

**CHAPTER 3. TRIAL PROCEDURES**

The child must be personally present at the trial. The truancy court may not proceed with the trial in the child’s absence. Sec. 65.062, F.C. A parent or guardian of the child and any court-appointed guardian ad litem of a child is required to attend the hearing unless such person(s) is excused by the court for good cause, is not a resident of this state, or is a parent of a child for whom a managing conservator has been appointed and the parent is not the conservator. Sec. 65.062(b) and (c), F.C. If a person, other than the child, is required to attend the hearing, but fails to attend, the court may proceed with the hearing. Sec. 65.057(b), F.C. If a child appears without a parent or guardian, or it appears to the court that the child’s parent or guardian is incapable or unwilling to make decisions in the best interest of the child with respect to truancy court proceedings, the court may appoint a guardian ad litem. Sec. 65.061, F.C.

A child alleged to have engaged in truant conduct is entitled to a jury trial. Sec. 65.007, F.C. A child who wants the judge to hear the evidence and decide his or her case must first waive the right to a jury trial after 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 is not required. The child, parent or guardian, and attorney, if the child is represented by counsel, must sign the waiver. Sec. 65.008, F.C.

Because procedures for conducting a bench trial differ from a jury trial, there are separate checklists for these procedures.

**A. The Non-Jury Trial (Bench Trial)**

Checklist 3	Script/Notes
<p><input type="checkbox"/> 1. Opening Ceremony and Remarks.</p> <p style="padding-left: 20px;"><input type="checkbox"/> a. Opening announcement given by bailiff or court clerk.</p> <p style="padding-left: 20px;"><input type="checkbox"/> b. Judge’s opening statements:</p> <p style="padding-left: 40px;"><input type="checkbox"/> (1) Explain court procedures.</p> <p style="padding-left: 40px;"><input type="checkbox"/> (2) If some time has elapsed since the adjudication hearing, the court may want to repeat the explanations made at the adjudication hearing.</p>	<p>“All rise! The Truancy Court of the City of /Precinct No. _____, _____ County, Texas is now in session. The Honorable _____, judge presiding.”</p> <p>Sec. 65.101(b), F.C.</p> <p>See Chapter 2, Checklist 2 - <i>Adjudication Hearing Checklist</i> Step 8.</p> <p>See Form, <i>Adjudication Hearing Explanation</i>.</p>

c. Call the case for trial.

(1) Ask the truant conduct prosecutor if the State is ready to proceed.

(2) Ask the child’s attorney if both the attorney and the child are ready to proceed. If the child does not have an attorney, ask the child.

2. Determine that the child who is in court is the same child named in the petition, that the age and date of birth are correctly stated in the petition, and that the child is, in fact, a “child” within the meaning of Sec. 65.002, F.C.

3. Inform the parties of the following:

SCRIPT:

a. Read the entire allegation to the child. Ask, “Do you understand the allegation?”

“This is Cause No. \_\_\_\_\_,  
in the matter of \_\_\_\_\_.”

“Child” means a person who is 12 years of age or older and younger than 19 years of age. Sec. 65.002, F.C.

A truancy court retains jurisdiction over a person, without regard to age, who was referred to the court under Sec. 65.051, F.C. for engaging in truant conduct before the person’s 19th birthday, until final disposition of the case. Sec. 65.004(d), F.C.

Make sure the court has the correct address for the child and tell the child to notify the court of any change of address.

The truancy court shall appoint a qualified interpreter in a truancy court proceeding on a motion by a party or the court if the court determines the child, parent or guardian, or a witness does not understand and speak English or if a party notifies the court that the child, parent or guardian, or a witness is deaf. Sec. 65.013, F.C.

For language interpreters, Art. 38.30(a), (b), and (c), C.C.P. apply. A qualified telephone

- b. “We are going to have your trial today, where a decision will be made as to whether you did engage in truant conduct.”
- c. “It is presumed that you did not engage in truant conduct. The State has the burden to prove beyond a reasonable doubt that you did engage in truant conduct. If the State fails to meet that burden, your case will be dismissed. If the State meets that burden, then this court, without a jury, is going to decide what to do about your truant conduct.”
- d. “Do you understand everything that I have explained to you? Is there anything I have said that you do not understand? Is there anything you want me to explain further? You have indicated in writing that you want to waive a jury trial in this case. Considering everything that I have explained to you, do you still want to waive a jury trial?”
- 4. “You have answered “not true” to the allegations. Is that correct?”
- 5. “The State may present its case.”
- 6. Opening statements:
  - a. The State goes first.
  - b. The child goes second or may reserve opening statement until after the State rests its case-in-chief.
  - c. Should the State waive the opening statement, the child may not make an opening statement until the State rests its case-in-chief.

interpreter may be sworn if an interpreter is not available to appear in person. For deaf interpreters, Art. 38.31(d), (e), (f), and (g), C.C.P. apply.

Sec. 65.101(f), (g), and (h), F.C.

If the answer to the waiver question is Yes, make sure the waiver was done in accordance with Sec. 65.008, F.C.

“I approve of your waiver of a jury trial.”

If the child wishes to now answer true, proceed to Steps 14-25.

7. Presentation of Evidence.

The Texas Rules of Evidence do not apply in a truancy proceeding except when 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 as otherwise provided by Chapter 65 of the Family Code.

- a. While Rule 614 of the Texas Rules of Evidence does not apply (placing witnesses under “The Rule”), the court may prohibit a person from personally attending the proceeding if the person is expected to testify and the court determines that the person’s testimony would be materially affected if the person hears other testimony at the proceeding.

Sec. 65.015(b), F.C.

- b. All testimony must be presented under oath.

SCRIPT:

“Do you solemnly swear or affirm that the testimony that you are about to give in the case now on trial is the truth, the whole truth, and nothing but the truth (so help you God)?”

- c. The State’s Case
  - (1) The State’s direct evidence.

An extrajudicial statement of the child that was obtained in violation of the constitution of this state or the United States may not be used in a truancy proceeding. A statement made by the child out of court is insufficient to support a finding of truant conduct unless it is corroborated wholly or partly by other evidence. Sec. 65.101(e), F.C.

- (2) Child’s cross-examination.

- (3) The State’s redirect examination.
  - (4) Child’s recross-examination.
- 8. The State rests.
- 9. Child’s case:
  - a. Child’s direct examination.
  - b. The State’s cross-examination.
  - c. Child’s redirect examination.
  - d. The State’s recross-examination.
- 10. Rebuttal evidence, if any. The State may present rebuttal evidence in the same manner as the State’s case-in-chief.
- 11. The State closes. If the truant conduct prosecutor presents more evidence, the child may present more evidence if he or she chooses.
- 12. Child closes.
- 13. Closing arguments:
  - a. The State argues first (but may waive).
  - b. Child makes his or her argument.
  - c. The State has the right to argue last.
- 14. Decide whether the State proved its case beyond a reasonable doubt.
  - a. If the court finds that the child did not engage in truant conduct, dismiss the case.

Both sides are allotted equal time for closing arguments. If the truant conduct prosecutor chooses to divide his or her argument, he or she does not receive additional time.

This finding must be based on competent evidence admitted in the proceeding. Sec. 65.101(f), F.C.

See Form, *Judgment*.

Sec. 65.101(g), F.C.

- b. If the court finds that the child did engage in truant conduct, the court shall proceed to issue a judgment finding the child has engaged in truant conduct and order the remedies the court finds appropriate under Sec. 65.103, F.C.

Sec. 65.101(h), F.C.

SCRIPT:

“Based on the petition on file, the record which reflects that the juvenile is properly before the court, and the competent evidence admitted in the trial, the child is hereby found to be a child who has engaged in truant conduct.”

- 15. Orally pronounce the court’s remedial actions in the child’s presence and enter those actions in a written order.

Sec. 65.102, F.C.

See Form, *Remedial Order*.

The remedial order is effective until the later of (1) the date specified by the court in the order, which date may not be later than the 180th day after the date the order is entered; or (2) the last day of the school year in which the order was entered. Sec. 65.104, F.C.

- 16. The court may enter a remedial order requiring the child to:

Sec. 65.103, F.C.

The court may not order the child to attend a juvenile justice alternative education program, a boot camp, or a for-profit truancy class. Sec. 65.103(b)(1), F.C.

