

Crime and Punishment: JP's practice of jailing in truancy-related cases questioned

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EDINBURG — The two weeks Elizabeth Diaz spent in the Hidalgo County Jail last month still threaten to derail her education.

During her 18-day stint behind bars, she missed the standardized exit test she must pass to graduate from high school.

Her school removed her from its roster for 10 consecutive days of unexcused absences.

And as she watched her plans to enroll in South Texas College this summer evaporate among a crowd of adult drug users, prostitutes and accused murderers, the irony of her situation was never once lost on the 18-year-old:

She was locked up for charges that began with missing school.

“It was my doing,” she said. “I just thought if I’m going to jail, I’m going to jail.”

Diaz is one of dozens of Hidalgo County teens sent to adult lockup each year for one of the most juvenile of crimes. In the last 12 months, 149 students were sentenced to terms as long as three months for failing to show up to truancy court hearings.

And while most accepted their sentences without question, a *Monitor* review of their cases found these court-ordered imprisonments:

>> May have subjected dozens of teens to wrongful incarceration.

>> Exacerbated problems with school attendance.

>> Were imposed despite missing paperwork required by the law.

>> In many cases, were extended well beyond their legal limit through multiple fines assessed for the same offense.

While the justices of the peace that ordered these jail terms maintain they are operating within the law, several attorneys, judges and state truancy experts agree that such long-term sentences violate the teens’ civil rights and may open up the county to millions of dollars in legal liability.

But Diaz’s mother, Adele Hernandez, doesn’t need a law degree or a background in public policy to make up her mind about her daughter’s case.

“What does this tell our kids?” she said, days after the teen’s release. “The justice system really sucks.”

‘THE BEGINNING OF EVERYTHING’

As minors, the vast majority of truant students — those who have three or more unexcused absences within a month or 10 or more within six months — are protected under state law from serving time in adult jails.

Most receive probationary sentences that include curfews and periodic grade checks or are assessed fines of up to \$500.

But once they legally become adults at age 17, those with unresolved cases can face additional fees if they fail to appear at scheduled truancy hearings — fees that can result in jail time.

In Hidalgo County, more than 90 percent of those cases come from one court — that of Precinct 4 Justice of the Peace Mary Alice Palacios.

She presides over her truancy cases with a stern hand and a no-excuses mentality. So far this year, she has ruled on more than 5,000 truancy matters for 12 Hidalgo County school districts.

“My role is to help a parent to try and get their kid back on course and help them graduate,” she said.

And by and large, her persistence produces effective results. Most students come to court once, complete probation and never run into problems again.

But for students who refuse to comply well into legal adulthood — less than 10 percent of all the county’s truancy cases — jail time is an appropriate option, Palacios said.

“I’m not going to joke with them and smile,” she said. “It’s serious. Truancy is the beginning of everything. If parents don’t teach their children how to be responsible at this age, nothing good is going to come of it.”

The law requires each teen with an open truancy case to receive a letter reminding them of their continuing obligation once they become adults. In Palacios’ court, these letters also set a hearing date.

For those who don’t show up, the judge issues an arrest warrant on a charge of “failure to appear” — a Class C misdemeanor, punishable by a fine of up to \$500.

The teen can either pay that fine, work out an arrangement for community service or pay off his debt at \$100 a day by serving time in the county jail.

The problem arises, however, in how these cases are charged, how fines are determined and — for those students who do end up in jail — how their sentences play out.

Many affected teens, including Diaz, claim not to have been made aware of their rights to an attorney, to challenge the charges in court or to carry out their sentences through community service.

Others are assessed multiple failure-to-appear counts for missing just one hearing — a decision that may have unlawfully extended their time in confinement and expanded the cost to taxpayers for jailing them, said Randall Sarosdy, an attorney at the Texas Justice Court Training Center, an institute charged with providing legal education for the state’s justices of the peace.

“You don’t just put them in jail upon conviction,” he said. “First, you have to impose the fine and give them an opportunity to discharge it through payment or other means.”

But Diaz and her mother insist they were never given that option.

‘I’D MAKE THE SACRIFICE’

Court staff notified the pair last month that Diaz owed \$1,603 for three failure-to-appear counts stemming from a missed hearing last year — each count tied to one of three open truancy cases the teen currently has on her record.

Diaz claims she never received the letters notifying her of her hearing once she turned 17, and court records back up those claims.

Her letters had been sent to an old address, according to documents in her file in Palacios’ office. Yet her current address in north Edinburg was reflected in other tickets and filings entered before those mailings were sent out.

