

Truancy and Parent Contributing to Non-Attendance

Judge Thelma L. Rodriguez

Nueces County

Justice of the Peace Pct. 2 Pl 2

Resources & Links

- www.tjctc.org
 - Juvenile Deskbook
 - Clerk Mentor Program
 - Q&A Board
 - Webinar Archive
 - Truancy Forms
 - Truancy Page
(www.tjctc.org/truancy)
 - Truancy Court Resource Manual
 - Flowcharts
 - Truancy Pre-Hearing
 - Truancy Court hearing
- <https://statutes.capitol.texas.gov/>
 - Family Code, Chapter 65
 - Education Code, Chapter 25



Does Attendance Really Matter??



Does Attendance Really Matter??

"I only miss a couple of days a week. Is that a big deal?"

Well.....

If you miss...	That equals...	Which is...	From PK-12 that is...
1 day every 2 wks	20 days in a year	4 wks per year	Nearly 1.5 years
1 day a week	40 days in a year	8 wks per year	Nearly 2.5 years
2 days per week	80 days in a year	16 wks per year	Nearly 5 years
3 days per week	120 days in a year	24 wks per year	Nearly 8 years

I'm just a few minutes late. Does it make that much difference?"

If you are tardy everyday...	In a week you miss...	In a month you miss...	In a semester (about 4 mo.) you miss...	In a school year you miss...	That's equal to...
1 min	5 min	20 min	80 min	160 min	.38 (Nearly half a day)
5 min	25 min	100 min	400 min	800 min	1.9 days
15 min	75 min	300 min	1,200 min	2,400 min	5.7 days
25 min	100 min	400 min	1,600 min	3,200 min	7.6 days
30 min	150 min	600 min	2,400 min	4,800 min	11.4 days
40 min	160 min	640 min	2,560 min	5,120 min	12.2 days

What Is Truant Conduct?

- A child (at least 12 not yet 19 years old)
- Required to attend school under *Education Code 25.085*
- Fails to attend school without excuse
- On 10 or more days or parts of days
- Within a 6-month period
- In the same school year





Role of the School

- School **must** apply truancy prevention measures if student misses 3 or more days in a 4-week period before the child reaches the 10th absence.
- Can be a behavior improvement plan or referral to counseling, mediation, mentoring, a teen court program, community-based services, or other in-school or out-of-school services aimed at addressing the truancy.

Sec. 25.0915, Education Code





Role of the School

- No filing on absences occurring at or after 19 years of age, however, after 3rd absences, now school **SHALL** issue warning letter that the child may be expelled if more than 5 absences.
 - School may use 'behavior improvement plan' instead of expelling
- *Sec. 25.085(b), (e), (g), & (h), Education Code*
- School truancy officer **CANNOT** take child into custody, even at parent's request
- *Sec. 25.091, Education Code*



