

# JUVENILE

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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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## FOREWORD

This deskbook on *Juvenile Law (1<sup>st</sup> ed. August 2018)* represents the Texas Justice Court Training Center's ongoing commitment to provide resources, information and assistance on issues of importance to Texas Justices of the Peace and Constables and their court personnel, and continues a long tradition of support for judicial education in the State of Texas by the Justices of the Peace and Constables Association of Texas, Inc.

We hope you will find it to be a valuable resource in providing fair and impartial justice to the citizens of Texas.

Thea Whalen  
Executive Director

## USER NOTES

This deskbook on *Juvenile Law (1<sup>st</sup> ed. August 2018)* is intended to offer a practical and readily accessible source of information relating to issues you are likely to encounter in the various administrative proceedings in justice court.

This deskbook is not intended to replace original sources of authority, such as the Family Code or the Code of Criminal Procedure. We strongly recommend that you refer to the applicable statutory provisions and rules when reviewing issues discussed in this book.

Please note that all references to “Rule \_\_” are to the Texas Rules of Civil Procedure.

The topic of **Juvenile Magistration** is discussed in Chapter 4 of the Magistration Deskbook.

Rather than including the citations to cases in the text of the deskbook, we have listed only the case name in the text but have included the entire citation in the appendix of cases.

Please do not hesitate to contact us should you have any questions or comments concerning any of the matters discussed in this deskbook.

Texas Justice Court Training Center  
August 2018

# CHAPTER 1: TRUANCY CASES

## A. What is a Truancy Case?

A **truancy case** is a **civil** proceeding filed in a “truancy court” alleging that a child (which for truancy cases is defined as a person who is 12 years of age or older and younger than 19 years of age) engaged in truant conduct by failing to attend school. *Family Code §§ 65.001(a), 65.002(1)*. “Truancy courts” include justice courts. *Family Code § 65.004(a)(2)*.

In 2015 the Legislature completely revised the way cases involving failure to attend school are handled: rather than treating those cases as Class C misdemeanor criminal cases, with the child named as a defendant, the Legislature decided that truancy cases “may be prosecuted only as a civil case in a truancy court.” *Family Code § 65.003(b)*. The child is a respondent rather than a defendant and is entitled to an adjudication hearing with many of the protections of a criminal case. **See pages 12-19**. If the child admits the allegations of the petition, or is found to have engaged in truant conduct, then the court should impose a remedial order that attempts to address the underlying causes of the truant conduct.

The purpose of the new law “is to encourage school attendance by creating simple civil judicial procedures through which children are held accountable for excessive school absences.” *Family Code § 65.001(b)*.

“The best interest of the child is the primary consideration in adjudicating truant conduct.” *Family Code § 65.001(c)*.

## B. What is Truant Conduct?

A child engages in truant conduct if the child is required to attend school under Section 25.085, Education Code, and fails to attend school on 10 or more days or parts of days within a six-month period in the same school year. *Family Code § 65.003(a)*. A child who is required to attend summer school is required to attend school.

**a. Who is required to attend school?**

### HB 2398: Truancy is Not A Criminal Offense

The Legislature rewrote the law in 2015 so that truancy is *not* a criminal offense and can only be filed as a **civil case** in truancy court.

### Truant Conduct Defined

- A child (at least 12, not yet 19 years old);
- Who is required to attend school;
- And fails to attend school without excuse;
- On 10 or more days or parts of days;
- Within a six-month period;
- In the same school year.



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The following persons are required to attend school:

- A child who is at least six years old (or less than six and has previously been enrolled in first grade), and who has not yet turned 19, is required to attend school unless specifically exempted. *Education Code § 25.085(b)*.
- A child who has been enrolled in prekindergarten or kindergarten. *Education Code § 25.085(c)*.
- A person who voluntarily enrolls in school or voluntarily attends school after their 19th birthday. *Education Code § 25.085(e)*.

***b. Who is exempt from attending school?***

A child is exempt from compulsory school attendance if the child:

- (1) Attends a private or parochial school;
- (2) Is eligible for a special education program and cannot be properly served by the school district;
- (3) Has a temporary physical or mental condition that makes the child's attendance not feasible;
- (4) Is expelled from school;
- (5) Is at least 17 years old and is attending a course for the G.E.D. (if certain conditions are met) or has received a high school diploma or G.E.D.;
- (6) Is at least 16 years old and is attending a course for the G.E.D. (if certain conditions are met) or is enrolled in a high school diploma program;
- (7) Is enrolled in certain Texas Academies; or
- (8) Is exempt under another law. *Education Code § 25.086*.

***Please see Section S on pages 39 – 40 for the full text of the exemption statute.***

## C. Exceptions to Truant Conduct



A school district may not refer a student to truancy court if the school determines that **the student's truancy is the result of:**

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- (1) Pregnancy;
- (2) Being in the state foster program;
- (3) Homelessness; or
- (4) Being the principal income earner for the student's family. *Education Code § 25.0915(a-3).*

## D. Affirmative Defenses to Allegations of Truant Conduct

It is an affirmative defense to an allegation of truant conduct that:

- One or more of the absences required to prove truant conduct have been excused:
  - by a school official, or
  - by the court; or
- One or more of the absences were involuntary.

**But only if:** there is an insufficient number of unexcused or voluntary absences remaining to constitute truant conduct. *Family Code § 65.003(c).*

The burden is on the child to show by a preponderance of the evidence that the absence has been or should be excused or that the absence was involuntary. *Family Code § 65.003(c).*

## E. Where May a Truancy Case be Filed?



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A truancy case must be filed in a truancy court. *Family Code § 65.003(b).* The following courts are designated as truancy courts:

### *Example of an Affirmative Defense*

The school alleges the child had 12 unexcused absences in a six-month period and the child claims 3 are excused. If the court excuses 3 absences, then the affirmative defense is **valid** because now there are only 9 unexcused absences.

But if the child only claims 1 absence is excused, then even if the court excuses that absence, it is not a valid affirmative defense because there are still 11 unexcused absences.

- Justice courts;
- Municipal courts; and
- A constitutional county court in a county with a population of 1.75 million or more. *Family Code § 65.004(a)*.

A truancy court has exclusive original jurisdiction over cases involving allegations of truant conduct. *Family Code § 65.004(b)*. This means that a truancy case may not be heard by any court other than a truancy court. For example, if a truancy case were filed initially with a district court, the case would have to be dismissed for lack of jurisdiction since a district court is not a truancy court.

Does a truancy case have to be filed in the precinct where the school is located or the child lives? No. A truancy case may be filed in any justice court in the county in which the school in which the child is enrolled is located or the county in which the child resides. *Family Code § 65.006*.

A truancy court retains jurisdiction over a person, no matter how old they are, until final disposition of the case, as long as they were referred to the court for engaging in truant conduct before their 19<sup>th</sup> birthday. *Family Code § 65.004(d)*.

### Truancy Cases Are Not Precinct Specific

A truancy case is not like an eviction case, which must be filed in the precinct where the property is located.

A truancy case may be filed in any justice court in the county in which the school is located or the child resides.

## F. How Does a Truancy Case Get Filed?

### 1. The School District Files a Referral

The first step in a truancy case is the filing of a **referral** by the school district with the truancy court. *Education Code § 25.0951(a); Family Code § 65.051*.

A school district may not file a truant conduct referral unless it has already tried other truancy prevention measures (beginning when the student had three or more unexcused absences in a four-week period) and those measures have not been successful. By filing the referral with the truancy court the school district is alleging that the student has ten or more unexcused absences within a six-month period within the same school year. *Education Code § 25.0915*.





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The referral is to be filed “within 10 school days of the student's 10th absence.” *Education Code § 25.0951(a)*. However, a school district may delay a referral, or may choose not to refer a student for truant conduct, if the school district has applied truancy prevention measures to the student and determines that the truancy prevention measures are succeeding and that it is in the best interest of the student that a referral be delayed or not be made. *Education Code § 25.0951(d)*.

## 2. The Court Forwards the Referral to the Prosecutor

The only thing the court does upon receiving a referral from a school district is to “forward the referral to a truant conduct prosecutor who serves the court.” *Family Code § 65.051*. Who is the truant conduct prosecutor? It is the “attorney who represents the state in criminal matters in that court.” *Family Code § 65.052*. If you are not sure who the truant conduct prosecutor is in your court, you should speak with your county attorney (or if your county does not have a county attorney, then speak with your district attorney).

The court does not review the referral at this point for defects or any issues that might require dismissal of the case. The court simply serves as a conduit and forwards the referral to the truant conduct prosecutor for that court.

A sample referral form may be viewed on the TJCTC website by clicking on “Resources,” then “Forms,” then “Truancy” or by clicking on this link: <http://www.tjctc.org/tjctc-resources/forms.html>.

## 3. The Prosecutor Decides Whether or Not to File a Petition

Once the truancy court forwards the referral to the truant conduct prosecutor, the prosecutor must promptly review the referral and decide whether or not “to file a petition with the truancy court requesting an adjudication of the child for truant conduct.” *Family Code § 65.053(b)*.

### Steps in Filing a Truancy Case

1. School district files a referral.
2. Court forwards the referral to the prosecutor.
3. Prosecutor decides whether to file a petition.
4. If petition is not filed, court orders records relating to allegations of truant conduct destroyed.
5. If petition is filed, court reviews and dismisses the petition if certain requirements are not met.
6. If petition is filed and requirements are met, court sets hearing and proceeds with case.



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A petition may not be filed more than 45 days after the date of the last absence that constitutes the truant conduct. *Family Code § 65.055*.

A petition may also not be filed if the referral:

- Is not accompanied by a statement from the school certifying that the school applied the truancy prevention measures required under Section 25.0915, Education Code, and those truancy prevention measures failed to meaningfully address the student's school attendance; or
- Does not specify whether the student is eligible for or receives special education services. *Family Code § 65.053(c); Education Code § 25.0915(b)*.

If the truant conduct prosecutor decides **not** to file a petition after reviewing a referral, the prosecutor must inform the truancy court and the school district of that decision. *Family Code § 65.053(b)*.

#### 4. If a Petition is *Not* Filed, the Court Must Order the Records Destroyed



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If the truant conduct prosecutor decides not to file a petition for adjudication of truant conduct after reviewing a referral, then the court must order the “destruction of records relating to allegations of truancy conduct that are held by the court or the prosecutor.” *Family Code § 65.203*.

The simplest way to do this is for the court to attach an order at the time it forwards the referral to the truant conduct prosecutor stating that any records relating to allegations of truancy conduct must be destroyed in the event the prosecutor decides not to file a petition.

A sample order may be viewed on the TJCTC website by clicking on “Resources,” then “Forms,” then “Truancy” or by clicking on this link: <http://www.tjctc.org/tjctc-resources/forms.html>.

#### 5. What Must the Petition Allege?

If the prosecutor decides to request an adjudication of a child for truant conduct, then the **prosecutor** files a petition alleging that the child has engaged in truant conduct. *Family Code § 65.054(a)*.

The petition is styled “In the matter of \_\_\_\_\_, Child,” identifying the child only by his or her initials. *Family Code § 65.054(b)*.

There is no filing fee when a petition is filed in a truancy case. *Family Code § 65.054(e)*.

The prosecutor may state that the allegations in the petition are based on “information and belief,” which simply means the prosecutor has good reason to believe the allegations are true. *Family Code*

§ 65.054(c).



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The petition must contain:

- The time, place and manner of the acts alleged to constitute the truant conduct;
- The child’s name, age and residence address, if known;
- The names and residence addresses, if known, of at least one parent, guardian or custodian and of the child’s spouse, if any;
- If the child’s parent, guardian or custodian does not live or cannot be found in the state, or if their place of residence is not known, then the name and residence address of any adult relative residing in the county;
- If there is no adult relative in the county, then the name and residence address of the relative residing nearest to the court. *Family Code § 65.054(d)*.

A sample petition form may be viewed on the TJCTC website by clicking on “Resources,” then “Forms,” then “Truancy” or by clicking on this link: <http://www.tjctc.org/tjctc-resources/forms.html>.

## 6. The Court Reviews the Petition



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At this point, that is once the petition is filed by the prosecutor (rather than when the referral is initially filed by the school district), the truancy court reviews the petition and the court **shall** dismiss the petition if the school district’s referral:

- Does not certify that the school applied the required truancy prevention measures and that those measures failed to meaningfully address the student’s school attendance;
- Does not specify whether the student is eligible for or receives special education services;
- Does not satisfy the elements required for truant conduct;
- Was not timely filed (that is, the referral must be filed within 10 school days of the student’s 10<sup>th</sup> absence, unless the school district delayed the referral because it determined that the truancy prevention measures were working, *see page 5*);

- Is otherwise substantively defective (for example, it is clear from the referral that the child is exempt from compulsory school attendance, *see Section S at pages 39 – 40*). *Education Code § 25.0915(c)*.

The petition must also be dismissed if it was filed more than 45 days after the date of the last absence that constitutes the truant conduct. *Family Code § 65.055*.

## G. Issuance and Service of the Summons

### 1. Setting the Date and Time for the Adjudication Hearing



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After a truancy petition is filed, the truancy court must set a date and time for an adjudication hearing. *Family Code § 65.056(a)*. The “hearing may not be held **on or before the 10<sup>th</sup> day from the filing** of the petition.” *Family Code § 65.056(b)*. So the first day on which an adjudication hearing may be set is **the 11<sup>th</sup> day after the petition is filed**.

### 2. Issuance of the Summons

After setting the date and time of the adjudication hearing, the truancy court must direct the issuance of a summons to:

- The child named in the petition;
- The child’s parent, guardian or custodian;
- The child’s guardian ad litem, if any (*see page 13 explaining what a guardian ad litem is*); and
- Any other person who appears to the court to be a proper or necessary party to the proceeding. *Family Code § 65.057(a)*.

The summons must require the persons served to appear before the court at the place, date and time of the adjudication hearing to answer the allegations of the petition. A copy of the petition must be served with the summons. *Family Code § 65.057(b)*.



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The truancy court may endorse on the summons an order directing the person having physical custody of the child to bring the child to the hearing. *Family Code § 65.057(c)*. As discussed below, this is an important step to have taken in cases in which the child does not appear in response to the summons. *See pages 9 – 10*.

Sample summons forms to the child and parent or guardian, with an order to the parent to bring the child to the adjudication hearing, may be viewed on the TJCTC website by clicking on “Resources,” then “Forms,” then “Truancy” or by clicking on this link: <http://www.tjctc.org/tjctc-resources/forms.html>.

### Order to Bring the Child to the Hearing

The **best practice** is to endorse on the summons an order directing the parent or other person having physical custody of the child to bring the child to the adjudication hearing.

### 3. Service of the Summons

If the person to be served with a summons is in Texas and can be found, the summons must be served at least **five days before the date of the adjudication hearing**:

- By personal delivery to the person; or
- By registered or certified mail, return receipt requested. *Family Code § 65.058(a)*.



KEY  
POINT

The summons may be served by “any suitable person under the direction of the court.” *Family Code § 65.058(b)*. A “suitable person” would certainly include a Constable or Deputy Constable but it could also include a school resource officer or other person who could serve the summons on the child and/or the parent or guardian under the court’s direction.

### 4. What if the Child is Served with the Summons but Fails to Appear?

If the child is served with the summons but fails to appear for the adjudication hearing, the court may take the following steps in an effort to bring the child before the court:

- (1) The court may endorse on the summons an order to the parent or guardian, or person having physical custody of the child, to bring the child to the adjudication hearing. *Family Code § 65.057(c)*.
- (2) If the parent or guardian (or person having physical custody of the child) does not appear, the court may issue a writ of attachment which will be executed in the same manner as in a criminal proceeding under Chapter 24 of the Code of Criminal Procedure. *Family Code § 65.254*. An “attachment” is a writ commanding a peace officer to “take the body of a witness and bring him before such court . . . .” *Code of Criminal Procedure Art. 24.11*. This means the person must be brought directly to the court and not to jail. **See Chapter 6.A.2 of the Criminal Deskbook.**



BEST  
PRACTICE

(3) When the person is brought before the court by means of the writ of attachment, the court may ask the person why they have not complied with the court's order to bring the child to the court.

(4) If a parent, guardian or guardian ad litem fails to appear for an adjudication hearing, the court may enforce an order that that they appear by contempt. *Family Code § 65.253(a)*. The penalty for a finding of contempt for failing to appear is a fine of \$100. *Family Code § 65.253(b)*. **See page 29 – 30 concerning the procedure required to hold a parent in contempt.**

(5) If all other measures fail, and the court has been unable to obtain the child's attendance by ordering the parent or guardian (or person having physical custody) to bring the child to the court, we believe the court may, as a last resort, issue a writ of attachment against the child. *Government Code § 21.001*.

(6) The writ of attachment must require the child to be brought immediately and directly to the court. Under no circumstances may the child be held in a place of nonsecure custody under Article 45.058 of the Code of Criminal Procedure.

### If the Child Fails to Appear for the Hearing . . .

- Order the parent to bring the child to the hearing.
- If the parent does not appear, issue a writ of attachment to have the parent brought before the court to explain why they have not brought the child.
- As a last resort, the court may issue a writ of attachment for the child but only to have the child brought directly to the judge.



## 5. What if the Child or Parent are Not Served at Least Five Days Before the Hearing?

### COMMON PITFALL

As discussed above, an adjudication hearing must be set after a petition is filed. But what if the child and parent or guardian are not served with the summons at least five days before the hearing as required by the statute? **See page 9**. Sometimes this occurs because the summons must be served personally or by registered or certified mail. Some courts have addressed this problem as follows.

After setting the date and time of an adjudication hearing, the court issues a summons but also sends a **courtesy letter** by first class mail to the child and parent or guardian notifying them of the adjudication hearing and enclosing a copy of the summons. If the child appears in response to the courtesy letter but has not been served with the summons personally or by registered or certified mail, the child is served personally at the time they appear in court.

The adjudication hearing could then be postponed for at least five days in order to comply with the five-day waiting period of Section 65.058(a), Family Code. But this would require the child and parent or guardian to come back to court a second time for the actual adjudication hearing.

As an alternative to postponing the adjudication hearing, once the child is served personally with the summons in court, the child could waive the five-day waiting period under Section 65.008, Family Code, and answer “true” or “not true” to the allegations of truant conduct. (It is up to the child, not the court, to decide whether to waive the five-day waiting period.) If the child waives the five-day waiting period and answers “true,” the court may proceed to the remedial stage without requiring the child and parent to come back for another hearing at least five days later.

Note that the child is not waiving **service** of the summons, which might create an issue under Section 65.057(d) (“A party, other than the child, may waive service of summons by written stipulation or by voluntary appearance at the hearing.”). The child is only waiving **the five-day waiting period**, which is permissible as long as the requirements of Section 65.008 are met.

**Waiver of the  
Five-Day Waiting Period**

A child may waive the five-day waiting period between the service of the summons and the adjudication hearing as long as the requirements of Section 65.008 of the Family Code are met.



**COMMON  
PITFALL**

According to Section 65.008, a child may waive a right if:

- The right is one that may be waived;
- The child and the child’s parent or guardian are informed of the right, understand the right, understand the possible consequences of waiving the right, and understand that waiver of the right is not required;
- The child signs the waiver;
- The child’s parent or guardian signs the waiver; and
- The child’s attorney, if any, signs the waiver.



**BEST  
PRACTICE**

So if a child appears for an adjudication hearing in response to a copy of the summons mailed by first class mail, the child could be served with the summons personally at that time and sign a waiver of the five-day waiting period (if they choose to do so) after the court complies with Section 65.008.

Forms for mailing a courtesy copy of the summons and for waiving the five-day waiting period may be viewed on the TJCTC website by clicking on “Resources,” then “Forms,” then “Truancy” or by clicking on this link: <http://www.tjctc.org/tjctc-resources/forms.html>.

## H. The Adjudication Hearing

As discussed above, after a petition is filed, the court sets a date for an adjudication hearing and a summons is served on the child and their parent or guardian requiring them to appear before the truancy court. *See page 8.*

After the petition has been filed, the child may answer the allegations of the petition, either orally or in writing, at or before the commencement of the adjudication hearing. *Family Code § 65.060.*

If the child admits the allegations of the petition, then the court proceeds directly to the remedial order. *See pages 20 – 23.*

If the child denies the allegations of the petition, then the court proceeds with the adjudication hearing. Also, if the child does not answer the petition, then “a general denial of the alleged truant conduct is assumed.” *Family Code § 65.060.* In that case the court also proceeds with the adjudication hearing, provided the child is present. The court may never proceed with a truancy case if the child is not present.

### 1. Nature of the Hearing



COMMON  
PITFALL

A truancy case is a civil case, not a criminal case. Therefore, an adjudication of a child as having engaged in truant conduct is not a conviction of a crime. *Family Code § 65.009(a).*

An order of adjudication in a truancy case does not subject the child to any civil disability that ordinarily results from a conviction of a crime (for example, not being able to vote) or disqualify the child in any civil service application or appointment. *Family Code § 65.009(a).*

The adjudication of a child as having engaged in truant conduct may not be used in any subsequent court proceedings other than for the purpose of determining an appropriate remedial order or in an appeal. *Family Code § 65.009(b).*

Even though a truancy case is a civil case, an adjudication hearing has many of the protections that are typically afforded to defendants in criminal cases. For example, a jury verdict must be unanimous and the burden of proof is beyond a reasonable doubt. These heightened procedural protections for the child and other aspects of the adjudication hearing are

#### Child Gets Extra Procedural Protections

Although a truancy case is a civil case, the child is given many of the procedural protections provided in a criminal trial, such as the standard of “proof beyond a reasonable doubt.”



discussed below.

## 2. Who Must be Present?



KEY  
POINT

The “child must be personally present at the adjudication hearing. The truancy court may not proceed with the adjudication hearing in the absence of the child.” *Family Code § 65.062(a)*.

A parent or guardian of a child, or any court-appointed guardian ad litem of a child is required to attend the adjudication hearing. *Family Code § 65.062(b)*. However, they are not required to attend the hearing if:

- The court excuses their attendance, for good cause shown;
- They are not a resident of Texas; or
- They are the parent of a child for whom a managing conservator has been appointed and the parent is not a conservator of the child. *Family Code § 65.062(c)*.

If a person, other than the child, fails to appear for the hearing after being summoned, the court may still proceed with the hearing (**provided the child is present**). *Family Code § 65.057(b)*. So the court may proceed with the hearing without the parent there but the parent may face consequences, such as contempt, for not appearing.

## 3. Appointment of a Guardian ad Litem

A “guardian ad litem” is a person appointed by a court to represent the best interests of a child. *Family Code § 107.001(5)*. A “guardian ad litem” is not the same as an “attorney ad litem,” which means an attorney who provides legal services to a person, including a child, and owes the person the duties of undivided loyalty, confidentiality and competent representation. *Family Code § 107.001(2)*.



KEY  
POINT

If a child appears before a truancy court without a parent or guardian, or it appears to the court that the child’s parent is incapable or unwilling to make decisions in the best interest of the child with respect to truancy proceedings, then the court may appoint a guardian ad litem to protect the interests of the child in the proceedings. *Family Code § 65.061(a)*.

### Guardian ad Litem

A truancy court may appoint a guardian ad litem if it appears that the child’s parent is incapable or unwilling to make decisions in the best interest of the child with respect to the truancy proceedings.



COMMON  
PITFALL

A truancy court **may** appoint an attorney for the child as the child's guardian ad litem. *Family Code § 65.061(b)*. But the court **may not** appoint a law enforcement officer, a probation officer or an employee of the truancy court as a guardian ad litem. *Family Code § 65.061(b)*.

If a truancy court appoints a guardian ad litem, it may order the child's parent or other person responsible for supporting the child to reimburse the county for the cost of the guardian ad litem. *Family Code § 65.061(c)*. But before issuing such an order the court must first determine that the parent or other responsible person has sufficient financial resources to offset the cost of the child's guardian ad litem wholly or partly. *Family Code § 65.061(c)*.

