

Truant Conduct

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Funded By A Grant From The Texas Court Of Criminal Appeals

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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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Does Attendance Really Matter?

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It Matters!

If you miss:	That equals:	Which is:	From PK-12, that is:
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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Tardiness Matters Too!

Tardy:	In 1 Month:	In 1 Year:	That's Equal To:
1 minute	20 minutes	160 minutes	.38 (Nearly half a day)
5 minutes	100 minutes	800 minutes	1.9 days
15 minutes	300 minutes	2,400 minutes	5.7 days
25 minutes	400 minutes	3,200 minutes	7.6 days
30 minutes	600 minutes	4,800 minutes	11.4 days
40 minutes	640 minutes	5,120 minutes	12.2 days

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What Are We Covering Today?

- What is Truant Conduct
- Process for Adjudication
- Remedial Orders

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What Is Truant Conduct

- A child (age 12-18)
- Required to attend school
- 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

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Kids Exempt From Attending School (1 of 2)

- Attends private or parochial school,
- Eligible for special education program and cannot be served by school district,
- Temporary physical or mental condition that makes attendance not feasible (certificate required),
- Expelled,

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Kids Exempt From Attending School (2 of 2)

- 16 or older and attending GED program or other high school diploma program with specifics (see page 43 -44 of Juvenile Deskbook),
- Attends certain Texas Academies,
- Exempt under another law.

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Does Tardiness Count?

- Depends – Fact Specific
 - Usually no
 - Except for egregious circumstances

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Remember:

- Truancy is a civil matter (i.e. not criminal)
- Purpose of the law is to encourage school attendance
- Best Interest of the Child is the Primary Consideration

Family Code 65.003 and 65.001

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Role Of The School (1 of 4)

- 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.

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Role Of The School (2 of 4)

- 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

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Role Of The School (3 of 4)

- No filing on absences occurring at or after 19 years of age, however, after 3rd absence, 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

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Role Of The School (4 of 4)

- School truancy officer cannot take child into custody, even at parent's request

Sec. 25.091, Education Code

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Handout 1

- Truancy Pre-Hearing Chart:
<https://www.tjctc.org/tjctc-resources/charts-and-checklists.html>

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Referral & Petition: When All Else Fails

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Venue

- Correct venue is the county where school is located, or child lives
 - Not precinct specific!
- Sec. 65.006, Family Code*

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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: Court Reviews Petitions or Issues Order of Record Destruction
- Step 5: Petition Dismissal or Issuance of Summons
- Step 6: Adjudication Hearing
- Step 7: Remedial Order & Enforcement

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Referral For Truant Conduct (1 of 2)

- School sends referral to truancy court
- Court may make a personal log of cases received
- Court forwards the referral to truant conduct prosecutor (court may not dismiss yet)

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Referral For Truant Conduct (2 of 2)

- Prosecutor will review the referral and determine whether or not to file a petition (no filing 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 Edu. Code 25.0915 requirements
 - A petition **cannot** be filed if received by court more than 45 days after date of last absence

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

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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 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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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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What Happens Next On The Child Cases

The referral packets are sent to the Truancy Prosecutor

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Prosecutor's Decision

- Truancy Prosecutor then has 45 Days to review the referral and file a petition
- If prosecutor files petition, the court issues summons and set a court date

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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

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Petition (1 of 3)

- 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.

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Petition (2 of 3)

- No filing fee required! Petition **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)

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Petition (3 of 3)

- 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

Sec. 65.054, Family Code

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Dismissing the Petition (1 of 2)

- 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,

Sec. 25.0951(c), Education Code

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Dismissing the Petition (2 of 2)

- The court shall dismiss the petition filed by the truant conduct prosecutor if:
 - Referral is not timely filed, or
 - Referral is otherwise substantially defective

Sec. 25.0951(c), Education Code

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If Not Dismissed, Set Hearing, & Issue 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

Sec. 65.056 and 65.057, Family Code

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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, April 8th, what is the first day that the court could hold the adjudication hearing?

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Summons Specifics (1 of 3)

- 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

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Summons Specifics (2 of 3)

- 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.'

Family Code Sec. 65.058

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Summons Specifics (3 of 3)

- 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).

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Appearance Suggestion

- Send courtesy letter with summons through regular mail.

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Answer (1 of 2)

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

Sec. 65.060, Family Code

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Answer (2 of 2)

- 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.

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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,
- 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)

Sec. 65.008, Family Code

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Waiver Of The 5-day—Other Party

- A party, other than the child, may waive service of summons by written stipulation or by voluntary appearance to the hearing.”

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Waiver Of The 5-day Period—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.