Referral & Petition: When All Else Fails

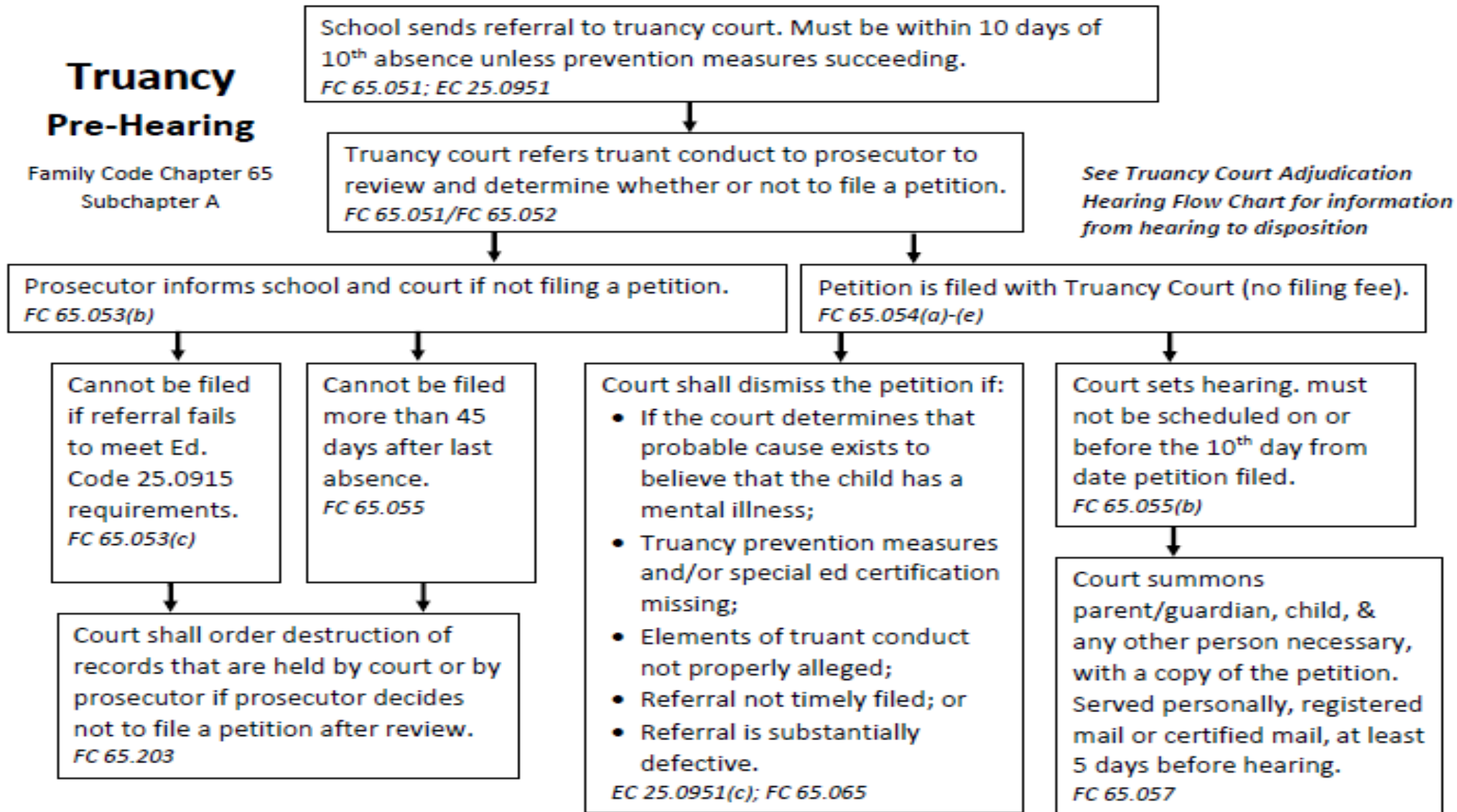


Process Overview

- Step 1: Referral from School to Court
- Step 2: Court Sends Referral to Prosecutor
- Step 3: Prosecutor Decides Whether to File Petition
- Step 4: Petition Review or Order of Record Destruction
- Step 5: Petition Dismissal or Issuance of Summons
- Step 6: Adjudication Hearing
- Step 7: Remedial Order & Enforcement

Truancy Pre-Hearing

Family Code Chapter 65
Subchapter A



Pre-Hearing Flow Chart

Referral for Truant Conduct

- **Step 1:** School sends referral to truancy court
- **Step 2:** Court may make a personal log of cases received
- **Step 3:** Court forwards the referral to truant conduct prosecutor (court may not dismiss yet)
- **Step 4:** Prosecutor will review the referral and determine whether or not to file a petition (no fee)
 - The prosecutor will inform the school and court if decides not to file a petition
 - A petition CANNOT be filed if the referral fails to meet 25.0915 requirements
 - A petition CANNOT be filed if received by court more than 45 days

Sec. 65.051, 65.052, 65.053, 65.055, Family Code

Exceptions to Truant Conduct

A school district **may not** refer a student for truant conduct if the truancy is a result of the student's:

- Pregnancy
- Severe or life-threatening illness/related treatment (new in 2021 Lege session)
- Homelessness
- Being the state foster care program
- Being the primary income earner for the student's family

Sec. 25.0915 (a-3), Education Code



DISCUSSION SCENARIO

- Jill is filed on for Truant Conduct. She is 3 months pregnant, and her absences do not relate to her pregnancy. Can the school refer her for truant conduct?