#### 4. Representation by an Attorney

A child may be represented by an attorney in a truancy case, but representation by an attorney is not required. *Family Code § 65.059(a)*.

A child is not entitled to have an attorney appointed to represent the child, but the court may appoint an attorney if the court determines it is in the best interest of the child. *Family Code § 65.059(b)*.

If the court appoints an attorney to represent the child, the court may order the child's parent or other responsible person to pay for the cost of an attorney appointed by the court provided that the court determines the person has sufficient financial resources. *Family Code § 65.059(c)*.

#### 5. The Court Must Explain the Child's Rights

At the beginning of the adjudication hearing, the truancy court must explain to the child, and to the child's parent, guardian or guardian ad litem:



KEY  
POINT

- The allegations made against the child;
- The nature and possible consequences of the proceedings;
- The child's privilege against self-incrimination;
- The child's right to trial and to confront 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. *Family Code § 65.101(b)*.

## 6. The Rules of Evidence Do Not Normally Apply



COMMON  
PITFALL

The Texas Rules of Evidence do not apply in an adjudication hearing unless:

- The judge hearing the case determines that a particular rule of evidence applicable to criminal cases must be followed to ensure that the proceedings are fair to all parties; or
- Otherwise provided by Chapter 65 of the Family Code. *Family Code § 65.101(d)*.

## 7. The Child Has a Right to a Jury Trial

A child alleged to have engaged in truant conduct is entitled to a jury trial. *Family Code § 65.007(a)*. The right to a jury trial may only be waived using the procedures required by Section 65.008. *Family Code § 65.101(c)*. **See page 11.**

The number of jurors in a truancy case is **six**. *Family Code § 65.007(a) and (b)*. A jury verdict must be unanimous. *Family Code § 65.101(c)*.

The state and the child are each entitled to three peremptory challenges. *Family Code § 65.007(c)*. **See Chapter 6.C. Step 9 of the Civil Deskbook concerning the meaning of “peremptory challenge.”**

There is **no jury fee** for a jury trial in a truancy case. *Family Code § 65.007(c)*.

## 8. The Child Cannot be Made to Testify



KEY  
POINT

The child may not be compelled to testify and need not be a witness at an adjudication hearing or otherwise incriminate themselves. *Family Code § 65.101(e)*.

An out of court statement that was obtained in violation of the Texas or United States Constitutions may not be used in an adjudication hearing. *Family Code § 65.101(e)*. An out of court statement made by the child is insufficient to support a finding of truant conduct unless it is supported wholly or in part by other evidence. *Family Code § 65.101(e)*. For example, if a child posts a message on Facebook bragging about how they “took a Ferris Bueller day off,” a copy of that message by itself is not sufficient to support a finding of truant conduct. The Facebook message would have to be supported by other evidence – which could be simply the

**Out of Court Statement  
by the Child**



school's attendance records showing that the child did not attend school that day.

## 9. The Burden of Proof is Beyond a Reasonable Doubt

The court or a jury may not return a finding that a child has engaged in truant conduct unless the state has proved the conduct beyond a reasonable doubt. *Family Code § 65.010*.

## 10. What Happens if a Child is Alleged to be Mentally Ill?



KEY  
POINT

A party may file a motion to dismiss the petition because the child has a mental illness. *Family Code § 65.065(a)*.

If such a motion is filed, the truancy court must temporarily stay the proceedings (that is, suspend the hearing) to determine whether probable cause exists to believe the child has a mental illness. *Family Code § 65.065(a)*. In making that determination the court may:

- Consider the motion, supporting documents, professional statements of counsel, and any witness testimony; and
- Observe the child. *Family Code § 65.065(a)*.

### Stay of Case if Mental Illness is Alleged

If a child is alleged to have a mental illness, the court must stay the case to determine whether probable cause exists to believe the child has a mental illness. If yes, then the case is dismissed. If no, then the case

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**“Mental illness”** means 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(14).

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If the court determines that probable cause exists to believe the child has a mental illness, the court must dismiss the petition. *Family Code § 65.065(b)*.

If the court determines that evidence does not exist to support a finding that the child has a mental illness, the court must continue with the truancy proceedings. *Family Code § 65.065(b)*.

## 11. The Proceedings May Not be Recorded

If the truancy court is not a court of record, then the proceedings may not be recorded. *Family Code § 65.016(a)*. Justice courts are not courts of record. Therefore, the proceedings where the truancy court is a justice court must not be recorded. (In contrast, some municipal courts are courts of record and where the truancy court is a municipal court of record, the proceedings are recorded.)

## 12. Public Access to the Proceedings

A truancy court hearing is open to the public unless the court, for good cause shown, determines that the public should be excluded. *Family Code § 65.015(a)*. For example, the court might find there is good cause to exclude the public if there will be testimony of a sensitive or personal nature that might be harmful to the child if publicly disclosed.

Even though the proceedings are open to the public, the court may still exclude a person from attending a hearing if the person is expected to testify at the hearing and the court determines that the person's testimony would be materially affected if the person hears other testimony at the hearing. *Family Code § 65.015(b)*. This is the same procedure known as "invoking the rule" in the trial of a civil or criminal case. *See Chapter 6.D.2 of the Civil Deskbook.*

## 13. When is an Interpreter Required?



KEY  
POINT

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 under Art. 38.30, Code of Criminal Procedure. *See Chapter 6.B of the Criminal Deskbook.*

If an interpreter is not available to appear in person before the court, then a qualified telephone interpreter may be sworn to provide interpretation services. *Family Code § 65.013(a)*.

If a party notifies the court that the child, the child's parent or guardian, or a witness is deaf, then the court must appoint a qualified interpreter to interpret the proceedings in any language, including sign language, that the person can understand. *Family Code § 65.013(b)*. *See Chapter 6.B of the Criminal Deskbook.*

## 14. Employment Protection for Attending a Hearing

An employer may not terminate the employment of a permanent employee because the employee is required to attend a truancy hearing. *Family Code § 65.063(a)*.

An employee who is injured by a violation of this law is entitled to reinstatement to their former position, damages and reasonable attorney's fees. *Family Code § 65.063(b) and (c)*.

## 15. Findings by the Court or Jury

At the end of the adjudication hearing the court or the jury must find whether the child has engaged in truant conduct. This finding must be based on competent evidence admitted at the hearing. *Family Code § 65.101(f)*.

The child is **presumed to have not engaged in truant conduct**. A finding that the child has engaged in truant conduct may not be made unless the state has proved the conduct beyond a reasonable doubt. *Family Code § 65.101(f)*.



In all jury cases, **the jury must be instructed** that the burden is on the state to prove that a child has engaged in truant conduct beyond a reasonable doubt. *Family Code § 65.101(f)*.

### Jury Must be Instructed

The jury must be instructed that a finding that a child has engaged in truant conduct may not be made unless the state has proved the conduct beyond a reasonable doubt.

## 16. Dismissal or Judgment

If the court or the jury finds that the child did not engage in truant conduct, the court must dismiss the case with prejudice (meaning the same case may not be filed again). *Family Code § 65.101(g)*.

If the court or the jury finds that the child did engage in truant conduct, then the court must issue a judgment finding the child has engaged in truant conduct. *Family Code § 65.101(h)*.

Sample dismissal and judgment forms may be viewed on the TJCTC website by clicking on "Resources," then "Forms," then "Truancy" or by clicking on this link:

<http://www.tjctc.org/tjctc-resources/forms.html>.

After the court enters a judgment finding the child engaged in truant conduct the court proceeds to an appropriate remedial order. The jury is not involved in ordering remedies for a child who is found to have engaged in truant conduct. *Family Code § 65.101(g)*

# I. Motion for New Trial and Appeal

## 1. Motion for New Trial

An order of a truancy court may be challenged by filing a motion for a new trial. Rules 505.3(c) and (e) apply to a motion for a new trial. *Family Code § 65.109. See Chapter 7.B of the Civil Deskbook.*

## 2. Right to Appeal

Any order of a truancy court may be appealed by the child, the child’s parent or guardian, or by the state. *Family Code § 65.151(a).*

A person who is subject to an order under Section 65.105 (“Orders Affecting Parents and Other Persons”) (*see pages 24 – 25*) may also appeal that order. *Family Code § 65.151(a).*

## 3. Where is the Appeal Filed?

An appeal from a truancy court is heard by a juvenile court. The case is tried de novo in the juvenile court (meaning it’s a new trial and not based on a record). The judgment of the truancy court is vacated on appeal. *Family Code § 65.151(b).*

## 4. What Rules Apply to an Appeal?

An appeal of an order of a truancy court to a juvenile court is governed by Rule 506 of the Texas Rules of Civil Procedure in the same manner as an appeal of a justice court judgment to a county court. However, an appeal bond is not required. *Family Code § 65.152. See Chapter 8 of the Civil Deskbook.*

## 5. Attorney for the Appeal

If the child and the child’s parent, guardian, or guardian ad litem request an appeal, then the attorney who represented the child before the truancy court, if any, must file a notice of appeal with the court that will hear the appeal and inform the court whether the attorney will handle the appeal. The appeal serves to vacate the order of the truancy court. *Family Code § 65.153.*

**Appeal**

An appeal from a truancy court order is heard de novo by a juvenile court. A bond is not required.

## J. Remedial Order

### 1. What is a Remedial Order?



A remedial order is an order entered by the court requiring a child who has been found to have engaged in truant conduct to take appropriate remedial actions, tailored to the child's circumstances, designed to address the truant conduct. *Family Code §§ 65.102, 65.103.*

### 2. Who Determines the Contents of the Remedial Order?

The court, not the jury, determines and orders appropriate remedial actions for a child who has been found to have engaged in truant conduct. *Family Code §§ 65.101(h), 65.102.*

The court must orally pronounce the remedial actions in the child's presence and enter those actions in a written order that is given to the child and the child's parent, guardian or guardian ad litem. *Family Code § 65.102(b).*

After pronouncing the court's remedial actions, the court must advise the child and the child's parent, guardian or guardian ad litem of the child's right to appeal and the procedures for sealing the child's records. *See pages 19 and 33 - 35.*

### 3. What May the Court Order the Child to do in a Remedial Order?



A truancy court may enter a remedial order requiring a child who has been found to have engaged in truant conduct to:

- (1) attend school without unexcused absences;
- (2) attend a preparatory class for the high school equivalency examination if the court

### Remedial Order

A remedial order is determined by the court and not the jury. The court must pronounce the remedial actions orally in the child's presence and enter them in a written order.

### Remedial Order: Options

The court has a wide range of options in ordering remedial actions designed to address the problems contributing to the truant conduct.



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 if that is in the best interest of the child;

(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;

(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. *Family Code § 65.103(a)*.

## GED

The court may order a child to **take** the GED exam but the court may not order the child to **get** their GED. In other words the court may not order the child to **pass** the GED exam but only to take it.

#### 4. What May the Court NOT Order the Child to do in a Remedial Order?



COMMON  
PITFALL

The court may **not** order the child to:

- (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. *Family Code § 65.103(b)*.

#### 5. Driver's License Suspension

The court may also order DPS to suspend the driver's license or permit of a child who has been found to have engaged in truant conduct. If the child does not have a driver's license or permit, the court may order DPS to deny the issuance of a license or permit to the child. *Family Code § 65.103(c)*.

The period of the suspension (or order denying issuance) of the license or permit may not extend beyond the maximum time period that a remedial order is effective. *Family Code § 65.103(c)*.

This suspension is imposed as punishment for engaging in truant conduct and is separate from a driver's license suspension that may be imposed as a sanction for finding a child in contempt for failing to comply with a remedial order. *See page 25.*

#### 6. How Long is the Remedial Order Effective?



KEY  
POINT

The remedial order is effective until the **later of**:

- The date specified by the court in the order, which may not be later than the 180<sup>th</sup> day after the order was entered; or
- The last day of the school year in which the order was entered. *Family Code § 65.104.*

#### Remedial Order: How Long is it Effective?

Suppose a remedial order is entered on October 1, 2018, and the school year ends on May 24, 2019. The order is effective until the **later** of 180 days (March 30, 2019) or the last day of the school year, so the order is effective until May 24, 2019.

Now suppose a remedial order is entered on April 1, 2019. The order is effective until the **later** of 180 days (September 28, 2019) or the last day of the school year (May 24, 2019), so the order is effective until September 28, 2019.

## 7. May the Court Modify the Remedial Order?

Yes. The truancy court may hold a hearing to modify any remedy imposed by the court in a remedial order. The remedy may only be modified during the period the order is effective (up to 180 days after the order was entered or the last day of the school year, whichever is later). *Family Code § 65.108(a)*.



COMMON  
PITFALL

A hearing to modify a remedy imposed by the court must be held if requested by the state, the court, or the child and the child's parent, guardian or guardian ad litem, or attorney. The court must give reasonable notice of the hearing to all parties. *Family Code § 65.108(c)*.

In considering a motion to modify a remedy, the court may consider a written report from a school district official or employee, a juvenile case manager, or a professional consultant in addition to the testimony of witnesses. The court must provide the child's attorney and the truant conduct prosecutor with access to all written materials to be considered by the court.

The court may order counsel not to reveal items to the child, or the child's parent, guardian or guardian ad litem if the disclosure would materially harm the treatment and rehabilitation of the child or would substantially decrease the likelihood of receiving information from the same or similar sources in the future. *Family Code § 65.108(c)*. For example, if the report contains information about the results of a drug test, the court may order the child's attorney not to disclose the results to the child, or the child's parent, guardian or guardian ad litem.

If the court modifies the remedial order, the court must pronounce the changes to the remedy in open court, and specifically state the court's changes to the remedy and the reasons for modifying the remedy in a written order. The court must furnish a copy of the order to the child. *Family Code § 65.108(e)*.

There is no right to a jury trial on a request for modification of the remedial order. *Family Code § 65.108(b)*. Any modification of the remedy is determined solely by the court.

## K. Court Costs

If a child is found to have engaged in truant conduct, the truancy court is to order the child, parent or other person responsible for the child's support to pay a court cost of \$50 to the clerk of the court. Before ordering this court cost to be paid, the court must give the child, parent or other person a reasonable opportunity to be heard and must find that the child, parent or other person is financially able to pay it. *Family Code § 65.107(a)*.



COMMON  
PITFALL

The court's order to pay the \$50 in court costs is not effective unless it is reduced to writing and signed by the judge. The order may be included in the remedial order. *Family Code § 65.107(b)*.

The clerk must keep a record of the court costs collected and forward the funds to the county treasurer. *Family Code § 65.107(c)*.

The court costs must be deposited in a special account that must be used to offset the cost of the operation of the truancy court. *Family Code § 65.107(d)*. For example, the account might be used to offset some or all of the costs of serving a summons by personal delivery. *See page 9.*

## L. Orders to Parents and Other Persons



If a child is found to have engaged in truant conduct, the court may order the child's parent or other persons to do or refrain from doing a wide range of things designed to protect the child's welfare. A person subject to such an order is entitled to a hearing before the order is entered.

The actions the court may take include to:

- (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 (for example, the court could order a parent to help a child with their homework every night, or could order a friend who was playing online video games with the child until late at night to stop playing video games with the child);
- (3) enjoin (that is, prohibit) 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 (meaning by blood or marriage), 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;

### Remedial Order v. Order Directed to a Parent or Other Person

A remedial order is directed to the child who has been found to have engaged in truant conduct. But the court may also order the child's parent or other persons to do or not do acts that the court determines are appropriate under the circumstances to address the causes of the truancy.

- (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;
- (7) order the child's parent to perform not more than 50 hours of community service with the child. However, 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. *Family Code § 65.105.*

## M. Contempt Procedure for Child

### 1. When May the Court Hold a Child in Contempt?



KEY  
POINT

If a child fails to obey a remedial order issued by a truancy court, or if a child is in direct contempt of court, the truancy court, after providing notice and an opportunity for a hearing, may hold the child in contempt of court and order either or both of the following:

- That the child pay a fine not to exceed \$100; or
- That DPS suspend the child's driver's license or permit, or if the child does not have a license or permit then order DPS not to issue a license or permit to the child, until the child **fully complies with the court's orders.** *Family Code § 65.251(a).*

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***“Direct Contempt” is behavior that occurs in the presence of the court. The judge has personal knowledge of it because the judge either saw it or heard it. See Chapter 3.A.1.b of the Officeholding Deskbook.***

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## 2. Must the Child be Present in Court to Hold Them in Contempt?

As noted above, the Family Code states that a truancy court may hold a child in contempt of court if the child fails to obey a remedial order or is in direct contempt “**after notice and an opportunity to be heard.**” *Family Code § 65.251(a)*. Does this mean that the court just has to send a notice to the child and give the child an **opportunity** to be heard before holding the child in contempt, or does the child have to be physically present in court before the court may hold the child in contempt?



We believe the best practice is to have the child physically before the court before holding them in contempt. Otherwise, the child may not have actual notice that they have been held in contempt (for example, they may not receive a written notice that is mailed to them) and may not know of the sanctions imposed on them upon a finding of contempt (for example, a driver’s license suspension). In addition, if they are present at the contempt hearing the court will have the benefit of any mitigating factors relating to their failure to comply with the remedial order.



### How can the court get the child before it for purposes of a contempt hearing?

We suggest the following steps in progression:

- Send a notice of the contempt hearing to the child and the child’s parent, guardian or guardian ad litem by first class mail.
- Issue a summons and have it served on the child and the child’s parent, guardian or guardian ad litem personally; endorse on the summons an order that the parent bring the child to the court for the contempt hearing.
- Order the parent, guardian or guardian ad litem to appear and explain why they have not brought the child to the court; if necessary, issue a writ of attachment to bring the parent, guardian or guardian ad litem directly to the court.
- Only as a last resort, and if all of the above methods have failed, issue a writ of attachment to bring the child directly to the court.

### Child’s Presence in Court at Contempt Hearing

The court should not hold a child in contempt for failing to obey a remedial order unless the child is present in court. Otherwise the child may not know they’ve been held in contempt. *See discussion on next page concerning how to get the child before the court.*

### 3. May the Court Conduct a Contempt Hearing After a Remedial Order Expires?

As discussed above, a remedial order is effective until the date specified in the order, which may not be more than 180 days after the date the order is entered, or the last day of the school year in which the order was entered, whichever is later. *Family Code § 65.104. See page 22.*

What if a child does not comply with a remedial order but it is now more than 180 days after the order was entered or the last day of the school year? Does that mean the court may not hold the child in contempt for failing to comply with the remedial order?



COMMON  
PITFALL

No. Even though the remedial order has now expired, the child was required to comply with the remedial actions in the order while it was in effect. If the child failed to do so, the court may hold a hearing to determine whether the child should be held in contempt for not complying with the remedial order. If the court finds the child in contempt, the court may impose a fine of up to \$100 or suspend the child's driver's license or permit until the child fully complies with the remedial order. *Family Code § 65.251. See page 25.*

For example, suppose the court orders the child to attend an alcohol and drug abuse program as part of the remedial order, which the court signed on March 1, 2018. The court sets a contempt hearing before August 28, 2018, when the remedial order expires, but the child does not appear for the hearing. The court sets a new hearing for September 5, 2018, and the child appears. Even though the remedial order has now expired, the court may hold the child in contempt for failing to attend the alcohol and drug abuse program and impose a fine of up to \$100 and/or order DPS to suspend the child's driver's license or permit (or not issue a driver's license or permit) until the child attends the course. (Note: even if the court did not set an initial contempt hearing before August 28, 2018, it could still set a contempt hearing after August 28 and enforce the remedial order through contempt.)

### 4. When May the Court Refer a Child to Juvenile Probation?



COMMON  
PITFALL

A truancy court may refer a child to the juvenile probation department, after providing notice and an opportunity for a hearing, if the child fails to obey a remedial order or is in direct contempt of court, and the child has failed to obey an order or been found in direct contempt of court on two or more previous occasions. *Family Code § 65.251(b).*

However, if the child failed to obey the truancy court order or was in direct contempt of court while 17 years of age or older, the court may not refer the child to juvenile probation. *Family Code § 65.251(b).*

## 5. What Must the Court Do When it Refers a Child to Juvenile Probation?

On referral of the child to the juvenile probation department, the truancy court must provide to the juvenile probation department:

- (1) documentation of all truancy prevention measures taken by the originating school district;
- (2) documentation of all truancy orders for each of the child's previous truancy referrals, including:
  - (A) court remedies and documentation of the child's failure to comply with the truancy court's orders, if applicable, demonstrating all interventions that were exhausted by the truancy court; and
  - (B) documentation describing the child's direct contempt of court, if applicable;
- (3) the name, birth date, and last known address of the child and the school in which the child is enrolled; and
- (4) the name and last known address of the child's parent or guardian.

The juvenile probation department may, on review of this information:

- (1) offer further remedies related to the local plan for truancy intervention strategies; or
- (2) refer the child to a juvenile court for proceedings there. *Family Code § 65.251(c) and (d).*

## 6. May a Court Confine a Child in Jail for Failing to Obey a Remedial Order?

**No.** A truancy court may not order the confinement of a child for failing to obey a remedial order. *Family Code § 65.251(e).*



### Jail is NOT an Option . . .

. . . for a child who fails to obey a remedial order.





## N. Contempt Procedure for Parent or Other Person

### 1. When May the Court Hold a Parent or Other Person in Contempt?



KEY  
POINT

A truancy court may enforce the following orders by contempt:

- (1) An order that a parent, guardian or guardian ad litem attend an adjudication hearing;
- (2) An order that a person other than a child take a particular action that the court has ordered that person to take under Section 65.015(a) (*see pages 24 – 25*);
- (3) An order that a child’s parent or other person responsible for supporting the child reimburse the county for the cost of the guardian ad litem (*see page 13 – 14*);
- (4) An order that a parent or person other than the child pay the \$50 court cost (*see page 23*).  
*Family Code § 65.253(a).*

The penalty for a finding of contempt for not complying with any of these orders is a fine of up to \$100. *Family Code § 65.253(c).*

A truancy court may also find a parent or other person in direct contempt of court. *Family Code § 65.253(b).* The penalty for a finding of direct contempt is a fine of up to \$100; in addition, the court may punish a parent or other person for contempt by confinement in jail for a maximum of three days and/or ordering them to perform up to 40 hours of community service. *Family Code § 65.253(c) and (d).* *See Chapter 3.A.1.b of the Officeholding Deskbook for a definition and explanation of direct contempt.*

### 2. Procedures for Contempt for a Parent or Other Person



COMMON  
PITFALL

Before holding a parent or other person in contempt the truancy court must provide them with notice of the proposed contempt order and give them a sufficient opportunity to be heard. *Family Code § 65.255(a).*

An order holding a parent or other person in contempt must be in writing and a copy of the order must be promptly furnished to the parent or other person. *Family Code § 65.255(b).*

The truancy court may require the parent or other person to provide suitable identification to be included in the court’s file. Suitable identification includes fingerprints, a driver’s license number, a social security number or similar indications of identity. *Family Code § 65.255(c).*

### 3. Appeal

A parent or other person who is held in contempt may appeal the contempt order in the same way a party appeals an order from a justice court in a civil case. Rule 506 applies to a such an appeal except that an appeal bond is not required. The pendency of an appeal does not stay or otherwise affect the proceedings in the truancy court involving the child. *Family Code § 65.256. See Chapter 8 of the Civil Deskbook.*

## O. Motion for Enforcement

### 1. What is a Motion for Enforcement?

A motion for enforcement is a motion filed by the prosecutor to enforce a truancy court order against a parent or a person **other than the child**. *Family Code § 65.257(a).*

The truancy court may also initiate a motion for enforcement itself, that is the court may use this procedure to enforce one of its orders against a parent or person other than the child even if the truant conduct prosecutor does not file a motion for enforcement.

### 2. What Does a Motion for Enforcement Have to Say?

A motion for enforcement must, in ordinary and concise language:

- Identify the provision of the order allegedly violated and sought to be enforced;
- State specifically and factually the manner of the person's alleged noncompliance;
- State the relief requested; and
- Contain the signature of the person filing the motion. *Family Code § 65.257(a).*

The prosecutor must allege the particular violation by the person of the truancy court order. *Family Code § 65.257(b).*

#### Motion for Enforcement

A motion for enforcement may be filed by a prosecutor or it may be raised by the court on its own motion. It is directed to a parent or person other than the child.

