

# Creative Sentencing in Truancy Cases

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*Developed by the Children's Law Center*



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## **Pre-Court Interventions**

Youth who experience truancy often have complex, underlying needs that are resulting in absenteeism from school. Many truant youth have experienced trauma, familial discord, abuse or neglect, and/or have a mental health disorder, learning disorder, or substance abuse problem. To be effective, interventions at the school level need to be tailored to the individual student's needs and must address the root cause of the truant behavior. Attendance Intervention Plans, which are implemented after a student has accumulated three consecutive or a total of five unlawful absences, provide an opportunity for school personnel, the student, and the student's guardian to develop an individualized plan to improve the student's attendance through supports and services.

### ***Using Attendance Intervention Plans***

Effective Attendance Intervention Plans are unique to each student and crafted to address the underlying causes of the truant behavior. In addition to addressing how the students will improve their attendance, these plans should include steps that school staff will take to support the student and the guardian. As these students tend to have multiple needs, schools and students often benefit from addressing truancy intervention with a multi-disciplinary approach utilizing staff from child-serving agencies such as the Departments of Mental Health, Social Services, and Juvenile Justice, during the development of Attendance Intervention Plans.

Unfortunately, some students and their guardians have difficulty following through with Attendance Intervention Plans. When a student accumulates additional absences following implementation of an intervention plan, the school has the option of making a referral to family court. However, it is important that all services and interventions have been pursued and exhausted prior to taking this action and that the educational staff believe that a court order would be an effective tool for addressing the underlying causes of the truant behavior. If the responsibility of the truant behavior falls on the guardian of the student, it is important that court proceedings be brought against the guardian and not the youth.

### ***Diverting Youth from Court***

When possible, diversion programs should be used for truancy cases as research has indicated that the juvenile justice system should remain the last option for truant youth

(Coalition for Juvenile Justice, & SOS Project, 2013). Diversion programs may be informal or formal, ranging from a family referral service to a structured, standardized programming option for youth who have been found truant. Successful truancy diversion programs, such as the Truancy Alternative Program (TAP) in York County, South Carolina, have reduced the rates of truant youth being formally introduced to the juvenile justice system and have led to improved school attendance among previously truant youth.

### **Constructing Effective Court Orders**

School Attendance Orders, like Attendance Intervention Plans, should be individualized to meet the specific needs of the student. The order can be used as a tool to encourage compliance with the previously developed Attendance Intervention Plan by including referrals for counseling or tutoring programs. It is important that the parameters of the order be appropriate for the youth and should not result in keeping the youth involved with the juvenile justice system for a longer period of time than necessary. School Attendance Orders should be time limited, and if possible, the order should be dismissed if the child demonstrates a change in behavior and compliance with school attendance laws.

If the court finds that a juvenile has violated a school attendance order, the court may hold the child in Contempt of Court for violating a court order and issue further sanctions. The options that the court has when sentencing a truant include ordering further compliance with the compulsory attendance laws, probation, and/or a determinate sentence not to exceed 90 days.

### ***Court-Ordered Evaluations for Truant Youth***

Prior to a final disposition, the court could order a community or residential evaluation; however, a community evaluation is preferable for a truant child. Research shows that placing a child charged with a status offense in secure confinement with children who have been accused of serious criminal offenses may expose the child to negative influences and behaviors. Research findings have indicated that over 20% of status and other nonviolent offenders who are detained are living in units with youth who have committed serious violent crimes such as murder and sexual assault (Sedlak & McPherson, 2010). As detention centers are often overcrowded and understaffed, these environments tend to increase the likelihood of violence as non-violent offenders continue to be housed with violent youth (Holman & Ziedenberg, 2006). This negative environment leads to a decrease in the personal safety and well-being of status offenders and increases their risk of committing further unlawful acts.

If continued absenteeism from school during a community evaluation is a concern of the court, it is preferable for the court to order that DJJ find a short-term alternative

placement (STAP) instead of resorting to a residential, or secure, evaluation. Secure evaluations should be avoided as they expose the youth to secure facilities and offenders with more serious behavioral problems. During secure evaluations, treatment services are not provided, and any services initiated in the community are disrupted.

A STAP is designed to be less restrictive than DJJ residential evaluation centers and more suitable for responding to the needs of the youth. Another option for the court to consider is placing the child with an alternative caregiver during the time period while awaiting a community evaluation and final disposition. In some cases, the non-custodial parent or a relative is willing to have the child stay with them during this period of time. This is a good option in a case where the custodial parent or guardian has a tumultuous relationship that exacerbates the truancy issue.

After an evaluation, the court should have more information about the child and what contributed to the truant behavior. Evaluation reports are helpful in crafting creative sentences because of the abundant information on the child, family, and community. This information can then be used to develop a detailed plan tailored to the individual child's and family's needs and risk factors. This plan can incorporate all information gathered to intervene at the individual, family, and community level.

It should be noted that evaluations can be obtained without using DJJ services. The Department of Mental Health may complete an assessment through the mental health centers which provides insight into development, family history, previous treatment, and current treatment needs. These assessments may occur in the community office, or in some cases, may occur in the school setting. If substance abuse is a concern, an assessment into treatment needs may be completed on an outpatient basis through counseling centers.

Additionally, S.C. Code § 63-19-1410(A) grants the court authority to have the child examined or treated by a psychologist or psychiatrist. The court is also authorized to designate a state agency as the lead agency to provide a family assessment to the court. Section 63-19-1410 requires that the family assessment include "the strengths and weaknesses of the family, problems interfering with the functioning of the family and with the best interests of the child, and recommendations for a comprehensive service plan to strengthen the family and assist in resolving these issues." A hearing is held after the court is provided the assessment to allow the court to review the proposed plan and craft an order that meets the needs and best interest of the child.