That oversight could have formed an effective defense had Diaz opted to challenge the charges. But no paperwork in her file reflects that she was ever advised of that option or her right to an attorney.

“Still, I went in there and asked if I could make payment arrangements,” said Hernandez, her mother. “I told them I could skip my phone bill or my car bill one month — I’d make the sacrifice. They told me I had to pay in full or Elizabeth was going to jail.”

A review of filings in a random sampling of other recent truancy cases also revealed consistent irregularities.

In each, the jailed teens who had missed a hearing were charged with new counts of failure to appear for each of their open truancy cases. But none of their files contained new complaints reflecting or explaining those charges.

Documentation that the teens had been arraigned, pleaded guilty to these new charges or waived their rights to an attorney or court hearings were also missing.

Such paperwork is required by state law, Sarosdy said.

STACKING CHARGES

But even if the paperwork were in order, the judge has questionable legal authority to impose fines of more than \$500 or sentences of more than five days in jail for one missed hearing.

Diaz served out the full 18 days of her term to pay off fines for three failure-to-appear counts. However, those charges stemmed from only one missed court setting — a hearing in which all three of her open truancy cases were to be heard.

“That should be one \$500 fine and at most five days in jail to pay it off,” said Jaime Gonzalez, Hidalgo County’s chief public defender.

In other similar cases, these stacked charges resulted in much longer jail stays. Twenty-eight teens — or 43 percent of those who served sentences only for truancy-related failure-to-appear fines last year — were jailed for more than a week, according to jail records.

Fines of nearly \$10,000 stemming from 20 open truancy and other school-related charges resulted in a more than three-month sentence for Edinburg teen Francisco de Luna.

Gonzalez discovered de Luna's case earlier this year — a month into the teen's stint behind bars. The attorney argued that Palacios had handed down 19 too many failure-to-appear counts and that his client's sentence should be reduced to five days.

County Court-at-law Judge Rodolfo Gonzalez agreed, releasing de Luna and calling into question dozens of other cases Palacios has decided along those same lines.

'THAT'S WHAT SHE NEEDED'

Palacios and her staff declined to comment on any of the specific cases, but even in discussing these cases generally the judge demonstrated a poor understanding of how the arrest warrants she issues have actually played out.

She insisted during a recent interview that many teens whose cases do end up in warrants never actually serve significant jail time. No matter how much their fine, most go in for a day or two before she releases them on a promise that they will appear at a future court date, she said.

"Our policy is that if you can't afford to pay, you do community service," she said. "If you look in the record, those teens that ended up in jail for more than that were arrested for an unrelated felony."

But that's not entirely true, according to jail records from January 2009 and February 2010.

Despite the judge's assertions, 44 percent of those arrested on truancy-related failure-to-appear charges faced no additional criminal counts.

They stayed an average of 11 days before being released from jail — with one student serving a month and 19 days.

In interviews with dozens of teens and their families, all claimed they were either denied an option to complete community service or weren't aware that that might be a possibility in their cases.

Rogelio Garza saw no other choice when Palacios' court told him his 17-year-old daughter, Vanessa, owed \$1,900 in fines on top of the fees from her previous six truancy cases. Raising two girls on his own on a monthly disability check, he knew settling those debts would take years.

"She was crying a lot, and I was feeling real bad, too," he said of the day last month when officers took his daughter away in handcuffs. "Everyone kept telling me that that's what she needed."

'I KNOW WHO'S IN JAIL'

But other local justices of the peace question whether extended jail terms are ever needed for teens facing minor offenses — especially considering the \$52 a day it costs the county to house them there.

If truancy is the issue, putting teens behind bars and forcing more absences may actually make the problems worse, said Precinct 2 Justice of the Peace Rosa Treviño, who hears truancy cases for the Pharr-San Juan-Alamo school district.

“What’s the use in jailing them?” she said. “They’re going to be learning more crimes in jail. I know who’s in jail, and I don’t want that for them.”

State law allows for other options, including barring teens from receiving or renewing their driver’s licenses until their open cases are resolved or dispensing judgment through court-mandated community service hours.

Hernandez, Diaz’s mother, would have preferred either of those alternatives to putting her daughter in handcuffs.

As a result of her jail sentence, the 18-year-old spent nearly a month out of school and only found a campus last week that would let her enroll this far into the year.

“If you’re going to punish them, make them go pick up trash on the highway or go to a hospital,” Hernandez said. “My kid is 18. She needs her diploma.”