### 3. Setting the Hearing and Giving Notice to the Person



KEY  
POINT

When a motion for enforcement is filed, the court must prepare a written notice setting the date, time and place for the hearing and order the person against whom enforcement is sought to appear and respond to the motion. *Family Code § 65.258(a)*.

The notice must be served by personal service or by certified mail, return receipt requested, on or before the 10<sup>th</sup> day before the date of the hearing on the motion. The notice must include a copy of the motion for enforcement. *Family Code § 65.257(b)*.

### 4. What if the Person Objects to the Motion?

If the person moves to strike or “specially excepts” to the motion, the court must rule on the motion to strike or the special exception before the court hears evidence on the motion. A special exception is an objection to an alleged defect in the motion, for example, that it does not state how the person failed to comply with the court’s order or contains some material omission. If the court sustains the special exception, the court must give the moving party an opportunity to replead and continue the hearing to a new date and time without requiring additional service on the person against whom the motion has been filed. *Family Code § 65.258(c)*.

### 5. What if the Person Does Not Appear at the Hearing?

If a person who has been personally served with a notice to appear at the hearing does not appear, the court may issue a warrant for their arrest. The court may not hold the person in contempt for failing to appear. *Family Code § 65.258(d)*. Note: the court could also issue a writ of attachment rather than an arrest warrant to have the person brought directly to the court.

### 6. What Happens at the Hearing?

The hearing is conducted before the court without a jury. The person against whom enforcement is sought has a privilege not to be called as a witness or otherwise incriminate themselves. *Family Code § 65.259(b) and (c)*.

The moving party must prove beyond a reasonable doubt that the person against whom enforcement is sought engaged in conduct constituting contempt of a reasonable and lawful court order. *Family Code § 65.259(a)*.

The person against whom enforcement is sought has a privilege not to be called as a witness or otherwise incriminate themselves. *Family Code § 65.259(b)*.



**COMMON  
PITFALL**

If the person against whom enforcement is sought was not represented by counsel in any previous court proceeding involving a motion for enforcement, the person may, through counsel, assert any defense or affirmative defense to the proceeding that could have been asserted in the previous court proceeding but was not asserted because the person was not represented by counsel. In other words, if someone did not raise a defense previously because they did not have a lawyer, they may still raise that defense now if they are represented by a lawyer. *Family Code § 65.259(e)*.

It is also an affirmative defense to enforcement of a truancy court order that the truancy court did not provide the person with due process of law in the proceeding in which the court entered the order. *Family Code § 65.259(f)*.

### **7. The Court’s Judgment on the Motion for Enforcement**

At the conclusion of the hearing on the motion for enforcement, the court is to enter a judgment that includes findings for each violation alleged in the motion for enforcement and the punishment, if any, to be imposed. *Family Code § 65.259(d)*.

The punishment the court may impose includes a finding of contempt and the punishment for contempt, that is a fine of up to \$100, confinement in jail for up to three days and/or up to 40 hours of community service. *See Family Code § 65.253. See page 29.*

## **P. Records**

### **1. Expunction**

When the current truancy laws went into effect on September 1, 2015, a court in which an individual had been convicted of the former offense of Failure to Attend School under Section 25.094, Education Code, or in which a complaint for that offense had been filed, were required to order the expunction from the individual’s record of the “conviction, complaints, verdicts, sentences and any other documents relating to the offense, including any documents in the possession of a school district or law enforcement agency.” *Art. 45.0541(c), Code of Criminal Procedure.*

All justice courts in Texas should have ordered the expunctions of these records shortly after the effective date of H.B. 2398 (the current truancy law) on September 1, 2015. If your court did not do so, please do so promptly or contact TJCTC for assistance.

**Records May be Treated in One of Four Ways:**

- (1) Expunction (for old failure to attend school cases);
- (2) Destruction;
- (3) Confidentiality;
- (4) Sealing.

## 2. Destruction

As discussed above, a school district may file a referral with a truancy court, which the court then forwards to the truant conduct prosecutor but the prosecutor decides not to file a petition alleging that the child engaged in truant conduct. If that happens the court must order the destruction of the referral and all documents relating to the allegations of truant conduct that are held by the court or the prosecutor. *Family Code § 65.203. See page 6.*

## 3. Confidentiality

Truancy court records and files must be maintained as confidential and may not be disclosed to the public. They may be disclosed only to:

- (1) the judge of the truancy court, the truant conduct prosecutor, and the staff of the judge and prosecutor;
- (2) the child or an attorney for the child;
- (3) a governmental agency if the disclosure is required or authorized by law;
- (4) a person or entity to whom the child is referred for treatment or services if the agency or institution disclosing the information has entered into a written confidentiality agreement with the person or entity regarding the protection of the disclosed information;
- (5) the Texas Department of Criminal Justice and the Texas Juvenile Justice Department for the purpose of maintaining statistical records of recidivism and for diagnosis and classification;
- (6) the agency (note: there is no definition of “agency” but we assume the legislature meant to refer to TEA); or
- (7) with permission of the truancy court, any other person, agency, or institution having a legitimate interest in the proceeding or in the work of the court. *Family Code § 65.202.*

## **4. Sealing**

### ***a. What is Sealing?***

When a document is sealed not only may the document itself not be disclosed to the public, but even the existence of the document may not be disclosed. It is as though the document does not exist.

### ***b. Who is Entitled to Have Truancy Records Sealed?***

A child who has been found to have engaged in truant conduct and who fully complied with the court's remedial order may apply, on or after the child's 18<sup>th</sup> birthday, to the truancy court that made the finding to seal the records relating to the allegation and finding of truant conduct held by (1) the court; (2) the truant conduct prosecutor; and (3) the school district. *Family Code § 65.201(a)*.

### ***c. What Does the Child Have to File?***

The child must file an application that includes the following information (or an explanation as to why it is missing):

- The child's full name, sex, race or ethnicity, date of birth, driver's license or identification card number, and social security number;
- The dates on which the truant conduct was alleged to have occurred; and
- If known, the cause number assigned to the petition and the court and county in which the petition was filed. *Family Code § 65.201(b)*.

### ***d. What Does the Court Do?***

Upon determining that the child complied with the remedies ordered by the court in the case, the court must order the records to be sealed. *Family Code § 65.201(c)*.

**e. What Does the Court Do Once the Records Have Been Sealed?**



KEY  
POINT

The truancy court, the clerk of the court, the truant conduct prosecutor and the school district must respond to a request for information concerning a child’s sealed truant conduct case by stating that “no record exists with respect to the child.” *Family Code § 65.201(e)*.

All index references to the records of the truancy court that are ordered sealed must be deleted not later than the 30<sup>th</sup> day after the date of the order to seal the records. *Family Code § 65.201(d)*.

**f. May the Sealed Records be Inspected?**

The sealed records may only be inspected if the person who is the subject of the records files a petition with the truancy court requesting a court order permitting inspection. Only persons specifically named in the court’s order permitting inspection are allowed to inspect the records. *Family Code § 65.201(f)*.

**g. What Effect Does Sealing Have on the Child?**

A person whose records have been sealed is not required in any proceeding, or in any application for employment, information or licensing to state that the person has been the subject of a truancy proceeding. Any statement that the person has never been found to have engaged in truant conduct may not be used against the person in any civil or criminal proceeding. *Family Code § 65.201(g)*.

**h. When May the Sealed Records be Destroyed?**

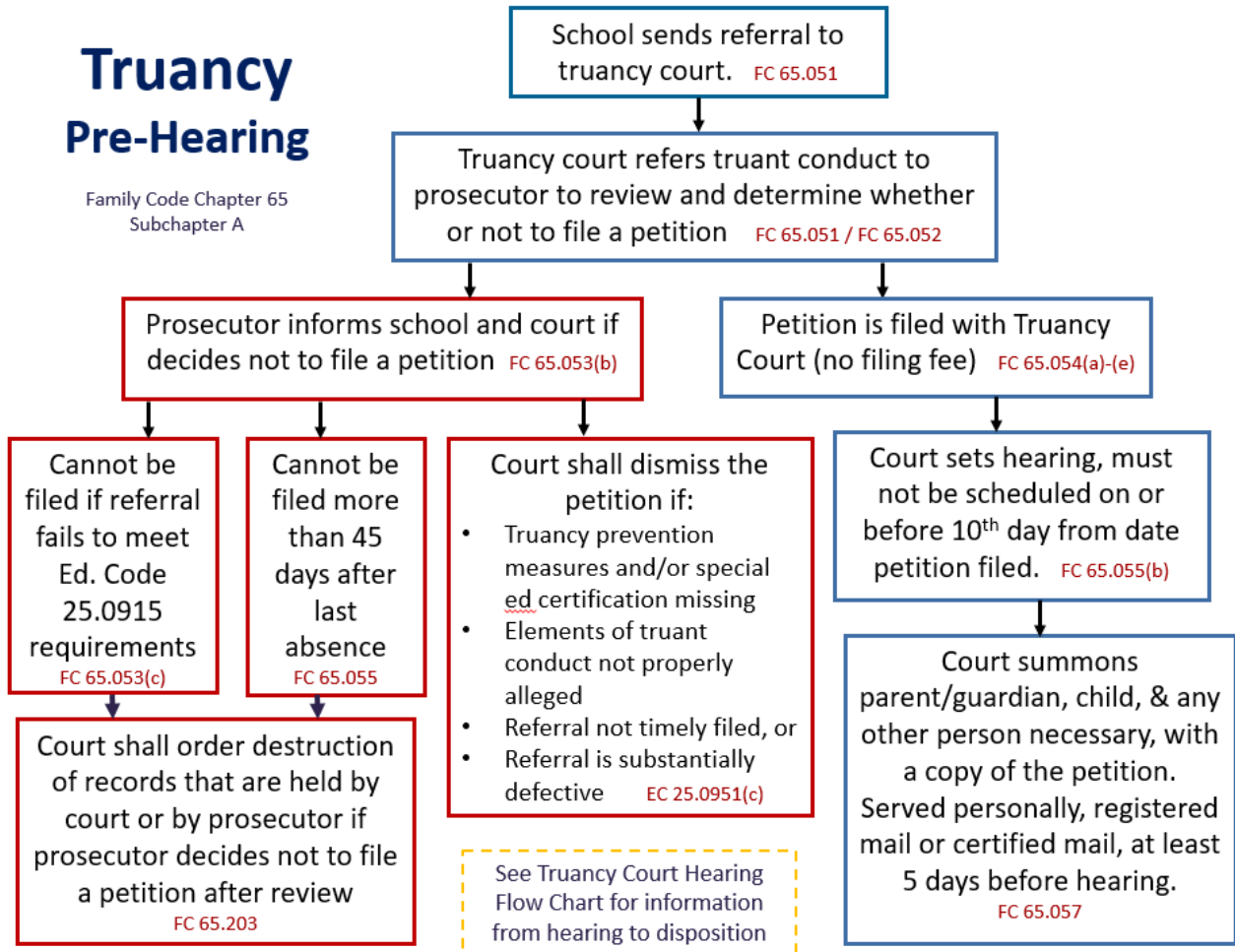
On or after the child’s 21<sup>st</sup> birthday, on a motion by the child or on the court’s own motion, the court may order the destruction of the sealed records as long as the child has not been convicted of a felony. *Family Code § 65.201(h)*.

## **Q. Forms**

Forms relating to truancy cases may be found on the TJCTC website by clicking on “Resources,” then “Forms,” then “Truancy” or by clicking on this link: <http://www.tjctc.org/tjctc-resources/forms.html>

## R. Flowcharts

Here are truancy flowcharts:



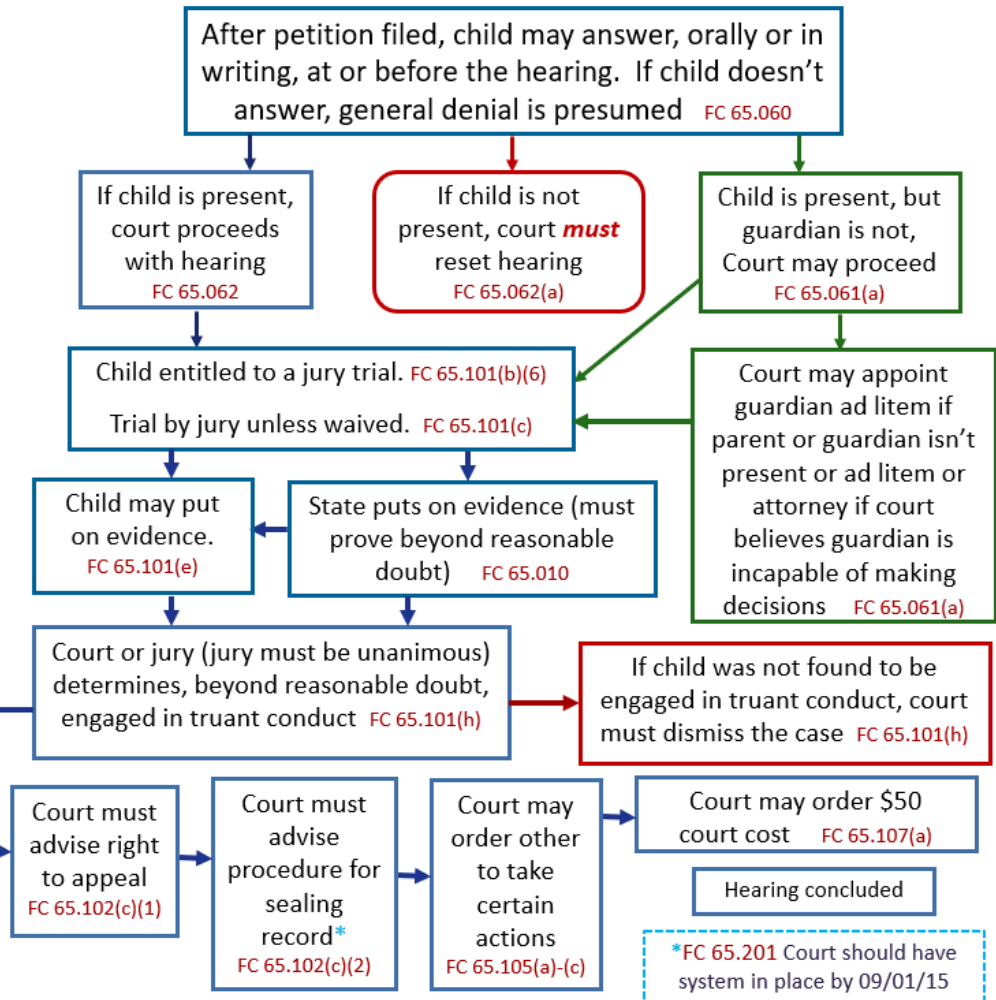


# Truancy Court Hearing

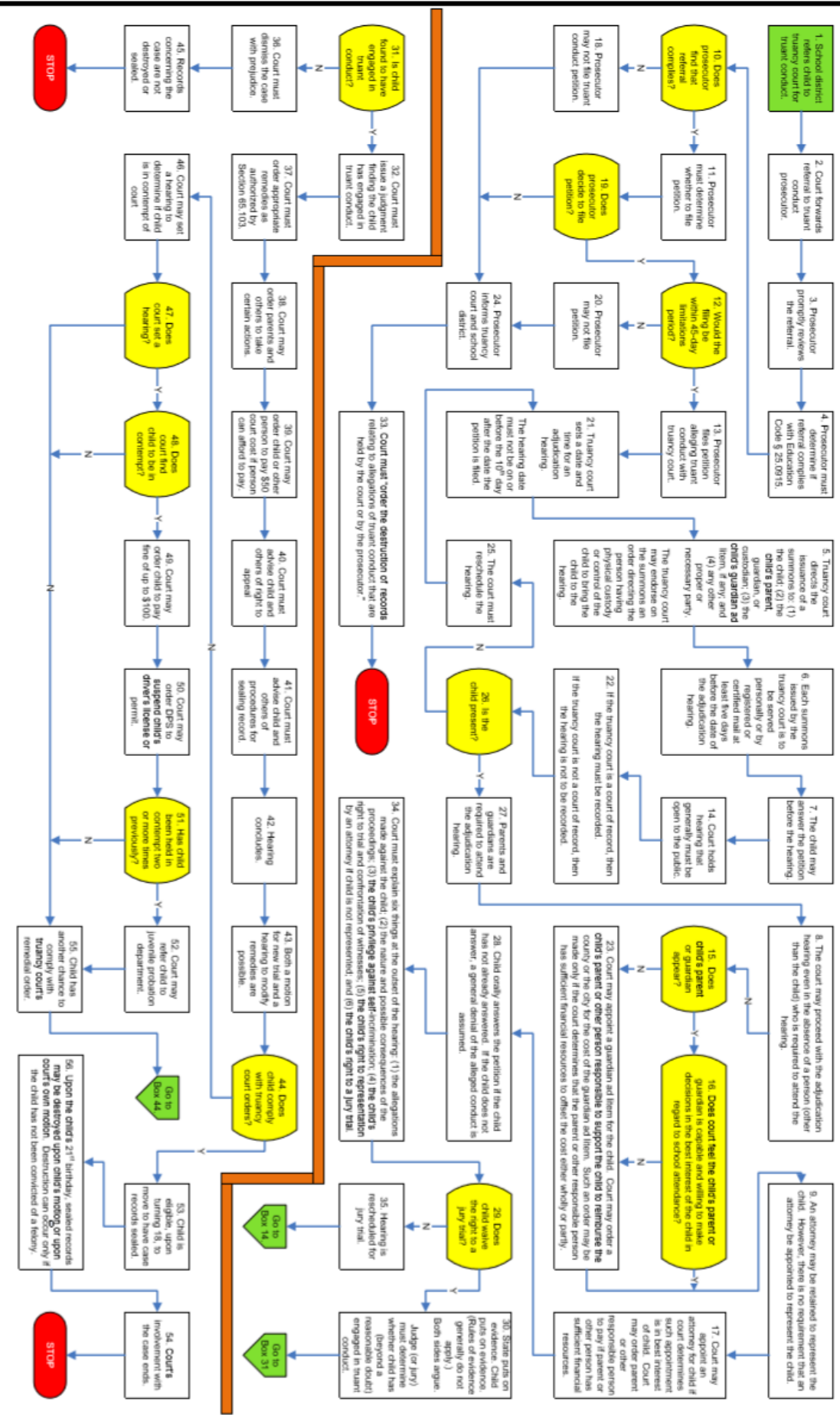
Family Code Chapter 65  
Subchapter A

Interpreter *may* be appointed for individuals that do not understand and/or speak English. An interpreter *shall* be appointed for deaf individuals, including the parent/guardian  
FC 65.013

If found to be engaged in truant conduct, court orders appropriate remedial actions (found in FC 65.102(a)) Court must pronounce those actions in child's presence and must put them in writing  
FC 65.102(a)



# Truancy Court Procedures



## **S. Exemptions from Compulsory School Attendance**

Here is the full text of the statute concerning exemptions from compulsory school attendance:

A child is exempt from compulsory school attendance if the child:

- (1) attends a private or parochial school;
- (2) is eligible to participate in a school district's special education program and cannot be appropriately served by the resident district;
- (3) has a physical or mental condition of a temporary and remediable nature that makes the child's attendance infeasible and holds a certificate from a qualified physician specifying the temporary condition, indicating the treatment prescribed to remedy the temporary condition, and covering the anticipated period of the child's absence from school for the purpose of receiving and recuperating from that remedial treatment;
- (4) is expelled in accordance with the requirements of law in a school district that does not participate in a mandatory juvenile justice alternative education program;
- (5) is at least 17 years of age and:
  - (A) is attending a course of instruction to prepare for the high school equivalency examination, and:
    - (i) has the permission of the child's parent or guardian to attend the course;
    - (ii) is required by court order to attend the course;
    - (iii) has established a residence separate and apart from the child's parent, guardian, or other person having lawful control of the child; or
    - (iv) is homeless; or
  - (B) has received a high school diploma or high school equivalency certificate;
- (6) is at least 16 years of age and is attending a course of instruction to prepare for the high school equivalency examination, if:

(A) the child is recommended to take the course of instruction by a public agency that has supervision or custody of the child under a court order; or

(B) the child is enrolled in a Job Corps training program;

(7) is at least 16 years of age and is enrolled in a high school diploma program;

(8) is enrolled in the Texas Academy of Mathematics and Science, the Texas Academy of Leadership in the Humanities, the Texas Academy of Mathematics and Science at The University of Texas at Brownsville, or the Texas Academy of International Studies; or

(9) is specifically exempted under another law.

*Education Code § 25.086.*

## Chapter 2: Parent Contributing to Non-Attendance Cases

### A. What is a Parent Contributing to Non-Attendance Case?



While a truancy case (the case brought against the child) is now a **civil** case, a parent contributing to non-attendance case remains a **criminal** case. It is a **criminal prosecution** against a parent of a child who has failed to attend school without excuse on ten or more days or parts of days within a six-month period in the same school year. *Education Code §§ 25.093(a), 25.0951(a); Family Code § 65.003(a)*.

In a proceeding based on a complaint for the offense of parent contributing to non-attendance, the court is therefore to follow the procedures and exercise the powers authorized by Chapter 45 of the Code of Criminal Procedure, except as otherwise provided by Chapter 25 of the Education Code. *Education Code § 25.0952. See Chapter 11.D of the Criminal Deskbook.*

What is the Difference  
Between a Truancy Case  
and a Parent Contributing  
Case?

A truancy case is a **civil**  
case directed to the child.

A parent contributing case  
is a **criminal case** directed  
to the parent.

### B. Where May a Parent Contributing Case be Filed?

A school district or school official may file a parent contributing complaint in “a justice court of **any precinct in the county** in which the parent resides or in which the school is located.” *Education Code §§ 25.093(b), 25.0951(b)*.



The complaint therefore does not have to be filed in the **precinct** in which the parent resides or the school is located; it may be filed in **any precinct in the county** as long as the parent resides in that county or the school is located in that county.

### C. When Does the Offense Occur?

The offense occurs if:

- (a) a warning is issued to the parent by the school district in writing at the beginning of the school year notifying the parent that they are subject to criminal prosecution if the student is absent from school on ten or more days or parts of days within a six-month period in the same school

year;

(b) the parent **with criminal negligence** fails to require the child to attend school as required by law; **and**

(c) the child fails to attend school without excuse on ten or more days or parts of days within a six-month period in the same school year. *Education Code §§ 25.093(a), 25.0951(a).*

The fact that a parent did not receive a notice at the beginning of the school year does not create a defense to a charge of parent contributing; what is required is that a warning is **issued**. *Education Code § 25.095(c).*

The term “parent” includes “a person standing in a parental relation.” *Education Code §§ 25.093(i), 25.0951(b).* This could include a guardian or a grandparent who is supporting the child.



COMMON  
PITFALL

At the time it files a complaint for parent contributing to non-attendance, the school district must provide “evidence of the parent’s criminal negligence.” *Education Code § 25.0951(b).* It is not enough “to allege merely that the accused, in committing the offense, acted . . . with criminal negligence.” *Art. 21.15, Code of Criminal Procedure.* For example, a petition might allege that a parent dropped their child off at the mall instead of taking them to school; the acts that constitute the criminal negligence must be stated, not just the words “criminal negligence.”

At the trial of a parent contributing case, the attendance records of the child may be presented in court by any authorized employee of the school district (or open enrollment charter school). *Education Code § 25.093(e).*

## D. When May the Court Dismiss a Parent Contributing Complaint?

### 1. Mandatory Dismissal



KEY  
POINT

A court **shall** dismiss a parent contributing to non-attendance case if a complaint filed by a school district:

- (1) Does not comply with Section 25.0951 of the Education Code (for example, the school district fails to provide evidence of the parent’s criminal negligence);
- (2) Does not allege the elements required for the offense (for example, that the student failed to attend school on ten or more days or parts of days within a six-month period within the same school year);

(3) Is not timely filed, unless the school district delayed the referral of the child to a truancy court because of the implementation of truancy prevention measures; or

(4) Is otherwise substantively defective (for example, a single complaint is filed against two parents).

