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Maine Department of Education

# COMPULSORY EDUCATION IN MAINE:

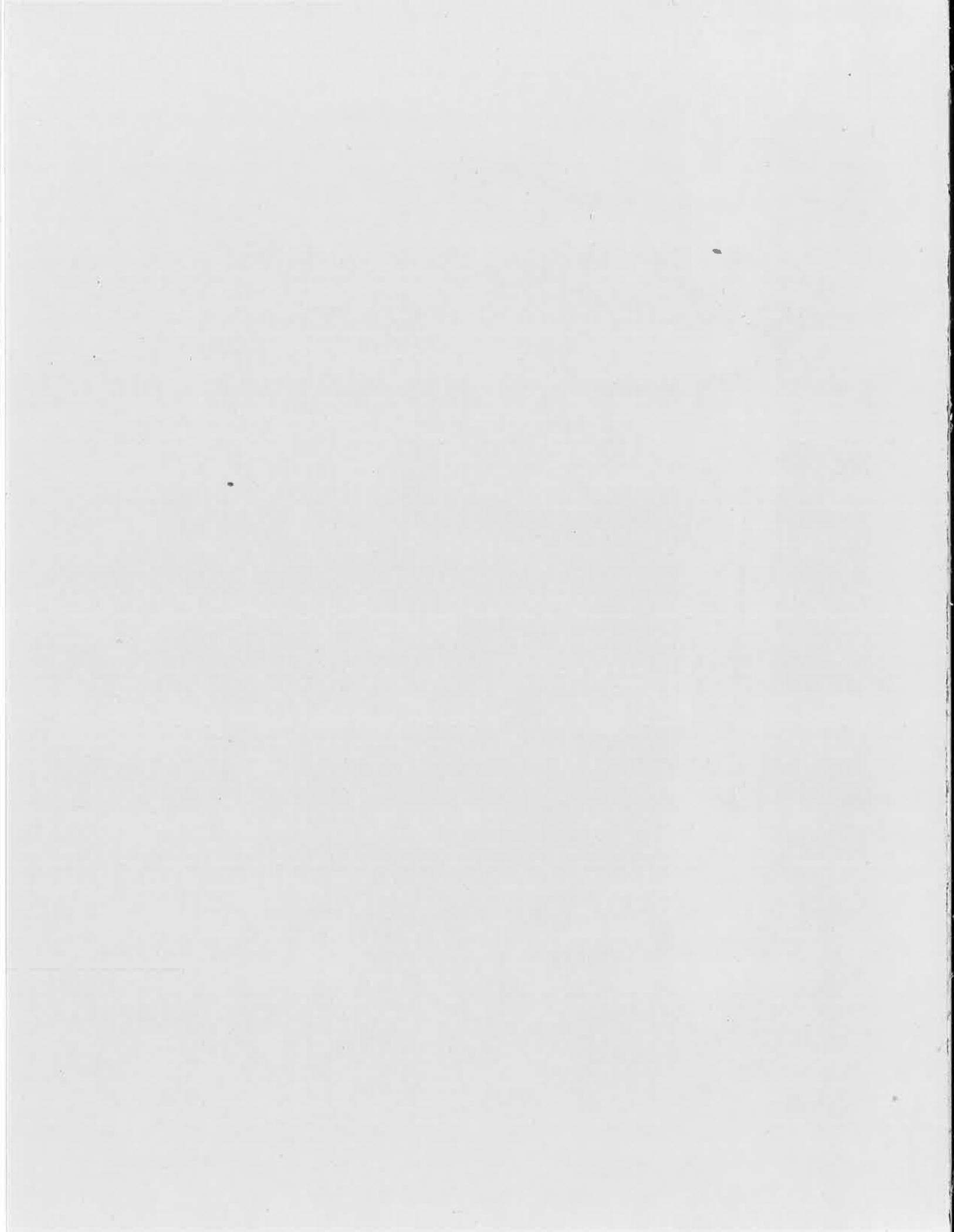
## A Brief History 1821 to 1996



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Truancy, Dropout, and Alternative Education*

