made. To further complicate the issue, most states do not report truancy rates.<sup>29</sup> However, one report, using data from six different states, reported chronic absentee rates ranging from 6% to 23%, with a substantial number of students missing six months to more than a year of school over a five-year period.<sup>30</sup>

Indiana's Department of Education website does not provide any reports regarding truancy rates in Indiana. While there are reports by school and by corporation regarding general attendance rates, these reports do not disaggregate the attendance rates into excused or unexcused absences.<sup>31</sup> Nevertheless, some reports show that chronic absenteeism and truancy is a problem in Indiana, with over 55,000 students missing school each year between 2008 and 2011.<sup>32</sup> In most Indiana elementary and middle schools, less than 5% of students are chronically absent.<sup>33</sup> In Indiana high schools, however, this number rises dramatically to as much as 25%.<sup>34</sup>

Clearly truancy is a growing problem in schools across Indiana and the United States.<sup>35</sup> Before this problem can be addressed, however, the causes of truancy need to be identified.

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<sup>28</sup> *Id.*

<sup>29</sup> *See id.* (reporting 24%, or 1.5 million, of California public school students truant, 15.4% in Wisconsin (including 62% of African American students), and 20% in Washington D.C.).

<sup>30</sup> *See* BALFANZ & BYRNES, *supra* note 20, at 4.

<sup>31</sup> *See Find School and Corporation Data Reports*, IND. DEPT' OF EDUC., <http://www.doe.in.gov/improvement/accountability/find-school-and-corporation-data> reports (Oct. 22, 2012). There are two separate links to two different Excel spreadsheets. One link is "Corporation Attendance Rate" and the other is "School Attendance Rate." There is also a link titled "Corporation and School Dropout Rates" further down the page.

<sup>32</sup> SPRADLIN ET AL., *supra* note 15, at 1.

<sup>33</sup> *Id.* at 7.

<sup>34</sup> *Id.* (reporting over 25% of high schools had less than 5% of students chronically absent, 37% had 5%-10% chronically absent, over 22% had 10%-15% chronically absent, and over 15% had a chronic absence rate over 15%).

<sup>35</sup> *See* JOANNA Z. HEILBRUNN, *PIECES OF THE TRUANCY JIGSAW: A LITERATURE REVIEW*, 2 (2007), available at <http://www.schoolengagement.org/TruancyPreventionRegistry/Admin/Resources/Resources/PiecesoftheTruancyJigsawALiteratureReview.pdf> (reporting that from 1987 to 1996 truancy petitions increased 92%); *see also* STAHL, *supra* note 17, at 1 (noting that truancy rose from 29% of all status offense cases in 1995 to 35% of all status offense cases in 2004).

The major causes of absenteeism are discussed in Part II.A. of this Note.

### A. *Causes of Truancy*

The Office of Juvenile Justice and Delinquency Prevention (OJJDP), a component of the U.S. Department of Justice,<sup>36</sup> has released several reports concerning school truancy across the United States.<sup>37</sup> Although there are dozens of reasons students give for why they fail to attend school,<sup>38</sup> one report found that truancy typically correlates with the following four categories of risk factors: (1) family factors (such as lack of parental supervision, domestic violence, poverty, and drug or alcohol abuse in the home), (2) school factors (including “school climate issues—such as school size and attitudes of teachers, other students, and administrators,” inconsistency in dealing with chronic absenteeism, and whether the school provides a safe learning environment), (3) economic influences (such as single-parent homes, parents who hold multiple jobs, and a lack of affordable transportation and childcare), and (4) student variables (such as drug and alcohol abuse and lack of social competence).<sup>39</sup>

Perhaps the most influential family factor affecting truancy is poverty. The link between poverty and truancy has been well-documented in publications explaining that children in poverty miss school due to “inadequate clothing, poor personal

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<sup>36</sup> *About OJJDP*, OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, <http://www.ojjdp.gov/about/about.html> (last visited Jan. 22, 2013).

<sup>37</sup> Publication Search Results for Truancy, OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, <http://www.ojjdp.gov/publications/PubResults.asp> (publications search over “all topics” with the keyword “truancy”) (last visited Jan. 22, 2013).

<sup>38</sup> See Ken Reid, *The Causes of Non-attendance: An Empirical Study*, 60 EDUC. REV. 345 (Nov. 2008) [hereinafter *Causes of Non-attendance*] (Table 1 and Table 4). While this article was written in Great Britain, it also has passed compulsory school attendance laws; thus, its empirical study is valuable and relevant to the issue of truancy in the United States.

<sup>39</sup> MYRIAM L. BAKER ET AL., TRUANCY REDUCTION: KEEPING STUDENTS IN SCHOOL, 2 (2001), available at <https://www.ncjrs.gov/pdffiles1/ojjdp/188947.pdf>; see also John N. Marvul, *If You Build It, They Will Come: A Successful Truancy Intervention Program in a Small High School*, 47 URB. EDUC. 144, 145-47 (2012), available at <http://uex.sagepub.com/content/47/1/144.full.pdf> (citing a similar list of factors that combine to lead to truancy problems); Sarah D. Peek, *Integrating Effective and Beneficial Interventions to Increase Student Attendance in an Elementary School Setting*, 16 GSCA JOURNAL 9, 10-11 (2009), available at <http://www.eric.ed.gov/PDFS/EJ871910.pdf>; WALLS, *supra* note 16, at 2-3.

hygiene, ill health,” and the negative stereotype of being the “free lunch child.”<sup>40</sup> In many homes, older children who must care for their younger siblings because the adult is working at night do not get homework done, do not get much sleep at night, and may fail to go to school in the morning.<sup>41</sup> These causes for truancy cannot be addressed by compulsory attendance laws, but must be addressed through alternative strategies.

One of the fastest growing factors contributing to students’ reluctance to attend school is safety. With the rise in frequency of school shootings and bullying-induced suicides,<sup>42</sup> children and parents alike are raising concerns regarding the safety of public schools. The OJJDP performed a study of bullying and its effects on truancy and overall learning and concluded that there is a significant relationship between bullying and truancy.<sup>43</sup> With the increase in online cyberbullying, schools are becoming less able to deal with this growing threat.<sup>44</sup>

Literature suggests a recurring, competing theme of blame-shifting among parents and academic institutions.<sup>45</sup> Institutions blame the parents for condoning absences, not placing proper value on education, and inconsistent or inadequate parenting.<sup>46</sup> Meanwhile, parents blame the

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<sup>40</sup> See KEITH LOGSDON, SCHOOL TRUANCY: A LOOK AT SELF ESTEEM AND POVERTY, 5 (2005), available at [http://chfs.ky.gov/NR/rdonlyres/10410D3E-3674-4CE3-A2EE4D9843F5D9E0/0/2005FSJUVENILECOURTS\\_STATUSOFFENDERSLogsdon\\_Keith.pdf](http://chfs.ky.gov/NR/rdonlyres/10410D3E-3674-4CE3-A2EE4D9843F5D9E0/0/2005FSJUVENILECOURTS_STATUSOFFENDERSLogsdon_Keith.pdf) (referencing D. Gleeson, *Wagging, Bobbing Bunking Off: An Alternative View*, 46 EDUCATIONAL REVIEW 1, 35 (1994).).

<sup>41</sup> See Kronholz, *supra* note 24, at 37.

<sup>42</sup> *Bullying and Suicide*, BULLYINGSTATISTICS.COM, <http://www.bullyingstatistics.org/content/bullying-and-suicide.html> (last visited Jan. 18, 2014) (reporting half of all suicides among young people are related to bullying).

<sup>43</sup> *Statistics*, BEATBULLYING.ORG, <http://www.beatbullying.org/dox/resources/statistics.html> (last visited Oct. 24, 2013) (finding a direct correlation between bullying and truancy); see also KEN SEELEY ET AL., OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, BULLYING IN SCHOOLS: AN OVERVIEW, 3 (2011), available at <http://www.ojjdp.gov/pubs/234205.pdf> (explaining a correlation between bullying and a student’s engagement in school, that may in turn effect the student’s attendance).

<sup>44</sup> See *What is the school’s role in this?*, STOPCYBERBULLYING.ORG, [http://www.stopcyberbullying.org/prevention/schools\\_role.html](http://www.stopcyberbullying.org/prevention/schools_role.html) (last visited Jan. 22, 2013) (noting that schools often get sued when attempting to intervene by disciplining students for cyberbullying).

<sup>45</sup> Ken Reid, *Finding Strategic Solutions to Reduce Truancy*, 84 RES. EDUC. 1, 4 (2010) [hereinafter *Finding Strategic Solutions*], available at <http://www.csub.edu/~rhewett/english100/Reid.pdf>.

<sup>46</sup> *Id.* (including public and private schools, courts, and local and state government agencies in the meaning of institutions).



institutions for poor management, poor supervision, poor teacher-student relations, uninteresting or worthless curriculum, unsafe environment, and poor teaching strategies.<sup>47</sup> Consequently, an endless argument of who is to blame replaces the focus of fixing the problem.

This uncertainty of whom to blame for truancy has led, in part, to the gross under-enforcement of compulsory school attendance laws, allowing truancy to increase.<sup>48</sup> If blame is truly to be placed on parents, then prosecutors and courts should have no reservations in holding parents accountable. However, if blame truly lies with schools and other institutions, then prosecutors and courts would understandably be reluctant to punish parents for their children's truancy. Most research literature does not place the blame solely on a single factor or entity, but on multiple variables that place partial blame on both parents and institutions.<sup>49</sup> Nevertheless, compulsory school attendance statutes mainly focus enforcement efforts on punishing the parents and the student for failing to attend school.<sup>50</sup>

There are inherent concerns with this scheme of enforcement. Typical punishments that parents may face<sup>51</sup> are counterproductive by nature. Imposing fines on a family will only exacerbate the problem for those who are living in poverty. Prosecuting and forcing parents into court robs school officials, prosecutors, police, and courts of valuable resources, notably time and money.<sup>52</sup> Removing children from the home may only result in the child's life becoming unstable,<sup>53</sup> which in turn is a

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<sup>47</sup> *Id.*

<sup>48</sup> See BAKER ET AL., *supra* note 39, at 5 (reporting that less than 50 percent of referred cases were prosecuted over a 4-year period).

<sup>49</sup> See *Id.* at 2; see also Marvul, *supra* note 39, at 145–47 (citing a similar list of factors that combine to lead to the truancy problem); Peek, *supra* note 39, at 10–11; WALLS, *supra* note 16, at 2–3; *Truancy Definition, Facts and Laws*, TRUANCYPREVENTION.ORG, <http://www.truancyprevention.org/> (last visited Nov. 6, 2012).

