

HB 410 Fact Sheet: Education Stakeholders

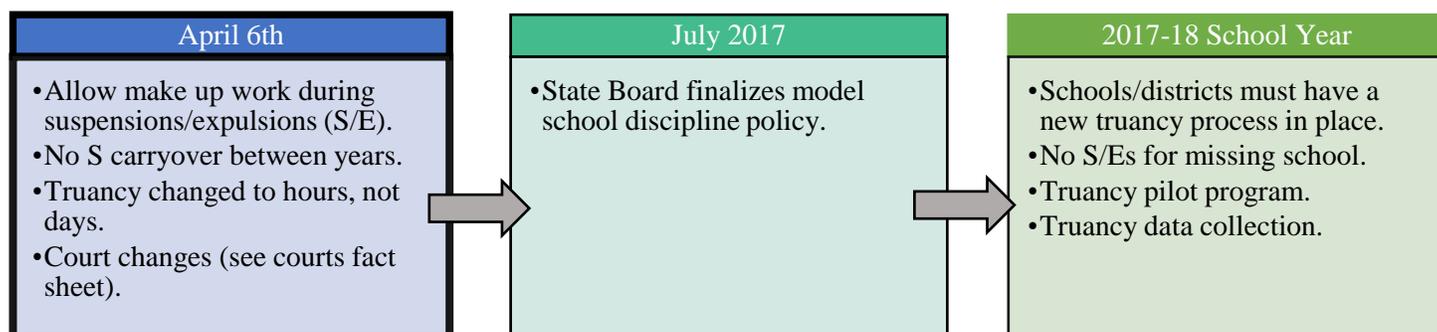
On April 6, 2017, certain provisions of HB 410 that apply to Ohio schools and school districts go into effect. HB 410 was passed by the General Assembly and signed by Governor Kasich in December 2016.

Background:

HB 410's truancy provisions bring Ohio law in compliance with federal law and reduce the number of students referred for formal juvenile court processing for missing school. HB 410 is based on the premise that schools and other community entities – such as mental health and substance abuse, child welfare, and developmental disability agencies, providers, or local non-profits – can begin to intervene with students in a holistic, collaborative way that addresses students' underlying reasons for absence, such as substance abuse, family needs or conflict, a lack of resources (i.e. no access to laundry), transportation, or other issues, that may not require court intervention.

HB 410 Implementation:

HB 410 has several provisions that impact schools, teachers, administrators, and students that will go into effect at different times over 2017; *this fact sheet focuses on the provisions that go into effect on April 6th.*



#1: Changing the truancy definition from days to hours.

The definition of “habitual truancy” moves to defining truancy in terms of days missed to hours missed, meaning under HB 410 a student is considered to be a habitual truant if they have missed:

HB 410 [ORC § 2151.011(18)]	Prior law
30 or more consecutive school hours	5 or more consecutive school days
42 or more hours in one school month	7 school days in one school month
72 or more hours in a school year	12 or more school days in a school year

#2: Allow students to make up work during out-of-school discipline.

Under HB 410, the district's board may allow students who receive out of school suspension or expulsion to make up their work missed because of the suspension. [ORC § 3313.66(A)(2)]

#3: No carryover for end-of the year suspensions between school years.

Students who receive suspensions with less than 10 days left in the school year cannot have out-of-school days carry over into the next school year. Instead, over the summer, the superintendent may require the student to participate in community service or an alternative program (districts may create a list of these programs). If the student does not complete the program, he or she may receive another discipline at the start of the new school year as long as it is not an out-of-school suspension or expulsion. [ORC § 3313.66(A)(1)]

*Questions? Please contact Erin Davies, Executive Director,
Juvenile Justice Coalition at edavies@jjohio.org or 614-400-5548.*

HB 410 Fact Sheet: Juvenile Courts

On April 6, 2017, the provisions of HB 410 that apply to juvenile courts go into effect. HB 410 was passed by the General Assembly and signed by Governor Kasich in December 2017. Several provisions of HB 410 apply directly to juvenile courts and these provisions are outlined below.