- a. attend school without unexcused absences;
- b. attend a preparatory class for the high school equivalency examination administered under Sec. 7.111, E.C., if the court determines that the child is unlikely to do well in a formal classroom environment due to the child’s age;

- c. if the child is at least 16 years of age, take the high school equivalency examination administered under Section 7.111, E.C., if that is in the best interest of the child;
- d. attend a nonprofit, community-based special program that the court determines is in the best interest of the child;
- e. complete not more than 50 hours of community service on a project acceptable to the court; and
- f. 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.

17. In addition, the court may order the Department of Public Safety (DPS) to suspend the child’s driver’s license or permit. 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.

18. The court may also order:

- a. the child and the child’s parent to attend a class for students at risk of dropping out of

The court may not order the child to perform more than 16 hours of community service per week. Sec. 65.103(b)(2), F.C.

Sec. 65.103(c), F.C.

See Form, *DPS Order of License Suspension*.

The period of the license or permit suspension or the order that the issuance of a license or permit be denied may not extend beyond the maximum time period that a remedial order is effective as provided by Sec. 65.104, F.C.

Sec. 65.105(a), F.C.

See Form, *Order Affecting Parents or Others*.

A person subject to an order proposed under Sec. 65.105(a) is entitled to a hearing before the order is entered by the court. Sec. 65.105(b), F.C.

school that is designed for both the child and the child's parent;

- b. 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;
- c. to enjoin all contact between the child and a person who is found to be a contributing cause of the child's truant conduct, unless that person is related to the child within the third degree by consanguinity or affinity, in which case the court may contact the Department of Family and Protective Services, if necessary;
- d. any person living in the same household with the child to participate in social or psychological counseling to assist in the child's rehabilitation, after notice to, and a hearing with, all persons affected;
- e. 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;
- f. 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; and



- g. the child’s parent to perform not more than 50 hours of community service with the child.

- 19. Advise the child and the child’s parent, guardian, or guardian ad litem that failure to obey the remedial order may result in (1) the court holding the child in contempt of court, and (2) a fine not to exceed \$100 and/or license or permit suspension by DPS.

- 20. Advise the child and the child’s parent, guardian, or guardian ad litem that a remedial order is not a conviction of a crime and does not impose any civil disability ordinarily resulting from a conviction or operate to disqualify the child in any civil service application or appointment.

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 those efforts, the child continues to do so, the court shall waive any requirement for community service that may be imposed on a parent. Sec. 65.105(c), F.C.

See Form, *Finding and Waiver of Parent’s Community Service*.

Sec. 65.251, F.C.

See related Forms on Contempt and corresponding Notices.

See also, Secs. 65.253 and 65.255, F.C. for contempt orders against parents or other persons.

See Form, *DPS Order of License Suspension*.

The State may enforce a contempt order against a parent or person other than the child by a written motion for enforcement. Sec. 65.257, F.C. Notice and a hearing must be given. See Secs. 65.258 and 65.259, F.C.

See Forms, *Motion for Enforcement* and *Notice of Motion for Enforcement*.

Sec. 65.009, F.C.

- ☐ 21. Advise the child and the child’s parent, guardian, or guardian ad litem of their right to appeal any order of the truancy court.

Secs. 65.102(c)(1), 65.151, 65.152, 65.153, F.C.  
See Form, *Notice of Right to Appeal and Sealing of Records*.

SCRIPT:

“You have the right to appeal any order of this court. Appeal is to the juvenile court and must be tried de novo. In order to appeal this case, you must give notice of appeal to this court within 21 days. No bond is required. You may be represented by counsel on appeal.”

If the truancy court is a court of record, the proceedings must be recorded by stenographic notes or by electronic, mechanical, or other appropriate means. If the truancy court is not a court of record, the truancy court proceedings may not be recorded. Sec. 65.016, F.C.

However, all appeals from a truancy court must be tried de novo in the juvenile court. On appeal, the judgment of the truancy court is vacated. Sec. 65.151(b), F.C.

- ☐ 22. Advise the child and the child’s parent, guardian, or guardian ad litem of the procedures for the sealing of the child’s records under Sec. 65.201, F.C.

Secs. 65.102(c)(2), 65.201, F.C.  
See Form, *Order Sealing Records*.

SCRIPT:

“You may apply, on or after your 18th birthday, to this court to seal the records relating to this case. This includes records held by this court, the truant conduct prosecutor, and the school district. Your application must include your name, sex, race or ethnicity, date of birth, driver’s license or identification card number, and social security number, or an explanation of why one or more of these items is not included. Prior to sealing the records, this court will make a determination whether you complied with the remedies ordered in this case. Inspection of the sealed records may only be permitted by an order of this court upon your request. If your records are sealed, you are not required to state that you have been the subject of a truancy proceeding in any subsequent proceeding or in any application for employment, information, or licensing. Further, any statement made by you that you have never been found to have engaged in truant conduct may not be held against you in any criminal or civil proceeding. On or after the fifth anniversary of your 16th birthday, you may make a motion to order the destruction of the sealed records as long as you have not been convicted of a felony.”

- ❑ 23. Assess the court cost. After giving the child, parent, or other person responsible for the child’s support a reasonable opportunity to be heard, the court shall order the child, parent, or other person, if financially able to do so, to pay a court cost of \$50 to the clerk of the court. The order must be reduced to writing and signed by the judge in order to be effective. This order may be part of the remedial order.

Records and files created under Chapter 65 of the Family Code are confidential and may only be disclosed to persons or entities listed in Sec. 65.202, F.C.

Sec. 65.107(a) and (b), F.C.

The clerk shall keep a record of court costs collected under Sec. 65.107(a), F.C. and forward the funds to the municipal or county treasurer respectively. Sec. 65.107(c), F.C.

These court costs shall be deposited in a special account that can be used only to offset the cost of the operations of the truancy court. Sec. 65.107(d), F.C.

- ❑ 24. As long as the remedial order is effective under Sec. 65.104, F.C., a truancy court may hold a hearing to modify any remedy imposed by the court.
- ❑ 25. The remedial order may be challenged by filing a motion for new trial. Rules 505.3(c) and (e) of the Texas Rules of Civil Procedure apply.

Sec. 65.108, F.C.

Sec. 65.109, F.C.

**B. The Jury Trial – Before Trial**

Although courts can carry out many of the following procedures on the day of trial, handling them in advance will achieve a smoother and more efficient trial experience. Under no circumstances should this process be used as a tool to thwart or discourage the child from exercising his or her right to a trial.

Some judges prefer to prepare the jury charge in advance and allow both sides to comment and recommend revisions. The judge, however, has the final decision on the wording. Both sides have a final opportunity to make recommendations or state objections to the charge on the day of trial, but are less likely to do so if given a previous opportunity to respond. The court may not flatly prohibit motions made on the day of trial and after the deadline date, but the court may require the movant to show good cause for not complying with the deadline. Some motions must be ruled upon on the trial day, but some can be decided in advance.

Checklist 4	Script/Notes
<ul style="list-style-type: none"> <li><input type="checkbox"/> 1. Send a “trial packet” to the truant conduct prosecutor and the child containing:                             <ul style="list-style-type: none"> <li><input type="checkbox"/> a. Copy of the petition;</li> <li><input type="checkbox"/> b. Copy of a draft jury charge;</li> <li><input type="checkbox"/> c. Date and time of trial; and</li> <li><input type="checkbox"/> d. Notice setting the deadline for:                                     <ul style="list-style-type: none"> <li><input type="checkbox"/> (1) Filing motions;</li> <li><input type="checkbox"/> (2) Filing subpoena lists;</li> <li><input type="checkbox"/> (3) Filing objections to the petition;</li> </ul> </li> </ul> </li> </ul>	<p>The jury must be instructed that the burden is on the State to prove that a child engaged in truant conduct beyond a reasonable doubt. Sec. 65.101(f), F.C.</p> <p>See, Sec. 65.065, F.C. for a motion requesting a petition alleging truant conduct be dismissed because the child has a mental illness.</p> <p>See Forms, <i>Temporary Stay and Determination of Probable Cause for a Child Alleged to be Mentally Ill</i>.</p> <p>Both sides shall be notified if a witness on the subpoena list cannot be located or if documents are not available.</p>

- (4) Filing recommendations or exceptions to the jury charge; and
    - (5) Requests for an interpreter.
- 2. Sign an order for the clerk to summon a sufficient number of jurors for a truant conduct case.
  - a. Consider summoning 30 to 40 persons for a truant conduct trial.
    - b. Prospective jurors may be randomly selected from:
      - (1) Driver’s license records, if available;
      - (2) Utility records;
      - (3) Tax rolls; and
      - (4) Voter registration rolls.
    - c. Prospective jurors must live within the county in which the school in which the child is enrolled is located or the county in which the child resides.
- 3. Court may reschedule prospective jurors to a later date. Clerk may postpone a juror’s service if:
  - a. The person summoned has not been granted a postponement in the county for one year prior to the date on which the juror is summoned to appear; and
  - b. The person and the clerk determine a substitute date on which the person will appear for jury service that is not later than six months after the date on which the person was originally summoned to appear.