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# COMPULSORY EDUCATION AND TRUANCY LAWS IN MAINE

## A Brief History

The truancy laws enacted at various times by the Maine legislature can be understood as a substantive statement of policy about the importance of education for youth and a procedural technique to ensure that children attend school. As such, the compulsory attendance laws set out both the State's objective--the education of all children and the mechanism for achieving that objective--the prosecution of those who failed to comply. While compulsory education was early defined as the Legislature's goal for the youth of the state, the mechanism to achieve that goal has reflected changing views of the State's right or ability to compel social behavior by its citizens and the State's capacity, as a practical matter, to ensure appropriate behavior on the part of youths. Thus, the truancy laws have changed from criminal laws under which children could be prosecuted, fined, and incarcerated for education or training to civil proceedings which hold the parents at fault, and these as a last resort among alternative persuasive actions by schools and other agencies.

To describe the truancy and compulsory attendance statutes through the years as policy statements is not to suggest that the Legislature has always been consistent in its approach to the subject. In fact, various amendments to the law have had completely different starting points and received much review and debate in different committees of the Legislature. The revision of the criminal laws which resulted in eliminating "truancy" as a juvenile crime, for example, was discussed in a special Commission and by the Judiciary Committee. Many other bills relating to truancy were the product of debate in the Education Committee. A totally comprehensive approach in recent years has been lacking and may account for some of the conceptual and procedural inconsistencies in the law.

### Early Laws: Crimes and Punishments

Maine's Constitution, adopted in 1821, established the importance of publicly-supported education in language which remains unchanged today:

A general diffusion of the advantages of education being essential to the preservation of the rights and liberties of the people; to promote this important object, the Legislature are authorized, and it shall be their duty to require, the several towns to make suitable provision, at their own expense, for the support and maintenance of public schools . . . <sup>1</sup>

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<sup>1</sup> Art. VIII: Literature

The first laws on education concentrated on ensuring that free schooling was available to the youth of the State. Thus, the Legislature in 1821 required each town to “annually raise and expend” a minimum sum for the maintenance and support of common schools, but school attendance was not required. Rather, members of the school committees were “to use their influence and best endeavors that the youth in several (school) districts regularly attend schools.”<sup>2</sup>

In 1850 Maine towns were authorized by the Legislature to enact local ordinances pertaining to school attendance and the behavior of youths not attending school, specifically:

to make all needful provisions and arrangements concerning habitual truants, and children between the ages of six and fifteen years, not attending school, without any regular and lawful occupation and growing up in ignorance; and may also make all such ordinances and by-laws respecting such children, as shall be most conducive to their welfare, and the good order of such town . . . <sup>3</sup>

For any one breach of a local ordinance a fine of \$20 could be imposed by a justice of the peace. In addition, the magistrates, “at their discretion,” could order children “proved before them to be growing up in truancy, and without the benefit of the education provided for them by law” to be placed in a school, a “house of reformation,” or other suitable situation, depending on the local ordinance. Although several subsequent laws have been enacted, this approach to truancy remained essentially unchanged until 1977 when the new Juvenile Code was adopted.

In 1875, the Legislature enacted the first definitive state compulsory education law, placing a duty on parents:

Every parent, guardian, or other person having control of any child between the ages of nine and fifteen years, shall send him to a public school for at least twelve weeks in each year . . . or that such child has been taught at a private school or at home in such branches as are usually taught in primary schools . . .”<sup>4</sup>

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<sup>2</sup> P.L. 1821 C. CXVII §1

<sup>3</sup> Five years later, because local initiative had not proved sufficient to cure the problem, the Legislature amended the provision so that “all towns are hereby authorized **and required to**” enact such ordinances.

<sup>4</sup> P.L. 1893 c.206.

Every parent violating the law could be fined \$5 payable to the town for school purposes and every boy violating the law would forfeit an equal amount. Towns were still allowed, however, to enact their own local ordinances on the subject. These typically concerned consorting with persons of bad influence, vagrancy, runaways, and truancy. Under these local ordinances, youths could be placed in state reformatories or ordered to attend school. Over the years, the compulsory education law was variously changed as to the age and minimum length of the required school year.