In cases where an evaluation is not ordered prior to sentencing, the court can make inquiries of the child, family, and school district personnel for more information. Similar to when an evaluation is conducted, this information gathered from outside resources can be used to develop an intervention that meets the needs of the child and their family.

## ***Using Probation Orders in Truancy and Contempt of Court Cases***

When placing a youth under a probation order, probationary terms should address issues that the court believes contributed to the truant behavior. Research indicates truancy is often a complex case with multiple aggravating factors surrounding the youth, the family, the community and the school (Jones, Lovrich, & Lovrich, 2011). Consideration should be given to the following:

- *Does the child relay a history of being bullied?* The court could order attendance at a victim's class, participation with a pro-social activity, or assignment of a mentor.
- *Does the child appear to have difficulty with academics?* The court could order the school district to follow up with testing, refer to a tutoring program, or provide other educational help.
- *Does the parent have trouble getting the child up for school?* The court could order the child to have a medical or mental health assessment and/or have DJJ help the parent and child create a behavior contract for behavior at home.
- *Does the child have discipline issues?* The court could order that DJJ use graduated sanctions for referrals and suspensions rather than immediate violations of the order.
- *Does the child have extensive medical notes?* The court could order the parent to be made a party to the order and that the parent consider medical homebound, if appropriate.
- *Does the child admit to alcohol or drug use?* The court could order compliance with random drug testing and a referral to an alcohol and drug treatment program.
- *Is there a concern that the child may be experiencing abuse within the home?* The court should determine whether there is a need to take the child into emergency protective custody or to order DSS to complete an investigation into the home and family situation.

Probation orders should not prohibit discipline referrals and suspensions unless discipline issues were a contributing factor to the unlawful absences. If suspensions contributed to the absences, the court could consider ordering that DJJ impose graduated sanctions for any referrals. The court could also order the child to complete a counseling program or anger management classes if either would address issues related to the discipline referrals.

The length of probation should be through the end of the school year but no longer than a year. Indefinite probation should be avoided as this tends to set up a child for failure. Furthermore, research indicates the juvenile justice system allocates too many high-intensive resources on low-risk non-violent youth (PJJ, 2012). These highly intensive

supervision strategies oftentimes are not meeting the needs of these youth, such as truants, who are in need of a more flexible, less punitive probationary plan. DJJ allows earned compliance credit for children who do well on probation. This means that the child can shorten his/her probation time by complying with all terms of probation. In rare cases, it may be prudent to utilize DJJ's intensive supervision probation officers to meet with the youth and family regularly and provide a higher level of supervision than traditional probation services (see S.C. Code § 63-19-350(15)). The court should consider shortening the length of the School Attendance Order if a child successfully completes probation. For instance, if the school attendance order requires the child to attend school until age 17, but the child successfully completes a year of probation, then the court could dismiss the order. The child would still be subject to the compulsory attendance law but would no longer face the more onerous requirements of the School Attendance Order. For example, some School Attendance Orders prohibit absences not excused by a doctor's note. This can be particularly burdensome for parents who do not have reliable transportation to get to a medical provider or the medical coverage that allows for doctor visits for common illnesses such as colds or stomach viruses. Dismissing the order would allow for the use of parent notes again and may be appropriate after the child has shown improvement over a period of time.

### **Alternative Educational Options**

For children ages 16 and older, the court can be more creative. There are educational and vocational options for older teens who have had trouble adhering to the discipline or academic rigors of the regular public school setting. Research indicates youth respond to general and vocational skill-building workshops and opportunities more positively than to punitive measures. Teaching delinquent youth practical life, interpersonal relationship, and vocational skills not only reduces the likelihood of future maladaptive behaviors, but also provides these youth with tools needed to succeed (Griffin & Torbet, 2002). Alternative education options in South Carolina include:

- **Wil Lou Gray Opportunity School**, a tuition-free school which specializes in helping at-risk young people, ages 16 to19, gain vocational and academic skills and prepares them for earning a GED. More information on this school can be found at <http://www.willougray.org/> or by contacting their office at (803) 896-6480.
- **SC Youth Challenge Academy**, a program developed by the South Carolina National Guard designed to provide at-risk males and females, ages 16 to18, with basic skills and the opportunity to earn a GED. The program is voluntary and therefore, cannot be court-ordered. However, the court could defer sentencing until the child enrolls and/or completes the program if the child is willing. More information about this program can be found at <http://scyouthchallenge.com/>.

- **JobCorps**, a free educational training program that helps low-income young people learn a vocation, earn a high school diploma or GED, and find and keep a job. To apply, the child must not be enrolled in school and cannot have pending charges or be under a court order. If the court finds that this is a viable option for a child, the court could dismiss the petition without prejudice and give the child time to enroll in the program. More information about JobCorps and the locations in South Carolina can be found at <http://www.jobcorps.gov/centers/sc.aspx>.
- **GED Programs**. Various GED programs around the state offer classes and testing for youth 16 or older. The court could order compliance with one of these alternative educational programs.

In severe cases where a child has missed the majority of the school year and lacks family support or a stable home environment that would encourage school attendance, the court may determine it is in the child's best interest to be placed outside of the home. If the court does not believe the circumstances rise to the level of neglect warranting DSS involvement but deems it necessary for the child to be placed out of the home, the court should consider other family members for placement. If there are no suitable family members and the court is considering an alternative placement, consideration should be given to placing the child in the community rather than locking the child up in a secure detention facility to await placement.

Truancy cases are often difficult to address within the family court system, as the mitigating factors involved in these cases are complex and at times hidden. A teamwork approach between agencies and flexibility with court orders can help support these families and allow treatment services to take priority in rectifying the truant behavior. When used as a last option, court orders can complement and not hinder the services these youth need.

## References

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