Sec. 65.013, F.C.

Sec. 65.007(b), F.C.

A written policy should be developed and adopted by the court that details the procedure for jury selection (preparing the jury candidate list, summoning the prospective jurors, etc.); the policy should be on file and available for inspection upon request.

Secs. 65.004 and 65.006, F.C.

Tex. Atty. Gen. Op. GA-0161 (2004).

Sec. 62.0143, G.C.

**C. The Jury Trial –Trial Day**

The number of jurors in a case involving an allegation of truant conduct is six. Sec. 65.007, F.C. Truancy proceedings are open to the public unless the court, for good cause shown, determines that the public should be excluded. Sec. 65.015, F.C. There is no jury fee for a trial under Chapter 65 of the Family Code. Sec. 65.007(c), F.C.

Prior to seating the jurors, if some time has elapsed since the adjudication hearing, the court may want to repeat the explanations made at the adjudication hearing. Sec. 65.101(b), F.C.

Checklist 5	Script/Notes
<input type="checkbox"/> 1. Instruct the clerk of the court to prepare a jury list containing the name of each juror in the order in which he or she was chosen.	
<input type="checkbox"/> 2. Seat jurors in the order in which they were selected.	
<input type="checkbox"/> 3. Distribute a copy of the numbered list of jurors to the truant conduct prosecutor and the child or the child’s attorney, if represented by counsel.	
<input type="checkbox"/> 4. Verify that an absent juror has not established his or her exemption by filing a signed statement with the clerk of the court prior to the appearance date or been given a postponement by the clerk. If desired, set contempt hearings and issue attachments for missing jurors not exempt.	Secs. 62.0142 and 62.0143, G.C.
<input type="checkbox"/> 5. Opening Ceremony and Remarks	
<input type="checkbox"/> a. Opening announcements may be given by the bailiff or court clerk.	“All rise! The Truancy Court of the City of /Precinct No. _____, _____ County, Texas is now in session. The Honorable _____, judge presiding.”
<input type="checkbox"/> 6. Judge’s Opening Remarks	

SCRIPT:

“Ladies and gentlemen, I want to welcome you to the \_\_\_\_\_ Truancy Court. You have been called for jury duty for this (*day/week*). You will be examined for inclusion on a jury hearing a truant conduct case. Courtroom hours vary, but are normally from 9:00 a.m. until 5:00 p.m.”

“Whether you are selected as a juror today or not, you are performing a significant service that only free people can perform. If you are selected, the case will be tried as expediently as possible consistent with justice that requires a careful and correct trial.”

“If selected on the jury, unless instructed otherwise, you will be permitted to separate at recess, for meals, and at night.”

- 7. The judge should administer the first jury oath to the array.

SCRIPT:

“Do each of you solemnly swear that you will make true answers to such questions as may be propounded to you by the court, or under its directions, touching your service and qualifications as a juror (so help you God).”

“The law requires that each of you must possess certain qualifications before you may be considered for service as a juror.”

“There are also certain excuses and exemptions that some of you may wish to claim.”

- 8. Ask the array the following questions:

SCRIPT:

“Are you 18 years of age or older?”

“Are you a citizen of the United States?”

“Are you a resident of this state and of \_\_\_\_\_ County?”

“Except for a failure to register, are you a qualified voter in this county under the Constitution and laws of the state?”

“Are you of sound mind and good moral character?”

“Are you able to read and write the English language?”

“Have you served as a petit juror for six days in the preceding three months in a county court, or six days in the preceding six months in a district court?” Sec. 62.102(6), G.C.

“Have you ever been convicted of theft or any felony?”

“Are you under indictment or legal accusation, or on deferred adjudication for theft or any felony?”

- 9. Immediately excuse any person whose answer to any one of the above questions is inconsistent with the statutory requirements.
- 10. Determine if anyone who is otherwise qualified to be a juror wishes to claim one of the following legal exemptions:

Sec. 62.102, G.C.

Sec. 62.106, G.C.

SCRIPT:

“You may claim any of the following exemptions if you choose to, but you are not required to claim them.”

“If one of these applies to you, but you still desire to be considered as a juror, please continue to remain seated.”

- |  |   |
|--|---|
| <p><input type="checkbox"/> a. The person is over 70 years of age;</p>   | <p>“Are you over 70 years of age?”</p>  |
| <p><input type="checkbox"/> b. The person has legal custody of a child under the age of 12 years, and jury service would leave the child or children without adequate supervision;</p>   | <p>“Do you have legal custody of a child under the age of 12 years and service on a jury at this time would result in the child not receiving adequate supervision?”</p>                          |
| <p><input type="checkbox"/> c. The person is a student in a public or private secondary school;</p>  | <p>“Are you a student in a public or private high school or secondary school?”</p>  |
| <p><input type="checkbox"/> d. The person is enrolled and in actual attendance at an institution of higher education;</p>  | <p>“Are you enrolled and in actual attendance at a college or community college?”</p>   |
| <p><input type="checkbox"/> e. The person is an officer or employee of the Senate, the House of Representatives, or any department, commission, board, office, or other agency in the legislative branch of State government;</p>  | <p>“Are you an officer or employee of the Senate, the House of Representatives, or any department, commission, board, office, or other agency in the legislative branch of State government?”</p> |
| <p><input type="checkbox"/> f. The person is the primary caretaker of a person who is unable to care for himself or herself;</p>   | <p>“Are any of you a primary caretaker for a person who is unable to care for himself or herself?”</p>  |
| <p><input type="checkbox"/> g. In counties with populations over 200,000, the person has served on a petit jury in the county in the last 24 month period preceding the currently scheduled date for service, unless the county uses a jury plan under Section 62.011, G.C., and the period authorized under Section 62.011(b)(6), G.C. exceeds two years;</p> | <p>Sec. 62.106(a)(6), G.C.</p> <p>“Have you served on a petit jury in this county in the last 24 to 36 months immediately preceding today?”</p>   |



- h. Unless the jury wheel in the county has been reconstituted after the date the person served as a petit juror, people in counties with a population of at least 250,000 who have served as a petit juror in the county during the 36 month period preceding the date the person is to appear for jury service may claim an exemption; or
  - i. The person is a member of the U.S. military on active duty deployed away from his or her home station and county of residence.
- Secs. 62.106(a)(8) and 62.106(b), G.C.
- Sec. 62.106(a)(9), G.C.
- “If any of these apply to you and you do not desire to serve as a juror, please come up to the bench at this time.”
- 11. Hear the exemption and rule accordingly.
  - 12. An exemption must be claimed in person on the date of service, or before the date of service by filing a signed statement of the ground for exemption with the clerk of the court.
- Sec. 62.107(a), G.C.
- A person may also claim an exemption by filing with the sheriff, voter registrar, or district or county clerk of the county of the person’s residence a sworn statement that sets forth the ground of and claims the exemption. If the person so files, that person may not be placed in the jury wheel for the ensuing year. Sec. 62.107(b), G.C.
- 13. Call forward any juror who wishes to be excused.
- “If any of you feel there is a reason why you cannot sit as a juror today, please come up to the bench now and I will hear your excuse.”
- 14. The judge may accept or reject any “reasonable” or “sufficient” excuse.
- Sec. 62.110(a), G.C.
- a. If an excuse is deemed sufficient, the juror may be released, or his or her service may be postponed to another date.
  - b. A juror may be excused for observance of a religious holiday.
- Sec. 62.112(b), G.C.
- The prospective juror may be required to file with the court an affidavit under Sec. 62.112(c), G.C.