With respect to when a complaint is “timely filed,” the statute is not clear. A school district must file a **referral** for a child with a truancy court “within 10 school days of the student’s 10<sup>th</sup> absence.” *Education Code § 25.0951(a)*. But a referral only applies to a **student**, not to a parent. The statute does not expressly state that a complaint for parent contributing must be filed within ten school days of the student’s tenth absence, and the filing of a referral with a truancy court is not a prerequisite to the filing of a complaint for parent contributing. Given this ambiguity we believe a court would not be **required** to dismiss a complaint that is not filed within ten school days of the student’s tenth absence.

## 2. Discretionary Dismissal

A court also has discretion to dismiss a parent contributing case if the court finds the dismissal would be in the interest of justice because:

(1) There is a low likelihood of recidivism by the defendant; or

(2) Sufficient justification exists for the failure to attend school. *Art. 45.0531, Code of Criminal Procedure*.

To dismiss on these grounds the court should have some evidence before it. For example, the court might find at trial that the parent has taken appropriate action and is making reasonable efforts to keep the child in school.

## E. What Affirmative Defenses May a Parent Raise?

A parent may raise as an affirmative defense “that one or more of the absences required to be proven . . . was excused by a school official or should be excused by the court.” The burden is on the parent “to show by a preponderance of the evidence that the absence has been or should be excused.”

### Mandatory v. Discretionary Dismissal of a Parent Contributing Case

A court **must** dismiss a parent contributing case if the complaint does not comply with the Education Code, does not allege the elements of the offense, is not timely or is substantively defective.

A court **may** dismiss a parent contributing case if the court finds there is a low likelihood of recidivism by the defendant or sufficient justification exists for failing to attend school.



BEST  
PRACTICE



KEY  
POINT

*Education Code § 25.093(h).*

## **F. What is the Fine Amount in a Parent Contributing Case?**



KEY  
POINT

A parent contributing to non-attendance offense is a misdemeanor, punishable by fine only, in an amount not to exceed:

- (1) \$100 for a first offense;
- (2) \$200 for a second offense;
- (3) \$300 for a third offense;
- (4) \$400 for a fourth offense; or
- (5) \$500 for a fifth or subsequent offense. *Education Code § 25.093(c).*

Each day the child remains out of school may constitute a separate offense. Two or more offenses may be consolidated and prosecuted in a single action. *Education Code § 25.093(c-1).*

The school district would need to file a new complaint for each separate offense but two or more offenses may be consolidate and tried in a single action. A new absence after the first ten absences could be grounds for a new offense. For example, offense 1 is based on absences 1-10; offense 2 is based on absences 2-11; offense 3 is based on absences 3-12, etc. The absences must all be within a six-month period in the same school year. If there is one new absence and within the prior six months there are not ten absences, then the school district does not have grounds to file a new complaint.



COMMON  
PITFALL

A fine collected in a parent contributing case is to be deposited with one-half going to the credit of the operating fund of the school district (or open enrollment charter school or juvenile justice alternative education program) and one-half going to the general fund of the county. *Education Code § 25.093(d).*

## **G. What Other Remedies May the Court Impose?**



BEST  
PRACTICE

In addition to a fine the court may order the parent to attend a program (if one is available) designed to assist parents in identifying problems that contribute to unexcused absences and in developing strategies for resolving those problems. *Education Code § 25.093(f).* The court may order this whether the parent is convicted of the offense or given a deferred disposition under Art. 45.051 of the Code of Criminal Procedure.



If the court orders a deferred disposition under Art. 45.051, then the court may also “require the defendant to provide personal services to a charitable or educational institution as a condition of the deferral.” Education Code § 25.093(c-1). This does not limit any other conditions of deferral the court may impose under Art. 45.051(b).



KEY  
POINT

If a parent refuses to obey a court order entered in a parent contributing case, the court may punish the parent for contempt of court under Section 21.002 of the Government Code. *Education Code § 25.093(g)*. Section 21.002(c) provides: “The punishment for contempt of a justice court . . . is a fine of not more than \$100 or confinement in the county . . . jail for not more than three days, or both such a fine and confinement in jail.”

## Contempt is Available

...

... if a parent refuses to obey a court order entered in a parent contributing case, such as an order requiring the parent to attend a program to assist parents in resolving the issues causing the child’s non-attendance.

# Chapter 3: Processing Juvenile Criminal Cases

## A. Justice Court v. Juvenile Court

### 1. What Cases Do You Hear?

Generally, a child cannot face criminal charges for their conduct. Instead, if a child engages in conduct that violates a criminal law, a juvenile court hears the case as one involving either delinquent conduct or conduct indicating a need for supervision (the two categories of conduct over which a juvenile court has jurisdiction). *Family Code § 51.04(a)*.



KEY  
POINT

But a child can be charged with a fine-only misdemeanor offense, such as speeding. And a justice court does have jurisdiction over fine-only offenses committed by a “child.” *Art. 45.058(h); Family Code § 51.02(2)*.

Juvenile criminal offenses that are heard by justice courts include:

- Alcohol offenses (*see Chapter 4*);
- Tobacco offenses (*see Chapter 5*);
- Non-truancy Education Code offenses (*see Chapter 6*);
- Traffic offenses (*see Chapter 7 and Chapter 11.C of the Criminal Deskbook*);
- Other fine-only misdemeanors, such as public intoxication, disorderly conduct and graffiti.

### 2. Transfer of a Case from Justice Court to Juvenile Court

#### a. May Transfer any Case Other than Traffic Offense



KEY  
POINT

A justice court **may** transfer any case filed against a child **other than a traffic offense** to a juvenile court. *Family Code § 51.08(b)(2)*.

#### Who is a “Child”?

A “child” means a person who is at least 10 years of age and younger than 17 years of age, or at least 17 years old but less than 18 years old and alleged to have committed conduct before turning 17 that is either delinquent conduct or conduct indicating a need for supervision. *Family Code § 51.02(2)*.

If a complaint is filed in a justice court against a child alleging a fine-only offense other than a traffic offense, and the justice court **does not** transfer the case to the juvenile court, then the justice court must notify the juvenile court of the pending complaint and furnish it with a copy of the final disposition of the case. *Family Code § 51.08(c)*.

***b. Must Transfer if Two Prior Non-Traffic Convictions (Unless Court has Juvenile Case Manager)***

If a fine-only offense is filed against a child in justice court and the child has two prior convictions of fine-only offenses other than traffic offenses, then the justice court **must** transfer the case to juvenile court. *Family Code § 51.08(b)(1)*.

A prior case that was dismissed under the deferred disposition procedures of Art. 45.051 or under the teen court procedures of Art. 45.052(d) of the Code of Criminal Procedure does not count as a prior conviction and therefore does not trigger the mandatory transfer requirement.



KEY  
POINT

If the justice court has implemented a juvenile case manager program under Art. 45.056, Code of Criminal Procedure (*see pages 107 – 108*), then the mandatory transfer provisions do not require transfer if the child has two prior convictions and the justice court may retain the case. *Family Code § 51.08(d)*.

***c. Must Transfer if Complaint has been Dismissed due to Mental Illness, Developmental Disability or Lack of Capacity***

A justice court must transfer a fine-only offense other than a traffic offense filed against a child if the court, or another court, has previously dismissed a complaint against the child on grounds of mental illness, developmental disability or lack of capacity under Section 8.08, Penal Code. *Family Code § 51.08(f)*.

***d. If Case is Transferred to Juvenile Court***

If the justice court transfers the case to the juvenile court, then it must issue a written order and forward the complaint and all other case documents to the juvenile court. *Family Code § 51.08(a)*.

## **B. Procedural Protections in Juvenile Cases**

As a general matter the procedures in Chapter 45 of the Code of Criminal Procedure apply to the prosecution of juveniles in justice court. *See Criminal Deskbook*. However, special requirements apply with respect to pleas, parental presence, notification and other matters discussed below.

*In the case of an alcohol offense by a minor under the Alcoholic Beverage Code the defendant may not plead guilty except in open court before a judge. Alcoholic Beverage Code § 106.10. In this case “minor” means less than 21 years old. See pages 72, 75 – 76.*

## 1. Pleas in Open Court



KEY  
POINT

The judge must take the defendant’s plea in open court if the defendant has not had the disabilities of minority removed and:

- Is younger than 17 years of age if they are charged with an offense other than a sexting offense under Penal Code § 43.261; or
- Is younger than 18 years of age if they are charged with a sexting offense under Penal Code § 43.261. *Art. 45.0215(a), Code of Criminal Procedure.*



COMMON  
PITFALL

May an attorney appear without the child present in open court and enter a plea on behalf of the child? **No.**

May the child simply mail in the fine amount or mail in a guilty, nolo contendere or not guilty plea? **No.**

Does a prosecutor have to be present when they enter their plea in open court? **No.**

What if they live in another county? Can they enter a plea in front of a judge in that county? **Yes**, with leave of the judge of the court of original jurisdiction. *Art. 45.0215(c).*

## 2. Parental Presence



KEY  
POINT

The judge must also issue a summons to compel the defendant’s parent, guardian or managing conservator to be present during the taking of the defendant’s plea and all other proceedings relating to the case if the defendant has not had the disabilities of minority removed and:

- Is younger than 17 years of age if they are charged with an offense other than a sexting offense under Penal Code § 43.261; or

### Removal of Disabilities

A minor may petition to have the disabilities of minority removed if the minor is:

- (1) a resident of Texas;
- (2) 17 years old or at least 16 years old and living separate and apart from their parents, conservator or guardian; and
- (3) self-supporting and managing their own financial affairs.  
*Family Code § 31.001.*

- Is younger than 18 years of age if they are charged with a sexting offense under Penal Code § 43.261. *Art. 45.0215(a), Code of Criminal Procedure.*

When the court issues the summons to the parent the court must endorse on the summons an order directing the parent to appear in court personally with the child. The summons must also include a warning that the failure of the parent to appear may result in their arrest and is a Class C misdemeanor. *Art. 45.0215(d).*



KEY  
POINT

If the court is not able to secure the presence of the parent, guardian or managing conservator through the issuance of a summons, then the court may still take the child’s plea in open court and proceed against the child without the child’s parent, guardian or managing conservator present. *Art. 45.0215(b), Code of Criminal Procedure.* If necessary, the court could consider appointing an attorney for the child.

### 3. Does a Child Have a Right to Have Counsel Appointed?



COMMON  
PITFALL

**No!** Every defendant has a right to have counsel **represent** them in justice court; however, this does not mean they have a right to have the court **appoint** counsel. They do not have a right to have counsel appointed to defend a charge in justice court because justice courts can only hear fine-only offenses, meaning non-jailable offenses. Even if the defendant is indigent, or a minor, they do not have a **right** to have counsel appointed to represent them in justice court. *In the Matter of B.A.M.* However, the court does have the ability (although not the duty) to appoint an attorney if needed in the best interest of the child.

### 4. Notifications Required by the Judge

The judge must inform the child and any parent in open court of the child’s expunction rights and give them a copy of Art. 45.0216 of the Code of Criminal Procedure (concerning expunction, *see pages 104 - 105*).



KEY  
POINT

The judge should also inform the child and any parent of their obligation to provide the court in writing with the current address and residence of the child. This obligation does not end when the child reaches age 17. If the child or parent change their residence, they have an obligation to inform the court of their new address on or before the 7<sup>th</sup> day after the date their residence changed. The obligation to

#### Be Sure to Tell the Parent and Child in Open Court . . .

That they must give the court in writing:

- The current address and residence of the child and tell the court whenever it changes; and
- That the child has expunction rights.

Also give them a copy of Art. 45.0216 and Art. 45.057(h) and (i) of the Code of Criminal Procedure.

provide this notice of their current address only terminates upon discharge and satisfaction of the judgment or a final disposition that does not require a finding of guilt (such as a dismissal following a deferred disposition or driving safety course). A violation of this obligation may result in arrest and is a Class C misdemeanor. *Art. 45.057(h), Code of Criminal Procedure.*

If a county court accepts an appeal from a justice court for a trial de novo, the child and parent must provide the notice of their current address to the county court. *Art. 45.057(i), Code of Criminal Procedure.*

The child and parent are entitled to a **written** notice of their obligation to provide the court with their current address. This may be satisfied by giving them a copy of Art. 45.057(h) and (i) of the Code of Criminal Procedure during their initial appearance before the court, or by a peace officer when they give the child a citation or release the child to their parent on the parent's promise to bring the child before the court. *Arts. 45.057(j), 45.058(a), 45.058(g-1), Code of Criminal Procedure.*

## 5. Interpreters

An interpreter must be appointed for any party or witness who does not understand and speak the English language or is deaf. *Arts. 38.30(a), 38.31, Code of Criminal Procedure. See Chapter 6.B of the Criminal Deskbook.*

Does the court have to appoint an interpreter for a parent who is summoned to court when the child is a defendant? The Attorney General has said the court does not have to do so unless the parent is a witness or the court contemplates imposing an order on the parent (*see pages 62 - 63*). *Atty. Gen. Op. No. JC-0584 (2002).*



BEST  
PRACTICE

The Office of Court Administration (OCA) offers free licensed Spanish interpreters in certain situations and they and interpreters for other languages are available through the Texas Court Remote Interpreter Service (TCRIS). *See Chapter 6.B of the Criminal Deskbook.*

## 6. Mental Capacity of a Child



KEY  
POINT

The issue of whether or not a child has the mental capacity to commit an offense can be raised by the defendant, a parent, a prosecutor or by the court on its own motion. If this issue is raised, the judge must determine whether probable cause exists to believe the child lacks capacity to:

- Understand the proceedings;
- Assist in their defense;

- Appreciate the wrongfulness of their conduct; or
- Conform their conduct to legal requirements. *Penal Code § 8.08(a)*.

If the judge determines that there is probable cause to believe the child lacks mental capacity, the judge may dismiss the complaint after providing notice to the state. *Penal Code § 8.08(b)*.

If a defendant is under the age of 15 years old, they are **presumed** to lack mental capacity except for juvenile curfew or traffic offenses. In such a case the prosecutor must prove to the court by a preponderance of the evidence (meaning it is more likely than not) that the child had sufficient capacity to understand that the conduct was wrong at the time the conduct was engaged in. The prosecutor does not have to prove that the child knew the conduct was a criminal offense or the legal consequences of it. The prosecutor may prove the child's capacity by alleging it in the complaint if the child pleads guilty or nolo contendere or by offering evidence at trial. *Penal Code § 8.07(e)*.



If a defendant under the age of 15 charged with an offense other than juvenile curfew or a traffic offense wants to plead guilty and the complaint **does not** contain proof of capacity, then the most cautious approach is to enter a plea of not guilty for the defendant and set the case for trial where the required proof may be presented.

In such a case, if the defendant wants to plead guilty and the complaint **does** contain proof of capacity, then the judge should admonish the defendant to make sure they understand that they are admitting that they understood their conduct was wrong; the court may then proceed with sentencing including any remedial orders or deferred disposition.

## C. Appearance and Trial

### 1. What if They Fail to Appear?

What happens if a juvenile to whom a citation has been issued fails to show up as required by the citation?

#### a. *If Defendant is Under 17 Years Old*

If the defendant is under 17, then the court may take the following steps:



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### **(1) Summon the Parent and Order Them to Bring the Child**

The court may summon the parent and endorse on the summons an order to appear personally at the hearing with the child. The summons must include a warning that the failure of the parent to appear may result in arrest and is a Class C misdemeanor. *Art. 45.057(e)*.

If the parent fails to appear with the child, and a sworn complaint is filed charging the parent with failure to appear, then a warrant may be issued for the parent’s arrest. Before issuing a warrant the court should follow the notice procedures required by Art. 45.014(e) of the Code of Criminal Procedure. *See Chapter 3.B.1 of the Criminal Deskbook.*

### **(2) Issue a Capias to Have the Child Arrested and Brought Directly to the Judge**

The court may issue a capias under Arts. 23.01 and 23.04, Code of Criminal Procedure, to have the child arrested and brought directly to the judge. *See Chapter 3.B of the Criminal Deskbook..*

If the judge is not present at the time the child is brought to the court, the child should be released.

Before issuing a capias the court should also follow the notice procedures required by Art. 45.014(e) of the Code of Criminal Procedure. *See Chapter 3.B.1 of the Criminal Deskbook.*

### **(3) Report to OMNI if Defendant has a Driver’s License**

The court may also report the child to OMNI if they have a driver’s license as with any defendant who fails to appear in response to a citation. *See Chapter 3.D of the Criminal Deskbook.*

#### ***b. If Defendant is at Least 17 Years Old***

Once a defendant turns 17, the court has additional options to bring the defendant before the court

#### **Failure to Appear by a Parent**

This is not the offense of Failure to Appear under Section 38.10 of the Penal Code, but a separate offense under Art. 45.057(g) of the Code of Criminal Procedure.

#### **Child May Not be Placed in Secured Custody**

In most cases an individual may not be taken into secured custody for offenses alleged to have occurred before the individual’s 17<sup>th</sup> birthday. *Art. 45.060(a), Code of Criminal Procedure.*



using the notice of continuing obligation procedures explained below. *Art. 45.060, Code of Criminal Procedure.*

### (1) What is a Notice of Continuing Obligation?



A notice of continuing obligation is a notice the court may send to a defendant on or after their 17<sup>th</sup> birthday “to secure the individual’s appearance to answer allegations made before the individual’s 17<sup>th</sup> birthday.” *Art. 45.060(b), Code of Criminal Procedure.*

Provided the court has tried to secure the defendant’s appearance before their 17<sup>th</sup> birthday using “all available procedures,” the court may issue a notice to appear by personal service or by mail to the last known address and residence of the defendant. The notice must order the individual to appear at a designated time, place, and date to answer the allegations stated in the notice. *Art. 45.060(b), Code of Criminal Procedure.*

#### A Notice of Continuing Obligation . . .

May be used after an individual’s 17<sup>th</sup> birthday to secure the individual’s appearance to answer allegations made before they turned 17 provided the court has tried to secure their appearance before their 17<sup>th</sup> birthday “using all available procedures.” *Art. 45.060(b), Code of Criminal Procedure.*

### (2) What if the Defendant Fails to Appear After Issuance of the Notice?

Failure to appear as ordered by the notice of continuing obligation is a separate Class C misdemeanor. So if the defendant (who is now 17) fails to appear after receiving the court’s notice, they may be charged with a new offense. This offense is in addition to any other FTA (“failure to appear”) or VPTA (“violate promise to appear”) offense they may be charged with and it is in addition to the underlying offense. *Art. 45.060(c).*

### (3) Warning Contained in the Notice of Continuing Obligation

The notice of continuing obligation must contain the following warning in boldfaced type or capital letters:

**"WARNING: COURT RECORDS REVEAL THAT BEFORE YOUR 17TH BIRTHDAY YOU WERE ACCUSED OF A CRIMINAL OFFENSE AND HAVE FAILED TO MAKE AN APPEARANCE OR ENTER A PLEA IN THIS MATTER. AS AN ADULT, YOU ARE NOTIFIED THAT YOU HAVE A CONTINUING OBLIGATION TO APPEAR IN THIS CASE. FAILURE TO APPEAR AS REQUIRED BY THIS NOTICE MAY BE AN ADDITIONAL CRIMINAL OFFENSE AND RESULT IN A WARRANT BEING ISSUED FOR YOUR ARREST."**

#### **(4) May a Warrant be Issued for the Defendant's Arrest?**



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POINT

Yes. The purpose of the notice is to give the individual one last chance to appear in court to face the charges. If the individual fails to appear in response to the court's notice of continuing obligation, they have committed a new offense as an adult (17 years of age or older) and, upon the filing of a sworn complaint charging the defendant with the commission of this new offense, a warrant may be issued for their arrest. But before issuing a warrant the court should follow the notice procedures required by Art. 45.014(e) of the Code of Criminal Procedure. *See Chapter 3.B of the Criminal Deskbook.*

#### **2. What if They Appear and Plead Not Guilty?**

If the defendant appears and pleads not guilty, then the judge should set the case for trial. In a criminal case a defendant is entitled to a jury trial unless they waive their right to a jury in writing. *Art. 45.025, Code of Criminal Procedure.*

A prosecutor must be present for trial. The case cannot be prosecuted by a school official, a law enforcement officer or the court.

If the prosecutor does not appear for trial when the case is called, the judge may postpone the trial, appoint an attorney pro tem to represent the state or proceed to trial (in which case the defendant will be acquitted because no evidence will be presented by the state). *Art. 45.031, Code of Criminal Procedure.*

#### **3. What if They Plead Not Guilty and Then Don't Appear for Trial?**



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The court should issue a summons to the child and the child's parent to appear for the trial. The summons should be served either personally or by certified mail. If they do not appear for trial in compliance with the summons, the court may issue a *capias* under Arts. 23.01 and 23.04 to have the defendant arrested and brought directly to the court for trial. *See page 52.*

#### **4. What if They Plead Guilty or Nolo Contendere or are Convicted After Trial?**

If the defendant appears and pleads guilty or *nolo contendere*, or they are convicted after a trial, then it is the court's obligation to impose a sentence and any remedial orders the court deems appropriate or that are required for certain offenses, such as alcohol and tobacco offenses. *See pages 61 – 62, 79 – 85.*

The court also has the option of suspending the sentence and ordering a deferred disposition which

may result in a dismissal of the charge if the defendant fully complies with the conditions of deferral. *Art. 45.051, Code of Criminal Procedure*. And in the case of traffic offenses the defendant may have a right to take a driving safety course, or the court may allow a driving safety course, which if completed will also result in the dismissal of the offense. *Art. 45.0511, Code of Criminal Procedure*. **See Chapter 5.B of the Criminal Deskbook.**

## D. Orders of Deferral

When a juvenile pleads guilty or nolo contendere or is convicted of an offense, the judge has several options with respect to the next stage of the proceedings.

The judge may order one of the following which will result in dismissal of the offense if the defendant fully complies with the terms of the court's order:

- A deferred disposition;
- A driving safety course if requested by the defendant (**see Chapter 5.B of the Criminal Deskbook**); or
- A teen court program if requested by the defendant.

It is always important to understand and keep in mind whether the court's order is for a deferred disposition, driving safety course or teen court program on the one hand or an order following a conviction on the other hand. The consequences and procedures are different in each case as discussed below.

### 1. Deferred Disposition

#### a. *What is a Deferred Disposition?*

A deferred disposition is a procedure that the court may use for any fine-only offense following a plea of guilty or nolo contendere, or upon conviction, in which the court defers further proceedings for up to 180 days and imposes conditions that the defendant must comply with.

If the defendant shows the court that they have complied with the conditions within the time allowed

#### Why Allow a Deferral?

A deferral gives the court an opportunity to impose conditions that the defendant must comply with in order to obtain a dismissal of the offense. Having the defendant do the things the court orders often results in a better outcome than simply having the defendant pay a fine. For example, if a person was driving without insurance the court may require as a condition of a deferral that they maintain insurance for the period of the deferral (180 days).



by the court, then the court dismisses the offense. If the defendant fails to show the court that they have complied with the conditions within the time allowed, then the court enters a final conviction and imposes a fine and, in the case of a juvenile, possibly other remedial orders. *Art. 45.051, Code of Criminal Procedure. See Chapter 5.A of the Criminal Deskbook.*

**b. When May the Court Order a Deferred Disposition?**



KEY  
POINT

If a defendant, including a juvenile, pleads guilty or nolo contendere or is found guilty of a fine-only misdemeanor offense, the court may defer further proceedings without entering an adjudication of guilt and place the defendant on probation for a period not to exceed 180 days. *Art. 45.051(a), Code of Criminal Procedure.* If a judge orders a deferred disposition, they must enter a **written order** stating the conditions of deferral.