<sup>50</sup> See *Truancy Prevention*, NAT'L CTR. FOR MENTAL HEALTH PROMOTION AND YOUTH VIOLENCE PREVENTION, <http://www.promoteprevent.org/publications/prevention-briefs/truancy-prevention> (last visited Nov. 6, 2012).

<sup>51</sup> See *id.* (listing punishments such as fines, prosecution, being taken to court, and removing the child from the home).

<sup>52</sup> Kronholz, *supra* note 24, at 34.

<sup>53</sup> See generally Beth Troutman et al., *The Effects of Foster Care Placement on Young Children's Mental Health*, 16 PROTECTING CHILD. 30, 31 (2000) (discussing the detachments that occur when children are taken away from their primary caretakers

known precursor to truancy.

Typical punishments children may face for truancy<sup>54</sup> seem to be counterproductive. Suspensions and detention centers in essence keep students out of school, causing students to fall further behind on their school work, and rarely encourage more consistent attendance.<sup>55</sup> Probation and monitoring are also costly and difficult to maintain.<sup>56</sup> Generally speaking, using the court in a “big stick” approach is not an effective deterrent to truancy.<sup>57</sup> Additionally, courts may not be equipped to handle the large volume of cases that would result if schools were required to refer every truant student.<sup>58</sup>

Some argue that these statutes are not necessary and should not be enforced.<sup>59</sup> This is an argument advanced in one of two ways: (1) that the statutes are not necessary because the private market will take care of ensuring students attend school<sup>60</sup> (*i.e.*, when students who drop out of school fail to get good jobs, they will push their children to complete high school) or (2) that the statutes actually hinder the education of others<sup>61</sup> (*i.e.*, by keeping truant students who disrupt the classroom in school, the rest of the children who want to be there suffer

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and placed in foster care).

<sup>54</sup> See *infra* Part III.A. (being monitored by juvenile courts, being placed on probation, suspensions, or being placed in detention centers).

<sup>55</sup> WALLS, *supra* note 16, at 2; see also *Truancy Prevention*, *supra* note 50.

<sup>56</sup> WALLS, *supra* note 16, at 2.

<sup>57</sup> Doug Rohrman, *Combating Truancy in Our Schools – A Community Effort*, 77 NASSP BULL. 40, 44 (1993), available at <http://bul.sagepub.com/content/77/549/40.full.pdf> (describing a Minnesota program in which taking truants to court resulted in an 80 percent recidivism rate).

<sup>58</sup> Kronholz, *supra* note 24, at 37 (reporting when the state of Washington passed such a law in 1995, approximately 15,000 truants flooded the courts, resulting in legislatures to begin looking at ways to amend the law).

<sup>59</sup> See generally MARY K. NOVELLO, WASH. INST., A CASE AGAINST COMPULSION (1998), available at <http://www.washingtonpolicy.org/publications/brief/case-against-compulsion>; AARON SMITH, LUDWIG VON MISES INST., THE COSTS OF COMPULSORY EDUCATION (2011), available at <http://mises.org/daily/5384>.

<sup>60</sup> See SMITH, *supra* note 59; see also ONTHEISSUES, [http://www.issues2000.org/celeb/Libertarian\\_Party\\_Education.htm](http://www.issues2000.org/celeb/Libertarian_Party_Education.htm) (last visited Jan 7, 2013).

<sup>61</sup> See *Attendance – Essential for Student Success*, IDAHO FALLS SCH. DIST. 91, [http://www.d91.k12.id.us/index.php?option=com\\_content&view=article&id=7&Itemid=629](http://www.d91.k12.id.us/index.php?option=com_content&view=article&id=7&Itemid=629) (last visited Nov. 6, 2012) (articulating the realities of a student’s absence, which include it usually takes a student two days to catch up from each day absent and it creates extra work for the teacher in the form of contacting the office or parents, gathering assignments, reteaching missed material, and going back to find answer keys once the absent student’s work is turned in, which in turn results in lost instruction time for the rest of the classroom).

educationally). Even if these hypotheses are true, it does not follow that the compulsory attendance statutes must be completely abandoned. As will be further discussed below, the students who are most commonly absent are those in low-income families and communities.<sup>62</sup> Every child, especially those at risk, should have the opportunity for education in order to be a productive member of society.<sup>63</sup> Society cannot allow children to miss their opportunity for an education simply because of family and/or economic situations. Whether the reasons for truancy today are due to under-enforcement, familial causes, or school-related causes, truancy statutes are necessary, and enforcement of these statutes may be an effective way to lift children out of poverty.<sup>64</sup> This Note does not argue that truancy statutes should be abandoned, but that alternative strategies should be used to supplement and improve the statutes' effectiveness.

### *B. Potential Effects of Truancy*

Truancy can have negative effects on both the student and society. This section begins with a discussion of the potential effects on the student. A subsequent discussion of the potential negative effects of truancy on schools and society (on both the micro and macro levels) follows.

#### *1. Effects on the student*

The potential effects of truancy on a student can be broken down into three main areas—lack of success in school, future employment and income, and future delinquency. These are considered in turn.

Current compulsory attendance statutes are based on the notion that students need to attend school<sup>65</sup> in order to learn the knowledge and skills necessary to lead productive lives in society.<sup>66</sup> Students who are truant are more likely to have

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<sup>62</sup> See BALFANZ & BYRNES, *supra* note 20, at 3.

<sup>63</sup> See No Child Left Behind Act of 2001, Pub. L. No. 107-110, 115 Stat. 1425 (2001) (providing a list of purposes revealing executive and legislative views concerning the importance of education; see also *infra* Part II.B).

<sup>64</sup> See BALFANZ & BYRNES, *supra* note 20, at 3.

<sup>65</sup> IND. CODE § 20-33-2-1 (2012) (providing that the legislature's intent for Indiana's compulsory attendance laws is to "provide an efficient and speedy means of insuring that students receive a proper education.").

<sup>66</sup> See *The Purpose of Education – Critical Pedagogy for the Democratic Society*,

lower grades, repeat grade levels, drop out, and be expelled.<sup>67</sup> The 2012 U.S. Department of Education State of Education Report revealed that as student absenteeism increases, reading scores decrease.<sup>68</sup>

Other research shows consistent attendance helps students develop “a strong learning foundation, on which to increase their knowledge.”<sup>69</sup> As a result of truancy, the student may fall behind, which may result in lower standardized testing scores.<sup>70</sup> As a student begins to fall further behind and discrepancies begin to develop between the student’s ability (as shown by IQ) and performance (as shown through testing scores), the student may mistakenly be labeled as learning disabled.<sup>71</sup>

In addition, as students fall further behind, they may lose

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21ST CENTURY SCH., [http://www.21stcenturyschools.com/Purpose\\_of\\_Education.htm](http://www.21stcenturyschools.com/Purpose_of_Education.htm) (last visited Nov. 6, 2012) (“[T]he purpose of education is to enable individuals to reach their full potential as human beings, individually and as members of a society; this means that these individuals will receive an education which will enable them to think and act intelligently and purposefully in exercising and protecting the Rights and Responsibilities claimed by the Declaration of Independence, the Constitution, the American Dream.”).

<sup>67</sup> *Truancy Prevention*, *supra* note 50; *see also Finding Strategic Solutions*, *supra* note 45, at 2–3.

<sup>68</sup> *See Condition*, *supra* note 6, at 72–73.

<sup>69</sup> Peek, *supra* note 39, at 9.

<sup>70</sup> *See id.* at 9–10; *see also Chronic Absenteeism: The Issue*, THE IND. PARTNERSHIPS CTR., <http://fsep.org/information-for-parents/chronic-absenteeism/chronic-absenteeism/> (last visited Nov. 6, 2012).

<sup>71</sup> *See* Candace Cortiella, *Response-to-Intervention: An Emerging Method for LD Identification*, GREATSCHOOLS, <http://www.greatschool.org/special-education/LD-ADHD/883-emerging-method-for-ld-identification.gs> (noting that the traditional “ability-achievement discrepancy” method, while widely used, has undergone criticism). It is worth noting that while the label, “learning disabled, may or may not actually be accurate, it does provide state and federal funding for remediation, extra assistance, accommodations, and procedural safeguards against suspensions and expulsions, thus increasing the likelihood the student will remain in school. *See generally Accommodations*, NAT’L CTR. FOR LEARNING DISABILITIES, <http://www.ncl.org/students-disabilities/accommodations-education> (last visited Nov. 6, 2012) (listing several links discussing accommodations and modifications). As a result of this mistaken identification problem, Response to Intervention methods are becoming increasingly common. *See* Mary Beth Klotz & Andrea Canter, *Response to Intervention (RTI): A Primer for Parents*, (2007), available at <http://www.nasponline.org/resources/handouts/revisedPDFs/rtiprimer.pdf>; *see also* NAT’L CNTR. ON RESPONSE TO INTERVENTION, <http://www.rti4success.org/> (last visited Mar. 1, 2013). In fact, the 2004 amendments to IDEA state schools cannot be required to use the discrepancy method in identifying learning disabilities in a child. *See* Peter Wright, Esq. & Pamela Wright, MA, MSW, *What You Need to Know About IDEA 2004 – Specific Learning Disabilities: Discrepancy & Response to Intervention Models*, WRIGHTSLAW, <http://www.wrightslaw.com/idea/art/ld/rti.discrep.htm>.

interest in school altogether, develop low self-esteem, and begin acting out inappropriately in order to hide their educational struggles.<sup>72</sup> If interventions are not taken, these truant students are more likely to drop out of school before graduating.<sup>73</sup> The Indiana Department of Education reported that in 2007, 16% of individuals in the United States between the ages of sixteen and twenty-four were high school dropouts.<sup>74</sup> Dropping out of school leads to the next issue caused by truancy: chronically truant students are more likely to be disadvantaged in future employment and income.<sup>75</sup>

Students who drop out of high school are two times as likely to live in poverty and three times as likely to be unemployed as those who receive a high school diploma.<sup>76</sup> Similarly, students who do not complete high school, which numbered 54% in 2008, <sup>77</sup> earn \$400,000 less over a lifetime than high school graduates and earn almost \$10,000 less per year.<sup>78</sup>

Delinquency is another challenge chronically truant students may face.<sup>79</sup> Truant students are at a greater risk for “substance abuse, gang activity, and involvement in criminal activities such as burglary, auto theft, and vandalism.”<sup>80</sup> Given that approximately 60% of juvenile crime occurs during

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<sup>72</sup> See *Finding Strategic Solutions*, *supra* note 45, at 3.

