

# Texas Truancy

**John Lackey  
Staff Attorney  
Texas Justice Court Training Center**

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Address inquiries to:  
Permissions  
Texas Justice Court Training Center  
1701 Directors Blvd. Suite 530  
Austin, TX, 78744

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# Resources:

## [www.tjctc.org](http://www.tjctc.org) (TJCTC website)

- Deskbooks, especially the Juvenile Deskbook for this class.
- Legal question board, charts, forms, webinars, modules, etc.

## [www.txcourts.gov](http://www.txcourts.gov)

- Texas Rules of Civil Procedure (TRCP)
- Texas Rules of Evidence (TRE)

## [statutes.capitol.texas.gov](http://statutes.capitol.texas.gov)

- Texas Constitution and Statutes

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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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# 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 (physician certificate required),
- Expelled in a school district with no mandatory alter. Edu. program,

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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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## Role Of The School (1 of 2)

- School **must** apply truancy prevention measures if student misses 3 or more days (or parts of days) in a 4-week period before the child reaches the 10<sup>th</sup> absence.

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## Role Of The School (2 of 2)

- 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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# Exceptions to Truant Conduct (1 of 2)

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

- Pregnancy,
- Being in the state foster program

*Sec. 25.0915 (a-3), Education Code*

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# Exceptions to Truant Conduct (2 of 2)

- Homelessness,
- Severe or life-threatening illness or related treatment, or
- Being the principal income earner for the student's family.

*Sec. 25.0915 (a-3), Education Code*

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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 the 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 3)

- School must file referral within 10 school days of the student's 10<sup>th</sup> absence
  - Unless delayed because school applied the truancy prevention measures, thought they were succeeding, and thought it was in child's best interest to delay

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## Referral For Truant Conduct (2 of 3)

- When school referrals are received, the court may make a personal log of the cases
- Court forwards the referral to truant conduct prosecutor (court may not dismiss yet)

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## Referral For Truant Conduct (3 of 3)

- 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 (remedial measures/exceptions statute)
  - A petition **cannot** be filed if received by court more than 45 days after date of last absence

Sec. 65.051—65.055, *Family Code*

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# Prosecutor's Decision

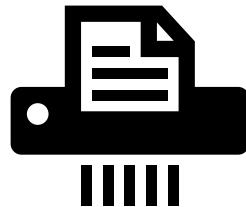
- Truancy Prosecutor then has 45 days to review the referral and file a petition
- If prosecutor files petition, the court issues summons and sets a court date

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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)

- No filing fee.
- 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)

- Petition **must** contain:
  - Time, Place, and Manner of the acts alleged to constitute truant conduct
  - Child’s Name, Age, and Residence Address, if known
  - Names and Residence Addresses of at least one 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 or they cannot be found in the state, 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 case if:
  - The truancy prevention measures and/or special education certification is missing
  - The elements of truant conduct are not properly alleged,



*Sec. 25.0915 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 properly delayed), or
  - Referral is otherwise substantially defective
- *Sec. 25.0915 Education Code*



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## If Not Dismissed, Set Hearing, & Issue Summons



- Summons is sent to child, parent/guardian, and 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 10<sup>th</sup> day from the filing of the petition

*Sec. 65.056, Family Code*

- So, if the petition is filed on Friday, April 17<sup>th</sup>, what is the first day that the court could hold the adjudication hearing?

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## Summons Specifics (1 of 3)

- Court should summon child, parent/guardian, and guardian ad litem if any, as well as anyone else proper or necessary
- 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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# 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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# 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 or guardian
- As a last resort, issue Writ of Attachment to child
  - **Under no circumstances** may the child be held in a place of non-secure custody under Art. 45A.453 of the Code of Criminal Procedure.

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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 parent/guardian to pay 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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## 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(b)
- Must be reinstated at their position, if terminated.