What Happens Next on the Child Cases

1

The referral packets are sent to the Truancy Prosecutor

2

Truancy Prosecutor has 45 Days to review the referral and file a petition

3

Petition is filed – issue summons and set for court

Petition not filed – Destroy all records

CAUSE NO. _____

IN THE MATTER OF

§ IN THE TRUANCY COURT

§

§

§

§

§

§

PRECINCT _____

_____ COUNTY, TEXAS

A CHILD

**TRANSMISSION OF REFERRAL
TO TRUANT CONDUCT PROSECUTOR**

The court transmits the attached Referral to the truant conduct prosecutor for _____
_____ County, Texas, under Family Code § 65.051.

In the event the truant conduct prosecutor chooses not to file a petition for adjudication of truant conduct based upon this referral, the court hereby **ORDERS** that the truant conduct prosecutor shall promptly notify the Truancy Court and the school district of their decision not to file a petition under Family Code § 65.053(b).

ISSUED AND SIGNED on _____, 20____.

JUSTICE OF THE PEACE, PRECINCT _____
_____ COUNTY, TEXAS |

Order Sent to the Truant Conduct Prosecutor

Record Destruction

- If the prosecutor elects not to file a petition, the truancy court **shall** order the destruction of records relating to allegations of truant conduct that are held by the court or by the prosecutor.
- *Sec. 65.203, Family Code*



Record Destruction Order

CAUSE NO. _____

IN THE MATTER OF

§
§
§
§
§
§
§

IN THE JUSTICE COURT

CHILD

PRECINCT _____

_____ COUNTY, TEXAS

ORDER TO DESTROY RECORDS

The court has transmitted the attached Referral to the truant conduct prosecutor for
_____ County, Texas, under Family Code § 65.051.

The court **ORDERS** all records relating to the allegations of truant conduct that are held by the court or the prosecutor to be destroyed under Family Code § 65.203.

ISSUED AND SIGNED on _____, 20____.

JUSTICE OF THE PEACE, PRECINCT _____
_____ COUNTY, TEXAS

Petition Alleging Truant Conduct

- Proceedings are styled “In the matter of _____, Child”, with the child being identified only by INITIALS.
 - **Note: Forms and court computer systems will contain the child’s full name. Only in the style of the case and docket listings does the court ONLY USE INITIALS.**
- No filing fee required! Petition (form available on TJCTC forms page) MUST contain:
 - **TIME, PLACE and MANNER of the acts leading to the petition**
 - **Child’s NAME, AGE and RESIDENCE ADDRESS**
 - **Name and Residence Address of the child’s parent/guardian and spouse (if any)**
 - **If no parent/guardian/custodian is known, name and residence address of closest relative residing in the county**
 - **If none in the county, nearest relative’s name and residence address**

Dismissing the Petition

- The court shall dismiss the petition filed by the truant conduct prosecutor if:
 - The truancy prevention measures and/or special education certification is missing
 - The elements of truant conduct are not properly alleged,
 - Referral is not timely filed, or
 - Referral is otherwise substantially defective



Confidentiality of Records

- Records/files created related to truancy cases may only be disclosed to:
 - Court, prosecutor and their staffs
 - The child and their attorney
 - Government agency, if required by law
 - Anyone the child is referred to for treatment, must enter written confidentiality agreement
 - Texas Justice and Juvenile Departments for statistics
 - Other party with legitimate interest after permission from the court

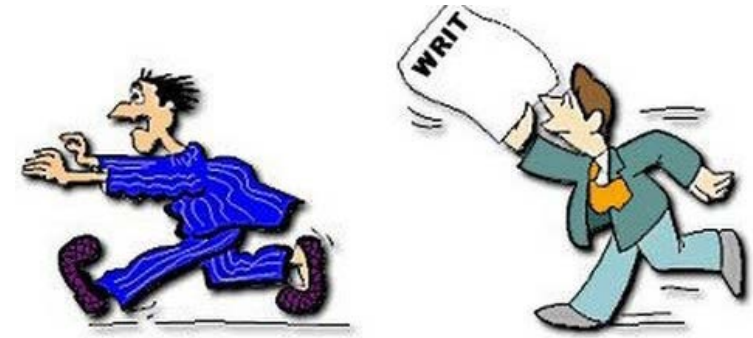
Sec. 65.202, Family Code

DISCUSSION SCENARIO

- A military recruiter wants access to Audrey's truancy records. Can they have them?

