

Hidalgo County sued over truancy jailings

July 28, 2010 7:40 AM

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The Monitor

McALLEN — Francisco de Luna spent 18 days in jail last year for a list of offenses as minor as wearing saggy pants to school.

Elizabeth Diaz was kicked out of her high school for excessive absences — all incurred during the two weeks she spent locked up for missing class.

Both teens admit they broke the rules, but a state civil rights organization now says neither should have been incarcerated for it.

The American Civil Liberties Union of Texas filed a federal class action lawsuit Tuesday alleging Hidalgo County violated the rights of dozens of teens sentenced to serve jail time to pay off fines stemming from truancy and other school-related offenses.

The lawsuit alleges local justices of the peace routinely failed:

>> To offer teens access to attorneys.

>> To verify whether they had the financial means to pay off their fines on their own.

>> To advise them that they could fight the charges or dispense with them through less drastic forms of punishment such as community service or payment plans.

“The schools and the county should be providing services that will help keep these kids in school instead of punishing them to the point where they can’t return to school,” said Gouri Bhat, an ACLU attorney representing the teens.

QUESTIONABLE JAILINGS

The Monitor first drew attention to the stories of both Diaz and De Luna in a March investigation on arrest warrants issued out of Justice of the Peace Mary Alice Palacios’ court.

The judge handles more than 90 percent of all truancy cases in Hidalgo County, including all of them coming from the Edinburg, Hidalgo, Donna and Edcouch-Elsa school systems.

But after reviewing months of records, the newspaper discovered that Palacios had sent dozens of teens to jail last year under legally questionable terms.

State law protects minors from serving jail sentences for crimes committed as youth. However, once they become legal adults, warrants can be issued for their arrest should they fail to pay fines on open cases or miss scheduled court appearances.

Before putting them behind bars, however, a court must verify that they are capable of paying and have not made a good-faith effort to settle their debts or work them off through community service.

In 2009, nearly 150 teens were sentenced to terms as long as three months for failing to show up to truancy court hearings. Some spent as long as 49 days behind bars, continuing to miss classes and in some cases jeopardizing their chances to graduate.

And in nearly every case, their files were missing documents that should have established their ability to pay and that they had waived their rights to alternatives to jail time.

Palacios claimed in March that any teens she sent to jail were wanted on other felony charges.

But jail records and Diaz's mother, Adele Hernandez, said different.

Forty-four percent of those arrested on truancy-related fines last year faced no additional criminal counts.

Hernandez said her daughter, one of those teens, was told in February that if she couldn't pay \$1,600 immediately, she had to go to jail.

"I didn't know what else we could do," the mother said, recalling the incident Tuesday. "It's just a feeling of hopelessness when you don't have the finances."

FOUR-MONTH SENTENCE

De Luna's brush with Palacios' court set off a chain of events that effectively forced him out of high school.

He was sentenced in January to four months in jail to pay off fines stemming from 24 counts of truancy and other charges arising from disruptive behavior at school.

ACLU attorneys maintain Palacios initially referred De Luna's case to a juvenile court but failed to note when he successfully completed a probationary period there resolving the charges.

Once he turned 17, Palacios' staff issued a notice setting a court date for De Luna to pay those juvenile fines but sent the letter to the wrong address.

When the teen never arrived at the hearing that he knew nothing about, Palacios issued 24 more warrants resulting in more than \$11,000 in fines — an exorbitant sum for a family surviving on an annual income of \$18,000.

Palacios' files have no records that anyone ever advised De Luna he had other options of dispensing with his fines besides working them off at \$100 a day in the jail.

He ultimately served less than half his 132-day sentence, but only after a county court-at-law judge intervened and tossed out the charges later that month.

WIDE-RANGING IMPLICATIONS

Palacios and county attorneys declined to comment Tuesday on the current lawsuit or any of the allegations surrounding truancy-related jailings, saying they had not yet been served with legal documents.

But the ACLU lawsuit could have wide-ranging implications for others forced to serve jail time to pay off unpaid debts, Bhat said.

The civil liberties group focused only on teens involved in truancy-related cases, but similar processes are used to handle all criminal defendants in Hidalgo County who are jailed to work off debts.

The ACLU has asked a federal judge to bar the county from future jailings without following proper procedures and to provide Diaz and De Luna with compensation for the violations of their civil rights.

An initial hearing date has not yet been set for the case.

“The county needs to start complying with the constitutional and statutory obligations not to jail people who can’t afford to pay fines,” Bhat said. “We would hope that by bringing these practices to light, the county would change some of its policies.”