- ❑ 15. A juror may not be excused for economic reasons without the consent of the parties.
  - ❑ a. A juror who, without prompting, articulates an inability to listen to testimony and be fair and impartial may be excused.
  
- ❑ 16. Hear without delay any challenges to the array from either party.
  - ❑ a. The only ground for challenge is that the summoning officer has willfully summoned jurors with a view to securing a particular outcome in the case.
  - ❑ b. The challenge must be in writing and must set forth the grounds for challenging.
  - ❑ c. When made by the child, it must be supported by his or her affidavit or the affidavit of any credible person.
  
- ❑ 17. If the challenge is sustained:
  - ❑ a. Discharge the array;
  - ❑ b. Order a new array summoned;
  - ❑ c. Prohibit the person who summoned or composed the array to bring another array in the case; and
  - ❑ d. Have another array brought to the courtroom.
  
- ❑ 18. After the array is qualified, the truant conduct prosecutor and the child or the child’s attorney should be permitted to view them for purposes of requesting a jury shuffle.

Sec. 62.110(c), G.C.

*Butler v. State*, 830 S.W.2d 125 (Tex. Crim. App. 1992).

“Array” is a term meaning the jury panel as a whole.

It may be prudent to reschedule the trial to allow sufficient time to summon another array in an orderly manner. Discuss the new trial date with both parties and seek consensus for the new date.

Put simply, a “jury shuffle” occurs when one of the parties does not like the order in which the jury is seated and wants the panel reseated in a new order.

- ❑ 19. The trial judge, on motion of the child or his or her attorney, or of the truant conduct prosecutor shall cause the names of the jurors to be randomly shuffled. The clerk shall deliver a copy of the new juror list to the truant conduct prosecutor and to the child or his or her attorney.

Only one shuffle is permissible by law.

- ❑ 20. The motion must be made before the State’s voir dire begins.
- ❑ 21. After a jury shuffle, seat the panel in the order their names were drawn.
- ❑ 22. Seating the Panel:
  - ❑ a. After considering and determining qualifications, exemptions, and excuses, the remaining jurors should be seated. The panel at this stage should consist of no fewer than 12 persons. This will allow the State and the child to exercise three peremptory challenges each and still have at least six persons available to serve on the jury.
  - ❑ b. There is no authority for the selection of alternate jurors in truancy court cases.

A simple way to do this is to write each juror’s name on a card, place the cards in a container and mix them up (shuffle) and randomly draw out each card in sequence. The first name drawn is now juror number one; the second name is juror number two, etc., until all names are drawn. The clerk will prepare the new juror list and they will be re-seated in the order drawn.

*Williams v. State*, 719 S.W.2d 573 (Tex. Crim. App. 1986).

Sec. 65.007, F.C.  
The number of jurors in a case involving an allegation of truant conduct is six.

23. Announcement of the Case and Introductions.

- a. Introduce yourself.

SCRIPT:

“Good morning. My name is \_\_\_\_\_, and I am the Judge of the \_\_\_\_\_ Truancy Court. I will be presiding over this trial.”

- b. Call the case.

SCRIPT:

“This is Cause No. \_\_\_\_\_, in the matter of \_\_\_\_\_. What says the State? And the child?”  
Ladies and gentlemen, allow me to introduce the lawyers in this case.”

- c. Introduce the lawyers.

SCRIPT:

“Ladies and gentlemen, allow me to introduce the lawyers in this case. Representing the State in this matter is the truant conduct prosecutor, Mr(s). \_\_\_\_\_; representing the child is Mr(s). \_\_\_\_\_.”

- d. Introduce the child and his or her parent(s) or guardian(s).

SCRIPT:

“This is a civil case in a truancy court. This is not a criminal case. It will be tried before six of you selected as the jury. As jurors, it is your exclusive duty to decide all questions of fact in this case, and, for that purpose, to determine the effect, the value, and the weight of the evidence. The evidence in this case will be the testimony you receive and hear from the witness stand and from that place only.”

“You will not be called upon to decide questions of law. It is my duty as judge to rule upon legal matters and to see that this case is tried in accordance with the rules of law.”

“Both the child and the people of this state have a right to expect that you will conscientiously consider and weigh the evidence, apply the law given you to that evidence, and that you will reach a just verdict.”

“In this case, as in all cases, the actions of us all – the judge, the attorneys, the witnesses, parties, and jurors – must be according to law: You must therefore follow all instructions given you, as well as others received as the case progresses.”

24. Give preliminary instructions for each juror to follow throughout the trial.

SCRIPT:

“Do not mingle with, nor talk to, the lawyers, the witnesses, the parties, or any other person who might be connected with or interested in this case, except of course, for casual greetings. They must follow these same instructions, and you will understand it when they do.”

“Do not accept from, nor give to, any of those persons any favors, however slight, such as food, refreshments, or cigarettes.”

“Do not discuss anything about this case, nor mention it to anyone, nor permit anyone to mention it in your presence, until you are discharged as jurors or excused from this case. If anyone attempts to discuss the case with you, report it to me immediately.”

“The parties, through their attorneys, have the right to direct questions to each of you concerning your qualifications, background, attitudes, and experiences.”

“In so questioning, they are not prying into your personal affairs, but are trying to select fair and impartial jurors who will be free from bias or prejudice in this case. If you are selected to serve as a juror, you will be permitted to separate at recesses, unless otherwise instructed by me. Consistent with justice, we will try this case as expediently as possible, but justice requires a careful and correct trial.”

25. The court will proceed into what is called voir dire (questioning under oath). The judge, at his or her discretion, may choose to voir dire the jury at this time on general principles of law and the practice and procedure of the court, or permit the truant conduct prosecutor and the child to voir dire. The truant conduct prosecutor has the right to conduct voir dire first, the child second.

26. Opening voir dire remarks

SCRIPT:

“Ladies and gentlemen of the jury panel: The case about to be tried is Cause Number \_\_\_\_\_, styled In the matter of \_\_\_\_\_, who is here today because the State of Texas has filed a petition with this court alleging that \_\_\_\_\_, a child required to attend school, has engaged in truant conduct.”

“As the jury panel, you have been seated in the order in which your names were selected using a purely random process. This is done purposely so that no one can “stack” or in any way manipulate who may sit as a juror on any particular case.”

“Some of you may be eliminated because of disqualification.”

“For those that remain, each side will have three peremptory challenges. Peremptory challenges may be exercised for any lawful reason. A peremptory challenge removes a name from the list of potential

jurors. Each side also has an unlimited number of strikes based upon a variety of legal reasons. The first six names remaining after all the strikes have been made will form the jury for this case.”

27. Explain the jury’s function and the role of the judge.

SCRIPT:

“It is the function of the jury to determine the facts. In doing so, you are the sole and exclusive judge of the credibility of the witnesses and the weight to be given their testimony. Even I, as the judge, am not permitted to influence your evaluation through words or actions during the trial. My job is to decide the law and to be certain that both sides receive a fair trial. When I rule on the admissibility of evidence, or hear other objections, I am not indicating my personal feelings for one side or the other, but simply applying rules of law established by the legislature that govern this trial.”

“There are a few general principles of law that I would like to review with you at this time.”

28. Explain who has the burden of proof. Sec. 65.101(f), F.C.

SCRIPT:

“The burden of proof in this case rests solely upon the State. The truant conduct prosecutor must prove beyond a reasonable doubt that the child has engaged in truant conduct.”

29. Explain the presumption that the child did not engage in truant conduct and touch upon the concept of beyond a reasonable doubt. Sec. 65.101(f), F.C.

SCRIPT:

“The child is presumed to not have engaged in truant conduct until and unless it is established by legal evidence, received before you in the trial of this case, beyond a reasonable doubt that the child did engage in truant conduct. If, after you retire to deliberate, each of you believes beyond a reasonable doubt that the child did engage in truant conduct, it will be your duty to find that the child did engage in truant conduct. If you have a reasonable doubt as to whether the child engaged in truant conduct, it will be your duty to find that the child did not engage in truant conduct.”

30. Explain that the child is not required to testify in a case alleging truant conduct.

SCRIPT:

“A child alleged to have engaged in truant conduct is not required to prove that he or she did not engage in truant conduct. If the child does not choose to testify, you may not consider that fact as evidence of truant conduct, nor may you, in your deliberations, comment or in any way allude to that fact.”