**c. Does the Defendant Have to Pay Court Costs?**

The defendant must either pay all court costs, or the court may:

- Allow the defendant to pay those costs in installments during the period of probation;
- Require the defendant to discharge all or part of the court costs by performing community service;
- Require the defendant to discharge all or part of the court costs by attending a tutoring program;
- Waive all or part of the court costs if the defendant was a child (under the age of 17) at the time the offense was committed; or
- Take any combination of these actions. *Arts. 45.051(a), 45.051(a-1), 45.049, 45.0491, 45.0492, Code of Criminal Procedure.*

### Court Costs

Instead of requiring a child to pay court costs, the court may allow the child to attend a tutoring program or perform community service or the court may waive the court costs.

**d. Does the Defendant Have to Pay a Special Expense Fee?**

In issuing the order of deferral the judge **may** impose a special expense fee on the defendant in an amount not to exceed the amount of the fine that could be imposed on the defendant as punishment for the offense. The special expense fee may be collected at any time before the period of probation ends. But the judge **may also elect not to impose** the special expense fee for good cause shown. *Art.*

45.051(a), Code of Criminal Procedure.

**e. What May the Court Require the Defendant to Do as a Condition of the Deferral?**

During the deferral period the court may require the defendant to do any of the following:

- Post a bond in the amount of the fine assessed to secure payment of the fine;
- Pay restitution to the victim of the offense in an amount not to exceed the fine assessed;
- Submit to professional counseling;
- Submit to diagnostic testing for alcohol or a controlled substance or drug;
- Submit to a psychosocial assessment;
- Participate in an alcohol or drug abuse or education program;
- Pay the costs of such testing, assessment or program either directly or as court costs;
- Complete a driving safety course;
- Present satisfactory evidence to the court that the defendant has complied with each requirement imposed by the judge; and
- **Comply with any other reasonable condition.** *Art. 45.051(b), Code of Criminal Procedure.*

**f. Examples of “reasonable conditions” of deferral in juvenile cases**



While “reasonable conditions” of deferral may vary depending on the offense involved and the defendant’s situation and circumstances, reasonable conditions for a juvenile may include:

- Attending a tutoring program;
- Performing community service;
- Lunch detention or lunch tutorial;

BEST  
PRACTICE

- Take courses for the GED;
- Take the GED;
- Attend half day of school on Saturday;
- Attend a teen leadership program;
- Attend a program run by a juvenile case manager;
- Attend a program involving life-coping skills or parenting skills;
- No texting at night (and require submission of cell phone records as proof);
- No video games on school nights;
- Remove TV, cell phone, video games, internet access from child's room;
- Orders may also be directed to a parent as necessary (*see pages 62 – 63*);
- Ankle bracelet monitoring device.

***g. If the defendant is younger than 25 and the offense is a traffic offense***



**COMMON  
PITFALL**

If the defendant is younger than 25 years of age and the offense committed by the defendant is a traffic offense classified as a moving violation, then the judge must require the defendant to complete a driving safety course and may require the defendant to complete an additional driving safety course designed for drivers younger than 25 years of age. If the defendant holds a provisional license, the judge must also order the defendant to be examined by DPS even if they were previously examined by DPS. *Art. 45.051(b-1), Code of Criminal Procedure.*

**Please note:** The court is also required to order a defendant younger than 25 years of age who is charged with a traffic offense classified as a moving violation to take a driving

**What is a  
moving violation?**

A “moving violation” is a traffic offense listed by DPS in Table 1 of the Texas Administrative Code § 15.89, which may be viewed at this link:  
<http://texreg.sos.state.tx.us/fids/201403910-1.html>

safety course if they request a driving safety course and are eligible for driving safety under the Driving Safety Course statute. *Art. 45.0511(a-1)*. **For more information on the Driving Safety Course statute, please see Chapter 5.B of the Criminal Deskbook.**

***h. If the defendant complies with the conditions of deferral***



KEY  
POINT

Upon determining that the defendant has complied with the requirements imposed by the judge, the judge “shall dismiss the complaint, and it shall be clearly noted in the docket that the complaint is dismissed and there is not a final conviction.” *Art. 45.051(c), Code of Criminal Procedure*.

***i. If the defendant fails to comply with the conditions of deferral***

If the defendant fails to present satisfactory evidence of compliance with the requirements imposed by the court within the deferral period, the court must issue a show cause order requiring the defendant to appear and show cause why the order of deferral should not be revoked.

If the defendant does show good cause for not complying with the requirements, the court may extend the deferral period.

If the defendant fails to show good cause, or if the deferral period is extended and the defendant fails to present satisfactory evidence of compliance by the end of the extended period, then the court may impose the fine assessed or a lesser fine, and this constitutes a final conviction. *Art. 45.051(c-1), (c-2), (d), Code of Criminal Procedure*.

***j. Why is a Deferred Disposition a Useful Tool in a Juvenile Case?***

Because of the flexibility it affords the court in imposing conditions of deferral, and because it gives a juvenile the opportunity to obtain a dismissal of the complaint upon meeting those conditions, the deferred disposition procedure can be an effective means of providing meaningful remedies in juvenile cases. The fact that the court may impose “any reasonable condition” gives the court great leeway in imposing an effective remedy.

Deferred disposition is also useful since the court may permit the defendant to perform community service instead of paying court costs or may waive court costs. If the juvenile fully complies with the conditions of deferral the court may elect not to impose the special expense fee. This flexibility, combined with dismissal of the complaint and the right of expunction (discussed below), offers incentives to juveniles interested in keeping a clean record.



BEST  
PRACTICE

## 2. Teen Court Program

A justice court may defer proceedings for up to 180 days and permit the defendant to attend a teen court program upon oral or written request if the defendant:

- Is under the age of 18 or enrolled full time in an accredited secondary school in a program leading to a high school diploma;
- Pleads guilty or nolo contendere to the offense in open court with the defendant’s parent, guardian or managing conservator present, and
- Has not successfully completed a teen court program in the two years preceding the date the alleged offense occurred. *Art. 45.052(a), Code of Criminal Procedure.*

The teen court program must be approved by the court. *Art. 45.052(b), Code of Criminal Procedure.* The only issue before the teen court is the punishment for the offense, since the defendant has pled guilty or nolo. Teen courts have therefore been described as “peer sentencing.” *See Dawson at page 216 – 217.*

If the judge agrees to allow a defendant to attend a teen court program, the proceedings are deferred for not more than 180 days. The defendant must complete the program not later than the 90th day after the date the teen court hearing to determine punishment is held or the last day of the deferral period, whichever is earlier. *Art. 45.052(a), (c), Code of Criminal Procedure.*

Once the defendant presents satisfactory evidence that they have completed the program, the court must dismiss the charge. A dismissed charge may not be part of the defendant’s criminal record or driving record or used for any purpose. But if the charge was for a traffic offense, the court must report to DPS that the defendant successfully completed the teen court program and the date of completion. *Art.45.052(c), (d), Code of Criminal Procedure.*

The court may exempt the defendant from paying ordinary court costs or fees for the offense. The judge may require a defendant who requests a teen court program to pay a fee of \$10; and if the defendant is under the age of 17, the court may require an additional \$10 fee. A defendant who requests a teen court program and fails to complete it is not entitled to a refund of the fees. *Art. 45.052(e), (g), (h), Code of Criminal Procedure.*

### Teen Court Program

A defendant who is less than 18 years of age or is enrolled full time in an accredited secondary school in a program leading to a high school diploma and who wishes to attend a teen court program must plead guilty or nolo to the offense in open court with the defendant’s parent, guardian or managing conservator present. *Art. 45.052(a)(2).*



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*Each fee is \$20 in the Texas-Louisiana Border Region which includes these counties: Bowie, Camp, Cass, Delta, Franklin, Gregg, Harrison, Hopkins, Lamar, Marion, Morris, Panola, Red River, Smith, Titus, Upshur and Wood. Art. 45.052(e), Code of Criminal Procedure; Govt. Code § 2056.002(e)(2).*

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## E. Orders Upon Conviction

When a child is convicted of an offense, in addition to imposing a fine and court costs (*see pages 66 – 67*), the court may also impose remedial orders directed to:

- The child;
- The parent; or
- Both.

If the child or parent fail to comply with a remedial order imposed following a conviction, the court may take certain actions against:

- The child even if they are under 17 years old; and
- The parent.

### 1. Orders Directed to the Child

On a finding that a child committed an offense over which the court has jurisdiction, the court may require the child to attend a special program that the court determines to be in the best interest of the child. *Art. 45.057(b)(2), Code of Criminal Procedure.*

These measures include programs for the purpose of:

- Rehabilitation;
- Counseling;

### Special Programs

If a special program that the court orders a child to attend upon being convicted of a fine-only misdemeanor involves the expenditure of county funds, the program must have been approved by the county commissioners court. *Art. 45.057(b)(2), Code of Criminal Procedure.*



- Self-esteem and leadership;
- Work and job skills training;
- Job interviewing and work preparation;
- Self-improvement;
- Parenting;
- Manners;
- Violence avoidance;
- Tutoring;
- Sensitivity training;
- Parental responsibility;
- Community service;
- Restitution;
- Advocacy; or
- Mentoring. *Art. 45.057(b)(2), Code of Criminal Procedure.*

The court may also refer the child or the child’s parent to Early Youth Intervention Services under Section 264.302 of the Family Code. *Art. 45.057(b)(1), Code of Criminal Procedure.*

## 2. Orders Directed to a Parent

The court may also require the child’s parent **to do any act or refrain from doing any act** that the



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court determines will increase the likelihood that the child will comply with the orders of the court and that is reasonable and necessary for the welfare of the child. This includes an order requiring the parent to:

- Attend a parenting class or parental responsibility program; and
- Attend the child’s school classes or functions. *Art. 45.057(b)(3), Code of Criminal Procedure.*

The court may order a parent, managing conservator or guardian required to attend a program with a child to pay not more than \$100 for the costs of the program. *Art. 45.057(c), Code of Criminal Procedure.*

The judge may require a child, parent, managing conservator or guardian required to attend a program, class, or function to submit proof of attendance to the court. *Art. 45.057(d), Code of Criminal Procedure.*

The parent must be present in court for the court to order the parent to take or refrain from taking any action. ***Dawson at page 224.***

For example, suppose a child pleads guilty to a graffiti offense and is given a deferred disposition but fails to comply with the conditions and the court enters a final conviction after a show cause hearing. The court may still order the child to attend a special program, such as a self-esteem and leadership program or a work and jobs skill training program. If the child fails to do that, the court may order the parent to take the child to the program or to attend the program with the child. The court could order the parent to take away the child’s cell phone or laptop until the child attends the program. The court may order the parent to do or refrain from doing anything the court believes will increase the likelihood the child will comply with the court’s order and that is reasonable and necessary for the child’s welfare.

### Who is a Parent?

A “parent” includes a person standing in a parental relation, a managing conservator or a custodian. *Art. 45.057(a)(3), Code of Criminal Procedure.*

### If a Parent Fails to Appear for a Hearing . . .

. . . after receiving an order to appear, it is a separate Class C misdemeanor. *Art. 45.057(g), Code of Criminal Procedure.*

### 3. What if a Child Fails to Comply with an Order Imposed After a Conviction?

#### *a. Refer the Child to Juvenile Court or Hold the Child in Contempt*

If a child fails to obey an order of the court imposed after a conviction, under circumstances that would constitute contempt of court, the court may, after giving the child notice and an opportunity to be heard, either:

- (1) Refer the child to the juvenile court for delinquent conduct for contempt of the justice court;  
or
- (2) Retain jurisdiction of the case, hold the child in contempt of court, and order:
  - i. The child to pay a fine not to exceed \$500; and/or
  - ii. DPS to suspend the child's driver's license or permit (or deny issuance of a license or permit) until the child **fully complies with the orders of the court.** *Arts. 45.057(f), 45.050(c), Code of Criminal Procedure.*



The court may also hold a person in contempt and impose those remedies if:

- (1) The person was convicted of an offense before turning 17 and failed to obey an order while 17 years of age or older under circumstances that constitute contempt of court; or
- (2) The person engaged in contempt while younger than 17 but contempt proceedings could not be brought until after the person turned 17. *Art. 45.050(d) and (e), Code of Criminal Procedure.*

In other words, if the offense occurred before the child's 17<sup>th</sup> birthday, the court must follow the procedure in Art. 45.050. Upon a finding of contempt, if the violation of the court order occurred before the child's 17<sup>th</sup> birthday, the court may refer the child to the juvenile court for delinquent conduct for violating the court order or the court may retain jurisdiction. If the court retains jurisdiction, or if the child was at least 17 when they violated the order, the court may impose a fine of up to \$100, order DPS to suspend their driver's license until compliance, or both.

#### *b. Notification to DPS Upon Compliance with Court Order*

Once the person complies with the court's orders, the court must notify DPS so the driver's license suspension or denial may be lifted. *Art. 45.050(f), Code of Criminal Procedure.*



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**c. No referral to juvenile court for violating court order after turning 17**

A justice court may not refer a child who violates a court order while 17 years of age or older to a juvenile court for delinquency proceedings for contempt of court. Art. 45.050(g).

**d. Court must send information to the juvenile court upon referral**

If a justice court refers a child to a juvenile court for delinquency proceedings for contempt, the court must describe in writing those facts the judge believes constitute contempt of court. *Family Code § 52.04(a)*. **Dawson at page 224.**

The judge must also provide all information in the court's possession pertaining to the identity of the child and his address, the name and address of the child's parent, guardian or custodian, the names and addresses of any witnesses, and the child's whereabouts; and when applicable, a complete statement of the circumstances of taking the child into custody. *Family Code § 52.04(a)*.

The court should send a copy of its entire file in the case to the juvenile court so it can better evaluate the case. **Dawson at page 224.**

**4. What if a Parent Fails to Comply with an Order Imposed After Conviction of a Child?**

An order directed to a parent after a child is convicted of an offense in justice court is enforceable by contempt. *Art. 45.057(l), Code of Criminal Procedure*.

After notice and an opportunity for a hearing, a justice court has authority to hold a person who is not a child in contempt and impose a fine of up to \$100 and/or confinement in jail for up to three days. *Government Code § 21.002(c)*. **For more information on contempt procedures, please see Chapter 3.A of the Officeholding Deskbook.**



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## F. Fines and Court Costs

### 1. Court Must Enter a Written Judgment of Conviction

If a defendant (including a juvenile) is convicted of an offense, the court **must** enter a written judgment of conviction assessing the fine and court costs. *Art. 45.041(a), Code of Criminal Procedure.*

If the offense is a Class C misdemeanor, then the maximum fine is \$500. *Penal Code § 12.23.* Most traffic offenses carry a maximum fine of \$200. *Transp. Code § 542.401.*

The court may also order the defendant to make restitution to any victim of the offense. *Art. 45.041(b)(2), Code of Criminal Procedure.*

All judgments, sentences and final orders must be rendered in open court. *Art. 45.041(d), Code of Criminal Procedure.*

### 2. Court's Duty to Inquire About Child's Income or Resources

During or immediately after imposing a sentence in any case where the defendant enters a plea in open court, the judge **must** inquire whether the defendant has sufficient resources or income to immediately pay all or part of the fine and court costs. *Art. 45.041(a-1).* Since a judge must take the plea of any defendant under the age of 17 years old in open court, the judge **must always** make this inquiry if the defendant is a child. *See page 48.*

A parent is not responsible for payment of the fine and court costs imposed on a child.

### 3. When Judge Must Consider Alternatives to Immediate Payment

If the judge determines that the defendant does not have sufficient resources or income to immediately pay all or part of the fine and court costs, the judge must determine whether the fine and court costs should be:

- (1) Allowed to be paid at a later date or in specified portions at designated intervals;

#### How May a Person be Convicted of an Offense?

A person (including a child) may be convicted of an offense by:

- Pleading guilty or nolo contendere;
- Paying a fine or amount accepted by the court;
- A finding of guilt at trial; or
- Failing to comply with the conditions of a deferred disposition or driving safety course (following a show cause hearing).



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- (2) Discharged by performing community service;
- (3) Waived in full or in part; or
- (4) Satisfied through any combination of these methods. *Art. 45.041(a-1), Code of Criminal Procedure.*

#### 4. Community Service or Installment Plan

##### a. Judge May Allow Child to Elect Community Service or Installment Plan

A judge may allow a child to elect at the time of conviction (including at the time an order of deferred disposition is entered) to discharge the fine and court costs by:

- (1) Performing community service; or
- (2) Paying the fine and court costs at a later date or in specified intervals. *Art. 45.041(b-3), Code of Criminal Procedure.*

If the child elects to do so, they must do so in writing signed by them and, if present, by their parent, guardian or managing conservator. The court must maintain the election as a record of the court and provide a copy to the defendant. *Art. 45.041(b-4), Code of Criminal Procedure.*

#### How Does A Child Discharge a Fine and Court Costs?

The court may allow a child to perform community service to discharge a fine and court costs, or to pay the fine and court costs in installments. The court may also waive all or a portion of the fine and court costs.

##### b. Court Must Specify Number of Hours of Community Service

In the judge's order requiring a defendant to perform community service to discharge all or part of the fine and court costs, the judge must specify:

- The number of hours of community service the defendant is required to perform; and
- The date by which the defendant must submit to the court documentation verifying the defendant's completion of the community service. *Art. 45.0492(c), Code of Criminal Procedure.*



**c. Time Credited toward Fine and Court Costs**



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A defendant is considered to have discharged **not less than \$100** of fines and court costs for each **eight hours** of community service. *Art. 45.0492(g), Code of Criminal Procedure. [Art. 45.0492(h) in Version 2.]*

The court may, of course, order **more than \$100** credit for each eight hours of community service. For example, the court could order \$200, \$400 or \$600 credit for each eight hours of community service. There is no maximum amount of credit the court may order; there is only a minimum of \$100 for each eight hours.

A judge may not order a defendant to perform more than 16 hours of community service per week unless the judge determines that requiring the defendant to perform additional hours does not impose an undue hardship on the defendant or the defendant's family. *Art. 45.0492(f), Code of Criminal Procedure. [Art. 45.0492(e) in Version 2.]*

**d. What Qualifies as Community Service**



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The judge may order the defendant to perform community service by attending:

- A work and job skills training program;
- A preparatory class for the high school equivalency examination or similar activity;
- An alcohol or drug abuse program;
- A rehabilitation program;
- A counseling program, including a self-improvement program;
- A mentoring program;
- A tutoring program; or
- Any similar activity. *Arts. 45.041(b-5), 45.049(c), 45.0492(d), Code of Criminal Procedure.*

The judge may order the defendant to perform community service for:

- A governmental entity;



- A nonprofit organization or another organization that provides services to the general public that enhance social welfare and the general well-being of the community, as determined by the judge; or
- An educational institution. *Arts. 49.049(c)(2), 45.0492(d)(2), Code of Criminal Procedure.*

An entity that accepts a defendant to perform community service must agree to supervise, either on-site or remotely, the defendant in the performance of the defendant's community service and report on the defendant's community service to the judge who ordered the service. *Arts. 45.049(c-1), 45.0492(d-1), Code of Criminal Procedure.*

## 5. Waiver of Payment of Fine and Court Costs

The court may waive payment of all or part of a fine or court costs imposed on a defendant if the court determines that:

- (1) The defendant was a child (less than 17 years old) at the time the offense was committed; and
- (2) Discharging the fine or court costs by performing community service or as otherwise authorized (for example, an installment plan) would impose an undue hardship on the defendant. *Art. 45.0491, Code of Criminal Procedure.*

A defendant is presumed to be indigent, or not to have sufficient resources or income to pay all or part of the fine or court costs if the defendant is:

- (1) In the conservatorship of the Department of Family and Protective Services, or was at the time of the offense; or
- (2) Designated as a homeless child or youth or an unaccompanied youth, or was at the time of the offense. *Art. 45.0491, Code of Criminal Procedure (Version 2).*



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## 6. What if the Defendant Fails to Pay Their Fine and Court Costs?

### a. Court May Not Issue a Capias Pro Fine if the Defendant is Under 17



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A justice court may never issue a capias pro fine for a child; nor may a judge order the confinement in jail of a child for:

- Failing to pay all or a portion of a fine or court costs imposed for the conviction of an offense punishable by fine only;
- Failing to appear for an offense committed by the child; or
- Contempt of another order of the court. *Art. 45.050(b), Code of Criminal Procedure.*

### b. What if the Defendant is Now Over the Age of 17?

If the defendant is now over the age of 17 and was convicted of an offense committed before they were 17, the court may issue a capias pro fine for the defendant but only if:

- (1) The court finds that the issuance of the capias pro fine is justified after considering:
  - (A) The sophistication and maturity of the individual;
  - (B) The criminal record and history of the individual; and
  - (C) The reasonable likelihood of bringing about the discharge of the judgment through the use of procedures and services currently available to the court; and
- (2) The court has proceeded under Art. 45.050 to compel the individual to discharge the judgment. *Art. 45.045(b).*

The procedures “currently available” to the court would include the measures discussed above, such as community service or an installment plan.

The procedures under Art. 45.050 consist of ordering DPS to suspend the defendant’s driver’s license

### Capias Pro Fine?

*Never issue* if defendant is under 17 years old.

*May issue* if defendant is over 17 years old and convicted of an offense committed before they were 17 **but only after** making findings concerning the defendant and using alternatives, such as community

(or not issue one) until the defendant complies with a court order. *See page 64.*

In effect, a *capias pro fine* for an individual who is over the age of 17 and has failed to pay a fine imposed for a conviction when younger than 17 is a means of last resort to be issued only after the court has considered whether the fine may be discharged through community service and/or installment payments and after the court has attempted to obtain payment of the fine by ordering DPS to suspend the individual's driver's license.



BEST  
PRACTICE

## Chapter 4: Alcohol Cases

### A. What are the Alcohol Offenses for Minors?

#### 1. Who is a Minor?

When it comes to alcohol offenses, a “minor” is a person under 21 years of age. *Alcoholic Beverage Code § 106.01.*

#### 2. What are the Alcohol Offenses?

The alcohol offenses by a minor are:

##### a. *Purchase of alcohol by a minor*

A minor commits this offense if they purchase an alcoholic beverage. *Alcoholic Beverage Code § 106.02.*

##### b. *Attempt to purchase alcohol by a minor*

A minor commits this offense if, with specific intent to purchase alcohol, the minor does an act that amounts to more than mere preparation in order to effect the purchase even though the purchase is not successful. *Alcoholic Beverage Code § 106.025.* For example, a minor goes into a convenience store, picks up a six pack of beer, goes to the counter and puts money on the counter to pay for it but the store attendant refuses to sell it.

##### c. *Consumption of alcohol by a minor*

A minor commits this offense if they consume an alcoholic beverage. *Alcoholic Beverage Code § 106.04.*

##### d. *Possession of alcohol by a minor*

A minor commits this offense if they possess an alcoholic beverage. *Alcoholic Beverage Code § 106.05.*

##### e. *Misrepresentation of age by a minor*

A minor commits this offense if they falsely state that they are 21 years of age or older or present any

“Minor” Has Different Meanings Under Different Statutes

There is not a single definition of a “minor.” Who is a “minor” depends on the statute. For alcohol offenses a minor is someone under the age of 21. For tobacco offenses a minor is someone under the age of 18.