Background:

HB 410's truancy provisions bring Ohio law in compliance with federal law and reduce the number of students referred for formal juvenile court processing for missing school. During interviews with juvenile court judges across the state, many judges reported that truancy cases were a large part of the juvenile court's caseload and courts struggle with finding resources to address students' absences.

HB 410 is based on the premise that schools and other community entities – such as mental health and substance abuse, child welfare, and developmental disability agencies, providers, or local non-profits – can begin to intervene with students in a holistic, collaborative way that addresses students' underlying reasons for absence, such as substance abuse, family needs or conflict, a lack of resources (i.e. no access to laundry), transportation, or other issues, that may not require court intervention.

Truancy and Court Involvement:

On April 6, 2017, HB 410 will make several changes to how juvenile courts handle truancy. *Note:* After the start of the 2017-2018 school year, students can only be referred to the juvenile after the school has worked to reengage the student in school for 60 days.¹ This fact sheet will be updated in August 2017 to reflect this change.

HB 410 addresses how juvenile courts handle truancy by:

#1: Changing the truancy definition from days to hours.

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30 or more consecutive school hours	5 or more consecutive school days
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#2: Using formal filing for truancy as a last resort.

Under HB 410, once a juvenile court receives an unruly filing based solely on truancy, the court must consider an adjudication alternative – 1) diversion, 2) using the Juvenile Rules of Procedure or, 3) any other means – unless an alternative is not available or the child has already participated in or failed to complete the alternative.

A formal filing in juvenile court shall only be used as a last resort to address truancy. [ORC § 2151.27(G)]

#3: Modifying burdens of proof.

In considering a truancy case, HB 410 clarifies burdens of proof stating:

- *Prosecution:* Must prove beyond a reasonable doubt that: 1) the child is compulsory school age under ORC § 3321.01, and 2) the child meets the definition of habitual truancy. [ORC § 2151.27(H)(1) & (2)]

¹ A truancy complaint must be filed by the attendance officer on the 61st day of the school implementing an absence intervention plan if: 1) the student is absent enough days to qualify as a habitual truant, 2) the school/district has made meaningful attempts to re-engage the student, and 3) the student has refused to participate or failed to make satisfactory progress as determined by the absence intervention team. [ORC § 3321.16(B)].

- *Defense:* The child can assert an affirmative defense that the child participated in or made satisfactory progress on the absence intervention plan or other adjudication alternatives. [ORC § 2151.27(H)] *Note:* The “absence intervention plan” language does not go into effect until the 2017-2018 school year.

#4: Providing notice to school districts.

Within 10 days after a child is either 1) adjudicated unruly or 2) violates a court order for truancy, the court must notify the student’s current school district and the district where the child was enrolled when the complaint was filed. [ORC §§ 2151.34(C)(2)(d) and 2152.19(E)(2)]

#5: Not considering “chronic truancy” and “double habitual” truancy as automatic delinquency offenses.

Under prior law, Ohio allowed truancy – a status offense – to be considered a delinquency offense automatically if the student missed enough school to either: 1) qualify as a chronic truant under former ORC § 2152.02(D)² or 2) have two habitual trancies (“double habitual” truant) under former ORC § 2152.02(F)(4)³. This construct violated the federal Juvenile Justice and Delinquency Prevention Act (JJDP), which states that status offenses cannot become delinquency offenses unless and until a youth has violated a Valid Court Order (VCO).

In order to bring Ohio into compliance with the JJDP, HB 410 eliminates chronic and “double habitual” truancy references throughout the ORC. Therefore, a truancy offense can only become a delinquency offense if a youth violates a VCO. [See e.g. ORC § 2151.23(A)(1) and 2152.02] In addition, the delinquency dispositions under ORC § 2152.19(A)(7) can only apply after a VCO violation on a truancy charge.

