

# Basic Truancy

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## Resources

- Family Code Chapter 65
- [www.tjctc.org](http://www.tjctc.org)
  - /truancy
  - Truancy Forms
  - Webinar Archives
  - Newsletter Archives
  - Legal Question Board

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## Why Truant Conduct?

- Fail to Attend School
- Appleseed Group
- 2015 Legislature
- Expunction
- Who are Truancy Courts?

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## Initial Steps – School Role

- School must have an employee responsible for implementing truancy prevention measures
  - Must meet with truancy court at least annually to discuss effectiveness of truancy prevention measures
- Measures must be implemented if student misses 3 days in a 4 week period
- 19 year olds may be expelled after 5 absences, must get warning letter after 3, may use behavior improvement plan instead

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## Initial Steps – Referral to Truancy Court

- School sends the court a referral (not a complaint or petition)
- Proper venue is the county where the student resides OR the school is located
- Needs information about the student and the case
- Court does NOT review the case at this point and cannot dismiss
- Do not need to create a file, but may if desired

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## Initial Steps – Sending Case to Prosecutor

- Court must send the case to the “truant conduct prosecutor”
  - Attorney responsible for prosecuting misdemeanors in court
- Prosecutor reviews file and makes determination to file the case or not (by filing a petition, not a complaint)
  - Must file within 45 days of last absence
  - Cannot file if referral doesn’t meet requirements of Ed. Code 25.0915
  - Must inform school and court if not filing a case
    - Records must be destroyed if case not filed

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## Initial Steps – Sending Case to Prosecutor

- A school district may not refer a student for truant conduct if the truancy is a result of the student's:
  - Homelessness,
  - Pregnancy,
  - Being in the state foster care program, or
  - Being the primary income earner for the student's family
- Prosecutor should decline to file the petition if so.

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## Initial Steps - Petition

- 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 or guardian and spouse, if any
  - If no parent, guardian or custodian is known, name and residence address of closest relative residing in the county
  - If none in county, nearest relative's name and residence address

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## Initial Steps - Petition

- Court creates the case, styled “In the matter of \_\_\_\_\_, Child”, with the child identified only by initials
- At this point, court must review the petition and referral and may dismiss if proper
  - Untimely filing
  - Doesn’t allege the elements of truant conduct
  - No truancy prevention measures shown
  - Other substantive defects

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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

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## Initial Steps - Summons

- If the court is moving forward with the case, must now summon the child, the parent, and any other necessary party
  - Parent summons may include order to bring child to court
- Summons served by personal delivery or certified mail and a copy of the petition must be attached
  - May be done by “any suitable person”
  - TJCTC recommends also attaching an answer form and rights info sheet
- Anyone other than child may waive summons in writing or by appearing at adjudication hearing

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## Initial Steps - Answer

- The child may answer orally or in writing, before or at the adjudication hearing
- They answer “true” or “not true” (do not ask guilty/not guilty)
- If they fail/refuse to answer, presume general denial
  - NO default judgments in Truant Conduct cases

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## Adjudication Hearing

- Child must be served at least 5 days before the hearing
- Hearing must be at least 11 days after petition filed
- Hearing is presumed to be “open court”, but the public may be excused for good cause
- Child must be present at the adjudication hearing
  - How to get them there if they aren't there?

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## Adjudication Hearing

- Parent has an obligation to be present at the hearing
  - Unless they live out of state, have been excused for good cause, or are not managing conservator
  - Can proceed with the hearing without parent
  - May attach the parent to secure their presence
  - Protections in statute to protect parent's job when attending

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## Adjudication Hearing

- 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 in the best interest – even if parent present if parent or custodian unable/unwilling to make decisions in best interest of the child
  - Attorney can also be the guardian ad litem
- May order whole or partial payment for the attorney and or guardian if determined the parents/guardian has the means to do so

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## Adjudication Hearing

- Child is entitled to a jury and gets one unless they waive it
  - No fee for jury
- To waive any right in a truancy case:
  - Parent and child must be informed of the right
  - Parent and child must be told they don't have to waive the right
  - Parent and child must agree in writing and sign the waiver
  - Attorney, if any, must sign the waiver as well
- Child and parent entitled to interpreter, if necessary
  - No fee for interpreter

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## Adjudication Hearing

- At the 'adjudication hearing', the truancy court must explain to the child and parent/guardian:
  - (1) the allegations made against the child;
  - (2) the nature and possible consequences of the proceedings;
  - (3) the child's privilege against self-incrimination;
  - (4) the child's right to trial and to confrontation of witnesses;
  - (5) the child's right to representation by an attorney if the child is not already represented; and
  - (6) the child's right to a jury trial.
- Even if the court sent the "rights info sheet"

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## Adjudication Hearing

- If the child answers "true", the court may enter an adjudication that the child engaged in truant conduct and proceed to remedial order
- If child answers "not true", prosecutor must prove the truant conduct occurred beyond a reasonable doubt
  - Rules of Evidence do not apply
  - Child may not be forced to testify

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## Adjudication Hearing

- 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 determined – move forward
- If he/she is mentally ill as defined by Health & Safety Code 571.003, dismiss the case

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## Adjudication Hearing

- Elements of Truant Conduct
  - A child (at least 12, not yet 19 years old)
  - Who is 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
- Affirmative Defense: Enough absences have been excused by school or court to not meet the 10 day requirement

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## Adjudication Hearing

- If the child is found not to have engaged in truant conduct, the case is dismissed with prejudice
- If the child is found to have engaged in truant conduct, the judge shall issue a judgment adjudicating that the truant conduct occurred
- The judge must announce the judgment and order in open court, along with the child's right to appeal and the process for sealing the court's records