Summons

- Summons is sent to child, parent/guardian, any other person the court finds to be a proper/necessary party to appear
- Copy of the petition **must** be attached
- Non-child party can waive service in writing or by appearance at the hearing
- Court can endorse on the summons and order to the “person having physical custody or control of the child” to bring the child to court



Sec. 65.057, Family Code

Summons

- If the person who is the subject of the summons is in Texas and can be found, the summons must be served by:
 - **Personal delivery, or**
 - **Certified mail, return receipt requested**
- At least 5 days before the adjudication hearing
- Service may be by *'any suitable person.'*

Sec. 65.058, Family Code



Summons

- Can the summons be served on the student by school employees?
 - Yes!
- TJCTC recommends that the summons is **not** served by any school employee who may be providing evidence or testimony at the adjudication hearing (like an attendance officer).

Answer

- Child can answer anytime before the hearing – orally or in writing
- If they fail to answer, presume general denial

Sec. 65.060, Family Code

- The child answers “true” or “not true.”
- If they answer true, the court proceeds with the remedial order.
- If they answer not true, the court proceeds with the adjudication hearing.

Waiver of Rights

- Only way a child can waive any rights in truancy court is if it is a right that may be waived,
- Waiver in writing signed by the child,
- The parent/guardian is informed about the right, told the child doesn't have to waive and also signs the waiver (any attorney must sign too)



Sec. 65.008, Family Code

DISCUSSION SCENARIO

- The law requires that the student is served at least 5 days before the adjudication hearing.
- Billy shows up for his adjudication hearing and was served 3 days earlier. Or has not been served a summons at all (his parent was served, and was told to bring Billy to court).
- Now what?

Waiver of the 5-day period

- A “party, **other than the child**, may waive service of summons by written stipulation or by voluntary appearance to the hearing.”
- If a child appears for an adjudication hearing without having been served at least 5 days earlier, the child could be served with the summons personally at that time and sign a waiver of the five-day waiting period after the court complies with Section 65.008.
- All the child is waiving is the five-day waiting period.



CAUSE NO. _____

IN THE MATTER OF

§ IN THE TRUANCY COURT

§

§

§

PRECINCT ____

§

§

§

____ COUNTY, TEXAS

A CHILD

WAIVER OF FIVE-DAY WAITING PERIOD

I, _____, waive my right to have my case heard at least five days from the date the summons was personally served on me under Family Code § 65.058. This waiver is made under Family Code § 65.008.

I and my ☐ parent ☐ guardian have been informed of my right to have the adjudication hearing at least five days from today, understand that right, understand the consequences of waiving that right, and understand that I am not required to waive that right.

I give the court permission to have my adjudication hearing today, _____,
20____ at _____. m.