****All the child is waiving is the five-day waiting period.**

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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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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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Handout 2

- Truancy Adjudication Hearing Chart:
<https://www.tjctc.org/tjctc-resources/charts-and-checklists.html>

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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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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

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Interpreters

- If the court determines that the child, the child's parent or guardian, or a witness does not understand and speak English, an interpreter must be sworn to interpret for that person.
- Any party may move for the appointment of an interpreter, or the court may do so on its own motion. Family Code § 65.013(a). The appointment and payment of the interpreter is done as described in Art. 38.30, Code of Criminal Procedure
Sec. 65.013, Family Code

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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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Attorneys & Guardians (1 of 2)

- 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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Attorneys & Guardians (2 of 2)

- 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

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Presence of Parent & Child (1 of 2)

- 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

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Presence of Parent & Child (2 of 2)

- 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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Excuses, Excuses, Excuses (1 of 2)

#1 Excuse: "I cannot 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.

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Excuses, Excuses, Excuses (2 of 2)

- 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

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Explanation of Rights (1 of 2)

- 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;

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Explanation of Rights (2 of 2)

- 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.

Sec. 65.101, Family Code

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Mental Illness Issues (1 of 2)

- 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

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Mental Illness Issues (2 of 2)

- If no mental illness determine – move forward
- If child has mentally ill as defined by *Health & Safety Code 571.003*
 - Dismiss the Case!

Sec. 65.065, Family Code

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Mental Illness Defined as:

“An illness, disease, or condition, other than epilepsy, dementia, substance abuse, or intellectual disability, that: (A) substantially impairs a person’s thought, perception of reality, emotional process, or judgment; or (B) grossly impairs behavior as demonstrated by recent disturbed behavior.”

Health & Safety Code 571.003

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Affirmative Defense (1 of 2)

- One or more of the absences were:
 - excused by a school official or by the court
 - Were Involuntary; **or**
 - Due to voluntary absence from home due to abuse

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Affirmative Defense (2 of 2)

- And without those absences, there are not enough absences left for truant conduct –Need 10
- Child has burden of proof that the absence(s) should be excused (preponderance of the evidence).

Sec. 65.003(c), (d), Family Code

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These Shall Be Excused:

- Observing religious holy days,
- Attending required court appearance,
- Appearing at govt office to complete citizenship paperwork,
- Naturalization oath ceremony,
- Serving as an election clerk, or
- If student is in conservatorship of Dept. of Family and Protective Services

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Court’s Excusal Power

- You have the power!
- Court may excuse absence for any reason the court feels is sufficient justification.
- Does not change the excused status with the school though.

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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 (1 of 2)

- 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.

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Judgment (2 of 2)

- 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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New Trial & Appeal (1 of 2)

- 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

Sec. 65.109, Family Code

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New Trial & Appeal (2 of 2)

- 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. 65.151 – 65.153, Family Code

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Remedial Order (1 of 3)

- 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.

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Remedial Order (2 of 3)

- This order must also be reduced to writing and furnished to the child and their parent/guardian

Sec. 65.102, Family Code

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Remedial Order (3 of 3)

- 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 (1 of 2)

- Attend School without unexcused absences
- Attend high school equivalency exam prep class if individual is unlikely to do well in formal classroom due to individual's age
- If age 16 or older, take high school equivalency exam (cannot order to pass it though)

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Remedial Order Options (2 of 2)

- Attend nonprofit, community based special program
- 50 hours or less of community service, and
- Tutorial program participation
- Order DPS to suspend or deny driver's license.

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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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Court Costs (1 of 2)

- 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)

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Court Costs (2 of 2)

- 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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Other Orders (1 of 2)

- 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;

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Other Orders (2 of 2)

- 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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Hearing to Modify Remedies (1 of 3)

- 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

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Hearing to Modify Remedies (2 of 3)

*****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 (3 of 3)

- 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 (1 of 2)

- 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 Probation Dept.(after 2nd contempt)

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Contempt By Child (2 of 2)

- Court **may not** confine a child in jail for failing to obey a remedial order!!!

Family Code 65.251(e)

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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 up to \$100

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Direct Contempt By Others

- Fine up to \$100,
- Up to 3 days in jail, and/or
- Up to 40 hours of community service

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Confidentiality of Records (1 of 2)

- 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

Sec. 65.202, Family Code

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Confidentiality of Records (2 of 2)

- Records/files created related to truancy cases may only be disclosed to:
 - 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 (1 of 4)

- 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

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Sealed Records (2 of 4)

Application must include the following (or explanation why they are missing):

- Child's full name
- Race/ethnicity
- Age
- DL/ID #
- Sex
- SSN

Sec. 65.201, Family Code

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Sealed Records (3 of 4)

- 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"

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Sealed Records (4 of 4)

- 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

Sec. 65.201, Family Code

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Destruction of Records

When the child turns 21:

- On defendant or court's own motion,
- Court may order destruction of sealed records,
- If child has not been convicted of a felony.

Sec. 65.201, Family Code

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Scenario Talk! (If Time Allows)

- See Handouts 3 and 4
 - Handout 3 = Remedial Order Form
 - Handout 4 = List of Scenarios
- Work with others near you to decide what to order
- Get ready to share answers

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