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## Remedial Order

- The court, not the jury, determines the appropriate remedial actions that the child must take
- This order must also be reduced to writing and furnished to the child and their parent/guardian.
- List of conditions the court may place on the child is exclusive, meaning there is no "any reasonable condition" provision
- Order length maximum is 180 days or until the end of the school year, whichever is longer

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## Remedial Order

- The truancy court may order the child to:
- (1) attend school without unexcused absences;
- (2) attend a preparatory class for the high school equivalency examination administered under Section 7.111, Education Code, if the court determines that the individual is unlikely to do well in a formal classroom environment due to the individual's age;
- (3) if the child is at least 16 years of age, take the high school equivalency examination administered under Section 7.111, Education Code, if that is in the best interest of the child;

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## Remedial Order

- (4) attend a nonprofit, community-based special program that the court determines to be in the best interest of the child, including:
  - (A) an alcohol and drug abuse program;
  - (B) a rehabilitation program;
  - (C) a counseling program, including a self-improvement program;
  - (D) a program that provides training in self-esteem and leadership;
  - (E) a work and job skills training program;
  - (F) a program that provides training in parenting;
  - (G) a program that provides training in manners;
  - (H) a program that provides training in violence avoidance;
  - (I) a program that provides sensitivity training; and
  - (J) a program that provides training in advocacy and mentoring;

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## Remedial Order

- (5) complete not more than 50 hours of community service on a project acceptable to the court; and
- (6) participate for a specified number of hours in a tutorial program covering the academic subjects in which the child is enrolled that are provided by the school the child attends.
- May also order DPS to suspend DL for the length of the order.
- May not order:
  - (1) attend a juvenile justice alternative education program, a boot camp, or a for-profit truancy class; or
  - (2) perform more than 16 hours of community service per week under this section.

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## Court Costs

- Court may, after an opportunity to be heard, order child, parent, or other person responsible for the child, if financially able, to pay the clerk a court cost of \$50
- Must be in a written order and signed by the court
- Clerk must keep a written record and forward to the treasurer, as appropriate
- Costs placed in a special account used only to offset the costs of truancy court

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## Other Orders

- Any person is entitled to a hearing before being subject to an order
- If child found to have engaged in truant conduct, the court may:
  - (1) order the child and the child's parent to attend a class for students at risk of dropping out of school that is designed for both the child and the child's parent;
  - (2) order any person found by the court to have, by a willful act or omission, contributed to, caused, or encouraged the child's truant conduct to do any act that the court determines to be reasonable and necessary for the welfare of the child or to refrain from doing any act that the court determines to be injurious to the child's welfare;

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## Other Orders

- (3) enjoin all contact between the child and a person who is found to be a contributing cause of the child's truant conduct, unless that person is related to the child within the third degree by consanguinity or affinity, in which case the court may contact the Department of Family and Protective Services, if necessary;
- (4) after notice to, and a hearing with, all persons affected, 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;

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## Other Orders

- (5) order the child's parent or other person responsible for the child's support to pay all or part of the reasonable costs of treatment programs in which the child is ordered to participate if the court finds the child's parent or person responsible for the child's support is able to pay the costs;
- (6) order the child's parent to attend a program for parents of students with unexcused absences that provides instruction designed to assist those parents in identifying problems that contribute to the child's unexcused absences and in developing strategies for resolving those problems

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## Other Orders

- (7) order the child's parent to perform not more than 50 hours of community service with the child.
- On a finding by the court that a child's 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 under this section.

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## 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
  - 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).

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## Enforcement of Orders

- Enforcement proceedings may be initiated by prosecutor or upon court's own motion
- Proceedings against parent or person other than the child require a hearing notice served by personal service or certified mail at least 10 days prior to the hearing
  - May issue a warrant if they do not appear at the contempt hearing
- Standard at contempt hearing is beyond a reasonable doubt, and the alleged contemnor is not entitled to a jury

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## Enforcement of Orders

- Against the child
  - MUST have hearing
  - Direct contempt - \$100 fine
  - Disobedience of court order - \$100 fine and/or suspension of DL until the child complies
  - If two prior findings of contempt, may refer to juvy probation if under 17 years of age

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## Enforcement of Orders

- Against the parent or other adult
  - MUST have hearing
  - Direct contempt - \$100 fine, 40 hours community service, and/or 3 days in jail
  - Disobedience of court order - \$100 fine
- Any party may appeal a finding of contempt
  - 21 days to appeal, no bond necessary, doesn't affect underlying case

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## 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 remedies, the record shall be sealed
- Application must include the following (or explanation why they are missing): The child's full name, age, sex, race/ethnicity, DL or ID#, and SSN

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## Sealed Records

- 30 days later, 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

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## Sealed Records

- Child is not required to admit truancy on applications
- Statement that they have not engaged in truant conduct cannot be used against them in any judicial proceedings, civil or criminal
- On 21<sup>st</sup> birthday, child or court can move to have the sealed records destroyed
  
- REMINDER: Court must inform the child of this process when rendering judgment

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## Parent Contributing to Nonattendance

- Still a criminal case, but no longer \$500 max fine
  - \$100 for a first offense;
  - \$200 for a second offense;
  - \$300 for a third offense;
  - \$400 for a fourth offense; or
  - \$500 for a fifth or subsequent offense.
- May now only be filed on 10 days/parts in six month period in same school year.

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## Parent Contributing: Dismissal

- Discretionary for the court to dismiss a parent contributing charge on its own motion
- Basis should be:
  - Best interest of justice
  - Low likelihood of repeating the offense
  - 'sufficient justification' for the underlying failure to attend school