Respondent Date

Respondent's Parent/Guardian Date

Respondent's Attorney, if any Date



5-Day Waiver

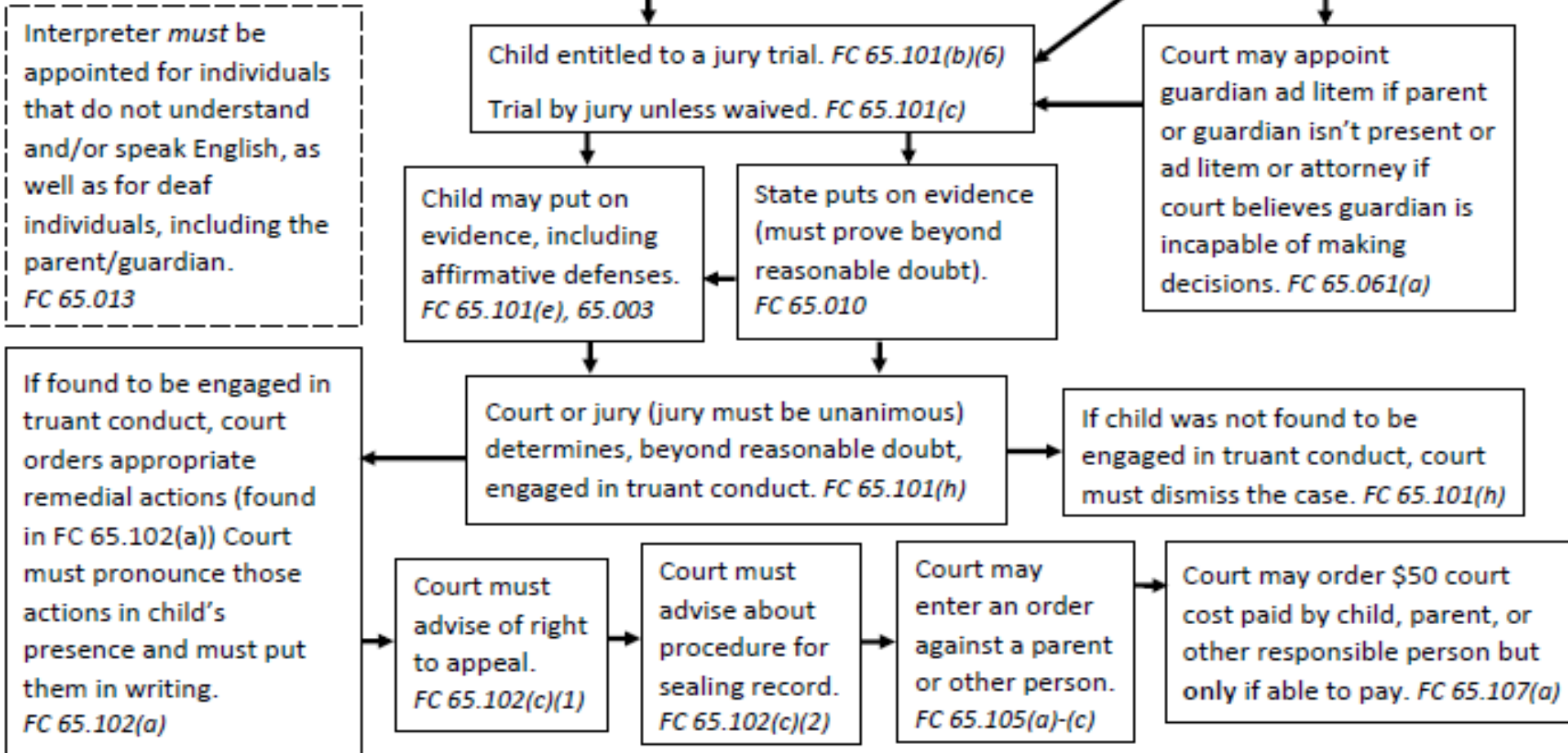
Example of How WE do it!

- Must be served in person at least 5 days prior to court – preferably an on-campus officer or other school official that will not be in court.
- Parent will be mailed a notice of the child's court hearing as well.
- If child is not served and appears to court – may sign a waiver of service and handed their summons. If they refuse to sign the waiver – hand them a summons for a new court date.
- If unable to locate (UTL) – complaint will be sent to ADA for possible dismissal (unless good cause)



Truancy Adjudication Hearing

Family Code Chapter 65
Subchapter A



Adjudication Hearing: Timeframe

- The adjudication hearing may not be scheduled on or before the 10th day from the filing of the petition
Sec. 65.056, Family Code
- So if the petition is filed on Friday, October 4th, what is the first day that the court could hold the adjudication hearing?

Adjudication Hearing: Venue & Jury

- Venue is the county where school is located or child lives
Sec. 65.006, Family Code
- **Must** be a jury trial unless the child waives a jury trial in writing as provided in Sec. 65.008. **There is no fee for a jury trial.** The jury has 6 members, and the verdict must be unanimous.

Sec. 65.007, 65.101(c), Family Code

Adjudication Hearing: Interpreters & Witnesses

- Interpreter appointment for individuals who are hard of hearing or non-English speakers should follow the CCP guidelines (see CCP 38.30 and 38.31). Parents are entitled to an interpreter in truancy court proceedings.

Sec. 65.013, Family Code

- Truancy court is open court, but the court can sequester a witness if necessary to protect the integrity of testimony.
- Court may also exclude the public for good cause shown.
- The proceedings **may not** be recorded.