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document that indicates that they are 21 years of age or older to a person engaged in selling or serving alcoholic beverages. *Alcoholic Beverage Code § 106.07.*

***f. Driving or Operating Watercraft Under the Influence of Alcohol by a Minor***

A minor commits this offense if the minor operates a motor vehicle in a public place, or a watercraft, while having **any detectable amount of alcohol** in the minor's system. *Alcoholic Beverage Code § 106.041.*

***g. Public intoxication by a minor***

A minor commits this offense if they appear in a public place while intoxicated to the degree that they may endanger themselves or another person. *Penal Code § 49.02.*

## **B. What Defenses May be Raised to an Alcohol Offense?**

### **1. Purchase Under Immediate Supervision of Peace Officer**

A minor does not commit a purchase offense if the minor purchases the alcoholic beverage under the immediate supervision of a commissioned peace officer engaged in enforcing the Alcoholic Beverage Code. *Alcoholic Beverage Code § 106.02.*

For example, it is not an offense if a minor, working under the immediate supervision of a peace officer, purchases alcohol at a convenience store as part of a law enforcement operation to determine whether that store is selling alcohol to minors. *Alcoholic Beverage Code § 106.02.*

### **2. Consumption in Presence of Parent or Other Adult**

It is an affirmative defense to a consumption offense that the alcoholic beverage was consumed in the **visible presence** of the minor's adult parent, guardian or spouse. *Alcoholic Beverage Code § 106.04.*

### **3. Possession in Course of Employment or in Presence of Parent or Other Adult or Peace Officer**

A minor may possess an alcoholic beverage:

- In the course of employment if the employer is a licensee of alcoholic beverages and the employment is not prohibited;

- If the minor is in the visible presence of their parent, guardian, spouse, or other adult to whom the minor has been committed by a court;
- If the minor is under the immediate supervision of a peace officer engaged in enforcing the Alcoholic Beverage Code; or
- If the tasting exception applies (*see page 75*). *Alcoholic Beverage Code § 106.05(b)*.

#### **4. Request for Emergency Medical Assistance**

The offenses of possession or consumption by a minor do not apply to a minor who:

- Requested emergency medical assistance in response to the possible alcohol overdose by themselves or another person;
- Was the first person to request medical assistance; and
- If the minor made the request for medical assistance for another person:
  - Remained on the scene until the medical assistance arrived; and
  - Cooperated with medical assistance and law enforcement personnel. *Alcoholic Beverage Code §§ 106.04(e), 106.05(d)*.

For example, if a college student under the age of 21 is at a fraternity party and sees another student binge drinking, and is the first person to call EMS and remains on the scene and cooperates with EMS and law enforcement, then the student may not be charged with the offense of either possession or consumption of alcohol by a minor.

#### **5. Report of a Sexual Assault**

The offenses of possession or consumption by a minor do not apply to a minor who reports the sexual assault of the minor or another person, or is the victim of a sexual assault reported by another person. The defense only applies if the sexual assault occurred at the time the minor was in possession of or consuming an alcoholic beverage and the sexual assault is reported to:

- A health care provider treating the victim;

- A law enforcement official, including campus police; or
- A Title IX coordinator or other employee of an institution of higher education responsible for responding to reports of sexual assault.

The defense may not be raised by a minor who commits a sexual assault that is reported. *Alcoholic Beverage Code §§ 106.04(f),(g),(h), 106.05(e),(f),(g).*

## 6. Tasting Exception

A minor may taste (meaning “to draw into the mouth without otherwise swallowing or consuming”) an alcoholic beverage if:

- The minor is at least 18 years old;
- The minor is enrolled in a higher education institution or career school offering a program in culinary arts or wine, beer or distilled spirits;
- The beverage is tasted for educational purposes as part of the curriculum;
- The beverage is not purchased by the minor; and
- The service and tasting of the beverage is supervised by a faculty or staff member who is at least 21 years of age. *Alcoholic Beverage Code § 106.16.*

## 7. Public Intoxication Defense

It is a defense to prosecution for public intoxication that the alcohol or other substance was administered for therapeutic purposes and as part of the person’s professional medical treatment by a licensed physician. *Penal Code § 49.02(b).*

## C. Guilty or Nolo Plea Must be Taken in Open Court

A minor (that is, a person under the age of 21 years) may not plead guilty to any offense under Chapter 106 of the Alcoholic Beverage Code “except in open court before a judge.” *Alcoholic*



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*Beverage Code § 106.10.*

This requirement is separate from the requirements that apply to a defendant who is younger than 17 years of age and has not had the disabilities of minority removed. *See page 48 concerning removal of disabilities.* In a case involving that defendant the court must take the defendant's plea in open court and also summon the defendant's parent, managing conservator or guardian to be present during the taking of the plea and all other proceedings relating to the case. *Art. 45.0215, Code of Criminal Procedure. See pages 48 - 49.*

Putting these two statutes together means that if a defendant is younger than 17, the court must take any plea (guilty, not guilty or nolo contendere) in open court and summon their parents. But if the defendant is over 17 but less than 21 years old, the court must (for an alcohol offense) take a plea of guilty or nolo contendere in open court but the defendant could mail in or deliver to the clerk at the window a plea of not guilty.

### What About a Nolo Plea?

Section 106.10 of the Alcoholic Beverage Code states that a *guilty* plea must be taken in open court before the judge. But we suggest following this practice for a plea of *nolo contendere* as well since the criminal prosecution consequences are the same for a nolo and a guilty plea.

## D. What if a Minor Has Prior Alcohol Offenses?

All of the alcohol offenses discussed above are Class C misdemeanors. *Alcoholic Beverage Code §§ 106.071(b), 106.041(b); Penal Code § 49.02(e).*



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However, if it is shown at trial that a minor who is not a child (that is, the minor is at least 17 years old but under the age of 21) has two or more prior convictions, then the offense may be punishable by confinement in jail, which means a **justice court would not have jurisdiction to hear the case.** *(See the discussion in Sections 1 - 3 below concerning which offenses count as "prior convictions" toward the current offense.)* Under Texas law a guilty plea is considered a "trial," so if a complaint is filed alleging two prior convictions of alcohol offenses, and the defendant pleads guilty, then the court would have to dismiss the case on its own motion for lack of subject matter jurisdiction.

A "conviction" includes both:

- A prior adjudication in juvenile court under Title 3 of the Family Code that the minor engaged in conduct that would constitute an alcohol offense; and
- A prior order of deferred disposition. *Alcoholic Beverage Code § 106.071(f); Alcoholic*



*Beverage Code § 106.041(h).*



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Another result of having prior alcohol offenses is that a minor who is not a child (that is, at least 17 years old but less than 21) is not eligible for a deferred disposition if the minor has two or more “convictions” -- as defined above to include juvenile court adjudications or prior deferred dispositions – of the same type of alcohol offense. *Alcoholic Beverage Code § 106.071(i); Alcoholic Beverage Code § 106.041(f)*. Examples of how this works in practice are given below.

### 1. Alcohol Offenses Other Than DUIM or Public Intoxication



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If a minor who is at least 17 years old but under the age of 21 is charged with purchase, attempt to purchase, consumption, possession or misrepresentation of age, and it is shown at trial that the minor has been previously convicted at least twice of **any** of those offenses, then the offense is punishable by:

- A fine of not less than \$250 nor more than \$2,000;
- Confinement in jail for a term not to exceed 180 days; or
- Both the fine and confinement. *Alcoholic Beverage Code § 106.071(c)*.

Remember that “conviction” includes a prior juvenile court adjudication and a prior order of deferred disposition. *Alcoholic Beverage Code § 106.071(f)*.

For example, suppose a minor who is not a child (more than 17 but less than 21) is charged with **possession** of alcohol and has one prior conviction for **consumption** and one prior **deferred disposition** for **misrepresentation of age**. In that case the current offense charging possession is punishable by up to 180 days in jail and a fine of \$250 to \$2,000.

It does not matter whether the prior conviction was the result of a plea of guilty or nolo contendere or the result of a trial.

A justice court does not have jurisdiction to hear an offense that is punishable by confinement in jail. But it is up to a law enforcement officer or a prosecutor to allege the prior offenses in a charging instrument (for example, a complaint). It is not up to the court or the clerk of the court to investigate whether a minor has any prior convictions (including any prior deferred dispositions) of alcohol offenses, and the court may not rely on the results of any such investigation.

In addition, the defendant is not eligible for a deferred disposition on the charge of possession because they have two prior “convictions” (a conviction for consumption and a prior deferred

disposition for misrepresentation of age). *Alcoholic Beverage Code § 106.071(i)*. However, this offense would have to be filed in another court.

The “two prior convictions” rule does not apply to a defendant who is under the age of 17 and is charged with any of these five alcohol offenses. For example, if a 16 year old is charged with a possession of alcohol offense, and previously plead guilty to a purchase offense and had a deferred disposition on a consumption offense, a justice court would still have jurisdiction to hear the case and the court could give him a deferred disposition on the current possession charge.

## 2. Driving Under the Influence by a Minor



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If a minor who is at least 17 years old but under the age of 21 is charged with this offense, and it is shown at trial that the minor has been previously convicted at least twice of **this** offense, then the offense is punishable by:

- A fine of not less than \$500 nor more than \$2,000;
- Confinement in jail for a term not to exceed 180 days; or
- Both the fine and confinement. *Alcoholic Beverage Code § 106.041(c)*.

Again “conviction” includes a prior juvenile court adjudication and a prior order of deferred disposition. *Alcoholic Beverage Code § 106.041(h)*.

But, as with the alcohol offenses discussed above, it is up to a law enforcement officer or the prosecutor, not the court or the clerk, to allege the prior offenses in a charging instrument. If that occurs, then a justice court would not have jurisdiction to hear the case because the offense is punishable by confinement in jail.

A minor who is not a child (that is, at least 17 years old but less than 21) is not eligible for a deferred disposition for a DUIM offense if the minor has two or more prior DUIM convictions (including juvenile court adjudications or prior deferred dispositions). *Alcoholic Beverage Code § 106.041(f)*. But this offense would have to be filed in another court with jurisdiction over jailable offenses.

If the defendant is under the age of 17, a justice court could hear a DUIM offense against a defendant who has two prior DUIM convictions (including juvenile court adjudications or prior deferred dispositions), but the court could not give the defendant a deferred disposition. *Alcoholic Beverage Code § 106.041(f)*.

### 3. Public Intoxication by a Minor

An offense of public intoxication committed by a person younger than 21 years of age is punishable in the same manner as if the minor had committed an offense to which Section 106.071 of the Alcoholic Beverage Code applies (that is, the punishment is the same as if they had committed an offense of purchase, attempt to purchase, consumption, possession or misrepresentation of age discussed above). *Penal Code § 49.02(e)*.

This means that if a minor who is at least 17 years old but under the age of 21 is charged with the offense of public intoxication, and it is shown at trial that the minor has been previously convicted at least twice of that offense, then the offense is punishable by:

- A fine of not less than \$250 nor more than \$2,000;
- Confinement in jail for a term not to exceed 180 days; or
- Both the fine and confinement. *Alcoholic Beverage Code § 106.071(c)*.

Here again a “conviction” includes a prior juvenile court adjudication that the minor engaged in conduct that would constitute public intoxication and a prior order of deferred disposition for public intoxication. *Alcoholic Beverage Code § 106.071(f)*.

### E. Alcohol Awareness Course

#### 1. Mandatory if Minor Given Deferred or Convicted with no Prior Convictions

If a minor is given a deferred disposition for **any** of the alcohol offenses by minors (that is, purchase, attempt to purchase, consumption, possession, misrepresentation of age, driving under the influence or public intoxication), or if the minor is **convicted** of any of these offenses and does not have a prior conviction of one of those offenses, then the court **must** require the minor to attend an alcohol awareness program, a drug education program or a drug and alcohol driving awareness program. *Alcoholic Beverage Code § 106.115(a)*.

#### Alcohol Awareness Course

**Mandatory** if defendant is given deferred or convicted of any of the alcohol offenses and has no prior conviction.

**Optional** if the defendant has a prior conviction.



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## 2. Optional if Minor Convicted and has Prior Convictions

If a minor has been previously convicted of one or more of any of those offenses, then the court **may** require the minor to attend an alcohol awareness program, a drug education program or a drug and alcohol driving awareness program. In this case the court is not required to order attendance at a program but the court may do so in the exercise of its discretion. *Alcoholic Beverage Code § 106.115(a)*.

## 3. When May the Court Require the Parent to Attend the Program with the Minor?

If the minor is under the age of 18 years old, the court may require the parent to attend the alcohol awareness program, drug education program or drug and alcohol driving awareness program with the minor. *Alcoholic Beverage Code § 106.115(a)*.

## 4. Approval of the Alcohol Awareness Program

The alcohol awareness program must be approved by the Texas Department of Licensing and Regulation. The drug education program must be approved by the Department of State Health Services. And the drug and alcohol driving awareness program must be approved by the Texas Education Agency. *Alcoholic Beverage Code § 106.115(a)*.

When requested, the program may be taught in languages other than English. *Alcoholic Beverage Code § 106.115(b)*.

## 5. What if an Alcohol Awareness Program is Not Available?



BEST  
PRACTICE

If the minor resides in a county with a population of 75,000 or less, and access to an alcohol awareness program is not readily available in the county, then the court:

- May allow the minor to take an online alcohol awareness course; or
- Require the minor to perform not less than eight hours of community service related to alcohol abuse prevention or treatment (approved by the Department of Licensing and Regulation).

Examples of an online alcohol awareness program and an online drug and alcohol driving awareness program may be found at these links:

<http://aliveat25texas.com/>

[http://www.dadaponline.com/state\\_approval.html](http://www.dadaponline.com/state_approval.html)

<https://www.tabc.state.tx.us/education/>



KEY  
POINT

If the court orders community service as an alternative to an alcohol awareness program, that community service is **in addition to** the community service the court must impose on a minor for an alcohol offense. *Alcoholic Beverage Code § 106.115(b-1)*. **See pages 83 – 84.**

The Department of Licensing and Regulation must create a list of community services related to alcohol abuse prevention or treatment available in each county in the state to which the judge may sentence a defendant as part of the community service requirement. *Alcoholic Beverage Code § 106.115(b-3)*.

Here is a link to the Department’s webpage concerning alcohol education programs for minors:

<https://www.tdlr.texas.gov/oeplaw-minor.htm>

And here is a link to the Live database to search for approved programs throughout the state:  
[http://www.dshs.texas.gov/offendered/oe\\_search.shtm](http://www.dshs.texas.gov/offendered/oe_search.shtm)

## 6. Where Does the Defendant Reside?

The court has some flexibility in determining where the defendant resides for purposes of taking an alcohol awareness course. If the defendant is enrolled in an institution of higher education in a county in which access to an alcohol awareness program is readily available, the court may consider the defendant to be a resident of that county. *Alcoholic Beverage Code § 106.115(b-2)*.

For example, if a minor lives in Andrews County and an alcohol awareness program is not readily available there but the minor is going to Texas Tech University and an alcohol awareness program is readily available in Lubbock County, the court may consider the minor to be a resident of Lubbock County and allow them to take the alcohol awareness program there.

Otherwise, the defendant’s residence is the residence listed on their driver’s license or personal identification certificate, or (if they don’t have a DL or I.D.), on their voter registration certificate, or on file with the public school district in which they are enrolled. *Alcoholic Beverage Code § 106.115(b-2)*.

## 7. Proof of Completion of the Program or the Community Service



KEY  
POINT

The court must require the defendant to present to the court, within 90 days of the date of the final

### Community Service as an Alternative to Alcohol Awareness Course

If the court requires community service as an alternative to an alcohol awareness course, that community service is **in addition to** the regular community service the court must impose for an alcohol offense.

conviction or the deferral order, evidence in the form ordered by the court that the defendant has satisfactorily completed an alcohol awareness program or performed the required hours of community service. The court may extend this period for good cause for up to an additional 90 days. *Alcoholic Beverage Code § 106.115(c)*.

If the defendant presents the evidence of compliance within the required period of time, the court may reduce the fine to no less than one-half the amount of the initial fine. *Alcoholic Beverage Code § 106.115(c)*.

## 8. What if the Defendant Does Not Complete the Program or the Community Service?

If the defendant does not present the evidence of completion of the program or performance of the community service to the court within the required time, then the court:

(1) Must order DPS to:

(A) Suspend the defendant's driver's license or permit for a period not to exceed **six months** (or order DPS to deny issuance of a driver's license or permit if the defendant does not have one); or

(B) If the defendant has previously been convicted of any of the alcohol offenses by minors (listed in paragraph 1), suspend the defendant's driver's license or permit for a period not to exceed **one year** (or order DPS to deny issuance of a driver's license or permit if the defendant does not have one); and

(3) May order the defendant or the defendant's parent, managing custodian or guardian to do any act or refrain from doing any act if the court determines that doing the act or refraining from doing the act will increase the likelihood that the defendant will present evidence that they have completed the alcohol awareness program or performed the required community service. *Alcoholic Beverage Code § 106.115(d)*.

### Driver's License Suspension

The court must order DPS to suspend the defendant's license (or not issue a license) if they fail to complete the program or perform the community service.

This driver's license suspension (or denial) is a separate sanction from the driver's license suspension following a conviction of an alcohol offense. *See page 84.*



BEST  
PRACTICE

For example, the court could order a parent to drive the minor to an alcohol awareness program or to the location where the minor will perform the community service. Or the court could order the minor not to play any video games and order the parent to deliver to the court all devices on which the minor could play video games (which might include Nintendo devices and even their cell phone) until they have completed the alcohol awareness program or performed the community service.

## 9. DPS Notification to Defendant

If the defendant’s license is suspended, DPS must send a notice of the suspension (or of the prohibition on issuing a license or permit) to the defendant by first class mail. The notice has to include the date of the suspension or prohibition order, the reason for the suspension or prohibition and the period of time for the suspension or prohibition. *Alcoholic Beverage Code § 106.115(e)*.

## F. Community Service

### 1. Alcohol Offenses by a Minor Other Than DUIM

For alcohol offenses by a minor other than Driving Under the Influence by a Minor (that is, purchase, attempt to purchase, consumption, possession, misrepresentation of age or public intoxication), in addition to any fine and any order to attend an alcohol awareness program (or perform community service in lieu of such a program), the court must order a minor who is given a deferred disposition or convicted of an offense to perform community service for:

- **Not less than eight or more than 12 hours** if the minor has not previously been convicted of any of the alcohol offenses; or
- **Not less than 20 or more than 40 hours** if the minor has previously been convicted once of any of the alcohol offenses. *Alcoholic Beverage Code § 106.071(d)*.

The community service must be related to education about or prevention of misuse of alcohol or drugs, as applicable, if programs or services providing that education are available in the community in which the court is located. If such programs or services are not available, then the court may order community service that it considers appropriate for rehabilitative purposes. *Alcoholic Beverage Code § 106.071(e)*.



KEY  
POINT

#### “Prior Conviction”

**Remember:** A “prior conviction” includes a prior adjudication in juvenile court or a prior deferred disposition for an alcohol offense. *Alcoholic Beverage Code § 106.071(f)*.

## 2. Driving Under the Influence by a Minor



KEY  
POINT

For the offense of Driving Under the Influence by a Minor, in addition to any fine and any order to attend an alcohol awareness program (or perform community service in lieu of such a program), the court must order a minor who is convicted of an offense to perform community service for:

- **Not less than 20 or more than 40 hours** if the minor has not previously been convicted of a DUIM offense; or
- **Not less than 40 or more than 60 hours** if the minor has previously been convicted of a DUIM offense. *Alcoholic Beverage Code § 106.041(d).*

The community service must be related to education about or prevention of misuse of alcohol. *Alcoholic Beverage Code § 106.041(e).*



COMMON  
PITFALL

Again, a “prior conviction” includes a prior adjudication in juvenile court under Title 3 of the Family Code and a prior order of deferred disposition for a driving under the influence by a minor offense. *Alcoholic Beverage Code § 106.041(h).*

## 3. Community Service Options

Here are options for ordering community service in alcohol or drug cases involving minors:



## Community Service Options for Alcohol/Drug Cases or Issues

When ordering community service for an Alcoholic Beverage Code offense or a public intoxication by a minor offense, the court will have to determine if a particular community service option is “related to education about or prevention of misuse of alcohol/drugs” as required for those offenses. If such an option is not available, then for all of the alcohol offenses except DUI by a Minor, the court may instead order community service that it determines is “appropriate for rehabilitative purposes”. (ABC § 106.041, 106.071)

Even when there are no specific requirements for the type of community service that must be ordered, rehabilitative options are always a good idea when community service is ordered in any alcohol/drug case or other type of case where alcohol/drugs were clearly an issue.

### Some Creative Community Service Ideas:

- Tutorial/community service/education program at the minor’s school
  - Related in some way to drug/alcohol prevention or at least the fostering of positive behaviors
  - During lunch or after school (reduces off-campus and/or unsupervised time)
- Teen Leadership program
  - 12 week class run by Juvenile Case Managers
  - Life/coping skills; Parent component
- ‘Scared straight’ program that includes a tour of the jail
  - Need to ensure your jail functions properly and would set a good example for the students.
- Write letters based on hypothetical scenarios and potentially read them in open court:
  - You were killed in an alcohol/drug related accident. Write a letter to your parents and read it to them.
  - You caused an accident while using alcohol/drugs and the other driver is paralyzed. Write an apology letter to that person.
  - Your parents are killed by a drunk driver. Write a statement about how this will impact you and what you think the sentence should be for the drunk driver.
- Watch an assigned documentary or do research on an assigned topic and then write an essay regarding the dangers of misuse of alcohol and/or drugs.
- Attend an AA Open Meeting and write an essay.

