

Truancy Scenarios

“Failure to Attend School”

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Resources & Links

- www.tjctc.org
 - Juvenile Deskbook
 - Legal Question Board
 - Webinars/Recordings for Credit
 - Truancy Forms
 - Truancy Page
(www.tjctc.org/truancy)
 - Truancy Court Resource Manual
- Flowcharts
 - Truancy Pre-Hearing Chart
 - Truancy Adjudication Chart
- <https://statutes.capitol.texas.gov/>
- Family Code, Chapter 65
- Education Code, Chapter 25

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QR CODE



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What Are We Covering Today?

- Why we do Truancy
- How we do Truancy
- Best Practices
- Scenarios

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Why do Truancy?

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It Matters!

Student that don't graduate from High School are 70% more likely to:

- Be unemployed or underemployed, earning less than \$13,000 per year
- Be addicted to drugs and/or alcohol
- Be in the criminal justice system repeatedly, if not permanently
- Have mental health barriers preventing them from being happy, healthy and productive

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Missing days adds up!

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

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Overview of Truant Conduct and Exceptions

Overview

- A child (age 12 thru 19th birthday)
- Required to attend school (some exemptions)
- 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

- **Exceptions** - 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 or related treatment,
 - Homelessness,
 - Being the state foster care program,
 - Being the primary income earner for the student's family.
- *Sec. 25.0915 (a-3), Education Code*

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Process Overview

Step 1: Referral from School to Court (within County)

Step 2: Court Sends Referral to Prosecutor

Step 3: Prosecutor Decides Whether to File Petition

Step 4: Prosecutor either Files **or** orders Destruction (w/in 45 days)

Step 5: Court sends Dismissal or sends summons with required hearing notice forms

Step 6: Adjudication Hearing

Step 7: Remedial Order & Enforcement (including potential Show Cause hearing)

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It All Starts With the School Campus

- 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.

Sec. 25.0915, Education Code



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Referral & Petition: When All Else Fails

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You Gonna Take on Truancy?

- Must identify Truancy Team/Stakeholders
- Must gain commitment from all Team Players/Stakeholders
- Must work together to develop guidelines/responsibilities
- Must have a Team meeting prior to first filings to refine guidelines and ensure commitment from entire Team

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Discussion Scenario – Truancy?

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?



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Yes! Refer it to Prosecutor.

- Campus Measures? Yes?
- Referral form and Packet sent from school to DA
- Good things to have Truancy Officer include/bring to court
- TJCTC <https://www.tjctc.org/tjctc-resources/forms.html>

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Summons Specifics



- 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
- 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.’

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Summons service by school employee

- 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).
- ***Family Code Sec. 65.058***

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Appearance Suggestion

- Send courtesy letter with summons through regular mail.

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Unable To Locate Child

- If unable to locate – complaint will be sent to ADA for possible dismissal, unless good cause is shown



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Answer

- Child can answer anytime before the hearing – orally or in writing
- If they fail to answer, presume general denial
- The child answers “true” or “not true.”
 - If answer true, the court proceeds with the remedial order. they
 - If they answer not true, the court proceeds with the adjudication hearing.

Sec. 65.060, Family Code



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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,
 - If a child appears 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.
- The parent/guardian is informed about the right, told the child does not have to waive and also signs the waiver (any attorney must sign too)
 - A “party, other than the child, may waive service of summons by written stipulation or by voluntary appearance to the hearing.”
- TJCTC 5-Day Waiver Form: <https://www.tjctc.org/tjctc-resources/forms.html>

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Scenario - Service

- 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?

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Jury & Interpreters

Jury - 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

Interpreters - 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.

See TJCTC's module on Interpreters for more information!

Sec. 65.013, Family Code

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Witness

Witnesses - 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

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What If Child Fails To Appear?

- Send summons to parent or guardian to bring child to court
- Issue Writ of Attachment for parent or guardian
- Possible contempt of parent of guardian
- As a last resort, issue Writ of Attachment to child

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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

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Discussion Scenario - Records

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

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Sealed Records – Request

- 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
 - Race/ethnicity
 - DL/ID #
 - SSN
 - Age
 - Sex

Sec. 65.201, Family Code

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Sealed Records –Procedure

Procedure

- 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.

Sec. 65.201, Family Code

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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

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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

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Discussion Scenario –Appearance

- 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?

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Discussion Scenario—Absences?

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.