31. Explain the purpose of a petition in a case alleging truant conduct.

SCRIPT:

“The petition in this case is not an indication that the child engaged in truant conduct. It is simply the legal means by which a child in Texas is brought to trial in truancy court.”

32. Emphasize the importance of a fair trial.

SCRIPT:

“The child, the truant conduct prosecutor, the public, and our system of justice, all require that a fair jury, one without bias or prejudice, and free of opinion as to the allegations of the child, be chosen here today. A fair jury is one that, not having heard any of the evidence, is not committed to either side. A fair jury is one that is impartial to both sides and that can and will follow the law as given to it by this court.”

33. Explain why the attorneys for each side, or the child, if he or she is not represented by counsel, will question them.

SCRIPT:

“In a moment, the attorneys for each side are going to ask each of you some questions. These questions are not meant to pry into your personal affairs, or those of your family. The questions are designed to determine if you can be a fair juror, or whether any bias or prejudice you may have about the law in this case or the facts as they may be presented to you, will prevent you from following your oath as a juror.”

34. Allow the truant conduct prosecutor to proceed with his or her voir dire. After he or she has finished with voir dire, allow the child to proceed with voir dire.

35. After voir dire is completed, allow both sides to exercise their peremptory challenges. Sec. 65.007(b), F.C.

- a. The truant conduct prosecutor and the child may each exercise as many as three strikes (that is, ask that a potential juror be excused) without having to explain why the strikes were made unless a *Batson* challenge is raised.
- b. Each side takes its jury list supplied by the court and marks through as many as three names.
- c. The two lists are returned to the clerk, who makes a list of the first six names that have not been marked through. Those six persons then take their position in the jury box. The clerk delivers the original list to the judge and gives a copy of the list of six jurors to both the truant conduct prosecutor and the child or the child’s attorney.

It is a good practice for the judge to compare the attorney’s strikes with the juror list prepared by the clerk to assure accuracy. The judge will then direct the clerk to prepare the juror list and make a copy for each side.

- 36. Seat and administer the oath to the jury at the conclusion of the voir dire proceedings.
- 37. Give the oath and further instructions to the jury at the conclusion of voir dire.
  - a. Oath

If there is a *Batson* challenge, see Checklist 6.

SCRIPT:

“Members of the jury, will you please stand, raise your right hand, and be sworn. Each of you do solemnly swear that in the matter of \_\_\_\_\_, the child, you will a true verdict render according to the law and the evidence (so help you God).”

- b. Explanation of the effect of the oath and further instructions

SCRIPT:

“You may be seated. Ladies and gentlemen of the jury, by that oath which you took as jurors, you have become officials of this court and active participants in the public administration of justice. It is your duty to listen to and consider the evidence and law in this case and to obey all instructions given you.”

“As an additional instruction, I now instruct you not to discuss this case among yourselves until after you have heard all the evidence and the attorney’s arguments, and until I have sent you to the jury room to deliberate and consider your finding.”

“Ladies and gentlemen, we are now ready to proceed.”

- 38. Explain how the trial will proceed.

SCRIPT:

“The trial will proceed as follows:”

“The truant conduct prosecutor may make an opening statement. The child’s attorney/ child may do so as well, or at a later time.”

“The truant conduct prosecutor will then offer evidence through witnesses and the child’s attorney/ child may cross-examine each witness.”

“When the truant conduct prosecutor has finished presenting the State’s case, the child’s attorney/child may or may not present his or her evidence.”



“The child is never required to prove he or she did not engage in truant conduct.”

“The truant conduct prosecutor may cross-examine each of the child’s witnesses, if any.”

“When the child is finished presenting witnesses, the truant conduct prosecutor may put on rebuttal witnesses, and the child may then do the same.”

“After both sides have presented their cases, we will hear closing arguments.”

- 39. Determine that the child who is in court is the same child named in the petition, that the age and date of birth are correctly stated in the petition, and that the child is, in fact, a “child” within the meaning of Sec. 65.002, F.C.

“Child” means a person who is 12 years of age or older and younger than 19 years of age. Sec. 65.002, F.C.

A truancy court retains jurisdiction over a person, without regard to age, who was referred to the court under Sec. 65.051 for engaging in truant conduct before the person’s 19th birthday, until final disposition of the case. Sec. 65.004(d), F.C.

Make sure the court has the correct address for the child and tell the child to notify the court of any change of address.

- 40. Inform the parties of the following:

SCRIPT:

- a. Read the entire allegation to the child. Ask, “Do you understand the allegation?”

The truancy court shall appoint a qualified interpreter in a truancy court proceeding on a motion by a party or the court if the court determines the child, parent or guardian, or a witness does not understand and speak English or if a party notifies the court that the child, parent or guardian, or a witness is deaf. Sec. 65.013, F.C. For language interpreters, Art. 38.30(a), (b), and (c), C.C.P. apply. A qualified telephone interpreter may be sworn if an interpreter is not available to appear in person. For deaf interpreters, Art. 38.31(d), (e), (f), and (g), C.C.P. apply.

- b. “We are going to have your trial today, where a decision will be made as to whether you did engage in truant conduct.”
- c. “It is presumed that you did not engage in truant conduct. The State has the burden to prove beyond a reasonable doubt that you did engage in truant conduct. If the State fails to meet that burden, your case will be dismissed. If the State meets that burden, then this court, without a jury, is going to decide what to do about your truant conduct.”
- d. “Do you understand everything that I have explained to you? Is there anything I have said that you do not understand? Is there anything you want me to explain further?”
- 41. “You have answered “not true” to the allegations. Is that correct?”
- 42. “The State may present its case.”
- 43. Opening statements:
  - a. The State goes first.
  - b. The child goes second or may reserve opening statement until after the State rests its case-in-chief.
  - c. Should the truant conduct prosecutor waive the opening statement, the child may not make an opening statement until the State rests its case-in-chief.
- 44. Presentation of Evidence.

Sec. 65.101(f), (g), and (h), F.C.

The Texas Rules of Evidence do not apply in a truancy proceeding except when 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 as otherwise provided by Chapter 65 of the Family Code.

- a. While Rule 614 of the Texas Rules of Evidence does not apply (placing witnesses under “The Rule”), the court may prohibit a person from personally attending the proceeding if the person is expected to testify and the court determines that the person’s testimony would be materially affected if the person hears other testimony at the proceeding.
- b. All testimony must be presented under oath.

Sec. 65.015(b), F.C.

SCRIPT:

“Do you solemnly swear or affirm that the testimony that you are about to give in the case now on trial is the truth, the whole truth, and nothing but the truth (so help you God)?”

- c. The State’s case.
  - (1) The State’s direct evidence.
  - (2) Child’s cross-examination.
  - (3) The State’s redirect examination, if any.
  - (4) Child’s recross-examination, if any.
- b. The State rests.
- 45. Child’s case:
  - a. Child’s direct examination
  - b. The State’s cross-examination
  - c. Child’s redirect examination, if any

An extrajudicial statement of the child that was obtained in violation of the constitution of this state or the United States may not be used in a truancy proceeding. A statement made by the child out of court is insufficient to support a finding of truant conduct unless it is corroborated wholly or partly by other evidence. Sec. 65.101(e), F.C.

- d. The State’s recross-examination, if any
- 46. Rebuttal evidence.
  - a. The State may present rebuttal evidence in the same manner as the State’s case-in-chief.
- 47. The State closes.
  - a. If the State presents more evidence, the child may present more evidence if he or she chooses.
- 48. Child closes.
- 49. You must give the jury a charge on the law that applies to the case. The charges may be made orally or in writing. The jury charge must be given before closing arguments.
- 50. Read the charge to the jury. Do not comment or communicate your views regarding the instructions given by changes in your voice or facial expressions.

The jury must be instructed that the burden is on the State to prove the conduct beyond a reasonable doubt. Sec. 65.101(f), F.C.

A written charge is preferred by most judges to avoid objections to the oral charge being made in front of the jury. If using a written charge, prepare the charge in advance and provide a copy to the child and the truant conduct prosecutor for review and objection prior to the trial. This avoids having to review and possibly revise the charge at trial while the jury and others wait. The final version is provided to both sides at the trial.

See Checklist 7.

SCRIPT:

“At this time, ladies and gentlemen, I will read to you the charge of the court containing the law applicable to this case. In continuing to discharge your responsibilities as jurors, you will continue to observe all the instructions that have previously been given to you. These instructions are given to you because your conduct is subject to review the same as that of the witnesses, parties, attorneys,

and myself. If it should be found that you have disregarded any of these instructions, it will be jury misconduct and it may require another trial by another jury.”