Sec. 65.015, 65.016, Family Code

Adjudication Hearing: Attorneys & Guardians

- Child may have, but is not entitled to an attorney
- The court may appoint one if in the best interest of the child.
- Guardian ad litem can be appointed if court believes it is in the best interest – even if parent is present, if the parent/custodian is unable/unwilling to make decision in the best interest of the child.
- Attorney can also be the guardian ad litem
- May order full or partial payment for the attorney and or guardian if determined the parents/guardian has the means to do so

Sec. 65.059, 65.061 Family Code

Adjudication Hearing: Presence of Parent & Child

- Child **MUST** be present at adjudication hearing
- Parent/guardian **MUST** be present at adjudication hearing,
UNLESS:
 - They are excused for good cause shown,
 - They are NOT a resident of the state, or
 - There has been a managing conservator appointed and it is not the parent
- Court MAY proceed with hearing without any summoned person
OTHER THAN THE CHILD!

Sec. 65.057, 65.062, Family Code

DISCUSSION SCENARIO

- What if the parent is there, but the child is not, what are the court's options?
- What if the parent says they tried to get the child to come, but the child physically resisted?
- What if no one is there?

Excuses, Excuses, Excuses

#1 Excuse: “I can’t go to court because I have to work!”

- Parent cannot be fired for attending a truancy hearing as required by Sec. 65.062
- Must be reinstated at your position, if you are terminated.
- Can sue for damages of up to 6 times monthly salary and reasonable attorney fees
- Employer’s affirmative defense can be that termination was for another reason.

Sec. 65.063, Family Code

Adjudication Hearing: Explanation of Rights

- At the 'adjudication hearing', the truancy court must explain to the child and parent/guardian:
 - *The allegations made against the child;*
 - *The nature and possible consequences of the proceedings;*
 - *The child's privilege against self-incrimination (does not have to testify);*
 - *The child's right to trial and to confrontation of witnesses;*
 - *The child's right to representation by an attorney if the child is not already represented; and*
 - *The child's right to a jury trial.*

Rights Info Sheet Available on TJCTC Website

TRUANT CONDUCT RIGHTS INFORMATION SHEET

- You have the right to answer “not true” to the statements against you. The truant conduct prosecutor (“Petitioner”) will be required to prove the truant conduct beyond a reasonable doubt.
- You have the right to claim an affirmative defense to truant conduct but are not required to. It is an affirmative defense to truant conduct that one or more of the absences required to be proved have been excused by a school official or by the court; were involuntary; or were due to your voluntary absence from the child’s home because of abuse.
- You have a right to file a motion for this case to be dismissed if you have a mental illness.
- You have the right to a trial by jury, and you may not be charged a fee for exercising that right. If you have a trial by jury, the jury must be unanimous in order to find that you engaged in truant conduct.
- You have the right to an interpreter if you are hearing-impaired or if you do not speak the English language.
- You have a right to question the witnesses against you.
- You have the right not to testify (*speak*) against yourself in this case.
- You have the right to be represented by an attorney. You may hire an attorney. Note that this does not mean you are entitled to have an attorney appointed, but the court may appoint one in the interest of justice.
- You have the right to appeal the court’s decision in this case. You will have 21 days from the date of judgment to appeal.
- You have the right to have the records in this case sealed when you turn 18, if you comply with the court’s orders in the case. If the records are sealed, they may not be released or used against you in any way.

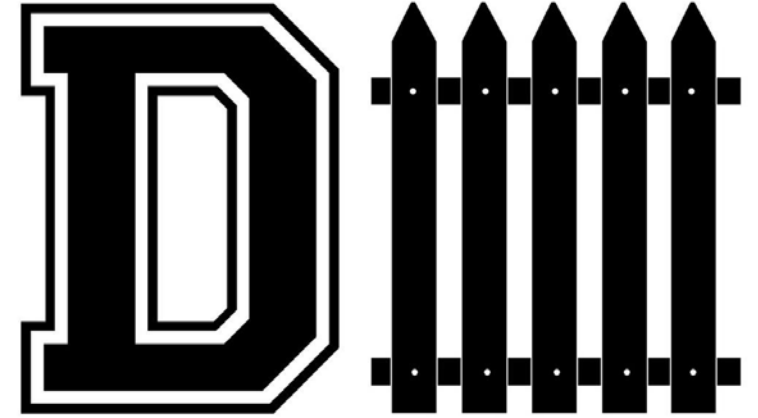
Adjudication Hearing: Mental Illness Issues