The immediate problem, evident shortly after the first state compulsory education statute was enacted, was enforcement. According to a subsequent report of the Superintendent (Commissioner) of Common Schools, the law was "generally found to be impractical" and he was not aware that it was being enforced.

In 1893, the Legislature acted to strengthen the enforcement provisions by concentrating on the appointment and role of attendance officers:

**Cities and towns shall annually elect one or more persons, to be designated truant officers, who shall inquire into all cases of neglect of the duty described (to attend school) and ascertain the reasons therefor, and shall properly report the same to the superintendent school committee and such truant officers, or any one of them, shall, when so directed by the school committee or supervisor in writing, prosecute in the name of the city or town, any person liable to the penalty, and said officers shall have power and it shall be their duty, when notified by any teachers that any pupil is irregular in attendance, to arrest and take such pupil to school when found truant . . . (Emphasis added)**

Similar language remains in the law today except that it is the school boards that are required to make the appointments of attendance coordinators.

In 1899, the Legislature attempted to strengthen the enforcement provisions. While lowering the age of compulsory attendance to 15, it simultaneously placed a penalty on towns which failed to appoint truant officers and truant officers found "neglecting to prosecute when directed . . ." of \$10 to \$50.

A child absent without excuse six or more times was deemed an "habitual truant" and a notice was to be given the parents. If they failed to send the child to school, prosecution was to follow with a \$20 fine or commitment of the child to a state institution.

On complaint of the truant officer, an habitual truant, if a boy, may be committed to the state reform school, or, if a girl, to the state industrial school for girls or to any truant school that may hereafter be established.

Two years later, the age was lowered to 14 and the "habitual truant" definition weakened (from any six absences to absent on six consecutive sessions). The age was later raised again to 15.

In 1909, the authority of truant officers was broadened to include the right to visit factories and business establishments during school hours when directed to do so by the superintendent or school committee. Truant officers were to report the employment of any minors under 15 to the state inspector of factories, a precursor of the Department of Labor.

The Legislature next amended the definition of habitual truant, deleting the words "absent from school at six or more consecutive sessions" and substituting:

habitually and willfully absent from school or shall fail without such excuse to attend school for five day sessions or ten half-day sessions within any period of six months.

In 1909, the Legislature modified the strict age requirement for the first time and required schooling of:

- every child between the 7th and 15th birthdays, and
- Every child between the 15th and 17th birthdays "who cannot read at sight and write legibly simple sentences in the English language"

The Legislature further refined this idea in 1919 by also requiring attendance of each student between 15 and 16 "who has not completed the eighth grade of the elementary school." The revised statutes of 1930 contained the following provisions governing compulsory education and truancy:

- Authority given to towns to make "such by-laws, not repugnant to law, concerning habitual truants and children" between 6 and 17, fining up to \$20
- Attendance officers alone were authorized to make complaints for violations of said "by-laws" and execute judgments of the magistrates
- Truant children could be placed in institutions, in lieu of a fine, by order of the magistrate
- Attendance required of children 7 to 15 and, for those "who cannot read at sight and write legibly simple sentences in the English language" education until age 17, and for every child up to 16 who has not completed the eighth grade

- Parents could be fined up to \$25
- Attendance officers, required to be elected by school committee, to prosecute in the name of the State any person responsible for “neglecting to perform the duties” described in the law (included both parents and truant children)
- “Habitual truant” defined as one habitually and willfully absent or failing to attend for five day sessions or 10 half-day sessions within six months
- Punishment set (fine of up to \$20 or imprisonment) for any person “having control of a child” habitually truant and any person including a child to absent himself from school
- Magistrate could commit truants to state institutions

The adoption of the Juvenile Code in 1959<sup>5</sup> repealed the authority of towns to enact local ordinances pertaining to truancy and children’s behavior. Instead, the new statute opted for a uniform approach by defining the crime of “habitual truancy” as

habitual and willful absence from school without sufficient excuse; or failing to attend school for 5 day sessions or 10 half-day sessions within any period of 6 months without sufficient excuse; or failing to attend school, without regular or lawful occupation, and growing up in ignorance.