“If any of you observe one or more of your group violating any of my instructions, you shall immediately warn the violator and caution him or her not to do so again.”

“Please listen carefully as I read the charge to you. The original will be placed on the table in the jury room when you retire to begin your deliberations.”

51. Closing arguments:

a. The State argues first (but may waive).

b. Child makes his or her argument.

c. The State has the right to argue last.

52. Submit the case to the jury for deliberations:

a. Instruct the jury.

(1) Provide the jury with:

(a) Jury charge;

(b) Jury instructions; and

(c) A verdict form.

c. Instruct the jury to make a finding that the child did or did not engage in truant conduct. This is the jury verdict.

Both sides are allotted equal time for closing arguments. If the truant conduct prosecutor chooses to divide his or her argument, he or she does not receive additional time.

“You must appoint a presiding juror.”

See Form, *Verdict*.

SCRIPT:

“The finding must be based on competent evidence admitted in the trial.” Sec. 65.101(f), F.C.

“The verdict must be unanimous.” Sec. 65.101(c), F.C.

“If you find the State did not prove that the child engaged in truant conduct beyond a reasonable doubt, you must make a finding that the child did not engage in truant conduct.” “You will be provided forms to reflect a finding of either that the child did engage in truant conduct or that the child did not engage in truant conduct. After you have made your finding the presiding juror will complete the appropriate

verdict form, sign the form, and notify the bailiff that a verdict has been made.”

“Any communication between the jury and court must be in writing and transmitted by the bailiff.”

“If you cannot reach a verdict within a reasonable time, notify the bailiff of your difficulty or problem.”

53. The Verdict.

a. Read the verdict in open court.

b. If the jury finds that the child did not engage in truant conduct, dismiss the case.

c. If the jury finds that the child did engage in truant conduct, the court shall proceed to issue a judgment finding the child has engaged in truant conduct and order the remedies the court finds appropriate under Sec. 65.103, F.C.

d. If the jury is deadlocked, give an *Allen Charge*.

e. If a finding cannot be made and it is improbable that an agreement can be reached, the jury should be discharged and the case tried again.

54. Poll jury on request of prosecution or defense.

55. Discharge jury.

56. Orally pronounce the court’s remedial actions in the child’s presence and enter those actions in a written order.

Sec. 65.101(g), F.C.

See Form, *Judgment*.

Sec. 65.101(h), F.C.

The jury is not involved in ordering remedies. Sec. 65.101(h), F.C.

See Checklist 6.

Sec. 65.102(b), F.C.

See Form, *Remedial Order*.

The remedial order is effective until the later of (1) the date specified by the court in the order, which date may not be later than the 180th day after the date the order is entered; or (2) the last day of the school year in which the order was entered. Sec. 65.104, F.C.

- 57. The court may enter a remedial order requiring the child to:
  - a. attend school without unexcused absences;
  - b. attend a preparatory class for the high school equivalency examination administered under Sec. 7.111, E.C., if the Court determines that the child is unlikely to do well in a formal classroom environment due to the child’s age;
  - c. if the child is at least 16 years of age, take the high school equivalency examination administered under Section 7.111, E.C., if that is in the best interest of the child;
  - d. attend a nonprofit, community-based special program that the court determines to be in the best interest of the child;
  - e. complete not more than 50 hours of community service on a project acceptable to the court; and
  - f. 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.
  
- 58. In addition, the court may order the Department of Public Safety (DPS) to suspend the child’s driver’s license or permit. 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.

Sec. 65.103, F.C.

The court may not order the child to attend a juvenile justice alternative education program, a boot camp, or a for-profit truancy class. Sec. 65.103(b)(1), F.C.

The court may not order the child to perform more than 16 hours of community service per week. Sec. 65.103(b)(2), F.C.

Sec. 65.103(c), F.C.

The period of the license or permit suspension or the order that the issuance of a license or permit be denied may not extend beyond the maximum time period that a remedial order is effective as provided by Sec. 65.104, F.C.  
See Form, *DPS Order of License Suspension*.

59. The court may also order:

- a. 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;
- b. 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;
- c. to enjoin all contact between the child and a person who is found to be a contributing cause of the child's truant conduct, unless that person is related to the child within the third degree by consanguinity or affinity, in which case the court may contact the Department of Family and Protective Services, if necessary;
- d. any person living in the same household with the child to participate in social or psychological counseling to assist in the child's rehabilitation, after notice to, and a hearing with, all persons affected;
- e. 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;

Sec. 65.105(a), F.C.

A person subject to an order proposed under Sec. 65.105(a) is entitled to a hearing before the order is entered by the court. Sec. 65.105(b), F.C.

See Form, *Order Affecting Parents or Others*.



- ☐ f. 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; and
- ☐ g. the child’s parent to perform not more than 50 hours of community service with the child.

- ☐ 60. Advise the child and the child’s parent, guardian, or guardian ad litem that failure to obey the remedial order may result in (1) the court holding the child in contempt of court, and (2) a fine not to exceed \$100 and/or license or permit suspension by DPS.

- ☐ 61. Advise the child and the child’s parent, guardian, or guardian ad litem of their right to appeal any order of the truancy court.

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 those efforts, the child continues to do so, the court shall waive any requirement for community service that may be imposed on a parent. Sec. 65.105(c), F.C.

See Form, *Finding and Waiver of Parent’s Community Service*.

Sec. 65.251, F.C.

See also Secs. 65.253 and 65.255, F.C. for contempt orders against parents or other persons.

See related Contempt forms and corresponding Notices.

The State may enforce a contempt order against a parent or person other than the child by a written motion for enforcement. Sec. 65.257, F.C. Notice and a hearing must be given. See Secs. 65.258 and 65.259, F.C.

See Forms, *Motion for Enforcement* and *Notice of Motion for Enforcement*.

Secs. 65.102(c)(1), 65.151, 65.152, and 65.153, F.C.

See Form, *Notice of Right to Appeal and Sealing of Records*.

SCRIPT:

“You have the right to appeal any order of this court. Appeal is to the juvenile court and must be tried de novo. In order to appeal this case, you must give notice of appeal to this court within 21 days. No bond is required. You may be represented by counsel on appeal.”

- ❑ 62. Advise the child and the child’s parent, guardian, or guardian ad litem of the procedures for the sealing of the child’s records under Sec. 65.201, F.C.

If the truancy court is a court of record, the proceedings must be recorded by stenographic notes or by electronic, mechanical, or other appropriate means. If the truancy court is not a court of record, the truancy court proceedings may not be recorded. Sec. 65.016, F.C.

However, all appeals from a truancy court must be tried de novo in the juvenile court. On appeal, the truancy court judgment is vacated. Sec. 65.151(b), F.C.

Secs. 65.102(c)(2) and 65.201, F.C.

See Form, *Order Sealing Records*.

SCRIPT:

“You may apply, on or after your 18th birthday, to this court to seal the records relating to this case. This includes records held by this court, the truant conduct prosecutor, and the school district. Your application must include your name, sex, race or ethnicity, date of birth, driver’s license or identification card number, and social security number, or an explanation of why one or more of these items is not included. Prior to sealing the records, this court will make a determination whether you complied with the remedies ordered in this case.”

- ❑ 63. Assess the court cost. After giving the child, parent, or other person responsible for the child’s support a reasonable opportunity to be heard, the court shall order the child, parent, or other person, if financially able to do so, to pay a court cost of \$50 to the clerk of the court. The order must be reduced to writing and signed by the judge in order to be effective. This order may be part of the remedial order.

Sec. 65.107(a) and (b), F.C.

The clerk shall keep a record of court costs collected under Sec. 65.107(a), F.C. and forward the funds to the municipal or county treasurer respectively. Sec. 65.107(c), F.C.

These court costs shall be deposited in a special account that can be used only to offset the cost of the operations of the truancy court. Sec. 65.107(d), F.C.

