

**CHAPTER 2. ADJUDICATION HEARING PROCEDURES**

The best interest of the child is the primary consideration in adjudicating truant conduct of the child. Sec. 65.001, F.C. A child may be found to have engaged in truant conduct only after an adjudication hearing conducted in accordance with Chapter 65 of the Family Code. Sec. 65.101(a), F.C. A hearing is required even if the child answers “true” prior to the hearing. This means that a child may not simply answer “true” to the allegations and avoid showing up in court.

The hearing is open to the public unless the court, for good cause shown, determines that the public should be excluded. Sec. 65.015, F.C. The court may also exclude a person expected to testify at the hearing if the court determines such testimony would be materially affected if the person hears other testimony at the hearing.

Checklist 2	Script/Notes
<p><input type="checkbox"/> 1. The child must be personally present at the adjudication hearing. The truancy court may not proceed with the hearing in the absence of the child.</p>	<p>Sec. 65.062(a), F.C.</p>
<p><input type="checkbox"/> 2. 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.</p>	<p>Sec. 65.062(b) and (c), F.C.</p> <p>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.</p> <p>An employer may not terminate the employment of a permanent employee because the employee is required under Sec. 65.062(b) to attend the hearing. Sec. 65.063, F.C.</p>
<p><input type="checkbox"/> 3. 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.</p>	<p>Sec. 65.061, F.C.</p> <p>An attorney for a child may also be the child’s guardian ad litem. A law enforcement officer, probation officer, or other employee of the truancy court may not be appointed as a guardian ad litem. Sec. 65.061(b), F.C.</p> <p>The court may order the child’s parent or other responsible person to reimburse the county or</p>

- ❑ 4. 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.
- ❑ 5. Call the case. Have the juvenile, his parents, guardians, and/or guardian ad litem and the attorneys come to the bench.
- ❑ 6. Ask the parent(s) or guardian(s) to identify themselves and their relationship to the juvenile.
  
- ❑ 7. 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.

municipality for the cost of the guardian ad litem, only after it determines such person has sufficient financial resources to offset the cost in part or in whole. Sec. 65.061(c), F.C.

See Form, *Appointment of Attorney or Guardian Ad Litem*.

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.

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

If no parent or guardian appears, see Step 3 for appointing a guardian ad litem. Make sure the summonses required to be served along with a copy of the petition have, in fact, been served. Secs. 65.057 and 65.058, F.C. If the person was summoned, consider issuing a writ of attachment. Sec. 65.254, F.C., Sec. 21.001(a), G.C.

See Form, *Writ of Attachment*.

See also, Sec. 65.253, F.C. for contempt and related forms.

A party, other than the child, may waive service of summons by written stipulation or by voluntary appearance at the hearing. Sec. 65.057(d), 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.

- 8. At the beginning of the adjudication hearing, the judge of the truancy court shall explain to the child and the child’s parent, guardian, or guardian ad litem:

- a. the allegations made against the child;

SCRIPT:

“You are here today because the State of Texas has filed a petition with this court alleging that you, a child required to attend school, have engaged 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, the absences have not been excused by a school official, and none of the absences were involuntary. “

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

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.

Sec. 65.101(b), F.C.

See Form, *Adjudication Hearing Explanation*.

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. the nature and possible consequences of the proceedings;

SCRIPT:

“We are going to have your adjudication hearing today where a decision is going to be made whether you engaged in truant conduct as alleged by the State. 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.”

*Note, the Texas Rules of Evidence do not apply in a truancy proceeding unless the judge, when hearing the case, determines that a particular rule of evidence applicable to criminal cases must be followed to ensure fair proceedings for all parties, or unless otherwise provided in Chapter 65 of the Family Code. Sec. 65.101(d), F.C.*

“If you are found not to have engaged in truant conduct, your case will be dismissed with prejudice. If you are found to have engaged in truant conduct, the court shall determine the appropriate remedial action and may order you to: (1) attend school without unexcused absences; (2) attend a preparatory class for the high school equivalency examination; (3) if you are at least 16 years of age, take the high school equivalency examination administered under Section 7.111 of the Education Code; (4) attend a nonprofit, community-based special program that the court determines to be in your best interest; (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 you are enrolled that are provided by the school you attend.”

“In addition to these orders, the court may order the Department of Public Safety (DPS) to suspend your driver’s license or permit. If you do not have a driver’s license or permit, the court may order DPS to deny the issuance of a license or permit to you.”

“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 you in any civil service application or appointment.”

“In addition, if financially able to do so, the court will order you or your parent or guardian to pay a \$50 court cost.”

- c. the child’s right to trial and to confrontation of witnesses;

SCRIPT:

“You have the right to a trial. You have the right to call witnesses to testify here for you, and you have the right to confront and cross-examine the witnesses that the State of Texas might call.”