Children convicted of truancy would be incarcerated at the Boys Training Center in South Portland or the Stevens School (for girls) in Hallowell. The law allowed these youths, at the discretion of the superintendent of either institution, to attend either South Portland High School or Hallowell High School, with tuition paid by the state institution, although the South Portland option was repealed in 1961.

In the 1960’s, the Legislature continued to tinker with the compulsory attendance statutes to make them more effective. A 1965 amendment extended the age of compulsory attendance to 17 (from 15). Being able to read and write after 15 no longer justified an exemption from compulsory school attendance.<sup>6</sup>

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<sup>5</sup> The Juvenile Code (P.L. 1959 c. 342) adopted the state philosophy that the “care, custody, and discipline” of juveniles “approximate, as nearly as possible,” treatment due from parents. Also, the law intended to treat juveniles not as criminals but “as young people in need of aid, encouragement, and guidance”

<sup>6</sup> P.L. 1965 c. 272



In the early 1970's, the truancy and compulsory attendance laws were perhaps at their "strongest." They included a uniform definition of truancy and enforcement through the Juvenile (municipal) courts. There were no exceptions to attendance at school. Students were to attend a public school or approved private day school or to obtain equivalent instruction in a manner arranged by the school board and approved by the Commissioner.

### **Emphasis on Prevention**

In several statutory amendments the Maine Legislature attempted during the 1970's to address the perceived problem of truants and dropouts, as well as the causes and results of criminal behavior by youths. This took place in the context of changing legal and social attitudes toward "juvenile delinquents" and the frustration of school officials in dealing with uncooperative truants and dropouts and their parents.

Only six years after the compulsory attendance age had been raised to 17, the Legislature amended the law to allow youths to leave school at age 16.<sup>7</sup> This exemption from school attendance for 16-year-olds was permissible for those who would attend a "structured program" of "work, work-study, or training." Thus, students could drop out completely a year earlier for a lawful occupation or training program (as had been permissible decades earlier) or attend school part-time for the same reason.

A bill endorsed by the Education Committee required all school units to establish a "positive action committee" which included teachers, administrators, students, and community representatives.<sup>8</sup> These PAC's were to study the "problem" of "dropouts" and to recommend local plans for addressing the problem. "Dropouts" were defined as any students (of any age) who had "voluntarily withdrawn" from school, a definition which obviously included truants although the new language never mentioned the truancy laws. Thus, an inconsistency was established which required school units simultaneously to deal with students as dropouts (enticing or persuading them to school) and as truants (prosecuting them for truancy).

The following year, the Legislature amended the law to define "dropouts" as students who had either withdrawn or been expelled, which created yet another inconsistency in education statutes.<sup>9</sup> A student of compulsory school age, of course, could not legally withdraw; the student was a truant.

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<sup>7</sup> P.L. 1971 c. 186

<sup>8</sup> P.L. 1975 c. 599

<sup>9</sup> P.L. 1975 c. 706

In the broader context, there was a nationwide rejection of the long-standing tradition of prosecution for so-called "status offenses," i.e., activities which were defined as criminal, if done by youths but not by adults. This included such "crimes" as truancy, running away, and incorrigible behavior for which youths could be fined or committed.

In 1976, a specially-appointed Commission to Revise the Statutes Pertaining to Youth, which had worked for almost two years, concluded that Maine should revise its criminal laws to delete juvenile "status offenses" and to spend its collective energies on appropriate measures to prevent youths from coming into contact with the juvenile court system in the first place.<sup>10</sup> It noted the serious problem of "dropouts" and recommended a complete repeal of the truancy statutes, replacing it with a mandate that students participate with parents and school personnel "in the process of achieving an education for themselves." The report also recommended that youths be allowed to opt out of school if "after reasonable efforts to maintain" a youth in an educational program, the youth "does not participate in the educational process."