- If motion over whether the child is mentally ill is filed, the court shall stay the case and determine if probable cause that the child does have mental illness
- Evidence and testimony may be considered and the judge may observe the child him/herself
- If no mental illness determine – **MOVE FORWARD**
- If he/she is mentally ill as defined by Health & Safety Code 571.003 – **DISMISS THE CASE!**

Sec. 65.065, Family Code

Adjudication Hearing: Affirmative Defense

- One or more of the absences were:
 - excused by a school official or by the court
 - Involuntary; OR
 - Due to voluntary absence from home due to abuse (new in 2021)
- And without those absences, there are not enough absences left for truant conduct
- Child has burden of proof that the absence(s) should be excused



DISCUSSION SCENARIO

Which of the following situations would you count as absences:

- Johnny is 20 minutes late to his English class 3 times a week, for a total of 15 tardies. The class is normally 55 minutes long.
- Shelley misses three days of school for jury duty.
- Norah misses a day of school to get her driver's license.
- Harry misses three days of school because his family won a free trip to Disney World.

Adjudication Hearing: Judgment

- If the child is found to have engaged in truant conduct beyond a reasonable doubt, the judge shall issue a judgment adjudicating that the truant conduct occurred and create a remedial order, aimed at solving whatever situation is causing the child to not attend school.
- If the child is found not to have engaged in truant conduct, the case is dismissed with prejudice.

Sec. 65.101, Family Code

New Trial & Appeal

- Motion for new trial may be filed as in civil cases, Rule 505.3(c) and (e) apply.
 - 14 days to file, overruled if not ruled on 21 days from judgment
- Appeal is de novo to juvenile court and Rule 506 applies, except that no bond is required.
 - 21 days to file from later of judgment date or overruling of motion for new trial.

Sec. 65.109, Family Code

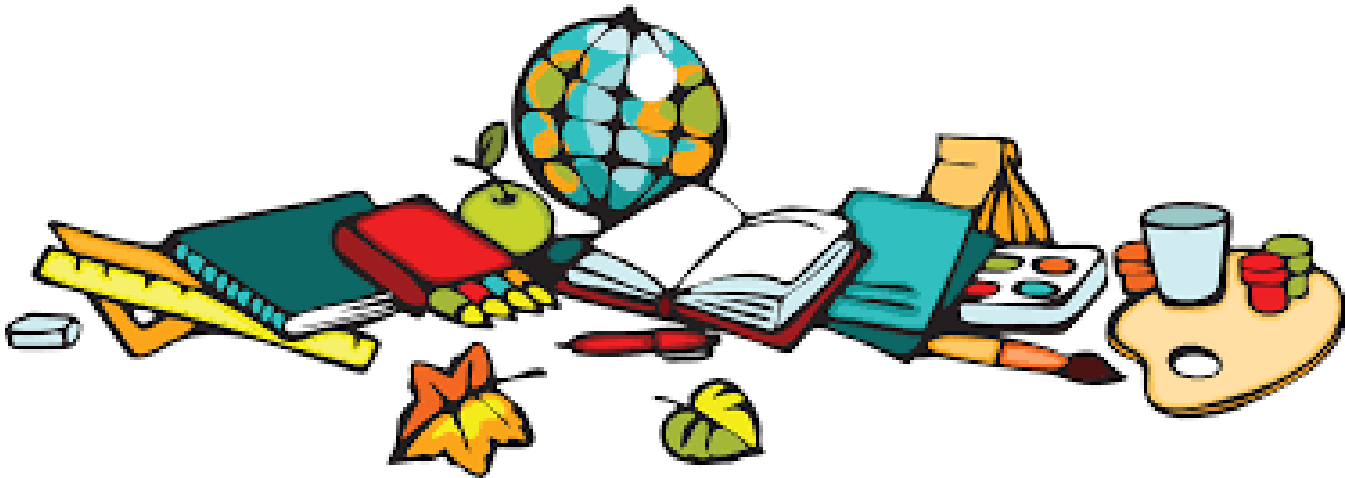
Sec. 65.151 – 65.153, Family Code

Remedial Order

- The court, **not the jury**, determines the appropriate remedial actions that the child must take
- The court **must** pronounce those actions in the child's presence, along with the child's right to appeal, and the procedure for the sealing of the records.
- This order **must** also be reduced to writing and furnished to the child and their parent/guardian