### Examples Where Some of the Above Ideas Have Been Implemented:

- City of Cedar Park: <http://www.cedarparktexas.gov/modules/showdocument.aspx?documentid=410>
- Community Service Project Options – Council on Alcohol and Drug Abuse (Dallas): <http://dallascouncil.org/programs/community-service-project-options/>

## G. Driver's License Suspension

### 1. Alcohol Offenses Other Than DUIM

If a minor is **convicted** of an offense of purchase, attempt to purchase, consumption, possession, misrepresentation of age or public intoxication, then the court must order DPS to suspend the driver's license or permit of the minor (or not to issue them a license or permit if they don't have one) for:

- 30 days if the minor has not previously been convicted of any of these offenses;
- 60 days if the minor has one prior conviction of any of these offenses; and
- 180 days if the minor has two or more prior convictions of any of these offenses. *Alcoholic Beverage Code § 106.071(d)(2).*

Again, a "prior conviction" includes a prior adjudication in juvenile court under Title 3 of the Family Code that the minor engaged in conduct that would constitute an alcohol offense and a prior order of deferred disposition for an alcohol offense. *Alcoholic Beverage Code § 106.041(h).*

A driver's license suspension takes effect on the 11<sup>th</sup> day after the conviction. *Alcoholic Beverage Code § 106.071(h).*

### 2. Driving Under the Influence by a Minor

The court does not order DPS to suspend the driver's license of a minor who is convicted of the offense of Driving Under the Influence by a Minor. This is not necessary because DPS administratively suspends the minor's license at the time they are cited for the offense. However, if the defendant is acquitted of the DUIM offense, then the court must notify DPS of the acquittal. *Alcoholic Beverage Code § 106.117(a)(4).*



KEY  
POINT



COMMON  
PITFALL

## H. Chart Showing Consequences for Alcohol Offenses by Minors

The Chart on the next page summarizes the consequences for alcohol offenses by minors:

**CONSEQUENCES FOR ALCOHOL-RELATED OFFENSES COMMITTED BY MINORS (Under 21 Years Old)**  
**CHAPTER 106, ALCOHOLIC BEVERAGE CODE (ABC)**

OFFENSE	FIRST CONVICTION	SECOND CONVICTION	THIRD OR SUBSEQUENT CONVICTION
Purchase of Alcohol by Minor § 106.02, ABC	<ul style="list-style-type: none"> <li>• <b>§ 106.071, ABC:</b></li> <li>• <b>Fine: \$1 - \$500 (Class C Misdemeanor)</b></li> <li>• <b>Alcohol/drug awareness program pursuant to § 106.115, ABC</b></li> <li>• <b>Community service: 8-12 hours</b></li> <li>• <b>Suspend or deny issuance of license/permit for 30 days (Order to DPS; takes effect on the 11<sup>th</sup> day after conviction)</b></li> </ul>	<ul style="list-style-type: none"> <li>• <b>§ 106.071, ABC:</b></li> <li>• <b>Fine: \$1 - \$500 (Class C Misdemeanor)</b></li> <li>• <b>Optional for Court: Alcohol/drug awareness program pursuant to § 106.115, ABC</b></li> <li>• <b>Community service: 20-40 hours</b></li> <li>• <b>Suspend or deny issuance of license/permit for 60 days (Order to DPS; takes effect on the 11<sup>th</sup> day after conviction)</b></li> </ul>	<ul style="list-style-type: none"> <li>• <b>§ 106.071, ABC:</b></li> <li>• <b>Court only has jurisdiction if defendant is under age 17</b></li> <li>• <b>Fine: \$1 - \$500 (Class C Misdemeanor)</b></li> <li>• <b>Optional for Court: Alcohol/drug awareness program pursuant to § 106.115, ABC</b></li> <li>• <b>Suspend or deny issuance of license/permit for 180 days (Order to DPS; takes effect on the 11<sup>th</sup> day after conviction)</b></li> </ul>
Attempt to Purchase Alcohol by Minor § 106.025, ABC	<ul style="list-style-type: none"> <li>• <b>§ 106.041, ABC:</b></li> <li>• <b>Fine: \$1-\$500 (Class C Misdemeanor)</b></li> <li>• <b>Alcohol/drug awareness program pursuant to § 106.115, ABC</b></li> <li>• <b>Community service: 20-40 hours</b></li> <li>• <b>License automatically suspended upon arrest by DPS – Court does not order)</b></li> </ul>	<ul style="list-style-type: none"> <li>• <b>§ 106.041, ABC:</b></li> <li>• <b>Fine: \$1-\$500 (Class C Misdemeanor)</b></li> <li>• <b>Optional for court: Alcohol/drug awareness program pursuant to § 106.115, ABC</b></li> <li>• <b>Community service: 40-60 hours</b></li> <li>• <b>License automatically suspended upon arrest by DPS – court does not order)</b></li> </ul>	<ul style="list-style-type: none"> <li>• <b>§ 106.041, ABC:</b></li> <li>• <b>Court only has jurisdiction if defendant is under age 17</b></li> <li>• <b>Fine: \$1 - \$500 (Class C Misdemeanor)</b></li> <li>• <b>Optional for Court: Alcohol/drug awareness program pursuant to § 106.115, ABC</b></li> <li>• <b>Community service: 40-60 hours</b></li> <li>• <b>License automatically suspended upon arrest by DPS – court does not order)</b></li> </ul>
Consumption of Alcohol by Minor § 106.04, ABC	<ul style="list-style-type: none"> <li>• <b>§ 106.041, ABC:</b></li> <li>• <b>Fine: \$1-\$500 (Class C Misdemeanor)</b></li> <li>• <b>Alcohol/drug awareness program pursuant to § 106.115, ABC</b></li> <li>• <b>Community service: 20-40 hours</b></li> <li>• <b>License automatically suspended upon arrest by DPS – Court does not order)</b></li> </ul>	<ul style="list-style-type: none"> <li>• <b>§ 106.041, ABC:</b></li> <li>• <b>Fine: \$1-\$500 (Class C Misdemeanor)</b></li> <li>• <b>Optional for court: Alcohol/drug awareness program pursuant to § 106.115, ABC</b></li> <li>• <b>Community service: 40-60 hours</b></li> <li>• <b>License automatically suspended upon arrest by DPS – court does not order)</b></li> </ul>	<ul style="list-style-type: none"> <li>• <b>§ 106.041, ABC:</b></li> <li>• <b>Court only has jurisdiction if defendant is under age 17</b></li> <li>• <b>Fine: \$1 - \$500 (Class C Misdemeanor)</b></li> <li>• <b>Optional for Court: Alcohol/drug awareness program pursuant to § 106.115, ABC</b></li> <li>• <b>Community service: 40-60 hours</b></li> <li>• <b>License automatically suspended upon arrest by DPS – court does not order)</b></li> </ul>
Possession of Alcohol by Minor § 106.05, ABC	<ul style="list-style-type: none"> <li>• <b>§ 106.041, ABC:</b></li> <li>• <b>Fine: \$1-\$500 (Class C Misdemeanor)</b></li> <li>• <b>Alcohol/drug awareness program pursuant to § 106.115, ABC</b></li> <li>• <b>Community service: 20-40 hours</b></li> <li>• <b>License automatically suspended upon arrest by DPS – Court does not order)</b></li> </ul>	<ul style="list-style-type: none"> <li>• <b>§ 106.041, ABC:</b></li> <li>• <b>Fine: \$1-\$500 (Class C Misdemeanor)</b></li> <li>• <b>Optional for court: Alcohol/drug awareness program pursuant to § 106.115, ABC</b></li> <li>• <b>Community service: 40-60 hours</b></li> <li>• <b>License automatically suspended upon arrest by DPS – court does not order)</b></li> </ul>	<ul style="list-style-type: none"> <li>• <b>§ 106.041, ABC:</b></li> <li>• <b>Court only has jurisdiction if defendant is under age 17</b></li> <li>• <b>Fine: \$1 - \$500 (Class C Misdemeanor)</b></li> <li>• <b>Optional for Court: Alcohol/drug awareness program pursuant to § 106.115, ABC</b></li> <li>• <b>Community service: 40-60 hours</b></li> <li>• <b>License automatically suspended upon arrest by DPS – court does not order)</b></li> </ul>
Misrepresentation of Age by Minor § 106.07, ABC	<ul style="list-style-type: none"> <li>• <b>§ 106.041, ABC:</b></li> <li>• <b>Fine: \$1-\$500 (Class C Misdemeanor)</b></li> <li>• <b>Alcohol/drug awareness program pursuant to § 106.115, ABC</b></li> <li>• <b>Community service: 20-40 hours</b></li> <li>• <b>License automatically suspended upon arrest by DPS – Court does not order)</b></li> </ul>	<ul style="list-style-type: none"> <li>• <b>§ 106.041, ABC:</b></li> <li>• <b>Fine: \$1-\$500 (Class C Misdemeanor)</b></li> <li>• <b>Optional for court: Alcohol/drug awareness program pursuant to § 106.115, ABC</b></li> <li>• <b>Community service: 40-60 hours</b></li> <li>• <b>License automatically suspended upon arrest by DPS – court does not order)</b></li> </ul>	<ul style="list-style-type: none"> <li>• <b>§ 106.041, ABC:</b></li> <li>• <b>Court only has jurisdiction if defendant is under age 17</b></li> <li>• <b>Fine: \$1 - \$500 (Class C Misdemeanor)</b></li> <li>• <b>Optional for Court: Alcohol/drug awareness program pursuant to § 106.115, ABC</b></li> <li>• <b>Community service: 40-60 hours</b></li> <li>• <b>License automatically suspended upon arrest by DPS – court does not order)</b></li> </ul>
Public Intoxication by Minor § 49.02, Penal Code	<ul style="list-style-type: none"> <li>• <b>§ 106.041, ABC:</b></li> <li>• <b>Fine: \$1-\$500 (Class C Misdemeanor)</b></li> <li>• <b>Alcohol/drug awareness program pursuant to § 106.115, ABC</b></li> <li>• <b>Community service: 20-40 hours</b></li> <li>• <b>License automatically suspended upon arrest by DPS – Court does not order)</b></li> </ul>	<ul style="list-style-type: none"> <li>• <b>§ 106.041, ABC:</b></li> <li>• <b>Fine: \$1-\$500 (Class C Misdemeanor)</b></li> <li>• <b>Optional for court: Alcohol/drug awareness program pursuant to § 106.115, ABC</b></li> <li>• <b>Community service: 40-60 hours</b></li> <li>• <b>License automatically suspended upon arrest by DPS – court does not order)</b></li> </ul>	<ul style="list-style-type: none"> <li>• <b>§ 106.041, ABC:</b></li> <li>• <b>Court only has jurisdiction if defendant is under age 17</b></li> <li>• <b>Fine: \$1 - \$500 (Class C Misdemeanor)</b></li> <li>• <b>Optional for Court: Alcohol/drug awareness program pursuant to § 106.115, ABC</b></li> <li>• <b>Community service: 40-60 hours</b></li> <li>• <b>License automatically suspended upon arrest by DPS – court does not order)</b></li> </ul>

**NOTE:** For the purpose of counting the number of convictions to determine which column applies, the following are considered "convictions:"

-A prior adjudication in juvenile court under Title 3, Family Code, that a minor engaged in this conduct.

-A prior order of deferred disposition for the offense.

**NOTE:** Community service under § 106.071, ABC, must be related to education about or prevention of misuse of alcohol/drugs, or, if programs/services providing that education are not available, the court may order community service that it considers appropriate for rehabilitative purposes. Community service under § 106.041, ABC, must be related to education about or prevention of misuse of alcohol.



## I. Expunction

### 1. Right to Expunction for Alcohol Offense by Minor



KEY  
POINT

Any person convicted of only one offense under the Alcoholic Beverage Code while a minor may apply to the court in which they were convicted to have the conviction expunged when they reach the age of 21 years. *Alcoholic Beverage Code § 106.12(a)*.

The right to expunction using this procedure applies to the offense of purchase, attempt to purchase, consumption, possession, misrepresentation of age and driving under the influence by a minor. This procedure does not apply to a conviction for public intoxication.

### 2. What Does the Applicant Have to Show?

The application for expunction must contain the applicant's sworn statement that they were not convicted of any violation of the Alcoholic Beverage Code while they were a minor other than the one they seek to have expunged. *Alcoholic Beverage Code § 106.12(b)*.

### 3. What Does the Court Do?



KEY  
POINT

If the court finds that the applicant was not convicted of any other Alcoholic Beverage Code offense while they were a minor, the court must order the conviction, together with all complaints, verdicts, sentences, prosecutorial and law enforcement records, and other documents relating to the offense, to be expunged from the applicant's record. *Alcoholic Beverage Code § 106.12(c)*.

After the order is entered, the applicant is released from all disabilities resulting from the conviction and the conviction may not be shown or made known for any purpose. *Alcoholic Beverage Code § 106.12(c)*.

### 4. Expunction For Arrest Without a Conviction

Any person who was placed under arrest for only one Alcoholic Beverage Code offense while a minor and who was not convicted of the offense may apply to the court in which the person was charged to

#### What Counts as a Conviction?

For purposes of expunction a prior juvenile adjudication or a prior deferred disposition do **not** count as a conviction. So if Johnny Jones has a deferred disposition for a minor in possession offense and then is convicted of DUIM, the DUIM is subject to expunction.

have the records of the arrest expunged. *Alcoholic Beverage Code § 106.12(d)*.

The application for expunction must contain the applicant's sworn statement that they were not arrested for any violation of the Alcoholic Beverage Code other than the one they seek to have expunged. *Alcoholic Beverage Code § 106.12(d)*.

If the court finds that the applicant was not arrested for any other Alcoholic Beverage Code offense while a minor, the court must order all complaints, verdicts, prosecutorial and law enforcement records, and other documents relating to the offense, to be expunged from the applicant's record. *Alcoholic Beverage Code § 106.12(d)*.

## **5. Fee for Expunction for Alcohol Offense by a Minor**

The fee for an application for expunction of a conviction or arrest for an alcohol offense by a minor is **\$30**. *Alcoholic Beverage Code § 106.12(e)*.

## **6. These Expunction Procedures are Separate From the Procedures under Chapter 55**

These expunction procedures under the Alcoholic Beverage Code are separate and distinct from the expunction procedures under Chapter 55 of the Code of Criminal Procedure. *See Chapter 10.B of the Criminal Deskbook.*

Chart B on page 84 contains an explanation of these expunction procedures as well as the expunction procedures under Chapter 55.

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*Separate expunction procedures apply to offenses other than alcohol offenses. See page 95 (tobacco offenses) and pages 104 – 105 (fine-only misdemeanor offenses) and the Expunction Table on page 106.*

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## **J. Reporting Requirements**

### **1. Reporting to DPS**

The court must send a notice to DPS of each:

- Conviction of an Alcoholic Beverage Code offense by a minor;
- Order of deferred disposition for an Alcoholic Beverage Code offense by a minor; and

- Acquittal of a DUIM offense. *Alcoholic Beverage Code § 106.117(a)*.

These reporting requirements apply to purchase, attempt to purchase, consumption, possession, misrepresentation of age and Driving Under the Influence by a Minor offenses. They do not apply to a public intoxication offense.

## 2. Reporting Form

The notice must be in a form prescribed by DPS and contain the driver's license number of the defendant if they have a driver's license. *Alcoholic Beverage Code § 106.117(b)*. The form to use for this purpose is DIC-15:

DIC-15

**NOTICE OF CONVICTION AND SUSPENSION/DISQUALIFICATION**  
PLEASE PRINT OR TYPE

NAME \_\_\_\_\_  
(FIRST) (MIDDLE) (LAST) (SO. SEC. NO.)

ADDRESS \_\_\_\_\_

DRIVER LICENSE # \_\_\_\_\_ DATE OF BIRTH \_\_\_\_\_ RACE \_\_\_\_\_ SEX \_\_\_\_\_  
ID # OR NONE

OFFENSE COMMITTED \_\_\_\_\_

DATE OFFENSE COMMITTED \_\_\_\_\_ DISPOSITION DATE \_\_\_\_\_

TRANSPORTING HAZARDOUS MATERIAL \_\_\_\_\_ NO \_\_\_\_\_ YES

EMPLOYER \_\_\_\_\_  
(IF CONVICTED OF VIOLATING OUT OF SERVICE ORDER)

NOTE: COURT MUST PROVIDE SUSPENSION OR DISQUALIFICATION DATES

BEGINNING DATE \_\_\_\_\_ ENDING DATE \_\_\_\_\_

CERTIFIED BY \_\_\_\_\_ TITLE \_\_\_\_\_  
SIGNATURE

COURT \_\_\_\_\_ CAUSE # \_\_\_\_\_ COUNTY \_\_\_\_\_

MAIL TO: DRIVER IMPROVEMENT & CONTROL  
TEXAS DEPARTMENT OF PUBLIC SAFETY  
PO BOX 4087  
AUSTIN TX 78773-0001

DIC-15 (REV. 3/96)

A copy of this form may be obtained at this link:

<http://www.tncec.com/public/files/File/Resources/Final%20Website%20Forms%20Book/PDF/18-Government%20&%20Agency%20Forms.pdf>

## 3. Information is Confidential



This information is confidential and may not be disclosed other than to DPS and to law enforcement agencies and courts to enable them to carry out their official duties. *Alcoholic Beverage Code § 106.117(c) and (d)*.

Another law, such as Chapter 58 of the Family Code, that limits collecting or reporting information on a juvenile or minor or requiring destruction of that information does not apply to information collected and reported to DPS under these requirements. *Alcoholic Beverage Code § 106.117(d)*.

*For other confidentiality requirements please see page 33 (truancy court records), pages 103 – 104 (juvenile case records) and Chapter 10.B of the Criminal Deskbook (fine only misdemeanor cases five years after the date of a conviction or dismissal following a deferred disposition).*

#### **4. Reporting to the Alcoholic Beverage Commission**

The clerk of the court must submit to the Alcoholic Beverage Commission, ***upon request by the Commission***, a notice of a conviction of an alcohol offense by a minor. *Alcoholic Beverage Code § 106.116*.

## Chapter 5: Tobacco Cases

### A. What Is a Tobacco Offense?



KEY  
POINT

An individual **who is younger than 18 years of age** commits an offense if they:

- (1) Possess, purchase, consume or accept a cigarette, e-cigarette, or tobacco product; or
- (2) Falsely represent themselves to be 18 years of age or older by displaying false proof of age information (including someone else's) in order to possess, purchase or receive a cigarette, e-cigarette, or tobacco product. *Health & Safety Code § 161.252(a)*.

This offense is punishable by a fine not to exceed \$250. *Health & Safety Code § 161.252(d)*.

### B. What are the Defenses?

The offense does not apply if an individual younger than 18 years of age possessed the cigarette, e-cigarette or tobacco product in the presence of:

- (1) An adult parent, a guardian or a spouse of the individual; or
- (2) An employer of the individual if possession or receipt of the e-cigarette or tobacco product is required in the performance of the employee's duties. *Health & Safety Code § 161.252(b)*. For example, a 17 year old who is working at a grocery store may ring up and sell a pack of cigarettes for an adult customer.

The offense also does not apply if an individual younger than 18 years of age is participating in an inspection or test of compliance by governmental authorities. *Health & Safety Code § 161.252(c)*.

#### E-cigarettes?

Tobacco offenses apply to e-cigarettes. An e-cigarette is an electronic cigarette or any other device that simulates smoking by using a mechanical heating element, battery or electronic circuit to deliver nicotine or other substances to the individual inhaling from the device. *Health & Safety Code § 161.081(1-a)*.



## C. Tobacco Awareness Program or Community Service

### 1. Court Must Require Defendant to Attend Program



KEY  
POINT

If an individual is convicted of a tobacco offense, the court must suspend execution of the sentence and require the defendant to attend an e-cigarette and tobacco awareness program approved by the Commissioner of Health Services. *Health & Safety Code § 161.253(a)*.

The court may require the defendant's parent or guardian to attend the e-cigarette and tobacco awareness program with the defendant. *Health & Safety Code § 161.253(a)*.

Approved courses may be found at these links:

<https://worthit.org/>; <https://dshs.texas.gov/tytap/> Instructions for locating and registering for an approved course may be found at this link: <https://www.celina-tx.gov/1152/Tobacco-Awareness-Courses>

### 2. Community Service as Alternative to Attending Program



KEY  
POINT

If the defendant resides in a rural area of the state or an area where access to an e-cigarette and tobacco awareness program is not readily available, the court must require the defendant to perform eight to 12 hours of e-cigarette and tobacco-related community service instead of attending an e-cigarette and tobacco awareness program. *Health & Safety Code § 161.253(c)*.

### 3. Proof of Compliance

Not later than the 90<sup>th</sup> day after the date of a conviction for a tobacco offense, the defendant must present to the court, in the manner required by the court, evidence of satisfactory completion of the e-cigarette and tobacco awareness program or the e-cigarette and tobacco-related community service. *Health & Safety Code § 161.253(e)*.

#### May the Course be in Another Language?

Yes. On request the e-cigarette and tobacco awareness course may be taught in a language other than English. *Health & Safety Code § 161.253(b)*.

#### 4. Reduction of Fine or Dismissal if Defendant Complies

If the defendant provides proof of compliance within 90 days of the conviction, then the court must:

- (1) If the defendant has previously been convicted of a tobacco offense, execute the sentence but at the discretion of the court, the court may reduce the fine imposed to not less than half the fine previously imposed by the court; or
- (2) If the defendant has not been previously convicted of a tobacco offense, discharge the defendant and dismiss the complaint or information filed against the defendant. *Health & Safety Code § 161.253(f)*.

“The Cat Came Back . . .”

When the court dismisses a tobacco offense after a defendant completes the e-cigarette and tobacco awareness program or community service, the conviction may not be used **unless** they get convicted of a tobacco offense again in which case it counts as a prior conviction.



COMMON  
PITFALL

When the court discharges a defendant who has not previously been convicted of a tobacco offense, the defendant is released from all penalties and disabilities resulting from the offense **except** that the defendant is considered to have been convicted of the offense if the defendant is subsequently convicted of a tobacco offense after the dismissal. *Health & Safety Code § 161.253(g)*.

#### 5. Driver’s License Suspension if Defendant Fails to Comply

If the defendant fails to show proof of compliance within 90 days of the conviction, then the court must order DPS to suspend or deny issuance of a driver’s license or permit to the defendant. The order must specify the period of the suspension or denial, which may not be more than 180 days after the date of the order. *Health & Safety Code § 161.254(a)*.

DPS has to send the defendant a notice of the court action by first class mail. The notice has to include the date of the court’s order and the reason for the order and specify the period of the driver’s license suspension or denial. *Health & Safety Code § 161.254(b)*.

## D. Expunction

An individual convicted of a tobacco offense may apply to have the conviction expunged.

If the court finds that the defendant satisfactorily completed the e-cigarette and tobacco awareness program or the e-cigarette and tobacco-related community service, then the court must order the conviction and any complaint, verdict, sentence, or other document relating to the offense to be expunged from the defendant's record and the conviction may not be shown or made known for any purpose. *Health & Safety Code § 161.255(a)*.

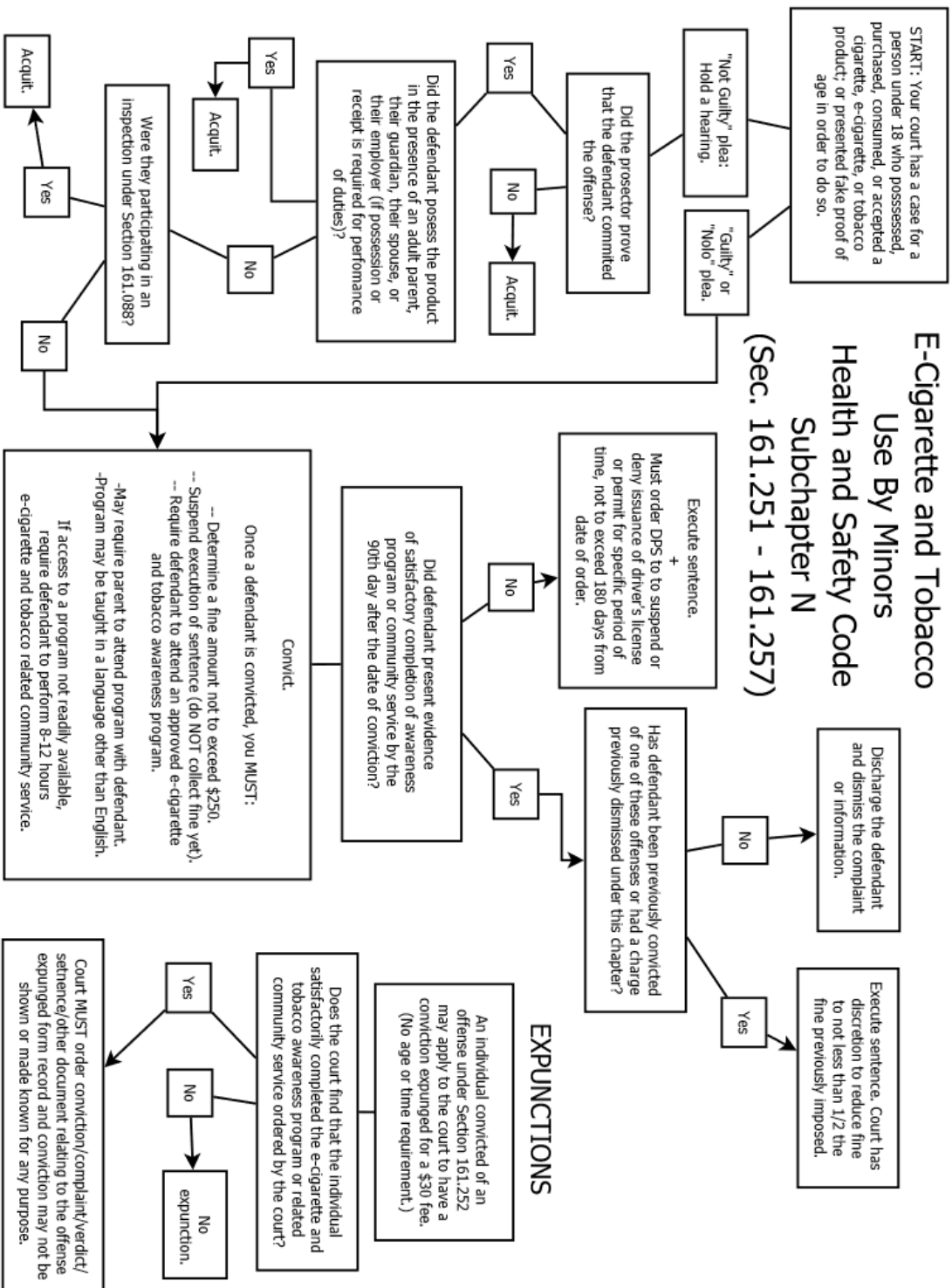
The fee for filing an application for expunction is **\$30**. *Health & Safety Code § 161.255(b)*.