The 1977 revision of the Juvenile Code eliminated status offenses relating to youths, deleting such "crimes" as truancy, running away, incorrigibility, and association with immoral people.<sup>11</sup>

The original bill introduced in the Legislature would have included a new chapter in Title 15 (Juvenile Code, on Truants and Dropouts). The bill proposed mandatory referral of truants and dropouts to Pupil Evaluation Teams which would have the authority to refer the students, in turn, to Human Services or Mental Health and Corrections. However, students could not be sent to state institutions for the offense of habitual truancy alone. Judicial review of these local PET decisions was not included in the draft.

The bill was apparently so unacceptable that it received no debate on the floor; another bill was substituted later in the session, which was enacted after very little discussion, as the new Juvenile Code. Language pertaining to truants and dropouts was omitted. The bill deleted "habitual truancy" and other status offenses from the criminal laws but it did not delete the offense of "truancy" from the education laws, which allowed prosecution of parents with truant school-age children.

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<sup>10</sup> The commission included, as required by law, representatives of the Commissioners of Mental Health and Corrections and Human Services but no corresponding representative of the Commissioner of Educational and Cultural Services. This appears ironic because much of the Commission's study and report focused on the education laws of the state.

<sup>11</sup> P.L. 1977, c. 520

In the same session, the education laws were amended to establish a **State** definition of truancy removing the ability of local schools to adopt varying definitions.<sup>12</sup>

The resulting law evidences a concern with uniformity and reasonableness in the delineation of "truancy," and an attention to due process protections for students whose behavior could lead to expulsion or suspension from school.

The essential elements of that law remain today:

- Compulsory school attendance of youths between 7 and 17 (except for early graduation, work programs, and waivers)
- A uniform legislative definition of "excusable absences"
- An authority and duty in the local school committee to administer the law and "promulgate reasonable rules and regulations to carry out this responsibility," filing the rules with the Department of Education
- A definition of "habitual truancy" as five full days or 10 half-days of unexcused absences in any 6-month period (continued from earlier criminal law)
- Notice to parents of an habitual truant, according to specified guidelines
  - ◆ a principal's report and written summations of all physical, mental, and counseling sessions, if available;
  - ◆ written summations of faculty discussions;
  - ◆ reports of the positive action committee; and reports of the school's efforts.
- Meeting with the school committee and parents, after which the committee may decide to instruct the child to attend school or to waive the compulsory attendance requirement for anyone at least fourteen years old.

The new truancy law continued the penalties against the **parents** of truants.

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<sup>12</sup> The Juvenile Code was heard and debated in the Judiciary Committee, while the proposed revisions of the education law were heard in the Education Committee. The truancy bill which finally emerged was the compilation of three separate bills, each with a different approach to the problem of truancy and dropouts. None of the bills appeared to have its genesis in the report of the Commission to Revise the Laws Relating to Juveniles. The Commission, with its chief counsel and professional staff, provided the most detailed and comprehensive study of truancy-related issues ever produced. None of the truancy/compulsory attendance bills offered before or after 1978 were predicated on such study.

All persons having children under their control shall cause them to attend school as provided in this section. Any person having control of a child who is an habitual truant . . . and being in any way responsible for such truancy, and any person who induces a child to absent himself from school, or harbors or conceals such child when he is absent, shall be punished by a fine of not more than \$25 or by imprisonment for not more than 30 days for each offense. If the court imposes a sentence of probation, it may in its sentence, as a condition of probation, require that the convicted person receive professional counseling by a qualified professional counselor who shall be selected by the convicted person, with the approval of the court, or by the court. The counselor shall submit a written report of his counseling to the court and to the person counseled.<sup>13</sup>

Although the Legislature removed the possibility of fining or incarcerating youths for truancy, they did not replace the prior penalties with anything other than an "encouragement" that schools offer "alternative" education.

In 1978 the definition of "habitual truant" was further amended as follows:

. . . if he is absent from school the equivalent of 10 full days or for ½ of a day on 7 consecutive school days within any 6-month period for other than an excusable absence . . .