<sup>73</sup> See Peek, *supra* note 39, at 10; see also *Truancy Definition, Facts and Laws*, *supra* note 49; *Chronic Absenteeism: The Issue*, *supra* note 70 (reporting only 17 percent of chronically absent students who qualify for free lunches in Indiana graduated high school, compared to 33 percent who did not qualify for free lunches); HEILBRUNN, *supra* note 35, at 19.

<sup>74</sup> See *Consequences & Costs of Dropping Out of School*, IND. DEPT OF EDUC., <http://www.doe.in.gov/sites/default/files/attendance/drop-out-consequences-2.pdf> (last visited Jan. 7, 2013).

<sup>75</sup> See Marvul, *supra* note 39, at 146; see also Plyler v. Doe, 457 U.S. 202, 230 (1982), available at <http://uex.sagepub.com/content/47/1/144.full.pdf> (lack of education leads to “problems and costs of unemployment, welfare, and crime”); *Finding Strategic Solutions*, *supra* note 45, at 3; *Truancy Prevention*, *supra* note 50.

<sup>76</sup> See Peek, *supra* note 39, at 10.

<sup>77</sup> See *Consequences*, *supra* note 74; see also ANDREW SUM ET AL., CENTER FOR LABOR MARKET STUDIES PUBLICATION, THE CONSEQUENCES OF DROPPING OUT OF HIGH SCHOOL: JOBLESSNESS AND JAILING FOR HIGH SCHOOL DROPOUTS AND THE HIGH COST FOR TAXPAYERS 3 (2009), available at [http://iris.lib.neu.edu/cgi/viewcontent.cgi?article=1022&context=elms\\_pub](http://iris.lib.neu.edu/cgi/viewcontent.cgi?article=1022&context=elms_pub).

<sup>78</sup> See *Consequences & Costs of Dropping Out of School*, *supra* note 74; but see John H. Tyler & Magnus Lofstrom, *Finishing High School: Alternative Pathways and Dropout Recovery*, 19 AMERICA’S HIGH SCHOOLS 77, 87 (2009) (stating high school dropouts will earn \$260,000 less than those who graduate high school).

<sup>79</sup> See BAKER ET AL., *supra* note 39.

<sup>80</sup> See *id.* at 1.

daytime hours,<sup>81</sup> it is not surprising that juveniles have been linked to one-third of daytime burglaries and one-fifth of daytime aggravated assaults.<sup>82</sup> More effective truancy prevention strategies would greatly curb juvenile criminal activity in the daytime hours, as these juveniles should be in school. Additionally, students who do not graduate from high school are eight times as likely to be placed in jail or prison compared to those who graduate high school.<sup>83</sup> Truancy is also commonly used as an early predictor for gang involvement later in life.<sup>84</sup> Gang members engage in more delinquent behavior, are more likely to carry weapons, and are more likely to commit violent crimes than non-gang members.<sup>85</sup> Accordingly, truancy has the potential to have a major negative impact on the chronically truant student's life and future.

## 2. *Effect on society and schools*

Students who are chronically truant or who drop out of high school are more likely to place a heavier burden on society economically, criminally, and culturally<sup>86</sup> by being more likely to utilize social services such as welfare and food stamps, commit crimes, and raise children who will be truant.<sup>87</sup> Dropping out of high school increases the likelihood of having difficulty obtaining employment. A less educated and less productive workforce with higher unemployment<sup>88</sup> will, in turn, result in a decrease in tax revenues.<sup>89</sup> Additionally, welfare

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<sup>81</sup> See *id.* at 2.

<sup>82</sup> See *id.*

<sup>83</sup> See Peek, *supra* note 39, at 10.

<sup>84</sup> See HEILBRUNN, *supra* note 35, at 2; see also WALLS, *supra* note 16, at 2.

<sup>85</sup> See KARL G. HILL ET AL., OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, EARLY PRECURSORS OF GANG MEMBERSHIP: A STUDY OF SEATTLE YOUTH, 1 (2001), available at <https://www.ncjrs.gov/pdffiles1/ojjdp/190106.pdf>.

<sup>86</sup> See Marvul, *supra* note 39, at 145.

<sup>87</sup> See BAKER ET AL., *supra* note 39, at 2–3; see also *Finding Strategic Solutions*, *supra* note 45, at 3 (reporting the average truant will cost taxpayers over \$200,000 in criminal, social service, and health costs); *Consequences*, *supra* note 74 (reporting over \$500,000 in lost tax revenues, social services costs, and incarceration costs).

<sup>88</sup> See BAKER ET AL., *supra* note 39, at 2–3.

<sup>89</sup> See Nat'l Conference of State Legislatures, *High Personal Income Tax Reliance and Current Unemployment*, <http://www.ncsl.org/issues-research/budget/high-personal-income-tax-reliance-and-current-unem.aspx> (last visited Nov. 6, 2012) (arguing that states that rely heavily on income taxes will likely run into fiscal problems as unemployment continues to rise); see also Tyler & Lofstrom, *supra* note 78, at 87 (estimating an annual loss of \$36 billion in state and federal income tax revenue); Casey Dainsberg, *The Effect of U.S. State Taxes on State Economic Prosperity* 7 (Mar.

costs would decrease dramatically, around \$1.8 billion per year, if those students who drop out of high school each year would instead graduate with a high school diploma.<sup>90</sup> Lastly, the considerable cost of incarcerating truants who engage in delinquent behavior could be partially avoided if truancy were reduced.<sup>91</sup>

Studies of behavior, performance evaluations, and funding show that schools are negatively affected by truancy. With the passage of NCLB, schools are required to meet Adequate Yearly Progress (AYP) each year, as proven by two markers: pass rate of State standardized tests and attendance rates.<sup>92</sup> The consequences a school may face for consistently failing to meet AYP include replacing school staff, extending the school day or year, or closing the school.<sup>93</sup>

The first marker used in evaluating schools for AYP is the percentage of students who pass the statewide standardized proficiency test, ISTEP+.<sup>94</sup> Students who are chronically truant are more likely to exhibit behavior concerns,<sup>95</sup> which results in increased time and resources being used by teachers and administrators in handling discipline matters and decreased time spent on curriculum. With less focus on curriculum it is not surprising that as truancy increases, performance on standardized tests decreases.<sup>96</sup>

The second marker used in evaluating elementary schools for AYP is attendance.<sup>97</sup> To meet AYP, elementary and middle schools must either show a ninety-five percent attendance rate

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2011) (unpublished P.S. Thesis, Bemidji State University), *available at* <http://patrickdonnay.files.wordpress.com/2011/05/dainsberg-thesis.pdf>.

<sup>90</sup> Tyler & Lofstrom, *supra* note 78, at 87 (2009); *see also* Civil Action Project, *Consequences of Dropping out of School*, 52, <http://www.crfcap.org/images/pdf/7B%20DocPack.pdf> (stating “[d]ropouts make up nearly half the heads of households on welfare”).

<sup>91</sup> *See* JAMES J. STEPHAN, U.S. DEP’T OF JUSTICE, STATE PRISON EXPENDITURES, 2001 1 (2004), *available at* <http://bjs.ojp.usdoj.gov/content/pub/pdf/spe01.pdf> (reporting the annual cost per state inmate at \$62.05 per day and \$62.01 per day for federal inmates).

<sup>92</sup> IND. DEP’T OF EDUC., ADEQUATE YEARLY PROGRESS (AYP) FACT SHEET 1 (2010), *available at* <http://doe.in.gov/sites/default/files/accountability/ayp-fact-sheet.pdf> [hereinafter FACT SHEET].

<sup>93</sup> *Id.* at 3–6.

<sup>94</sup> *Id.* at 1.

<sup>95</sup> *See* BAKER ET AL., *supra* note 39, at 2.

<sup>96</sup> *See Condition*, *supra* note 6, at 72–73. *See also Chronic Absenteeism: The Issue*, *supra* note 70.

<sup>97</sup> FACT SHEET, *supra* note 92, at 1.

or demonstrate significant improvement each year in attendance.<sup>98</sup> Indiana uses a school's Average Daily Attendance (ADA) for many areas, including calculating AYP.<sup>99</sup> A school's ADA is calculated by "dividing the number of aggregate days of attendance for the reporting period by the number of student instructional days during the reporting period."<sup>100</sup> The aggregate days of attendance is "the total days of attendance accumulated by all students enrolled in grades K-12."<sup>101</sup> The reporting period is the three weeks following the first Monday after Labor Day.<sup>102</sup> Accordingly, a student's truancy or absenteeism during this three-week reporting period can affect a school's attendance and even its AYP evaluation. Indiana uses a school's Average Daily Membership (ADM)<sup>103</sup> for funding purposes, so a student's absence on the ADM count day does not affect a school's funding.<sup>104</sup> However, chronically absent students who may have been dropped from enrollment or who have dropped out of school can result in a loss or decrease in funding from a decreased enrollment, which can prove to be problematic for school corporations that rely on such funding.<sup>105</sup>

Furthermore, Indiana has a program, called Four Star Schools, which serves to recognize school districts excelling in ISTEP+ results and in their individual AYP goals.<sup>106</sup> In order to

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<sup>98</sup> *Id.* at 14 (explaining that graduation rate is used in high schools instead of attendance).

<sup>99</sup> See *Chronic Absenteeism: The Issue*, *supra* note 70.

<sup>100</sup> 511 IND. ADMIN. CODE 1-3-1(f) (2012).

<sup>101</sup> *Id.* at 1-3-1(e).

<sup>102</sup> *Id.* at 1-3-1(l)(1).

<sup>103</sup> *Id.* at 1-3-1(h) (defined as the number of students enrolled in the school corporation on the second Friday following Labor Day with kindergarten students counting as one-half).

<sup>104</sup> See *Bite-Sized Budget Breakdown: How Are Schools Funded?*, STATEIMPACT, <https://stateimpact.npr.org/indiana/tag/school-funding-formula/>.

<sup>105</sup> See Elle Moxley, *Why a Referendum Might be the Only Way to Save Hamilton Community Schools*, STATEIMPACT, Oct. 25, 2012, <http://stateimpact.npr.org/indiana/2012/10/25/why-a-referendum-might-be-the-only-way-to-save-hamilton-community-schools/> (reporting that as the number of students has decreased over the years in Hamilton County, state funding has decreased as well, which has led to cuts in staff and programs to a point where they can no longer cut any teachers and still meet the minimum requirements imposed by the state in services provided, leading them to resort to asking for an increase in property taxes); Rich Van Wyk, *Head Counts Important for Indiana Schools' Funding*, WTHR.COM, Sept. 14, 2012, <http://www.wthr.com/story/19548235/head-counts-important-for-indiana-schools-funding> (noting certain Indianapolis schools have been dropping in enrollment, creating funding issues).