### Be Sure You Know Which Expunction Law Applies

Expunction for a tobacco offense is separate from expunction for an alcohol offense or expunction for some other fine-only misdemeanor. The procedures and fee are different depending on the offense being expunged. Always be sure you're applying the right statute. These are explained on pages 104 – 105 and the Table on page 106.

## E. Flowchart

Here is a juvenile tobacco offenses flowchart:



## Chapter 6: Non-Truancy School Offenses

### A. What Are School Offenses?



KEY  
POINT

A “school offense” is a Class C misdemeanor other than a traffic offense committed by a child (a student who is at least 10 years of age and younger than 18 years of age) on property under the control and supervision of a school district. *Education Code § 37.141*.

School offenses include:

- (1) Being a member of, or pledging to become a member, or joining or soliciting another person to become a member of a public school fraternity, sorority, secret society or gang (*Education Code § 37.121(a)*);
- (2) Possession of an intoxicating beverage for consumption, sale or distribution while on public school grounds (including a building, field or stadium) (*Education Code § 37.122(a)*); and
- (3) For a person other than a primary or secondary grade student enrolled in the school: intentionally disrupting, on school property or on public property within 500 feet of school property, the conduct of classes or other school activities (*Education Code § 37.124(a)*).

Please note that the offenses of disrupting the conduct of classes or other school activities (*Education Code § 37.124*) may only be committed by a person who is not attending the school where the disruption occurs. For example, if Johnny Jones is a sophomore at Travis High School he cannot commit the offense of disruption of class at Travis High; but if he goes over to Bowie High School and disrupts classes there he can be charged with the offense (subject to graduated sanctions, discussed below).

### B. What Procedures Apply to School Offenses?

#### 1. No Citations



COMMON  
PITFALL

A peace officer, law enforcement officer or school resource officer may not issue a citation to a child (a student who is at least 10 years of age and younger than 18 years of age) who is alleged to have committed a school offense. *Education Code § 37.143(a)*.

## 2. Graduated Sanctions for Certain School Offenses

A school district that commissions peace officers may develop a system of graduated sanctions that the school district may require to be imposed on a child before a complaint is filed against the child for a school offense of:

- Disrupting the conduct of classes or other school activities under Education Code § 37.124;
- Interfering with the lawful transportation of children under Education Code § 37.126; or
- Disorderly conduct through abusive, indecent, profane, or vulgar language, making an offensive gesture, creating a noxious and unreasonable odor by chemical means, abusing or threatening a person, or making unreasonable noise under Penal Code § 42.01(a)(1)-(5). *Education Code § 37.144(a).*

The system of graduated sanctions may require:

- (1) A warning letter to the child and the child's parent or guardian;
- (2) A behavior contract;
- (3) The performance of school-based community service by the child; and
- (4) The referral of the child to counseling or community or school-based services. *Education Code § 37.144(a).*

### Before a Complaint May be Filed for Some Non-truancy School Offenses . . .

The school district may require graduated sanctions to be imposed on the child first. This is something the school district has to do but if a complaint is filed it must state what graduated sanctions were used if they are required by the school district.

Graduated sanctions **do not apply** to the school offenses of being a member of a public school fraternity, sorority, secret society or gang (Education Code § 37.121) or to possession of alcohol on school property (Education Code § 37.122).

## 3. When May a Complaint for a School Offense be Filed?

If the child fails to comply with or complete the graduated sanctions, or if the school district has not elected to adopt a system of graduated sanctions, then the school may file a complaint against the child with a criminal court. *Education Code § 37.145.*

#### **4. What Must a Complaint for a School Offense State?**

A complaint alleging the commission of a school offense must, in addition to the requirements of Art. 45.019 of the Code of Criminal Procedure:

- Be sworn to by a person having personal knowledge of the underlying facts giving rise to probable cause to believe an offense has been committed; and
- Be accompanied by a statement from a school employee stating whether the child is eligible for or receives special services and the graduated sanctions, if required, that were imposed on the child before the complaint was filed. *Education Code § 37.146(a)*.

After a complaint is filed a summons may be issued under Arts. 23.04 and 45.057(e) of the Code of Criminal Procedure requiring the child to appear.

A complaint may include a recommendation from a school employee that the child attend a teen court program if the school employee believes attending a teen court program is in the best interest of the child. ***For more information on teen court programs, see page 60.***

#### **5. Offense Report and Witness Statements Must be Filed by Law Enforcement**

If a law enforcement officer issues a citation (which they may not do for a school offense) or files a complaint as provided in Art. 45.018 of the Code of Criminal Procedure for conduct by a child 12 years of age or older that is alleged to have occurred on school property or on a vehicle owned or operated by a county or independent school district, the officer must submit to the court:

- The offense report;
- A statement by a witness to the alleged conduct; and
- A statement by a victim of the alleged conduct, if any. *Art. 45.058(i), Code of Criminal Procedure.*

A prosecutor may not proceed to trial unless the law enforcement officer has complied with this requirement. *Art. 45.058(i), Code of Criminal Procedure.*

#### **6. Law Enforcement May Not File a Citation or Complaint for Child Younger Than 12**

A law enforcement officer may not issue a citation or file a complaint in the manner provided for in

Art. 45.018 of the Code of Criminal Procedure for a child under 12 years of age for conduct that is alleged to have occurred on school property or on a vehicle owned or operated by a county or independent school district. *Art. 45.058(j), Code of Criminal Procedure.*

A complaint in this situation would have to be filed by the school district under Education Code § 37.145.



# Chapter 7: Distracted Driving Offenses by Minors

## A. Ban on Wireless Communication Device

### 1. While Operating Motor Vehicle

A person who is under 18 years of age may not operate a motor vehicle while using a wireless communication device, except in case of emergency. *Transportation Code § 545.424(a)*. A “wireless communication device” is a handheld or hands-free device that uses commercial mobile service. *Transportation Code § 545.424(f)*.

**Peace Officer May  
Not Stop a Vehicle ...**

... or detain the operator for the sole purpose of determining whether the operator of the vehicle has committed this offense. *Transportation Code § 545.242(e)*.



KEY  
POINT

This law covers more than just texting. A person under the age of 18 years old may not **use** any mobile device while driving unless there is an emergency. This means they may not use a cell phone to talk with someone else while driving, even if they are using the device “hands free.” Obviously, they also may not use a cell phone to text or take photos (including a selfie) or to look at a map for directions or to search the internet for information.

### 2. While Operating Motorcycle or Moped

A person under 17 years of age who holds a restricted motorcycle license or a moped license may not operate a motorcycle or moped while using a wireless communication device, except in case of emergency. *Transportation Code § 545.424(b)*.

This offense does not apply to a person licensed by the FCC while operating a radio frequency device other than a wireless communication device.

## B. Fine Amount

This offense is a misdemeanor punishable by a fine of at least \$25 and not more than \$99. But if it is shown at trial that the defendant has previously been convicted at least one time of this offense (either while driving a motor vehicle or motorcycle or moped), then the offense is punishable by a fine of not less than \$100 or more than \$200. *Transportation Code § 545.424(g)*.

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*H.B. 62, passed in the 85<sup>th</sup> Legislative Session (2017), imposed a ban on the use of a wireless communication device to read, write or send an electronic message while operating a motor vehicle for all persons but with notable exceptions (for example, to navigate using a GPS, to use an app to obtain traffic and road conditions, to play music or to read a message that the person believes concerns an emergency). Transportation Code § 545.4251(c). See Chapter 11.C of the Criminal Deskbook.*

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# Chapter 8: Juvenile Case Records

## A. Confidentiality

### 1. What Records are Confidential?



KEY  
POINT

All records and files relating to a fine-only misdemeanor case against a child (person under the age of 17) **other than a traffic offense** are confidential and may not be disclosed to the public. *Art. 45.0217(a), Code of Criminal Procedure.*

The outcome of the proceeding does not affect the confidentiality of the records. They must be maintained as confidential and may not be disclosed to the public if the child was charged with, convicted of, found not guilty of, had a charge dismissed for, or is granted a deferred disposition for a non-traffic fine-only misdemeanor. *Art. 45.0217(a), Code of Criminal Procedure.*

Confidentiality applies to all records and files, including those held by law enforcement and information stored by electronic means or otherwise. *Art. 45.0217(a), Code of Criminal Procedure.*

### 2. Who May the Confidential Information be Disclosed to?

The confidential information is open to inspection only by:

- Judges or court staff;
- A criminal justice agency;
- DPS;
- An attorney for a party to the proceeding;
- The child defendant;
- The defendant's parent, guardian or managing conservator. *Art. 45.0217(b), Code of Criminal Procedure.*

In addition, certain information may be provided to a school superintendent or person designated by a school

A "Criminal Justice Agency" ...

... is a federal or state agency that is engaged in and allocates a substantial portion of its annual budget to the administration of criminal justice (for example, DPS); or a campus police department that has obtained an originating agency identifier from the FBI. *Government Code § 411.082(3).*

superintendent in the school district in which the child is enrolled. *Art. 15.27, Code of Criminal Procedure.*



COMMON  
PITFALL

Please note that the military or a military recruiter is not included among the persons to whom confidential information may be given; but the defendant could obtain the records and give them to a recruiter.

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*This confidentiality provision is in addition to the general confidentiality provision for all persons in all fine-only misdemeanor cases (including traffic offenses) that applies five years after the date of a conviction or dismissal following a deferred disposition. Art. 45.0218; see Chapter 10.B of the Criminal Deskbook.*

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## B. Expunctions

### 1. Which Records May be Expunged?

#### *a. If Acquitted*

Records of a person under 17 years of age relating to a complaint may be expunged if the person was acquitted of the offense. *Art. 45.0216(h)(2), Code of Criminal Procedure.*

#### *b. If Complaint Dismissed*

Records of a person under 17 years of age relating to a complaint may be expunged if the complaint was dismissed following a deferred disposition, or teen court, or other law. *Art. 45.0216(h)(1), Code of Criminal Procedure.*

#### *c. If Only One Conviction*

Records relating to a conviction may be expunged **on or after a person's 17<sup>th</sup> birthday** if the person was convicted of not more than one fine-only misdemeanor offense while the person was a child, or if the person was convicted of only one sexting offense. *Art. 45.0216(b), Code of Criminal Procedure.*

Please note that a separate expunction procedure applies to alcohol offenses by a minor, and those offenses are not subject to expunction until the defendant turns 21. *See pages 88 – 89.*



KEY  
POINT

## 2. Procedure and Order of Expunction

The person must make a written request to have the records expunged. If the request is based on only one conviction of a fine-only misdemeanor offense or sexting offense, the request must contain the person's statement under oath that the person was not convicted of any additional fine-only misdemeanor offense while a child or been found to have engaged in conduct indicating a need for supervision for a sexting offense. *Art. 45.0216(c), (d), Code of Criminal Procedure.*



KEY  
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If the court finds those statements to be true, then the court is to order the conviction, together with all complaints, verdicts, sentences, and prosecutorial and law enforcement records, and any other documents relating to the offense, to be expunged from the person's record. *Art. 45.0216(f), Code of Criminal Procedure.*

After entry of the expunction order, the person is released from all disabilities resulting from the conviction and the conviction may not be shown or made known for any purpose. *Art. 45.0216(g), Code of Criminal Procedure.*

## 3. Fee

The fee for an application for expunction under these circumstances is **\$30**. *Art. 45.0216(i), Code of Criminal Procedure.*

## 4. Other Expunction Procedures

As noted above, these expunction procedures do not apply to Alcohol and Tobacco cases involving minors. *Art. 45.0216(g).* **See pages 88 – 89.**

They are also separate and distinct from other expunction procedures (including for arrest records) under Chapter 55 of the Code of Criminal Procedure. *Art. 45.0216(j).* **See Chapter 10.B of the Criminal Deskbook.**

## 5. Expunction Table

Here is an expunction table:

**Table of Justice Court Expunction Procedures**

<b>Type of Record</b>	<b>Requirements and Procedure</b>	<b>Fee</b>	<b>Authorizing Statute</b>
Dismissals/ Acquittals (Defendant under 17)	The case has been dismissed or the defendant was acquitted. Applicant files with the court in which the offense was pending. Application must be sworn and written.	\$30	Art. 45.0216(h), Code of Criminal Procedure
Arrest Records Related to ABC Offense	The defendant is now 21 years of age and has only one arrest for an offense under Ch. 106, ABC. Noncustodial arrests (citations) count as arrests. Applicant files sworn application with the convicting court.	\$30	Sec. 106.12, Alcoholic Beverage Code
Convictions of ABC Offense	The defendant is now 21 years of age and has only one conviction under Ch. 106, ABC. Deferrals do not count as convictions. Applicant files sworn application with the convicting court.	\$30	Sec. 106.12, Alcoholic Beverage Code
Convictions of fine-only misdemeanor (Defendant under 17)	The defendant had only one conviction of a fine-only misdemeanor before their 17 <sup>th</sup> birthday (other than ABC or tobacco offenses) and is now 17. Applicant files with the convicting court. Application must be sworn and written.	\$30	Art. 45.0216(b), Code of Criminal Procedure
Convictions of tobacco-related offense	The defendant complied with the court's order to take a tobacco awareness course or perform tobacco-related community service. Applicant files with the convicting court.	\$30	Sec. 161.255, Health & Safety Code
Conviction of "sexting" offense	The defendant has only one conviction of an offense under Penal Code Sec. 43.261, was never adjudicated by a juvenile court as having engaged in the same conduct, and is now 17. Applicant files with the court in which the offense was pending. Application must be sworn and written.	\$30	Art. 45.0216(b), (f), Code of Criminal Procedure
Arrest Records Related to Fine- Only Misdemeanors Not Resulting in Conviction or Acquittal (Adult defendants)	1) Offense is no longer pending, did not result in conviction, no felony charges are pending and at least 180 days has elapsed since arrest; 2) Prosecutor recommends expunction before trial of offense; or 3) Defendant convicted is subsequently acquitted by court of appeals or court of criminal appeals or pardoned. Applicant files petition described by Art. 55.02, Sec. 2(b) with any court in the county in which the defendant was arrested or in which the offense was alleged to occur.	\$100*	Arts. 55.01, 55.02, 102.006, Code of Criminal Procedure
Arrest Records Related to Acquittals (Adult defendants)	Trial court must notify defendant of right to expunction upon acquittal. Defendant or prosecutor can make request. Defendant's attorney prepares expunction order, if defendant is pro se, prosecutor does. Request can be made with trial court or petition described by Art. 55.02, Sec. 2(b) with any court in the county in which the defendant was arrested or in which the offense was alleged to occur.	\$0^	Arts. 55.01, 55.02, 102.006, Code of Criminal Procedure

\* Court may return all or a portion of this fee to the applicant.

^ Fee is only waived if petition is filed within 30 days of acquittal. If not, fee is \$100, though the court may return all or a portion of this fee to the applicant.

## Chapter 9: Juvenile Case Managers

### A. What is a Juvenile Case Manager?

A juvenile case manager is a person employed by a justice court (or by a school district or other governmental entity), with the approval of the commissioners court, to:

(1) Provide services in cases involving juvenile offenders who are before a court, or who are referred to the court by a school administrator for misconduct that would otherwise be within the court's statutory powers prior to a case being filed, with the consent of the juvenile and the juvenile's parents or guardian; or

(2) Assist the court in administering the court's juvenile docket and in supervising the court's orders in juvenile cases, and who may provide prevention services to a child considered at risk of entering the juvenile justice system or intervention services to juveniles engaged in misconduct before cases are filed, excluding traffic offenses. *Art. 45.056(a), Code of Criminal Procedure.*

A juvenile case manager may be full or part-time.

### B. What are the Advantages of a Juvenile Case Manager?

A juvenile case manager gives the court the ability to more effectively administer the court's juvenile case docket and supervise its orders in juvenile cases.

For example, the juvenile case manager may inform the judge about the child's home environment, the child's developmental, psychological and educational status, the child's previous interaction with the justice system and any sanctions available to the court that would be in the best interest of the child. *Art. 45.056(j), Code of Criminal Procedure.*

A juvenile case manager may also assist the court in handling the juvenile docket under the court's direction. In some courts juvenile case managers receive and docket all complaints filed against juveniles and assist the judge in processing those cases, as well as securing the attendance of juveniles and their parents to court proceedings. If directed by the court, case managers can operate

#### Jointly Hired Juvenile Case Managers

A justice court may hire its own juvenile case manager or may agree with other justice courts (including justice courts in other counties) or a municipal court to jointly employ a juvenile case manager. *Art. 45.056(a)(3), Code of Criminal Procedure.*



BEST  
PRACTICE

deferred disposition programs and assist in the implementation of dispositional orders, such as arranging for community service by juveniles and supervising the juvenile during the deferral period. *Dawson at 213.*

A juvenile case manager must receive training in ethics, case planning and management, procedural and substantive law, courtroom proceedings and presentation, services to at-risk youth, local programs and services for juveniles and how juveniles may access those services, and detecting and preventing abuse, exploitation and neglect of juveniles. *Art. 45.056(f), Code of Criminal Procedure.*

If a justice court employs a juvenile case manager, then the court is not required to refer a charge of a non-traffic offense to a juvenile court if the juvenile has two prior convictions for fine only offenses. The juvenile case manager gives the justice court an additional means of dealing with the habitual juvenile offender so that requiring the juvenile court to be involved is not seen as necessary. But if the justice court does not have a juvenile case manager, then it must refer a charge of a non-traffic offense to a juvenile court if the juvenile has two prior convictions for fine-only offenses. *Family Code § 51.08(b); Dawson at 214. See pages 46 – 47.*

### **C. How is the Juvenile Case Manager Paid?**

The court may pay the salary and benefits of the juvenile case manager, as well as the costs of training, travel, office supplies, and other necessary expenses relating to the position, from the juvenile case manager fund. *Art. 45.056(d), Code of Criminal Procedure.*

Funding may also be available through the Governor's Office. *Art. 45.056(b), Code of Criminal Procedure.*



# Chapter 10: Juvenile Detention Hearings

## A. What is a Juvenile Detention Hearing?



A juvenile detention hearing is a hearing to determine whether there is probable cause to believe a child engaged in delinquent conduct or conduct indicating a need for supervision (CINS) and may be held in detention pending a determination by a juvenile court of the charges against the child. *Family Code § 53.01*.

“Child” means a person who is:

- Ten years of age or older and under 17 years of age; or
- 17 years of age or older and under 18 years of age who is alleged or found to have engaged in delinquent conduct or conduct indicating a need for supervision as a result of acts committed before becoming 17 years of age. *Family Code § 51.02(2)*.

A child must be released unless detention is required by law. *Family Code § 53.02*. A detention hearing is necessary when a child is taken into custody and is not released administratively by an intake officer at a detention facility.

## B. Who Conducts the Detention Hearing?

The detention hearing will normally be held by the juvenile court. But if the judge of the juvenile court (or any alternate judge designated under Family Code § 51.04) is out of the county or unavailable, then any magistrate may conduct a detention hearing. *Family Code § 51.04(f)*.

If a magistrate presides at the detention hearing, a determination of unavailability of the juvenile court judge must be made. This must be done for the first hearing and all subsequent hearings in the same case. *Dawson at 31*.

**Who May Conduct the Hearing?**

The Attorney General has concluded that any magistrate may be a detention magistrate whether the magistrate is a lawyer or not. *Atty. Gen. Op. No. H-1301 (1978)*.

## C. When Must the Hearing be Held?

A detention hearing without a jury must be held “promptly,” but not later than the second working

day after the child is taken into custody. If the child is taken into custody on a Friday or Saturday, the detention hearing must be held on the first working day after the child was taken into custody. *Family Code § 54.01(a)*.

If the child is detained in a county jail or other facility because a certified detention facility is not available, then the detention hearing must be held within 24 hours (excluding weekends and holidays) after the child was taken into custody. *Family Code § 54.01(q)*.

The detention hearing for a **status offender** or a nonoffender who has not been released must be held before the 24<sup>th</sup> hour after the time the child arrived at the detention facility (excluding hours of a weekend or holiday). *Family Code §§ 54.011(a), 53.01(a)(2)(B)*.

### What is a Status Offender?

A status offender means a child who is accused, adjudicated or convicted for conduct that would not be a crime if committed by an adult. *Family Code § 51.02(15)*.

## D. Right to Legal Counsel

Before the first detention hearing, the court must notify the child and their parents of the child's right to legal counsel. If the court determines that the child's family is indigent, the court **must** appoint an attorney prior to the initial detention hearing. The child's attorney must then be present at all subsequent detention hearings, unless the hearings are waived by the child and the child's attorney. *Family Code §§ 54.01(b), 51.01(a)(1), 51.09*.

## E. Notice of the Hearing

Reasonable notice of the hearing must be given to the child and, if they can be located, to the parents, guardian or custodian of the child. A detention hearing may be held without the child's parents if the court has not been able to locate them. If no parent or guardian is present, the court **must** appoint a lawyer or guardian ad litem for the child. *Family Code §§ 54.01(b), (d)*.

### Guardian Ad Litem

A guardian ad litem acts as the legal representative for the child who is the subject of a lawsuit. The guardian ad litem may be a qualified non-lawyer, such as a volunteer advocate or a lawyer who serves in a dual role as attorney for the child and guardian ad litem. *Family Code Chapter*



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## F. When May the Child be Detained?



KEY  
POINT

After a detention hearing is held, a child must be released unless the judge finds that the child:

- Is likely to abscond;
- Lacks adequate supervision;
- Lacks a parent or other person to return him or her to court when required;
- Is a danger to himself or may threaten the public safety; or
- Was previously adjudicated for delinquent conduct and is likely to commit an offense if released. *Family Code § 54.01(e)*.

Release of a juvenile may be conditioned on requirements reasonably necessary to ensure the child's appearance at later court proceedings. Conditions of release must be in writing, and a copy must be furnished to the child. If the child is released to an adult, the release must be conditioned on an agreement that the adult will ensure the appearance of the child at a later court proceeding or be subject to an order of contempt. *Family Code §§ 54.01(f), 53.02(d)*.

A judge may order a child's parent, who is present at the detention hearing, to perform certain acts or omissions specified by the judge that will assist the child in complying with the conditions of release. Such an order must be in writing and a copy furnished to the parent or guardian. The order is enforceable by contempt of court. *Family Code § 54.01(r)*.

## G. How Long Does the Detention Remain in Effect?

An initial detention order extends to the end of the court case, if there is one, but in no event for more than 10 working days. If a county does not have a certified detention facility, any subsequent detention orders may extend for up to 15 working days. The reason for holding a detention hearing every 10 (or 15) days is for the juvenile court to determine whether there are sufficient grounds for continued detention of the child. *Family Code § 54.01(h)*.

## CHAPTER 11: RESOURCES

1. TJCTC Resource page: <http://www.tjctc.org/tjctc-resources.html>
  - a. Legal Question Board: You may search the Legal Question Board for answers to a question you currently have or a similar question.
  - b. Important Legal Updates
  - c. Publications, including Deskbooks, Newsletters, Flowcharts
  - d. Electronic Publications
  - e. Forms
2. TJCTC Truancy Court Information Page: <http://www.tjctc.org/truancy.html>
3. Texas Truancy Court Resource Manual (including additional forms):  
<http://tmcec.com/truancy/texas-truancy-court-resource-manual/>
4. Juvenile Justice Handbook (Texas Attorney General 2016):  
[https://www.texasattorneygeneral.gov/files/cj/juvenile\\_justice.pdf](https://www.texasattorneygeneral.gov/files/cj/juvenile_justice.pdf)
5. Robert Dawson, Texas Juvenile Law for Justice and Municipal Courts (2d ed. 2008), and Texas Juvenile Law (8<sup>th</sup> ed. 2014 Supplement)

## **CHAPTER 12: APPENDIX OF CASES**

*In the Matter of B.A.M.*, 980 S.W.2d 788 (Tex. App.—San Antonio 1998, pet. denied)