In 1981, the Legislature amended the truancy provision to make parental guilt under the truancy law a civil rather than a criminal offense. It also changed the terminology to place responsibility on any person "primarily responsible for such truancy" (rather than "in any way responsible for such truancy"). Thus, on the one hand the Legislature made it easier to prosecute (the burden of proof easier in civil rather than criminal laws), and on the other hand, more difficult since the parent had to be **primarily** responsible, rather than responsible in any way, for the truancy.

That same year, several legislators (Reps. Mitchell and Thompson) held informal talks with educators about the truancy law and sent proposed language to District Court Judges for their review. Legislation was not submitted because there was no agreement on how to proceed.

In the next session, Rep. Thompson again pursued the truancy problem. Her efforts would have authorized fines to be levied against truant children over age 14, among other things. The bill was vetoed by Governor Brennan who was strongly against reinstating anything resembling the previous "status offenses."

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<sup>13</sup> P.L. 1977, c. 499

In 1985-86, a special advisory committee chaired by Representative Merle Nelson conducted several months of study on the problems of truancy, dropouts, and alternative education. The outcome of this special commission was the enactment of legislation creating the Commissioner's Advisory Committee on Truancy, Dropout, and Alternative Education and funding for a department consultant with support staff to provide technical assistance to the Department and schools.

### New Issues

New legal issues have surfaced with truancy prosecutions in the late 1980s. In one case (against a Bowdoinham man whose children remained home for several years without approval of the school department), a truancy prosecution was dismissed because the court determined that proper procedures (meetings with parents, etc.) had not been followed prior to the prosecution.

A number of truancy prosecutions or threatened cases have involved children whose parents have kept them out of school for home instruction. The issues in these cases have included the right of the State to set standards for approval of such instruction (versus the rights of parents to control their children's education) and religious freedoms.

In *State v. McDonough*, the Maine Supreme Judicial Court upheld two truancy convictions against parents who had kept their children home for home instruction, without approval of the school department and the commissioner. The McDonough's had protested the statutory requirement of prior approval for "equivalent instruction" but the court found this reasonable, in light of the duty of school officials to oversee the education of all children in the school unit. (Despite this, the McDonough children reportedly have never attended school since, and, after bringing the two prosecutions, school officials abandoned their efforts to make the children attend or have approved instruction.)

In a case involving home instruction, Vassalboro parents challenged the Department's home instruction regulations and the State's truancy law, alleging that they infringe on religious freedom. That case is in Superior Court.

Several truancy prosecutions have been delayed or rejected by prosecutors or courts because of appeals to the Department of Educational and Cultural Services. In one case, the parents successfully argued to the District Court that the school board's finding of the fact of habitual truancy was an appeal to the Department; this resulted in the Court's refusal to continue with the case. (The Department successfully sponsored an amendment to the law the next year to make clear that the school board's finding of habitual truancy is not a matter for administrative appeal.)

In another case (1987) a district attorney refused to prosecute the parents of children whose home instruction has not been approved on grounds that it is being appealed to the Department of Educational and Cultural Services. This prosecutorial decision appears to ignore the conclusion of the *McDonough* case which determined that children were truant while receiving instruction which was not yet approved by local and state education officials.

The Commissioner's Advisory Committee on Truancy, Dropout, and Alternative Education, created in 1986, has provide a consistent and continuous agenda for addressing the issues of truancy. Maine law requires each school unit to appoint an "attendance coordinator" who shall be a member of the LEA's Dropout Prevention Committee.

A significant activity of the Advisory Committee over a two-year period resulted in the enactment in 1991 of a new statute regarding work permits. This enactment, referred to as "School is a student's first job," gave leverage to school superintendents to withhold and/or revoke a work permit for an habitual truant under age 16. In addition, with the cooperation with the Maine Department of Labor, child labor laws were clarified prohibiting minors under 17 from working while school is in session unless as part of an education plan approved by the local school, in accordance with education statutes. Homeschoolers are also prohibited from working during the hours that the minor's school or home instruction is in session. Unfortunately, despite the attempts to establish consistent remedies to enforce the laws which require mandatory school attendance for minors under 17, the reluctance of District Attorneys to refer cases to the court due to the apparent log jam of court cases, does not lead to an immediate and adequate resolution of truancy.



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