<sup>106</sup> See *Four Star Schools*, IND. DEPT OF EDUC. <http://www.doe.in.gov/student-services/accreditation/four-star-schools> (last updated Mar. 14, 2012) (providing an



earn Four Star School status, a school must meet AYP for that year, which includes attendance goals.<sup>107</sup> Thus, schools that work diligently throughout the year to meet academic goals can fall short on Four Star status due to a few students' chronic absenteeism. Given the multitude of negative effects on students, society, and schools, failing to address truancy and chronic absenteeism can have disastrous results.

### III. CURRENT INDIANA COMPULSORY SCHOOL ATTENDANCE LAWS

Presumably in an effort to avoid the above-mentioned harms, Indiana developed a framework for compelling students' attendance in school. Before addressing what can be done in Indiana about truancy and chronic absenteeism, a brief look at the current framework is helpful. While this section describes Indiana's framework for school attendance, this framework is representative of most states<sup>108</sup> and serves as a useful tool for analyzing attendance laws across the United States. Part III begins with a brief overview of the current statutory framework, followed by a concise reporting of major case law interpreting these statutes, and concludes with an abridged discussion of constitutional challenges that have been brought over the years against compulsory attendance statutes.

#### A. *Statutory Background*

The legislature's intent regarding the function of the compulsory attendance statutes is to guarantee that every child receives an education.<sup>109</sup> By law, every student must attend either a public school in the area in which the student resides or another school taught in the English language.<sup>110</sup> A

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explanation of the methodology used and previous years' results for Indiana schools).

<sup>107</sup> See IND. DEP'T OF EDUC., FOUR STAR CALCULATIONS: EFFECTIVE 2009-2010 AWARD AND BEYOND, 1 (2009), available at <http://www.doe.in.gov/sites/default/files/accreditation/four-star-calculation-methodology.pdf>.

<sup>108</sup> See Institute of Education Sciences, *Table 5.1. Compulsory School Attendance Laws, Minimum and Maximum Age Limits for Required Free Education, by State: 2013*, NATIONAL CENTER FOR EDUCATION STATISTICS, available at [http://nces.ed.gov/programs/statereform/tab5\\_1.asp](http://nces.ed.gov/programs/statereform/tab5_1.asp).

<sup>109</sup> IND. CODE § 20-33-2-1 (2012).

<sup>110</sup> *Id.* § 20-33-2-4; see also *id.* § 20-26-11-1 (stating residence is not legal domicile, but where that individual resides); but see *id.* § 20-26-11-5 (stating a parent

student must attend school each year for the number of days school is in session,<sup>111</sup> beginning with the fall school term in which the student becomes seven years of age until the student either graduates, becomes eighteen years of age, or becomes sixteen years of age and fulfills the requirements concerning an exit interview, enabling the student to withdraw from school.<sup>112</sup> A student's attendance is excepted if the parent certifies to the superintendent the student will either be enrolled in a private school or be homeschooled.<sup>113</sup> A parent may also choose to employ a private individual to educate his or her child.<sup>114</sup>

As noted below, a child who does not comply with the compulsory attendance statutes faces several possible penalties. A superintendent or an attendance officer must report a child who is habitually absent<sup>115</sup> to the juvenile court or the department of child services.<sup>116</sup> At this point, the juvenile may be adjudicated as a delinquent child<sup>117</sup> or could even be removed from the parent.<sup>118</sup> If the court wishes to place the child in a juvenile detention facility for failing to comply with compulsory attendance laws after being adjudicated as a

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may request an out-of-district transfer).

<sup>111</sup> IND. CODE § 20-33-2-5 (2012).

<sup>112</sup> *Id.* § 20-33-2-6 (HB 126 would amend this to five (5) years of age).

<sup>113</sup> *Id.* § 20-33-2-8; *see also* Mazanec v. N. Judson-San Pierre Sch. Corp., 614 F. Supp. 1152, 1159 (N.D. Ind. 1985) (stating the homeschool must be reasonably equivalent to that of the child's public school). The arguments related to the validity or effect of homeschooling are beyond the scope of the article. For further information on this topic, see Jack MacMullan, Comment, *The Constitutionality of State Home Schooling Statutes*, 39 VILL. L. REV. 1309 (1994). Related to this topic is the free exercise clause of the 1st Amendment. This too is beyond the scope of this article. For further reading, see Laura J. Bach, *For God or Grades? States Imposing Fewer Requirements on Religious Homeschoolers and the Religion Clauses of the First Amendment*, 38 VAL. U. L. REV. 1337 (2004); Micheal E. Chaplin, *Petersom v. Mindoka County School: Home Education, Free Exercise, and Parental Rights*, 75 NOTRE DAME L. REV. 663 (1999).

<sup>114</sup> *See* State v. Peterman, 70 N.E. 550, 551 (Ind. Ct. App. 1904) (reasoning that the intent behind the compulsory attendance statute is to ensure children are educated, not to ensure children are in a school and since the parent's means provided the child with the requisite education, the parents complied with the compulsory education statutes).

<sup>115</sup> IND. CODE § 20-33-2-11(b) (2012) (stating each school corporation must define the term habitual truant, but at a minimum the definition must include students who accumulate more than ten (10) unexcused absences in a single school year). An unexcused absence is any absence not authorized by the school administrator or school corporation rules. 511 IND. ADMIN. CODE 1-3-1(o) (2012).

<sup>116</sup> IND. CODE § 20-33-2-25 (2012).

<sup>117</sup> *Id.* § 31-37-2-3.

<sup>118</sup> *Id.* § 31-35-2-4.

delinquent, it must follow certain notification requirements.<sup>119</sup> Additionally, a student under the age of eighteen who is a habitual truant can have his or her driver's license suspended or denied.<sup>120</sup> Each semester, the principal is required to send information concerning each student's ineligibility for or suspension of driving privileges to the Bureau of Motor Vehicles.<sup>121</sup> Upon request, a student's driving privileges may be reevaluated to determine if the student's attendance has improved to the level necessary for the student to be eligible to receive a permit or license.<sup>122</sup>

Additionally, parents face many penalties for violating the compulsory school attendance laws. It is unlawful for a parent to fail or refuse to produce a certificate of illness or incapacity within six days of a school's request.<sup>123</sup> A court may appoint a guardian to monitor a parent's compliance.<sup>124</sup> When a parent knowingly fails, neglects, or refuses to send his or her child to school as required by law,<sup>125</sup> the parent commits a Class B misdemeanor.<sup>126</sup> Another possible penalty that may be imposed on a parent is neglect of a dependent, a Class D felony, for failing to provide education as required by law.<sup>127</sup> To convict a parent of educational neglect of a dependent, the State must prove beyond a reasonable doubt that the parent knowingly or intentionally deprived the dependent of education as required by law.<sup>128</sup>

In addition, a court may adjudicate a dependent as a child in need of services if the inability, refusal, or neglect to provide the dependent with education seriously impairs or seriously endangers the child's physical or mental condition.<sup>129</sup> A police officer may arrest the person who is responsible for the child being in need of services.<sup>130</sup> In severe cases, a juvenile or

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<sup>119</sup> *Id.* 31-37-22-6.

<sup>120</sup> *Id.* § 9-24-2-1; *see also id.* § 20-33-2-11.

<sup>121</sup> IND. CODE § 20-33-8-33 (2012); *see also id.* § 20-33-2-11.

<sup>122</sup> IND. CODE § 20-33-2-11(e) (2012).

<sup>123</sup> *Id.* § 20-33-2-18.

<sup>124</sup> *Id.* § 29-3-5-3.

<sup>125</sup> *Id.* § 20-33-2-28(b); *see also id.* § 20-33-2-27(a).

<sup>126</sup> IND. CODE § 20-33-2-44 (2012).

<sup>127</sup> *Id.* § 35-46-1-4(a)(4).

<sup>128</sup> *Id.*

<sup>129</sup> *Id.* § 31-34-1-1; *see also id.* § 31-34-1-2.

<sup>130</sup> IND. CODE § 31-34-2-2 (2012).

probate court may terminate the parent-child relationship.<sup>131</sup> There is also case law precedent for a modification of a custody arrangement, discussed further in Part III.B. This statutory law in Indiana evidences the legislature's judgment that the responsibility of ensuring children attend school should be on the parents. The only exception to this is when the child reaches high school. As this Note will show, this is not the most effective way of guaranteeing children's consistent school attendance.

### *B. Case Law Interpreting Indiana's Statutory Framework*

The courts have been asked on multiple occasions to interpret and define the boundaries of Indiana's compulsory attendance laws. As will be shown, the judiciary still has some areas to address. Due to the lack of case law in this area, schools, prosecutors, and courts have little guidance, possibly resulting in less-than-effective enforcement of the compulsory attendance framework.

The burden of proof can vary depending on the type of action being brought by the prosecutor. In order to find a child is a Child in Need of Services (CHINS), a court's findings need only be based upon "clear and convincing evidence."<sup>132</sup> However, a finding of juvenile delinquency must be proved "beyond a reasonable doubt."<sup>133</sup> Three prominent cases discussed below set the precedence for adjudicating a juvenile as a delinquent for failing to comply with the compulsory attendance statutes. Additional case law elaborates on this framework.

In *G.N. v. State*, 833 N.E.2d 1071, 1073 (Ind. Ct. App. 2005), a thirteen-year-old, G.N., had fifteen unexcused absences in the first semester of school. The step-father claimed that all of the absences were due to either doctor appointments or in-school suspensions.<sup>134</sup> The court ultimately found that the evidence provided by the social worker was

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<sup>131</sup> *Id.* § 31-35-2-4(a) (specifying specific circumstances the petition must allege under (b)(2)).

<sup>132</sup> *Id.* § 31-37-14-2 (2012); *see also* *Waltz v. Daviess Cnty. Dep't of Pub. Welfare*, 579 N.E.2d 138, 140 (Ind. Ct. App. 1991); *B.R.F. v. Allen Cnty. Dep't of Pub. Welfare*, 570 N.E.2d 1350, 1351 (Ind. Ct. App. 1991).

<sup>133</sup> IND. CODE § 31-37-14-1 (2012); *see also In Re Winship*, 397 U.S. 358, 368 (1978); *G.N. v. State*, 833 N.E.2d 1071, 1075 (Ind. Ct. App. 2005).