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## Excuses, Excuses, Excuses (2 of 2)

- Can sue for reemployment and 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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## Trial

- Jury trial, unless waived
- Rules of evidence do not apply
  - Unless court applies a particular rule to ensure fairness of parties
- Child does not have to testify
- State's burden to prove truant conduct
  - Must be beyond a reasonable doubt

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# 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

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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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# Mental Illness Issues Decision

- If no mental illness determine – dissolve the stay and 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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## Affirmative Defense (1 of 3)

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

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## Affirmative Defense (2 of 3)

- 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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## Affirmative Defense (3 of 3)

- Schools must excuse for absence for reason in Edu. Code Sec. 25.087(b)
- Court may excuse absence for any reason the court feels is sufficient justification.
- Does not change the excused status with the school though.

*Family Code § 65.003(c)*

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## **Edu. Code Sec. 25.087 (1 of 4)—Schools Must Excuse:**

- 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

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## **Edu. Code Sec. 25.087 (2 of 4)—Schools Must Excuse:**

- if the student is in the conservatorship of the Department of Family and Protective Services, participating, as determined and documented by the department, in an activity:
  - (i) ordered by a court under Chapter 262 or 263, Family Code, provided that it is not practicable to schedule the participation outside of school hours; or
  - (ii) required under a service plan under Subchapter B, Chapter 263, Family Code;

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## **Edu. Code Sec. 25.087(b) (3 of 4)— Schools Must Excuse:**

Attending a course under Edu. Code 25.0875:

- At request of parent or guardian, student's absence will be excused for attending a course in religious instruction offered by a private entity for at least 1 but not more than 5 hours a week.

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## **Edu. Code Sec. 25.087(b) (4 of 4)— Schools Must Excuse:**

- a temporary absence resulting from an appointment with health care professionals, including mental health professionals, for the student or the student's child if the student commences classes or returns to school on the same day of the appointment;
- an absence resulting from a serious or life-threatening illness or related treatment that makes the student's attendance infeasible, if appropriate doctor's form is provided

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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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## Remedial Order (1 of 2)

- 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 2)

- This order must also be reduced to writing and furnished to the child and their parent/guardian
- Order effective until the later of:
  - the date specified by the court order, which cannot be later than the 180<sup>th</sup> day after order is entered; or
  - last day of school year;

*Sec. 65.102 and 65.104, Family Code*

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## 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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## 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 or permit

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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(b), 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)

*Sec. 65.107, Family Code*

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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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## Other Orders (1 of 3)

- 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.
- If court finds parents have made a reasonable, good faith effort to prevent the child from engaging in truant conduct and that, despite the parents' efforts, the child continues to engage in truant conduct, the court shall waive any requirement for community service that may be imposed on a parent.

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# Other Orders (2 of 3)

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;
- Enjoin contact between child and non-family member contributing to truant conduct (see statute for details)
- Class to help a parent understand causes and solutions of truancy;

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# Other Orders (3 of 3)

- order any person living in the same household with the child to participate in social or psychological counseling to assist in the child's rehabilitation;
- 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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# 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 after judgment is signed, overruled if not ruled on 21 days from date judgment is signed.

*Sec. 65.109, Family Code*

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# New Trial & Appeal (2 of 2)

- Child, parent, guardian, State, or person subject to order may appeal
- 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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## 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)

- 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, and witness testimony
- Must pronounce changes in court and put changes and reasons for changes in written order delivered to child

*Sec. 65.108 Family Code*

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## **Hearing to Modify Remedies (3 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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## **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 or permit denial or suspension
  - Send to Juvenile Probation Dept.(after 2<sup>nd</sup> 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 authorized or 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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## Sealed Records (1 of 3)

- When turning 18, child can apply to have records held by the court, prosecutor, and school district sealed
  - application requirements found in Family Code Sec. 65.201(b)
- If child has complied with the remedial order, the record shall be sealed

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## Sealed Records (2 of 2)

Within 30 days of sealing order:

- all index references to the sealed records should be deleted
- the response by a truancy court, clerk or prosecutor or school district 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 (3 of 3)

- The sealed records may only be reviewed by order of the truancy court and only by the child or other person designated in the order to review the sealed records
- Once sealed, former defendant does not have to disclose to any employer or state licensing agent, and it cannot be held against them

*Sec. 65.201, Family Code*

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# **Destruction of Records**

On or after the child's 21<sup>st</sup> birthday:

- 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(h), Family Code*

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## **Questions?**

**Thank you!**

**Don't mess with Texas!**

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