## TEXAS TRUANCY COURT RESOURCE MANUAL

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| ❑ 64. As long as the remedial order is effective under Sec. 65.104, F.C., a truancy court may hold a hearing to modify any remedy imposed by the court. | Sec. 65.108, F.C. |
| ❑ 65. The remedial order may be challenged by filing a motion for new trial. Rules 505.3(c) and (e) of the Texas Rules of Civil Procedure apply.        | Sec. 65.109, F.C. |

**D. The Jury Trial – Batson Challenges**

Parties use peremptory challenges to remove from the jury panel jurors they believe will have an unfavorable bias as a factfinder. Though a party need not state a reason for rejecting jurors when using peremptory challenges, the U.S. Supreme Court held in *Batson v. Kentucky*, 476 U.S. 79 (1986), and *J.E.B. v. Alabama ex rel. T.B.*, 511 U.S. 127 (1994), that these challenges cannot be used to strike a juror in a criminal case based solely on his or her race or gender, respectively. Though a truant conduct case is not a criminal case, the U.S. Supreme Court held in *Edmonson v. Leesville Concrete Co., Inc.*, 500 U.S. 614 (1991) that *Batson* applies to an ordinary civil lawsuit between two private parties. *Batson* applies in any juvenile case. Robert O. Dawson, *Texas Juvenile Law* (Nydia D. Thomas ed., 8th ed., Texas Juvenile Justice Department 2012).

Checklist 6	Notes
<p><input type="checkbox"/> 1. Hold a hearing upon a timely, specific objection or motion, written or oral, by either the State or the child, that the opposing party made a peremptory strike based upon:</p> <p style="padding-left: 20px;"><input type="checkbox"/> a. Race; or</p> <p style="padding-left: 20px;"><input type="checkbox"/> b. Gender.</p> <p><input type="checkbox"/> 2. The motion is timely so long as it is made <b>before</b> the jury is impaneled and sworn.</p> <p><input type="checkbox"/> 3. Subsequent proceedings are public and should be held in the courtroom.</p> <p><input type="checkbox"/> 4. Administer the witness oath to both the truant conduct prosecutor and the child’s attorney, if represented by counsel, or the child.</p> <p><input type="checkbox"/> 5. <i>A prima facie</i> case of racial or gender-based discrimination consists of a showing that the opposing party:</p> <p style="padding-left: 20px;"><input type="checkbox"/> a. Struck all venire members of the same race or gender; or</p> <p style="padding-left: 20px;"><input type="checkbox"/> b. Struck a disproportionate number of venire members of one race or gender.</p>	<p><i>Batson v. Kentucky</i>, 476 U.S. 79 (1986); <i>Georgia v. McCollum</i>, 505 U.S. 42 (1993).</p> <p><i>J.E.B. v. Alabama ex rel T.B.</i>, 511 U.S. 127 (1994).</p> <p><i>Hill v. State</i>, 827 S.W.2d 860 (Tex. Crim. App. 1992).</p> <p><i>Salazar v. State</i>, 795 S.W.2d 187 (Tex. Crim. App. 1990).</p> <p><i>Salazar v. State</i>, 795 S.W.2d 187 (Tex. Crim. App. 1990).</p> <p><i>Linscomb v. State</i>, 829 S.W.2d 164 (Tex. Crim. App. 1992).</p>

- ❑ 6. The party against whom the objection or motion is made is then permitted to offer a reasonable race or gender-neutral explanation for the strike(s).
- ❑ 7. If the party against whom the objection or motion is made fails to offer a reasonable race or gender-neutral reason, the objecting party’s burden is met.
- ❑ 8. If the party against whom the objection or motion is made offers a reasonable race or gender-neutral explanation, the objecting party has the burden of persuading the judge by a preponderance of the evidence that the allegations of purposeful discrimination are true.
  - ❑ a. The objecting party may call witnesses, including opposing counsel.
  - ❑ b. The objecting party’s counsel is entitled to examine opposing counsel’s notes for purposes of cross-examination.
  - ❑ c. Objecting counsel may also testify as to what occurred during voir dire.
- ❑ 9. The trial judge must evaluate the reasons given in light of the circumstances of the trial and decide whether the explanations are valid or a pretext.
  - ❑ a. In reviewing the rationale for strikes, the judge should look at:
    - ❑ (1) Reasons given not related to facts given;
    - ❑ (2) Lack of questions or meaningful questions;
    - ❑ (3) Disparate treatment of prospective jurors;
    - ❑ (4) Disparate questioning to exclude jurors; and

*Williams v. State*, 767 S.W.2d 872 (Tex. App.—Dallas 1989, writ ref’d).

*Tompkins v. State*, 774 S.W.2d 195 (Tex. Crim. App. 1987).

*Williams v. State*, 767 S.W.2d 872 (Tex. App.—Dallas 1989, writ denied), *aff’d on different grounds by an equally divided court*, 490 U.S. 754 (1989) (per curiam).

*Salazar v. State*, 795 S.W.2d 187 (Tex. Crim. App. 1990).

*Prosper v. State*, 788 S.W.2d 625 (Tex. App.—Houston [14th] 1990, writ ref’d).

- (5) Bias toward a group or profession where the trait is not shown to apply.
  - b. Reasons held to be racially neutral include but are not limited to:
    - (1) Juror has family members with criminal problems;
    - (2) Juror has family member in the penitentiary;
    - (4) Juror has a criminal history;
    - (5) Juror previously served on a hung jury; and
    - (6) Juror previously served on a jury that acquitted.
- 10. The judge should, but is not required to, make findings of fact and conclusions of law.
- 11. If purposeful discrimination is found, the judge is not required to dismiss the venire, call another, and begin jury selection again. The judge may fashion any remedy he or she deems appropriate consistent with *Batson*, and its progeny.
  - a. Consider, for example:
    - (1) Calling a new jury array; or
    - (2) Seating the struck venire person.

*Lewis v. State*, 779 S.W.2d 449 (Tex. App.—Tyler 1989, writ ref'd).

*State ex rel Curry v. Bowman*, 885 S.W.2d. 421 (Tex. Crim. App. 1993).

**E. The Jury Trial – Jury Deliberation**

Checklist 7	Script/Notes
<ul style="list-style-type: none"> <li><input type="checkbox"/> 1. Have the bailiff ensure that the jury room is ready and equipped with chairs, pencils, writing pads, etc.</li> <li><input type="checkbox"/> 2. Remand the jurors to the bailiff and instruct the jurors that they are to follow the bailiff’s instructions when not in the jury room.</li> <li><input type="checkbox"/> 3. The jury should be advised by the bailiff where he or she will be stationed should he or she be needed.</li> <li><input type="checkbox"/> 4. Jury questions during deliberation:                             <ul style="list-style-type: none"> <li><input type="checkbox"/> a. If the jury communicates with the court in writing, use reasonable diligence to secure the presence of the child, the child’s attorney if represented, and the truant conduct prosecutor.</li> <li><input type="checkbox"/> b. Show the question and proposed answer to both sides for objections or exceptions.</li> <li><input type="checkbox"/> c. If unable to secure the presence of the child, the child’s attorney if represented, and the truant conduct prosecutor, answer appropriately.</li> <li><input type="checkbox"/> d. Read the written answer in open court unless the child expressly waives in satisfaction of Sec. 65.008, F.C.</li> <li><input type="checkbox"/> e. If the jury disagrees as to the testimony of a witness, have the specific portion in dispute read back to them.</li> <li><input type="checkbox"/> f. If there are no court reporter notes, the witness may be recalled to repeat testimony only as to the point in dispute.</li> </ul> </li> </ul>	<p><i>Brown v. State</i>, 870 S.W.2d 53 (Tex. Crim. App. 1994). The jury must disagree about the testimony before the statement of a witness may be read to them; a simple request for testimony does not, by itself, reflect disagreement. <i>Moore v. State</i>, 874 S.W.2d 671 (Tex. Crim. App. 1994).</p>

- 5. If the jury is deadlocked and cannot reach a verdict, the court may give an “Allen Charge” or “Dynamite Charge.” Read the charge to the jury and give the charge to them in writing to take to the jury room along with the original instructions.

An “Allen” charge is one given to a deadlocked jury which indicates to a juror that some deference is owed to the opinion of the majority of the other jurors. *Allen v. United States*, 164 U.S. 492 (1896).