<sup>134</sup> *G.N.*, 833 N.E.2d at 1073.

sufficient to show G.N. violated the compulsory attendance law.<sup>135</sup>

In *R.B. v. State*, 839 N.E.2d 1282, 1283 (Ind. Ct. App. 2005), an eighth grader, R.B., was adjudicated as a delinquent after accumulating twenty-three unexcused absences during the first semester of school. The court stated that in order for the finding to be affirmed, the evidence must show that R.B. (1) was truant, and (2) “need[ed] care, treatment, or rehabilitation.”<sup>136</sup> R.B. argued that the court failed to make a finding under the second prong.<sup>137</sup> The Indiana Court of Appeals, in interpreting the intent behind the compulsory attendance statutes and the juvenile delinquency statutes, affirmed the trial court and held that

a poor attendance record . . . implicitly indicates that [the care, treatment, and rehabilitation] need is not being met, is not going to be accepted voluntarily by the child, and is unlikely to be provided or accepted without the coercive intervention of the court.<sup>138</sup>

In the third case, *C.S. v. State*, 953 N.E.2d 1144 (Ind. Ct. App. 2011), the appeals court reined in a trial court that adjudicated a juvenile as a delinquent. C.S., a high school sophomore, had one unexcused full-day absence, missed five class periods without an excuse, and was tardy twelve times during the fall semester.<sup>139</sup> The court easily distinguished C.S.’s attendance record from R.B.’s, stating that the pattern was not as severe, the mother was cooperative and took disciplinary actions at home, and C.S.’s attendance improved thereafter.<sup>140</sup> This distinction set by the Court of Appeals sent a clear message to trial court judges that they were not to overreach in adjudicating truant juveniles as delinquents. Therefore, while it is possible to adjudicate a minor as a delinquent for failing to attend school, it appears the court will require severe chronic

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<sup>135</sup> *Id.* at 1076–77 (noting that the social worker provided a list of dates G.N. was absent, which was obtained from reliable sources within the school).

<sup>136</sup> *R.B. v. State*, 839 N.E.2d 1282, 1284 (Ind. Ct. App. 2005). This language is taken from section 31-37-2-1 of the 2012 Indiana Code.

<sup>137</sup> *Id.* at 1284.

<sup>138</sup> *Id.* at 1285.

<sup>139</sup> *C.S. v. State*, 953 N.E.2d 1144, 1145 (Ind. Ct. App. 2011) (being tardy meant C.S. was not in his seat when the bell rang and being absent from class without an excuse could include showing up late to class beyond what would otherwise be considered tardy).

<sup>140</sup> *Id.* at 1147.

absenteeism and a showing of how the absences are affecting the student's well-being before doing so.

The leading Indiana case concerning prosecuting parents for failing to ensure that their child attends school as required by law and for educational neglect of a child is *Hamilton v. State*, 694 N.E.2d 1171 (Ind. Ct. App. 1998). Hamilton appealed her conviction of two counts of educational neglect of a dependent and two counts of failure to ensure her children attend school.<sup>141</sup> Her child, K.W., had ten unexcused absences during a six-month period and her other child, E.W., had four unexcused absences during the same six-month period.<sup>142</sup> The Court of Appeals overturned both of the trial court's convictions for failure to ensure her children attend school.<sup>143</sup> However, the court clarified that it was not holding that Hamilton did not violate the compulsory attendance law, but merely that the school corporation failed to properly notify Hamilton.<sup>144</sup>

The court went on to hold that the State failed to prove all necessary elements for neglect of a dependent.<sup>145</sup> The court, noting the statute requires the dependent be deprived of "education as required by law," held that education is more than merely attending school, but also includes receiving the knowledge that comes from the education obtained in school.<sup>146</sup> Thus, the plain language of the statute requires more than a mere showing of a person's violation of the compulsory attendance law; it requires the State to prove that, "as a result of the child's failure to attend school, the child failed to acquire the knowledge and training taught at the school."<sup>147</sup>

The Indiana Court of Appeals took up another case of educational neglect of a dependent in *Hampton v. State*, 754 N.E.2d 1037 (Ind. Ct. App. 2001). In this case, Charles Hampton ("Hampton") and Tina Hampton, who had two

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<sup>141</sup> *Hamilton v. State*, 694 N.E.2d 1171, 1172 (Ind. Ct. App. 1998) (reviewing the Failure to Ensure statute at the time which was materially similar to the current Failure to Ensure statute, now codified at section 20-33-2-27 of the Indiana Code).

<sup>142</sup> *Id.* at 1172.

<sup>143</sup> *Id.*

<sup>144</sup> *Id.* at 1172-73 (noting the notice statute at the time was section 20-8.1-3-33(b) of the Indiana Code and required notice sent by courier to be sent by certified mail).

<sup>145</sup> *Id.* at 1173.

<sup>146</sup> *Id.*

<sup>147</sup> *Id.*

children together, M.C.H. and K.H., were divorced in 1999.<sup>148</sup> In 2000, Hampton, who was the non-custodial parent, failed to return M.C.H. and K.H. to the mother after an extended summer visit.<sup>149</sup> Police officers entered Hampton's home and recovered M.C.H. and K.H., but not until after the start date for the school in which the mother had enrolled M.C.H. and K.H. had passed.<sup>150</sup>

After a bench trial, the judge found Hampton guilty of one count of educational neglect of M.C.H.,<sup>151</sup> pointing out that Hampton was not the custodial parent and only the custodial parent has the right to make educational decisions for the child.<sup>152</sup> Since the mother had decided the education was to take place in the public school in which M.C.H. was enrolled, the court affirmed the conviction, finding that Hampton had unlawfully withheld the education chosen for M.C.H. by his custodial parent.<sup>153</sup> Thus, divorced parents in Indiana would be wise to communicate as to which school their child(ren) will attend and follow through with that decision. Additionally, a non-custodial parent may use the defense that he/she was educating the child elsewhere if the custodial parent has already made that decision.

Two additional cases, *Parrish v. State*, No. 55A01-0512-CR-563, 2007 WL 80023 (Ind. Ct. App. 2007) (unpublished) and *Cotton v. State*, No. 15A05-1101-CR-30, 2011 WL 3849480 (Ind. Ct. App. 2011) (unpublished), serve as examples of evidence deemed sufficient for a conviction of educational neglect. In *Parrish*, Kevin Parrish was convicted by a jury of one count of Neglect of a Dependent and one count of Failure to Comply with Compulsory School Attendance.<sup>154</sup> Parrish's child, K.P., was absent over seventeen days during the course of the fall semester.<sup>155</sup> After withdrawing K.P. from this school, the

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<sup>148</sup> Hampton v. State, 754 N.E.2d 1037, 1039 (Ind. Ct. App. 2001).

<sup>149</sup> *Id.*

<sup>150</sup> *Id.*

<sup>151</sup> *Id.*

<sup>152</sup> *Id.* at 1041 (citing Neudecker v. Neudecker, 577 N.E.2d 960, 962 (Ind. 1991)).

<sup>153</sup> *Id.*

<sup>154</sup> Parrish v. State, No. 55A01-0512-CR-563, 2007 WL 80023, at \*1 (Ind. Ct. App. 2007) (unpublished) (Neglect of a Dependent is found in section 35-46-1-4(a)(4) of the Indiana Code and Failure to Comply with Compulsory School Attendance at the time of this case was section 20-8.1-3-33, but is now section 20-33-2-27 of the Indiana Code).

<sup>155</sup> *Id.* at \*1-2 (the notice also contained the relevant law and possible consequences for failure to take action to correct K.P.'s absenteeism).

absences continued at her new school.<sup>156</sup> The opinion does not detail the harm to K.P.'s education, but since she had to repeat first grade, perhaps it was assumed.<sup>157</sup>

*Cotton* is a good example of the State using various test scores to show harm to the dependent's education.<sup>158</sup> Aimee Cotton was convicted by a jury of Neglect of a Dependent by depriving her daughter, S.S., of education as required by law.<sup>159</sup> S.S. was absent nineteen days during fifth grade, over thirty-eight days during sixth grade, and more than ten days during the first semester of seventh grade.<sup>160</sup> Over the course of these years, her grades dropped from A's and B's to D's and F's.<sup>161</sup> The State presented evidence that S.S.'s standardized test scores on the ISTEP+, while passing, had declined over the years, and her scores on a test produced by the Northwest Evaluations Association had remained above average, but had steadily declined.<sup>162</sup> The Court of Appeals, in an unpublished opinion, declined to reverse the conviction and stated the decline in testing scores and the significant drop in grades was sufficient for a "reasonable fact-finder to determine that S.S. failed to acquire the knowledge and training taught at her school."<sup>163</sup> As shown by these cases, a student's absenteeism that results in a slowing of academic progress can result in disaster for an unengaged or neglectful parent.

Sometimes, criminal prosecution of a parent is nonetheless deemed insufficient. Although parental rights are protected under the U.S. Constitution,<sup>164</sup> those rights may be terminated when it is shown "parents are unable or unwilling to meet their responsibilities as parents."<sup>165</sup> Such was the case in *Hinkley v.*

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<sup>156</sup> *Id.* at \*2 (K.P. was absent over twenty-four days of school over the course of the Spring semester).

<sup>157</sup> *Id.* at \*5 (the court remanded with instructions to modify the sentence imposed).

<sup>158</sup> *Cotton v. State*, No. 15A05-1101-CR-30, 2011 WL 3849480, at \*1 (Ind. Ct. App. 2011) (unpublished).

<sup>159</sup> *Id.*

<sup>160</sup> *Id.*

<sup>161</sup> *Id.*

<sup>162</sup> *Id.*

<sup>163</sup> *Id.* at \*2.

<sup>164</sup> *Pierce v. Soc'y of the Sisters of the Holy Names of Jesus and Mary*, 268 U.S. 510, 534-35 (1925) (parents' right to "direct the upbringing and education of children under their control" is protected under the due process clause of the 14th Amendment to the U.S. Constitution).