Sec. 65.102, Family Code

School Recommendations (OPTIONAL)



Remedial Orders



See Sec. 65.103 for Details
Attendance at School
Community Service
Counseling Programs
Other Programs Necessary

DL Suspension
GED
Tutorials
Summer School
Drug/Alcohol Rehab



Remedial Order

- Order length is 180 days after order date or last day of school year; which is later

Sec. 65.104, Family Code

- May **not** order:
 - Child to attend a juvenile justice alternative education program, a boot camp, or a for-profit truancy class; or
 - Child to perform more than 16 hours of community service per week.

Sec. 65.103(c), Family Code

Court Costs

- Court may, after a hearing, order child, parent, or other person responsible for the child, **if financially able**, to pay a court cost of \$50
- Must be in a written order and signed by the court
 - *(often in the remedial order)*
- Clerk must keep a written record and forward to the treasurer, as appropriate *(usually in your computer system)*
- Costs placed in a special account used only to offset the costs of truancy court

Sec. 65.107, Family Code

DISCUSSION SCENARIO

- Stevie can't afford the \$50 court cost. Can the court order him to do community service to work off the court cost?

Other Orders

- Sec. 65.105 allows the court to impose orders on parents or other individuals, but any person is entitled to a hearing before being subject to an order.
- These orders can include:
 - A class for students at risk of dropping out of school that is designed for both the child and the child's parent;
 - Any person contributing to the truancy to take any action or stop any action in order to improve the child's attendance;
 - Class to help a parent understand causes and solutions of truancy;
 - Parent to pay costs of necessary programs, if financially able;
 - Parent to perform up to 50 hours of community service with the child.

Remedial Order Activity

- Each table will receive a sample student, along with blank remedial order forms. Take 10 minutes to come up with a sample remedial order that you find would be effective for your sample student. Nominate a spokesperson who will share your order with the group.

Hearing to Modify Remedies

- Can be requested by any party or the court
- Some examples:
 - When a child needs more time to complete community service hours
 - When a child continues having unexcused absences – the judge can modify the order to take the GED, if eligible
 - If a child is passing and no longer requires tutorials

*******VERY IMPORTANT*******

CANNOT modify a remedial order if the order has expired! May only modify during period that order is effective

Hearing to Modify Remedies

- Must send reasonable notice to all parties
- No right to a jury at the hearing
- May consider written report of school, juvenile case manager, or professional consultant
- Must pronounce changes in court and put changes and reasons for changes in written order

Sec. 65.108 Family Code

Sealed Records

- When turning 18, child can move to have records held by the court, prosecutor and school district sealed
- If child has complied with the remedial order, the record shall be sealed
- Application must include the following (or explanation why they are missing):
 - Child's full name
 - Age
 - Sex
 - Race/ethnicity
 - DL/ID #
 - SSN

Sec. 65.201, Family Code

Sealed Records

- Within 30 days, all index references to the sealed records should be deleted and the response by a truancy court, clerk or prosecutor to a records request relating to a sealed record should be that “*no record exists with respect to the child*”
- The sealed records may only be reviewed by order of the truancy court and only the child or other person designated in the order can review the sealed records
- Sealed records should be destroyed when the child turns 21.

Contempt by Child

- What can happen if a child continues to have absences or disobeys other orders?
- Bring Back to Court – Contempt Hearing (school does not have to be present)
- \$100 Fine
- DL Suspension
- Send to Juvenile Justice Center (after 2nd contempt)



Contempt by Others

- Parent/others can be held in contempt for failing to follow orders, including failure to pay for attorney, court cost, etc.
- Notice and right to be heard, order in writing
- Fine \$100 for disobedience of orders
- \$100 fine, up to 3 days in jail and/or up to 40 hours of community service for direct contempt
- May require them to provide ID for file

Sec. 65.253, Family Code

- Can be brought to court via writ of attachment

Sec. 65.254, Family Code



.... THANK YOU