

**CHAPTER 1. INITIAL PROCEDURES**

The best interest of the child is the primary consideration in adjudicating truant conduct of the child. Sec. 65.001, F.C. A truancy court has exclusive original jurisdiction over cases involving allegations of truant conduct. Sec. 65.004(b), F.C. Truant conduct may be prosecuted only as a civil case in truancy court. Sec. 65.003(b), F.C. Venue for a truant conduct proceeding is the county in which the school in which the child is enrolled is located or the county in which the child resides. Sec. 65.006, F.C. A truancy court is considered to be in session at all times. Sec. 65.005, F.C.

Checklist 1	Script/Notes
<p><input type="checkbox"/> 1. When a truancy court receives a referral from a school district under Sec. 25.0915, E.C., the court shall forward the referral to a truant conduct prosecutor who serves the court.</p>	<p>Sec. 65.051, F.C.</p> <p>See Form, <i>School District Referral</i>.</p> <p>The truancy court must forward all referrals to the truant conduct prosecutor and is not authorized to review or screen them prior to forwarding. However, once the truant conduct prosecutor files a petition requesting an adjudication of the child for truant conduct, the truancy court shall dismiss the petition if the referral is defective under Sec. 25.0915(c), E.C. See Step 7.</p> <p>In a municipal or justice court, the attorney who represents the State in criminal matters in that court is to serve as the truant conduct prosecutor. Sec. 65.052, F.C.</p>
<p><input type="checkbox"/> 2. The truant conduct prosecutor shall promptly review the facts described in the referral, and may, in the prosecutor’s discretion, determine whether to file a petition with the truancy court requesting an adjudication of the child for truant conduct.</p>	<p>Sec. 65.053, F.C.</p>
<p><input type="checkbox"/> 3. As part of his or her review, and prior to filing, the truant conduct prosecutor must determine whether the referral was made in compliance with Sec. 25.0915, E.C., which provides that a school district’s referral must:</p>	<p>Sec. 65.053(c), F.C. and Sec. 25.0915(b), E.C.</p> <p>If the referral does not comply, the petition may not be filed. Sec. 65.053(c), F.C.</p>

- a. be accompanied by a statement from the student’s school certifying that:
  - (1) the school applied the truancy prevention measures adopted under Sec. 25.0915(a) or (a-4), E.C. to the student; and
  - (2) the truancy prevention measures failed to meaningfully address the student’s school attendance; and
- b. specify whether the student is eligible for or receives special education services under Subchapter A, Chapter 29 of the Education Code.
- 4. If the prosecutor decides to file a petition requesting an adjudication of the child for truant conduct, the proceedings shall be styled “In the matter of \_\_\_\_\_, Child,” identifying the child by the child’s initials only.
- 5. If the prosecutor decides not to file a petition, the prosecutor shall inform the school district of that decision.

The decision to file a petition that complies with Sec. 25.0915, E.C. lies entirely with the prosecutor.

Sec. 65.054, F.C.

The petition may be on information and belief. Sec. 65.054(c), F.C.

A petition may not be filed after the 45th day after the date of the last absence giving rise to the act of truant conduct. Sec. 65.055, F.C.

Filing fees may not be charged for the filing of the State’s petition. Sec. 65.054(e), F.C.

Sec. 65.053(b), F.C.

See Form, *Notice of Decision Not to File Petition*.

A truancy court shall order the destruction of records relating to allegations of truant conduct held by the court or the prosecutor if the

- 6. The petition must state:
  - a. with reasonable particularity the time, place, and manner of the acts alleged to constitute truant conduct;
  - b. the name, age, and residence address, if known, of the child;
  - c. the names and residence addresses, if known, of at least one parent, guardian, or custodian of the child and of the child’s spouse if any; and
  - d. if the child’s parent, guardian, or custodian does not reside or cannot be found in the state, or if their places of residence are unknown, the name and residence of any known adult relative residing in the county or, if there is none, the name and residence address of the known adult relative residing nearest to the location of the court.

prosecutor decides not to file a petition after reviewing the referral. Sec. 65.203, F.C.

See Form, *Destruction Order*.

Sec. 65.054, F.C.

See Form, *Petition for Adjudication of Truant Conduct*.

A child engages in truant conduct if the child is required to attend school under Sec. 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. Sec. 65.003, F.C.