<sup>165</sup> *Egly v. Blackford Cnty. Dept. of Pub. Welfare*, 592 N.E.2d 1232, 1234 (Ind. 1992) (holding that clear and convincing evidence that continued custody be *wholly*



*Chapman*, 817 N.E.2d 1288 (Ind. Ct. App. 2004), where the trial court found it necessary to appoint a permanent co-guardian to Hinkley's son, L.B.<sup>166</sup> *Chapman*, L.B.'s half-sister, filed with her husband for temporary and permanent guardianship of L.B. when she became concerned about L.B.'s inability to communicate effectively and the quality of the education Hinkley was providing L.B.<sup>167</sup> A written psychological evaluation showed that although L.B.'s perceptual reasoning was average, L.B. was functioning well below grade level in reading, spelling, and mathematics.<sup>168</sup> Additionally, a guardian ad litem testified that it would be in L.B.'s best interests if he were placed with the Chapmans.<sup>169</sup>

The law is well settled that detailed and specific findings are required when a court is placing a child with a person other than a natural parent<sup>170</sup> as a "means of alerting parents of the reasons why their children are not being returned to their custody."<sup>171</sup> Generally, a child's best interests are served by placement with a natural parent;<sup>172</sup> however, this presumption may be overcome by factors such as a parent's unfitness, a parent's long acquiescence to a third party's custody of the child, or the nature of a child's relationship to the third party.<sup>173</sup> This also applies within the context of custody arrangements between parents.

In *Bowman v. Bowman*, 686 N.E.2d 921 (Ind. Ct. App. 1997), the court found that the custodial mother's educational decision could provide partial grounds for post-dissolution custody modification.<sup>174</sup> The court was careful to note that the

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inadequate for the child's survival is not necessary).

<sup>166</sup> *Hinkley*, 817 N.E.2d at 1290.

<sup>167</sup> *Id.*

<sup>168</sup> *Id.* (noting the psychologist concluded that L.B. was "an individual with an average intellectual ability who simply [has not been] taught the information that would be appropriate for [his] age").

<sup>169</sup> *Id.*

<sup>170</sup> *In re Guardianship of B.H.*, 770 N.E.2d 283, 287 (Ind. 2002); *see also In re M.K.*, 867 N.E.2d 271, 274 (Ind. Ct. App. 2007); *In re Guardianship of A.R.S.*, 816 N.E.2d 1160, 1162 (Ind. Ct. App. 2004).

<sup>171</sup> *In re Guardianship of A.R.S.*, 816 N.E.2d at 1162.

<sup>172</sup> *In re M.K.*, 867 N.E.2d at 274.

<sup>173</sup> *In re Guardianship of B.H.*, 770 N.E.2d 283, 287 (Ind. 2002); *see also A.J.L v. D.A.L.*, 912 N.E.2d 866, 875 (Ind. Ct. App. 2009); *In re M.K.*, 867 N.E.2d at 273; Blasius v. Wilhoff, 863 N.E.2d 1223, 1229 (Ind. Ct. App. 2007).

<sup>174</sup> *Bowman*, 686 N.E.2d at 927 (the mother's decisions, including the decision to homeschool the children, resulted in reduced opportunities for the boys to interact socially with others, to participate in sports, and made their education entirely

decision to homeschool was not the primary reason for modification, but rather it was the surrounding circumstances that happened as a result of the homeschooling.<sup>175</sup>

Using the statutory factors<sup>176</sup> and cases<sup>177</sup> for appointing a guardianship in conjunction with this case, it follows that a non-custodial parent could petition for modification of custody if the custodial parent is deemed unfit to make educational decisions for the child. In a finding of neglect of a dependent, however, procedural due process must be provided to the custodial parent to protect his or her substantive right to the fundamental parent-child relationship.<sup>178</sup>

As shown by the above-mentioned cases, in Indiana, harsh penalties may be assessed against parents for their child(ren)'s chronic absenteeism; however, a very high burden must be met. For those cases where adjudication is necessary, this high burden lessens the effectiveness of the State's ability to enforce its compulsory attendance laws. However, it also protects parents from being penalized for circumstances outside of their control, such as socioeconomic status. This Note recognizes the important, but not exclusive, role that adjudication can play in combatting truancy and chronic absenteeism, thus an understanding of the case law is helpful.

### *C. Constitutional Concerns and Challenges of Compulsory Attendance Statutes*

The State has a strong interest and responsibility in providing for the education of its citizens and imposing reasonable regulations to control basic education.<sup>179</sup> However, this substantial governmental interest is not absolute and must yield to constitutional rights, interests, and liberties, especially those guaranteed by the Free Exercise Clause of the First Amendment and the privacy rights of parents to determine the upbringing of their children.<sup>180</sup>

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dependent on the mother's abilities).

<sup>175</sup> *Bowman*, 686 N.E.2d at 927.

<sup>176</sup> IND. CODE § 29-3-5-3 (2012).

<sup>177</sup> *See In re Guardianship of B.H.*, 770 N.E.2d 283 (Ind. 2002).

<sup>178</sup> *Bowman*, 686 N.E.2d at 924 (referencing *Brown v. Brown*, 463 N.E.2d 310, 313 (Ind. Ct. App. 1984)).

<sup>179</sup> *Wisconsin v. Yoder*, 406 U.S. 205, 213 (1972); *see, e.g.*, *Brown v. Bd. of Educ.*, 347 U.S. 483, 493 (1954) (stating education as the most important function of state and local governments).

<sup>180</sup> *Wisconsin*, 406 U.S. at 213; *but see State v. O'Dell*, 118 N.E. 529, 530 (Ind.

In 1925, an Oregon compulsory attendance law was struck down when it required all children of a certain age to attend a public school.<sup>181</sup> While the case was ultimately decided on due process grounds, the U.S. Supreme Court affirmed the liberty interest of parents in directing the upbringing and education of their children, including the right to choose a private or parochial institution for educational purposes.<sup>182</sup> In addition, in 1972, an Amish community successfully challenged a Wisconsin compulsory attendance law based on its religious belief that high school education is unnecessary and improper.<sup>183</sup>

Indiana's compulsory attendance law specifically provides parents with alternatives to the public school setting.<sup>184</sup> This was recognized in *Mazanec v. North Judson-San Pierre School Corporation*, 614 F. Supp. 1152, 1160 (N.D. Ind. 1985), where the court affirmed a parent's constitutional right to educate his or her child in a home setting.<sup>185</sup> However, the court also stressed that the State retains an interest in setting certain legislative and administrative requirements.<sup>186</sup>

In addition to privacy and religious freedom based requirements, the State must comply with due process requirements.<sup>187</sup> The State must also respect the parents' substantive due process rights while investigating noncompliance with the Compulsory Attendance laws.<sup>188</sup> A balancing test may be imposed when the State impinges on fundamental rights of the parent.<sup>189</sup> However, since *Yoder* and

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1918) (stating compulsory attendance statutes "do not invade the right of a parent to govern and control his own children"); *State v. Bailey*, 61 N.E. 730, 732 (Ind. 1901) (stating compulsory attendance statutes are "necessary to carry out the express purposes of [Article 8 of the Indiana Constitution]").

<sup>181</sup> *Pierce v. Soc'y of the Sisters of the Holy Names of Jesus and Mary*, 268 U.S. 510, 534–35 (1925).

<sup>182</sup> *Id.*; but see *Norwood v. Harrison*, 413 U.S. 455, 462 (1973) (affirming the holding in *Pierce* while expressing it is not without limits).

<sup>183</sup> *Wisconsin*, 406 U.S. at 234–35.

<sup>184</sup> IND. CODE § 20-33-2-8 (2012) (may utilize a "nonaccredited, nonpublic school" or provide the child with "instruction equivalent to that given in the public schools).

<sup>185</sup> *Mazanec*, 614 F. Supp. at 1160 (determining that the instruction provided was sufficient to qualify as "equivalent" under the attendance law).

<sup>186</sup> *Id.*

<sup>187</sup> IND. CODE § 20-33-2-27 (2012).

<sup>188</sup> *U.S. v. Hollingsworth*, 495 F.3d 795, 801 (7th Cir. 2007) (stating the State's intrusion into familial relations may violate substantive due process under certain circumstances).

<sup>189</sup> *Farrington v. Tokushige*, 273 U.S. 284, 298–99 (1927).

*Farrington*, the Supreme Court has adopted a strict scrutiny analysis when dealing with Due Process challenges.<sup>190</sup> Therefore, it is not entirely clear which framework should be applied by courts.<sup>191</sup> The procedural due process requirements may be satisfied by complying with the notification guidelines set forth in Indiana's compulsory attendance statutes.<sup>192</sup>

Lastly, courts have entertained constitutional challenges to statutory definitions for vagueness.<sup>193</sup> Currently, Indiana's statutory language allows parents to send their child to a public school or any other school taught in the English language,<sup>194</sup> enroll their child in a private or parochial school,<sup>195</sup> or provide their child with instruction as long as it is "equivalent to that given in the public schools."<sup>196</sup> Currently there have been no Indiana cases attempting to challenge what would constitute "equivalent" instruction. However, confusion as to what the legislature intended was discussed in *State v. Peterman*, 70 N.E. 550 (Ind. Ct. App. 1904), where the court stated that the legislative goal was to reach the "result to be obtained, and not the means or manner of attaining it."<sup>197</sup> The court explained that a parent who "places within the reach of the child the opportunity and means of acquiring an education equal to that obtainable in the public schools of the state" is not the parent the legislature had in mind when drafting the law.<sup>198</sup> Nevertheless, it is still possible a parent could facially

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<sup>190</sup> See *e.g.*, *Hobbie v. Unemployment Appeals Comm'n of Fla.*, 480 U.S. 136, 141 (1987) (applying strict scrutiny when the Free Exercise Clause of the First Amendment is infringed); *Roe v. Wade*, 410 U.S. 113, 155 (1973) (applying strict scrutiny when a fundamental privacy right is infringed).

<sup>191</sup> See, *e.g.*, Daniel J. Rose, Note, *Compulsory Education and Parent Rights A Judicial Framework of Analysis*, 30 B.C. L. REV. 861 (1989).

<sup>192</sup> See IND. CODE § 20-33-2-27 (2012).

<sup>193</sup> See, *e.g.*, *Roemhild v. State*, 308 S.E.2d 154, 157 (Ga. 1983) (holding definition of "private school" was unconstitutionally vague); *State v. Popanz*, 332 N.W.2d 750, 753 (Wis. 1983) (holding the Wisconsin statute was "singularly silent on the question of what constitutes a private school"); *Fellowship Baptist Church v. Benton*, 620 F. Supp. 308, 318 (S.D. Iowa 1985) (holding the statutory language "equivalent instruction" to be unconstitutionally vague, but rendered moot in *Fellowship Baptist Church v. Benton*, 678 F. Supp. 213, 214 (S.D. Iowa 1988) after amendments to statute were made by state legislature); *Bangor Baptist Church v. State of Me., Dep't of Educ. & Cultural Services*, 549 F. Supp. 1208, 1225 (D. Me. 1982) (holding statutory language "equivalent instruction" was not unconstitutionally vague or overbroad).