#6: Changing truancy proceedings against parents, guardians, and caregivers.

With regards to parents, guardians, and caregivers, when a child is adjudicated unruly for a truancy, the court must warn the parent, guardian or caregiver that a subsequent offense may result in criminal charges against the parent. [ORC § 2151.354. (C)(2)(c)] In addition, a parent, guardian, or caregiver can only be charged with contributing to the delinquency of a minor after the youth has violated a VCO, which (as noted in #4 above) is the only way a youth can receive a delinquency charge related to truancy. [ORC § 2152.021(A)] The maximum bond parents, guardians, and caregivers can be required to give is \$500. [ORC § 3321.38]

#7: Collecting data on truancy cases and filing the annual report with the Ohio Supreme Court.

Each court’s annual report to County Commissioners under ORC § 2151.18 must include the number of children who were placed into adjudication alternatives to truancy, specifically the number of youth who were 1) placed in these programs, 2) successfully completed the program, and 3) failed to complete the program and were therefore adjudicated unruly. [ORC § 2151.18(B)] The Ohio Supreme Court recently sent a letter to juvenile courts recommending that courts collect an additional data point – the number of habitual truancy complaints filed during the year.

A copy of the court’s annual report required by under ORC § 2151.18 must also be filed with the Ohio Supreme Court. [ORC § 2151.18(B)]

*If you have any questions, please contact Erin Davies,
Executive Director, Juvenile Justice Coalition at edavies@jjohio.org or 614-400-5548.*

² Former ORC § 2152.02(D) defined “chronic truant” as “any child of compulsory school age who is absent without legitimate excuse for absence from the public school the child is supposed to attend for seven or more consecutive school days, ten or more school days in one school month, or fifteen or more school days in a school year.”

³ Former ORC § 2152.02(F)(4) included “[a]ny child who is a habitual truant and who previously has been adjudicated an unruly child for being a habitual truant” in the delinquency definitions, summarized in the ORC through the phrase “a delinquent child for being a habitual truant.”

ARE YOU OR SOMEONE YOU KNOW IN COURT FOR MISSING SCHOOL (“TRUANCY”)?

A new law – HB 410 – has some new rules about how courts handle truancy cases (cases when students are in trouble for missing school). HB 410 goes into effect on April 6, 2017.

Should I get a lawyer for my truancy case? – Yes. You should ask the court to assign a lawyer to help you with your case. Your lawyer will be able to help you figure out a plan.

When can I get charged with truancy? – To be charged with truancy, you need to miss 30+ hours of school in a row, 42+ hours in one month, OR 72+ hours in one year.

How does the law change how the court will handle my truancy case? – Under the new law, the court is only supposed to use formal filing – or formal case – as a last resort. Instead, you and your lawyer could advocate for you to:

- Get into a diversion program – like mediation or counseling – to help get you back in school without a formal case. You may not be able to be in diversion if: 1) you already tried the program and it didn’t work or 2) the court doesn’t have a program.
- Use the juvenile court rules to dismiss your case.

In court, you and your attorney should work together to figure out a plan, like:

- Telling the court you already were in a diversion program and did well – “made significant progress.”
- If you have started going back to school, talking to your lawyer about telling the court that you started going back to school and why.
- If you aren’t going to school, talking to your lawyer about telling the court why you can’t or don’t want to go to school.

Can I be considered “delinquent” for truancy? – You can only be considered “delinquent” for truancy if you have a hearing that you violated a court’s order – meaning the court told you do something (go back to school) and you didn’t do it.

Can a parent, guardian, or caregiver be charged with truancy? – Yes. The court can file charges against your parent, guardian, and caregiver if you miss school after providing a warning. *Parents, guardians, and caregivers should ask the court for their own lawyer.*

Can my lawyer or I get information on how many kids are truant in my county? – Yes. The court should collect this data and have it available in a report.

*Have Questions? Need Help? Contact the
Juvenile Justice Coalition at 614-400-5548 or info@jjohio.org.*