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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

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Going From “True” to Remedial Order

- The child appears and answers true.
- What are some good questions that the court can ask of the student and family in order to develop an effective remedial order?
- Blank remedial order on P. 21 of QR code
- Order with notes on P. 22 of QR code

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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***
- Order length is 180 days after order date or last day of school year; which is later
- ***Sec. 65.104, Family Code***

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Remedial Order Options

- Attendance tracker for 30 days
- Community service at a court-approved agency
- Weekly tutoring/credit recovery for 1 month
- Family and individual counseling
- Drug counseling
- ***Orientation*** for a boot camp
- Enrollment and completion of a GED program
- Order for parent to attend school with student
- Order to parent to ensure student complies with order
- Proof of graduation plan from counselor with amount of credits
- Proof of enrollment in school or any educational program
- Proof of enrollment and completion of summer school

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Prohibited in Remedial Orders

- 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

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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.

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Orders to Parent Scenario

- What if a parent tells you “I’m too busy to care for this kid and I’m not going to make him go to school he doesn’t listen to me anyway”?
- What orders should be entered?

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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

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Discussion Scenario --Costs

- Stevie cannot afford the \$50 court cost.

Can the court order him to do community service to work off the court cost?

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Hearing to Modify Remedies - Why

- 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.

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Hearing to Modify Remedies - How

- Can be requested by any party or the court
- 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***



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Contempt By Child & Others



- 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)

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Contempt By Child & 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***



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Remedial Order Activity

- Look at Scenario Handout and Blank Remedial Order
- Confirm what scenario you are assigned
- Discuss with table about what you would order and fill out order
- Nominate table spokesperson to share answer

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SCENARIO 1

- Tina is a 16-year-old student. She has missed 16 days and says the main reason that she is missing is that she has a three-month-old child at home, and so she isn't getting as much sleep and sometimes the baby is sick.

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SCENARIO 2

- Audrey is a 14-year-old student. She has missed her first two classes 12 and 15 times and says that she is having an impossible time falling asleep and can't get up in the morning. Her mom is a single parent and must be at work at 7 AM, and so is unable to ensure Audrey is awake before leaving for work.

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SCENARIO 3

- Billy is a 17-year-old student. He is in 10th grade, and has stopped going to school, because he feels like it's a waste of time because he's almost 18 and still two years from graduation. He says he doesn't want to do the GED because "tests suck."

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SCENARIO 4

- Amara is a 15-year-old student. She has stopped going to school because she says she is suffering from depression and anxiety, largely triggered by relentless bullying at school. She says she has suicidal ideation whenever she goes to school, and there is nowhere to hide from the bullying.

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SCENARIO 5

- Trina is a 16-year-old student. She has missed 18 days. Her parents are often too hungover to take her to school the next day and tell her school is a stupid waste of time and that she should just get a job and start working. She has a mild disability that prevents her from walking the 4 miles to school, and buses aren't available.

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SCENARIO 6

- Alishia is a 12-year-old student. She has missed large chunks of 14 days. She has a friend group that often decides to leave school during the day and go hang out at one of their houses. On a couple of occasions, they have consumed alcohol and/or marijuana at these meetups.

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SCENARIO 7

- Lisa testifies that she has stopped going to school because she is embarrassed about how she performs in class and that she is facing bullying about her performance. What conditions could be placed in a remedial order to address these issues? Anything else the court wants to know?

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Collaborative Scenarios

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SCENARIO 1

- Your school district drags their feet on filing cases, often filing cases in April or May on students who have 20, 30, or more absences. They say they are applying truancy prevention measures, so they can wait to file the cases, but you are unaware of any actual measures.
- Can they wait to file? What could possibly be done to resolve this issue?

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SCENARIO 2

- Your constable is inundated with civil paperwork, and doesn't have the budget to add another deputy. Can the court have a school employee serve the summons on a student at school? If so, what are pros and cons of this approach?

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SCENARIO 3

- Billy and his dad show up for the adjudication hearing. The summons was served 3 days before the hearing. What are the court's options to go forward?

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SCENARIO 4

- Jesse is 14 and shows up for the adjudication hearing without a parent. They state that their dad lives in Kansas, and their mom works 8-6 M-F and can't take off or they won't be able to pay bills. What are the court's options to go forward?

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Wrap-up & problem solving

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BIGGEST CURRENT PROBLEM?

- Discuss at your table the biggest current problem your court faces in handling Truant Conduct cases.
- Share your problem with the large group to see if a solution can be found!

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WHAT IF YOU LACK RESOURCES?

- Discuss at your table the biggest current problem your court faces in handling Truant Conduct cases.
- Share your problem with the large group to see if a solution can be found!

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Questions?

Thank you!

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