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

A truancy court retains jurisdiction over a person, without regard to age, if 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.

7. A truancy court shall dismiss the petition if the court determines that the school district’s referral:

- a. does not comply with Sec. 25.0915(b), E.C.;
- b. does not satisfy the elements required for truant conduct;
- c. is not timely filed, unless the school district delayed the referral under Sec. 25.0951(d); or

d. is otherwise substantively defective.

8. After the petition has been filed, the truancy court shall set a date and time for an adjudication hearing on a date following the 10th day after the date the petition is filed.

9. After setting the date and time of an adjudication hearing, the truancy court shall direct the issuance of a summons to:

- a. the child named in the petition;

Sec. 25.0915(e), E.C.

See Form, *Order Dismissing Petition for Adjudication of Truant Conduct*.

See Step 3.

See Note on Step 6a.

A school district shall refer the student to a truancy court within 10 school days of the student’s 10th absence (10th day or part of day in a six-month period in the same school year without excuse). However, a school district may delay referral or choose not to refer if it is applying truancy prevention measures under Sec. 25.0915, E.C. and determines that such measures are succeeding and it is in the best interest of the student that a referral not be made. Sec. 25.0951, E.C.

For example, a school district may not refer a student to truancy court if it determines the truancy is a result of pregnancy, being in the state foster program, homelessness, or being the principal income earner for the student’s family. Sec. 25.0915(a-3), E.C.

Sec. 65.056, F.C.

Sec. 65.057, F.C.

See Form, *Summons*.

- b. the child’s parent, guardian, or custodian;
  - c. the child’s guardian ad litem, if any; and
  - d. any other person who appears to the court to be a proper or necessary party to the proceeding.
10. The summons must:
- a. require the persons served to appear before the court at the place, date, and time of the adjudication hearing to answer the allegations of the petition;
  - b. be accompanied by a copy of the petition; and
  - c. be served on the person personally or by registered or certified mail, return receipt requested, at least five days before the date of the adjudication hearing (if the person is in this state and can be found).
11. The child may answer the petition, orally or in writing, at or before the commencement of the hearing. If the child does not answer, a general denial of the alleged truant conduct is assumed.

Secs. 65.057 and 65.058, F.C.

The truancy court may endorse on the summons an order directing the person having the physical custody or control of the child to bring the child to the hearing. Sec. 65.057(b), F.C.

Service of the summons may be made by any suitable person under the direction of the court. Sec. 65.058(b), F.C.

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.

Sec. 65.060, 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.

There is no statutory authorization or prohibition concerning providing an answer form to the

❑ 12. A party may make a motion requesting that the petition be dismissed because the child has a mental illness as defined by Sec. 571.003, H.S.C. In response to the motion, the truancy court shall temporarily stay the proceedings to determine whether probable cause exists to believe the child has a mental illness. If the court finds probable cause, it shall dismiss the petition. If the court does not find probable cause, it shall dissolve the stay and continue with the proceedings.

❑ 13. A witness may be subpoenaed in accordance with the procedures for the subpoena of a witness under the Code of Criminal Procedure.

❑ 14. A truancy court may employ a juvenile case manager in accordance with Art. 45.056, C.C.P. to provide services to children who have been referred to truancy court or who are in jeopardy of being referred.

child. The best practice is for the child to answer the petition orally at the adjudication hearing.

An adjudication hearing is required even if the child answers the petition with “true” prior to the hearing. A child may only be found to have engaged in truant conduct after an adjudication hearing. Sec. 65.101, F.C.

Sec. 65.065, F.C.

In making the determination, the court may consider the motion, supporting documents, professional statements of counsel, and witness testimony and observe the child.

See Forms, *Temporary Stay - Child Alleged to Be Mentally Ill* and *Determination of Probable Cause - Child Alleged to Be Mentally Ill*.

Of course, a court may *sua sponte* determine that probable cause exists to believe the child has a mental illness and dismiss the petition. This statute should not be read as a prohibition on the court in light of Sec. 65.001(c), F.C., which states that the primary consideration in adjudicating truant conduct is the best interest of the child.

Sec. 65.064, F.C.

See Chapter 24, C.C.P.

See Forms, *Subpoena of Witness* and *Subpoena Duces Tecum*.

Sec. 65.017, F.C.