<sup>194</sup> IND. CODE § 20-33-2-4 (2012).

<sup>195</sup> See *id.* § 20-18-2-12 (defining the term "Nonpublic school").

<sup>196</sup> *Id.* § 20-33-2-8.

<sup>197</sup> *Peterman*, 70 N.E. at 552.

<sup>198</sup> *Id.*

challenge the statute's validity due to vagueness.<sup>199</sup>

#### IV. REDUCING TRUANCY IN INDIANA SCHOOLS

While the current statutory law and judicial interpretations provide a fairly clear framework requiring school attendance, schools and parents alike could benefit from some changes to the framework. Part IV.A. begins by introducing several proposals for statutory changes and clarification of case law to aid in more effective enforcement of the compulsory attendance laws. Part IV.B. discusses some alternative methods that can be utilized to help reduce truancy. These alternatives attempt to allow flexibility and individualism for school corporations in customizing an approach that will work for its patrons.

##### A. *Through Better Enforcement of Compulsory Attendance Laws*

While many believe that positive programs focused on helping families will curb the truancy problem, there are studies that show taking truant students and/or their parents to court is the single most effective strategy.<sup>200</sup> Policies employed by schools and the State should clearly communicate to parents and students a “zero tolerance for truancy” and emphasize attendance is the sole responsibility of students and their parents.<sup>201</sup> Currently in Indiana, each school corporation is allowed to develop its own attendance policies and procedures.<sup>202</sup> While this allows local school corporations to develop individualized policies to fit their community's needs, it also provides a patchwork of policies across the State. This Note advocates for a balanced approach between using the Compulsory Attendance statutes for adjudicative purposes and using alternative strategies.

##### 1. *Statutory changes*

To better enforce the Compulsory Attendance laws, the

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<sup>199</sup> A statute is unconstitutionally vague if “men of common intelligence must necessarily guess at its meaning and differ as to its application.” *Connally v. Gen. Const. Co.*, 269 U.S. 385, 391 (1926).

<sup>200</sup> ED. RES. INFO. CTR., URBAN POLICIES AND PROGRAMS TO REDUCE TRUANCY, 4 (1997), available at <http://www.hawaii.edu/truancy/TruancyReduction-Policies.pdf>.

<sup>201</sup> *Id.*

<sup>202</sup> See IND. CODE § 20-33-2-11(b) (2012); 511 IND. ADMIN. CODE § 1-3-1(o) (2012).

Indiana legislature and Department of Education should develop a minimal, common framework for every school to follow. This can be partly achieved by developing common definitions for key areas in tracking attendance, such as excused absence, unexcused absence, truancy, and chronic absenteeism.<sup>203</sup> Additionally, every school and school corporation should define and treat when a student is tardy in the same way.<sup>204</sup> Adding these changes to the Indiana Administrative Code<sup>205</sup> and the Indiana Code<sup>206</sup> will enhance consistency, especially when dealing with students who transfer from one school to another or between school corporations.<sup>207</sup>

After introducing clear definitions, the legislature should also require schools to track and report the rates of each category to the Indiana Department of Education. This result can be obtained by adding a subsection (d) to Indiana Code § 20-33-2-20 that requires every public and private school to report the number of students identified as truant, habitually truant, or chronically absent and its plan to identify and address the needs of these students.<sup>208</sup> To add to the

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<sup>203</sup> In May 2013, the Indiana legislature made some changes to the Indiana Code related to education reform. SEA 338, 118th Leg., 1st Reg. Sess. (Ind. 2013). The bill changed the definition of chronic absenteeism from ten (10) days of school missed to ten percent (10%) of school days missed and added a definition for habitual truancy. *Id.* Under Ind. Code § 20-20-8-8, habitual truancy is defined as being absent from school ten (10) days or more within any given year, regardless of the absences being labeled as excused. Ind. Code §20-20-8-8(19) (2013). Nevertheless, some additional definitions and guidance would be helpful. For example, the legislature could include, “Excused Absence is defined as an absence permitted under Indiana Code section 20-33-2 or any other absence a school corporation determines is a legitimate reason.” If a school corporation adds a legitimate reason, it should be submitted to the Indiana Department of Education, so a more effective, state-wide definition of excused absence can be developed. “Unexcused Absence is defined as any absence not permitted under section 20-33-2 of the Indiana Code, an absence not identified by the school corporation as legitimate, or an accumulation of three (3) tardies.” “Truancy is defined as being absent from school or class without a valid excuse under the definition of ‘Excused Absence.’”

<sup>204</sup> “Tardy” should be defined as “arriving to school or to class past the designated start time without a valid excuse under the definition of ‘Excused Absence.’” More importantly, every school should treat tardies in the same manner. Multiple tardies can result in the same loss of instruction as an absence; therefore, I have included multiple tardies in the definition of “Unexcused Absence.”

<sup>205</sup> 511 IND. ADMIN. CODE § 1-3-1 (2012).

<sup>206</sup> IND. CODE § 20-33-2-14 (2012).

<sup>207</sup> See *Causes of Non-attendance*, *supra* note 38, at 345 (Table 3).

<sup>208</sup> See SPRADLIN ET AL., *supra* note 15, at 11. The Indiana legislature amended Ind. Code 20-33-2-20 in May 2013 to require schools have data available for inspection. SEA 338, 118th Leg., 1st Reg. Sess. (Ind. 2013). However, it does not require this data

effectiveness of these definitions, increased administrative enforcement authority should be given to schools.<sup>209</sup> In order to alleviate the possibility of transient students falling through the cracks, there should also be a provision in the Indiana code to allow absences in one county to transfer to a different county if the parent or child moves. Lastly, the legislature should clearly define “equivalent” instruction under Indiana Code § 20-33-2-8 (2012) and how it is to be measured.<sup>210</sup>

## 2. *Clarifying case law*

Providing clarity for the courts regarding when a parent has violated the Compulsory Attendance law will allow prosecutors to be more confident in charging parents for violations. For example, *Hamilton*, *Hampton*, *Parrish*, and *Cotton* provide some insight into what type of evidence will sustain a conviction upon review by the Indiana Court of Appeals.<sup>211</sup> Despite these cases, there remain some questions. Is the fact that a child is held back to repeat a grade level sufficient to show a child did not acquire the necessary knowledge and training taught at the school? It seems possible the child could be held back due solely to absences but has still acquired the knowledge and training taught at the school. If the ISTEP+ is supposed to be Indiana’s method of measuring progress, should not the results of that test be conclusive in determining whether a child mastered the “knowledge and training” taught by his teachers? Moreover, the standard set by the Court of Appeals for depriving a dependent of education seems to be based on the particular school in which the child is enrolled.<sup>212</sup> Does it matter if the knowledge and training taught at that child’s school is much more advanced than other

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be reported in any significant way. This legislation also establishes a commission to perform a study of absenteeism in Indiana. *Id.*

<sup>209</sup> For example, a school should be able to force parents, whose child is showing a pattern that may lead to chronic attendance issues, to attend an educational program outlining the importance of attendance. If a parent fails to attend the program, the school should have the authority to impose penalties, such as a fine.

<sup>210</sup> Every student, except for those with disabilities, should be taking the ISTEP+ test, despite whether the student is educated in a public, private, or home school setting. Since this is the test chosen to measure whether a student has mastered the academic standards set forth by the State, it makes sense that it can be a useful tool in determining “equivalent” instruction.

<sup>211</sup> *See supra* Part III.B.

<sup>212</sup> *See Hamilton v. State*, 694 N.E.2d 1171, 1173 (Ind. Ct. App. 1998).

schools?

These types of questions may be making prosecutors and school officials reluctant to pursue truancy cases. A clearer framework in the Indiana Administrative Code would provide answers to these questions. The code should clearly outline what type of test results can be used as evidence of a student's failure to acquire the knowledge and training taught at school.<sup>213</sup> It should also clarify whether the court should look to the curriculum and rigor of the school in which the child is enrolled or should be enrolled or perhaps some other standard.

Indiana, like all other states, has developed standards that students must master by the end of every grade level.<sup>214</sup> Fairness would seem to dictate that if a child has acquired the level of knowledge and training required by these standards, but falls short of the level of knowledge and training taught in the school in which the child is enrolled, the conviction should not stand. However, one could argue that this system does not account for the discrepancies in the quality of education among the various schools in Indiana.<sup>215</sup>

Developing a framework for attendance that is clear and consistent across Indiana can aid in better enforcement of the compulsory attendance law. Changes to the statutory language will provide a firm foundation for school officials and prosecutors to stand on when dealing with truancy problems. Enforcement must include clearly stated consequences and consistent follow-through.

### *B. Through Alternative Strategies*

While changes to policies and statutes will increase enforcement of the compulsory attendance statutes, a comprehensive solution must be utilized to truly curb the

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<sup>213</sup> Examples of assessments include ISTEP, ECAs, IMAST, ISTAR, IREAD, and Acuity. *Office of Student Assessment*, IND. DEP'T OF EDUC., <http://www.doe.in.gov/achievement/assessment> (last visited Jan. 22, 2013).

<sup>214</sup> *Indiana Standards*, LEARNING CONNECTION, <https://learningconnection.doe.in.gov/Standards/About.aspx?art=11> (click on "Standards Search;" then choose the grade level and subject matter desired).

<sup>215</sup> Indiana Department of Education grades each school on its effectiveness and assigns each a letter of A through F. *See A-F Accountability*, IND. DEP'T OF EDUC., <http://www.doe.in.gov/improvement/accountability/f-accountability> (last updated Jan. 15, 2013) (showing vast discrepancies in the effectiveness of schools, both public and private). It is also worth noting that students who are homeschooled are not given the same assessments as students in public or private schools and there is currently no system in place to measure the effectiveness of any given homeschool environment.



truancy problem in Indiana.<sup>216</sup> Finding alternative solutions to attack truancy is not a new concept and a variety of interventions have been implemented in various communities across the United States and the world.<sup>217</sup>

### 1. *Increased communication and community involvement*

Increasing communication between parents and school officials and fostering community involvement are essential pieces of any truancy reduction plan. Parents should be notified<sup>218</sup> each year of the school's attendance policy and consequences for violating the policy. Prompt notification to parents when a child is absent or tardy should be a required practice of every school.<sup>219</sup> At five tardies or absences, a mediation-type conference should be held with the parents and student to go over the policy, possible consequences, and the reasons for keeping good attendance.<sup>220</sup> At this conference, school officials, truancy officers, the parents, and the student should develop a written plan<sup>221</sup> that will improve the student's attendance.<sup>222</sup> This plan should include possible penalties if the

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<sup>216</sup> See Peek, *supra* note 39, at 11.