- d. the child’s right to a jury trial;

See Sec. 65.007, F.C.

SCRIPT:

“You may have a jury make the decision whether you engaged in truant conduct, or you can give up your right to a jury trial and have this court make the decision.”

- e. the child’s privilege against self-incrimination; and

SCRIPT:

“Whether you decide to have a jury or the court decide whether you engaged in truant conduct, you have the right not to testify in this hearing or in trial and no one can make you give any evidence in this case or sign any stipulation or confession; but, if you do decide to testify or give evidence, anything you say can and will be used against you in deciding whether you have engaged in truant conduct. You have the burden of proof to show that an absence was or should be excused or that the absence was involuntary. That means you must prove an excused or involuntary absence with evidence, which could include testimony and/or documents. “

“You may request documents and evidence from the State by following the discovery procedures in Article 39.14 of the Code of Criminal Procedure other than subsections (i) and (j).” Sec. 65.011, F.C.

- f. the child’s right to representation by an attorney if the child is not already represented.

See Sec. 65.059(a), F.C.

Appointment of representation is not required, but the court may appoint an attorney if the court determines it is in the best interest of the child. Sec. 65.059(b), F.C.

See Form, *Appointment of Attorney or Guardian Ad Litem*.

The court may order a child’s parent or other responsible person to pay for the cost of such appointment if the court determines that person has sufficient financial resources. Sec. 65.059(c), F.C.

SCRIPT:

“You are entitled to be represented by an attorney of your choice, but representation by an attorney is not required.”

“Do you understand everything that I have explained to you? Is there anything I have said to you that you do not understand? Is there anything you want me to explain further?”

- 9. A right granted to a child by Chapter 65 of the Family Code or by the constitution or laws of this state or the United States is waived in truancy court proceedings if:
  - a. the right is one that may be waived;
  - b. 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;
  - c. the child and the child’s parent or guardian sign the waiver; and
  - d. the child’s attorney signs the waiver, if the child is represented by counsel.
  
- 10. After the judge makes the required explanations in Sec. 65.101(b), F.C., the judge should ask the child if he or she wants to answer the petition (true or untrue).

Sec. 65.008, F.C.

See Form, *Child’s Answer*.

There is no set way in which the child must answer. However, a plea of guilty or not guilty would be inappropriate since the case is not criminal. A child can answer “true” or “not true.” Another possible answer is to “admit” or “deny” the allegations in the petition.

The child may have already answered the petition in writing prior to the hearing. Confirm his or her answer after giving the required explanations under Sec. 65.101(b), F.C.

If the child does not answer, a general denial of the alleged truant conduct is assumed. Sec. 65.060, F.C. Set for a jury trial unless a jury is waived in accordance with Sec. 65.008, F.C. See Sec. 65.101(c), F.C.

SCRIPT:

“What is your answer to the allegations in the State’s petition, true or not true?”

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| <p><input type="checkbox"/> a. If the child answers true, that concludes the adjudication hearing. The judge shall find whether the child has engaged in truant conduct. This finding must be based on competent evidence admitted at the hearing. A finding that a child has engaged in truant conduct must be beyond a reasonable doubt.</p> | <p>Sec. 65.101(f), F.C.</p> <p>See Forms, <i>Judgment and Remedial Order</i>.</p>  |
| <p><input type="checkbox"/> (1) If the judge finds that the child did not engage in truant conduct, dismiss the case with prejudice.</p>   | <p>Sec. 65.101(g), F.C.</p>  |
| <p><input type="checkbox"/> (2) If the judge finds that the child did engage in truant conduct, proceed to judgment and order the remedies the court finds appropriate under Sec. 65.103, F.C.</p>   | <p>Sec. 65.101(h), F.C.</p> <p>See Chapter 3, <i>Trial Proceedings Checklist - Non-Jury Trial (Bench Trial)</i> Steps 15-25.</p> |

SCRIPT:

*(If Applicable)* “Based on the petition on file, the record which reflects that the juvenile is properly before the court, the answer of true, and a finding of true, the child is hereby found to be a child who has engaged in truant conduct.”

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| <p><input type="checkbox"/> b. If the child answers not true, set for a jury trial, unless a jury is waived in accordance with Sec. 65.008, F.C.</p> | <p>Sec. 65.101(c), F.C.</p> <p>If the child waives his or right to a jury, the judge may immediately proceed with the trial (See Chapter 3, Checklist 3 - <i>Non-Jury Trial (Bench Trial)</i>) or proceed with the trial on the same day or another day.</p> <p>For jury trial procedures, see Chapter 3, Checklists 4-8.</p> |
| <p><input type="checkbox"/> 11. Pronounce that the adjudication hearing is closed.</p>   | <p>Make sure the court has the correct address for the child and tell the child to notify the court of any change of address.</p>   |