SCRIPT:

“While undoubtedly, members of the jury, the verdict of a jury should represent the opinion of each individual juror, it by no means follows that opinions may not be changed by conference in the jury room. The very object of the jury system is to secure unanimity by comparison of views and by arguments among the jurors themselves. Every juror should listen with deference to the arguments of the other jurors, and with a distrust of his or her own judgment if he or she finds the larger majority of the jury takes a different view of the case than that which he or she takes. No juror should go to the jury room with a blind determination that the verdict should represent his or her opinion of the case at that moment or that he or she should close his or her eyes to the arguments of the other jurors, who are equally honest and intelligent.”

“So I charge that although the law requires the considered verdict of each individual juror and not a mere acquiescence in the conclusion of his or her fellows, you should examine the questions submitted with candor and with a proper regard and deference to the opinions of each other.”

“Now, it is your duty to decide this case, if you can conscientiously do so. No juror is expected to do violence to his or her own conscience. You should listen with a disposition to be convinced of each other’s arguments. If a much larger number are for conviction, a dissenting juror should consider whether his or her doubt is a reasonable doubt, which made no impression upon the minds of so many men or women equally honest and intelligent as himself or herself.”

“If, on the other hand, a majority of you are for acquittal, the minority ought to ask themselves whether they might not reasonably doubt the correctness of a judgment which was not concurred in by the majority.”

“Having given you these additional instructions, it is my hope that you will return to the jury room and endeavor to reach a verdict. And with these instructions in mind, I am now going to ask you to return to the jury room and consider further your verdict.”

- 6. If a verdict is returned, read it in open court.
- 7. If the jury cannot agree, it may be discharged:
  - a. When both parties consent to its discharge; or
  - b. When the court believes the jury has been kept together for such time as to render it altogether improbable that it can agree.



**F. The Jury Trial – Jury Charge**

In a jury trial, the jury determines questions of fact while the judge determines questions of law. Jurors often do not fully understand what they are to properly consider in determining fact questions. Jury charges narrow the scope of considerations to be made by the jury to relevant and nonprejudicial matters.

Checklist 8	Script/Notes
<p><input type="checkbox"/> 1. Charge the jury before either the child or truant conduct prosecutor presents closing arguments. The charge may be made orally or in writing.</p> <p><input type="checkbox"/> a. Delete any allegations of alternative means of engaging in truant conduct for which no evidence was presented.</p> <p><input type="checkbox"/> b. Obtain a copy of the petition and Section 65.003(a) of the Family Code.</p> <p><input type="checkbox"/> c. Request submission of any specially requested charges by the parties and make a ruling on each.</p> <p><input type="checkbox"/> d. Give each party a reasonable time to inspect and object to the charge intended to be given.</p> <p><input type="checkbox"/> 2. Caption</p> <p><input type="checkbox"/> a. Insert the:</p> <p><input type="checkbox"/> (1) Cause number;</p> <p><input type="checkbox"/> (2) Court; and</p> <p><input type="checkbox"/> (3) Child’s initials.</p>	<p>CAUSE NUMBER _____</p> <p>THE STATE OF TEXAS</p> <p>§ IN THE TRUANCY                  § COURT OF                  § <i>(City/Precinct No.)</i>                  § <i>(County)</i>, TEXAS</p> <p>CHARGE TO THE JURY</p>

3. Commencement

MEMBERS OF THE JURY:

The child, (*initials appearing in the petition*), is alleged to have engaged in truant conduct in the City of/ Precinct No. \_\_\_\_\_, (*county*), Texas, on or about the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_. To this allegation the child has answered not true. You are instructed that the law applicable to this case is as follows:

4. Abstract Charge

- a. Describe the truant conduct as specifically as possible from Sec. 65.003(a), F.C. and the petition.
- b. Consider quoting verbatim the actual statutory language of Sec. 65.003(a), F.C.

A child engages in truant conduct if the child is required to attend school under Section 25.085, E.C. and fails to attend school on 10 or more days or parts of days within a six-month period in the same school year.

5. Definitions

- a. Define “child” as it is defined in Section 65.002(1) of the Family Code.
- b. Reasonable Doubt

“Child” means a person who is 12 years of age or older and younger than 19 years of age.

The six paragraphs previously required by *Geesa v. State*, 820 S.W.2d 154 (Tex. Crim. App. 1991) are no longer required under the holding of *Paulson v. State*, 28 S.W.3d 570 (Tex. Crim. App. 2000). If both sides agree, it can be included but, if either objects, its inclusion is error. *Vosberg v. State*, 80 S.W.3d 320 (Tex. App.—Fort Worth 2002).

6. Application Paragraph

- a. Incorporate the petition or statutory language of Sec. 65.003, F.C. to include all elements of truant conduct.
- b. Delete any manner or means of engaging in truant conduct not supported by evidence.
- c. Change conjunctive pleadings (“and”) to disjunctive (“or”) where applicable.
- d. Apply the law without commenting on the weight of evidence.

7. Insert the converse charge.

8. Evidentiary Instructions

Therefore, if you believe from the evidence beyond a reasonable doubt that the child, (*initials appearing in petition*), on or about (*date alleged in the petition*), in the City of /Precinct No. \_\_\_\_\_, \_\_\_\_\_ County, Texas, is required to attend school under Section 25.085, Education Code, and did then and there engage in truant conduct by failing to attend school on 10 or more days or parts of days within a six-month period in the same school year, you will find that the child did engage in truant conduct.

But if you do not so believe or if you have a reasonable doubt thereof, you will find that the child did not engage in truant conduct.

Remember, the Texas Rules of Evidence generally do not apply to truant conduct proceedings. Instructions on evidence are only necessary if the judge determined a rule applicable in criminal cases should be applied in fairness to both parties under Sec. 65.101(d), F.C.

- a. If evidence has been admitted for a limited purpose such as to impeach a witness, add an instruction to limit the jury’s consideration to the purpose for which it was offered.
- b. If there is a fact issue as to admissibility of evidence or a confession because of illegality in the way it was obtained, submit it to the jury if requested by the child or the child’s attorney.

9. Defenses

- a. If evidence from any source establishes a defense, instruct the jury on the law and the requirement to find that the child did not engage in truant conduct if the State fails to disprove the defense evidence beyond a reasonable doubt.
- b. If evidence from any source establishes an affirmative defense, instruct the jury on the law and the requirement to find that the child did not engage in truant conduct if the child proves the defense by a preponderance of the evidence.

- 10. Note that the jury is not involved in ordering remedies for a child who has been adjudicated as having engaged in truant conduct.

It is an affirmative defense that one or more of the absences required to be proven: (1) have been excused by a school official or by the court; (2) were involuntary; or (3) were due to the child’s voluntary absence from the child’s home because of abuse, as defined by Sec. 261.001, F.C. Sec. 65.003(c), F.C. Note that Sec. 65.003(c)(3), F.C. is effective beginning with the 2021-2022 school year.

The affirmative defense in Sec. 65.003(c), F.C. is not available if, after deducting the absences described by that subsection, there remains a sufficient number of absences to constitute truant conduct. Sec. 65.003(d), F.C.

Sec. 65.101(h), F.C.

11. General Instructions

- a. You are instructed that the petition is not evidence that the child engaged in truant conduct. It is the means whereby a child is brought to trial in a truant conduct case in truancy court. It is not evidence, nor can it be considered by you in deciding whether the child engaged in truant conduct.
- b. During your deliberations in this case, you must not consider, discuss or relate any matters not in evidence before you. You should not consider or mention any personal knowledge or information you may have about any fact or person connected with this case which is not shown by the evidence.
- c. After you have retired to your jury room, you should select one of your members as your presiding juror. It is his or her duty to preside at your deliberations, vote with you, and when you have unanimously agreed upon a verdict, to certify to your verdict by signing the same as presiding juror.
- d. Your verdict must be unanimous.
- e. You are the exclusive judges of the facts proved, of the credibility of the witnesses, and of the weight to be given to the evidence, but you are bound to receive the law from the court, which is herein given to you, and be governed thereby.

Sec. 65.101(c), F.C.

- 12. Prepare the verdict form on a separate page and include it with the charge. The verdict should not address remedies, but merely reflect a finding that the child did or did not engage in truant conduct.

Sec. 65.101(h), F.C.

See Form, *Verdict*.

- 13. Submission of Main Charge. Give each party a copy of the charge and allow them a reasonable amount of time to review it.
- 14. Objections to the Main Charge. Allow each party to make objections to the charge.

- 15. Make any needed changes to the charge. Do not indicate in the charge which party requested the instruction.
  
- 16. Read the charge to the jury.