<sup>217</sup> See *id.*; see also *Finding Strategic Solutions*, *supra* note 45, at 5–10; Marvul, *supra* note 39, at 148–51; WALLS, *supra* note 16, at 3–4.

<sup>218</sup> Peek, *supra* note 39, at 11.

<sup>219</sup> See ED. RES. INFO. CTR., *supra* note 200, at 3–4; see also Marvul, *supra* note 39, at 148–49. In addition to record keeping, this can alert a parent if a child is missing, abducted, or otherwise in danger.

<sup>220</sup> See *Truancy Mediation*, TIPPECANOE CNTY., IND., <http://www.tippecanoe.in.gov/department/division.php?structureid=234> (last visited Jan. 20, 2013) (describing a truancy mediation program currently being utilized); see also ED. RES. INFO. CTR., *supra* note 200, at 3–4.

<sup>221</sup> Written plans are commonly used in other areas of education, such as students with disabilities. For example, many schools develop a Response to Intervention plan for students suspected of learning disabilities. NAT'L CNTR. ON RESPONSE TO INTERVENTION, *supra* note 71; see also Klotz & Canter, *supra* note 71. Additionally, once a student is officially labeled with a learning disability, the school must develop an individualized education plan (IEP) each year that outlines the student's goals and accommodations. Educ. For All Handicapped Children Act of 1975, Pub. L. No. 94-142, 89 Stat. 773 (1975) (see Section 4(a)(19) for the definition of "individualized education program").

<sup>222</sup> See IND. CODE § 20-33-6-2 (2012) (establishing a framework for developing a written compact between the school, students, and parents); see also *id.* § 20-33-6-3 (stating "a reasonable effort to comply with the terms of the compact" is required); *Compulsory Attendance and Truancy Elimination Plan*, PA. DEP'T OF EDUC., [http://www.portal.state.pa.us/portal/server.pt/community/purdon's\\_statutes/7503/compulsory\\_attendance\\_and\\_truancy\\_elimination\\_plan/507353](http://www.portal.state.pa.us/portal/server.pt/community/purdon's_statutes/7503/compulsory_attendance_and_truancy_elimination_plan/507353) (last visited Jan. 7, 2013) (requiring a Truancy Elimination Plan after three unexcused absences); Peek, *supra* note 39, at 11 (describing a Truancy Arbitration Program used "to help parents further

plan is not followed and should be signed by all parties present. As part of the plan, if the student's attendance does not show improvement, the parents and the student should be required to attend an education program on attendance.<sup>223</sup> Frequent communication between the school and parents should be a key component of any intervention program.<sup>224</sup>

Another key component of intervention programs is community involvement because it "produces a shared vision, maximizes existing resources, and results in a blend of services to address the range of issues related to truancy."<sup>225</sup> A community-based program should include schools, law enforcement, courts, social services agencies, health organizations, businesses, and faith-based organizations.<sup>226</sup> These organizations can provide benefits to schools such as tutoring, mentoring, financial donations, food, clothing, healthcare, and sports opportunities.<sup>227</sup> One such community-based program, called Strengthening Families, provides material for an interactive training course on "parenting skills, children's life skills, and family life skills."<sup>228</sup> This program can be run by any community organization and has been shown to reduce problem behaviors in high risk children. It is used as a "universal primary prevention intervention in schools."<sup>229</sup> By increasing communication between families and schools and getting the community involved, students are less likely to go unnoticed and instead will feel pressured to attend school regularly.<sup>230</sup>

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acknowledge the importance of school attendance").

<sup>223</sup> See *Compulsory Attendance and Truancy Elimination Plan*, *supra* note 222 (requiring a parenting education program for parents found to be in violation of the state's compulsory attendance law).

<sup>224</sup> ED. RES. INFO. CTR., *supra* note 200, at 4.

<sup>225</sup> Office of Juvenile Justice and Delinquency Prevention, *Truancy Reduction: Keeping Youth in School and Out of Trouble* (2004), available at [https://www.ncjrs.gov/html/ojdp/news\\_at\\_glance/203557/](https://www.ncjrs.gov/html/ojdp/news_at_glance/203557/).

<sup>226</sup> *Id.*

<sup>227</sup> See Marvul, *supra* note 39, at 150–51 (using club sports as an intervention for chronically truant students).

<sup>228</sup> *Program Descriptions*, STRENGTHENING FAMILIES PROGRAM, <http://www.strengtheningfamiliesprogram.org/about.html> (last visited Jan. 7, 2013).

<sup>229</sup> *Id.*

<sup>230</sup> See Marvul, *supra* note 39, at 148–49 (noting significant results from a concerted effort to increase communication between schools and parents).

## 2. *Diversion programs*

Courts are using diversion programs to change the behaviors of those accused or convicted of misdemeanor crimes, especially those involving alcohol and drugs.<sup>231</sup> These programs, designed to target first-time offenders, aim to incentivize offenders to remain free from future crimes by offering a dismissal of charges if the offender does not recidivate within a stated period of time.<sup>232</sup> These diversion programs have proven to be effective at reducing repeat offenses.<sup>233</sup> Similar diversion programs should be offered to students and parents who are in danger of prosecution or have been prosecuted for violating the compulsory attendance statute.<sup>234</sup> At five unexcused absences, the parents and student should be referred to the pretrial diversion program, run jointly by the court and prosecutor's office. These programs should utilize community volunteers to reinforce the importance of education and should include community service work that will serve to show the importance of getting a good education.

## 3. *Incentive programs*

Some school districts are experimenting with various incentive programs—including cash—to get students and teachers to work harder at improving school attendance and grades.<sup>235</sup> These programs can be used to incentivize students

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<sup>231</sup> See, Marcia Oddi, *Diversion Programs May Come Under Question*, THE IND. L. BLOG (Oct. 30, 2007, 7:21 AM), [http://indianalawblog.com/archives/2007/10/ind\\_courts\\_dive.html](http://indianalawblog.com/archives/2007/10/ind_courts_dive.html); see also *Drug & Alcohol Defferal [sic] Services*, VANDERBURGH CNTY. SUPER. CT., <http://www.evansville.in.gov/index.aspx?page=830> (last visited Jan. 10, 2013).

<sup>232</sup> See *Drug & Alcohol Defferal [sic] Services*, *supra* note 231.

<sup>233</sup> See CATHERINE CAMILLETTI, BUREAU OF JUSTICE ASSISTANCE, PRETRIAL DIVERSION PROGRAMS 3 (Oct. 25, 2010), <https://www.bja.gov/Publications/PretrialDiversionResearchSummary.pdf> (stating participants in diversion programs are more likely to remain in the community than in jail twelve months after their initial crime than those who go through traditional criminal justice system).

<sup>234</sup> See WALLS, *supra* note 16, at 3–5 (describing two intervention programs used in Ohio and Minnesota and special diversion programs used in Louisville, Baltimore, and Phoenix).

<sup>235</sup> See ROLAND G. FRYER, JR., FINANCIAL INCENTIVES AND STUDENT ACHIEVEMENT: EVIDENCE FROM RANDOMIZED TRIALS (2010), available at <http://www.edlabs.harvard.edu/pdf/studentincentives.pdf>; see also Erica L. Green, *Teachers get bonuses in some schools with lower suspension rates*, THE BALTIMORE SUN Jan. 14, 2013, <http://www.baltimoresun.com/news/maryland/education/bs-md-ci-suspension-bonus-program-20130114,0,519508,full.story>; see also *Ohio High School*

to show up to school, behave appropriately, and work hard academically.<sup>236</sup> In low-income districts, the money can be a highly sought-after reward.<sup>237</sup> Rewards—such as cash, gift cards, college savings plan donations, or school-related activity certificates—can be given to students or teachers to reinforce positive behaviors and hard work. If there is a strong community partnership, the funding for these rewards may be donated to the schools.

Through various alternative strategies, including incentive programs and diversion programs, and improved communication between parents and schools, most students displaying truancy and/or absenteeism problems will be steered back on track toward consistent attendance. Undoubtedly, this will not be enough for some students and parents, which is where court intervention picks up.

## V. CONCLUSION

Education is one of the most important functions of the State. Despite every state having compulsory attendance laws, truancy and chronic absenteeism are major problems across the United States. This is unacceptable given truancy is a well-documented indicator of dropping out of high school, future criminality, unemployment, and economic dependence on government aid.

Indiana's current statutory framework and case law does not adequately address this problem. Changing definitions and adding provisions to better align with Indiana's policy of educating every child to be a productive citizen will encourage schools and prosecutors to address truancy problems together. However, stopping here would be an inadequate solution, as it would only aid in the more effective punishment of students who have already been identified as truants.

Alternative strategies, such as getting schools and parents communicating better, securing greater community

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*Paying Students To Show Up, Behave In Class*, HUFFPOST EDUC. Feb. 15, 2012, [http://www.huffingtonpost.com/2012/02/15/ohio-high-school-paying-s\\_n\\_1280227.html](http://www.huffingtonpost.com/2012/02/15/ohio-high-school-paying-s_n_1280227.html) [hereinafter *Paying Students To Show Up*]; see also Bruce Crumley, *Should Students Be Paid to Do Well in School*, TIMEWORLD, Oct. 12, 2009, <http://www.time.com/time/world/article/0,8599,1929454,00.html>.

<sup>236</sup> See *Paying Students To Show Up*, *supra* note 235.

<sup>237</sup> See *id.*

involvement, developing diversion programs, and offering incentive programs must be included in order to develop a comprehensive solution that will be fully effective. These alternative strategies work to prevent truancy before it becomes a problem, thus avoiding the need for punishment altogether. While this is a substantial and costly endeavor, inaction can result thousands of students being truant or chronically absent each year. A balanced approach in dealing with truancy will result in steps toward ameliorating these problems.

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\* J.D. Candidate, 2014, Indiana University Robert H. McKinney School of Law. As a former teacher, I have witnessed firsthand the devastation absenteeism can have on a child's education. I hope this note inspires legislatures, educators, and school corporation administrators to take this epidemic seriously and adopt the solutions outlined herein. I want to thank Professor Margaret Ryznar for all of her guidance and assistance throughout this process, as well as the Indiana Law Review Board. I also want to thank my loving wife for all that she has done for our family throughout our journey through law school. I dedicate this paper to her and to my beautiful daughters, Ella and Clara.