

# 12th Judicial District Truancy Protocol



# Resources

(all available on court's website – URL on last slide)

- 12<sup>th</sup> Judicial District Truancy Protocol
    - This provides an overview of the process of a truancy matter
  - 12<sup>th</sup> Judicial District Truancy Checklist
    - Highlights the “must” and “shall” provisions of the statutes
  - Attachments to Truancy Protocol
    - These attachments are forms that should be used in a truancy matter (e.g., Petition to Compel Attendance)
- \*Recommendation:** Review the protocol first and then use the checklist to ensure all the statutory requirements are satisfied.

## **Lots of Prerequisites Must be Satisfied Before Filing a Truancy Case**

Court proceedings are a “last-resort approach” and, as such, can only be initiated after the school district has created and implemented an intervention plan and the student continues to be habitually truant.

C.R.S. § 22-33-108(5)(a),(b).

# The Steps of a truancy case

There are four phases in a truancy case:

## 1. Before filing with the court

- ❑ Written Attendance Policy
- ❑ Designate one or more employees to be “attendance officer(s)”
- ❑ Develop/implement an Intervention Plan
- ❑ If the plan is unsuccessful, provide written notice to student’s parent(s), guardian(s), or legal custodian(s)  
(i.e., “parent” or “parents” for ease of reference)

## 2. Filing with the court

## 3. Appearing in court

## 4. Enforcing the court’s order



# PHASE 1. BEFORE FILING WITH THE COURT

A school district will not be able to obtain an order compelling attendance unless the statutory prerequisites are satisfied.

The statutory prerequisites are outlined in C.R.S. § 22-33-101 *et seq.* — i.e., the School Attendance Law of 1963 (aka the “School Attendance Law”).



# PHASE 1. BEFORE FILING WITH THE COURT

- Each school district must adopt a **written attendance policy** that explains what the school district classifies as an excused absence.
- Each school district shall designate one or more employees to act as **attendance officer(s)**.
- The school district must determine that the student is a “**habitual truant**” according to its policies and Colorado’s School Attendance Law.
- The school district must develop and implement an **intervention plan** to assist the student to remain in school.
- Despite the plan, the student continues to be habitually truant.

# PHASE 1. BEFORE FILING WITH THE COURT

“**Child who is habitually truant**” means a child:

- between the ages of 6 and 17,
- who has 4 unexcused absences in any one month or 10 unexcused absences during any school year.

C.R.S. § 22-33-102(3.5).

Regarding **excused absences**:

Each school district “is encouraged to establish attendance procedures for identifying students who are chronically absent and to implement best practices and research-based strategies to improve the attendance of students who are chronically absent.”

C.R.S. § 22-33-104(4)(b.5).

# PHASE 1. BEFORE FILING WITH THE COURT

## Written Attendance Policy

- Each board of education must adopt a written attendance policy that sets forth the school district's attendance requirements and explains what the school district classifies as an excused absence.

- Statutory provision:

“The board of education shall adopt a written policy setting forth the district's attendance requirements. The policy must provide for excused absences, including those listed as exclusions from compulsory school attendance . . . as well as temporary absences due to behavioral health concerns.”

C.R.S. § 22-33-104(4)(a).



# PHASE 1. BEFORE FILING WITH THE COURT

## Written Attendance Policy

- ▶ The attendance policy must determine the maximum number of unexcused absences a student may incur before the attorney for the school district, the attendance officer, or the local board of education may initiate judicial proceedings.

- ▶ Statutory provision:

“The attendance policy . . . shall specify the maximum number of unexcused absences a child may incur before the attorney for the school district, the attendance officer, or the local board of education may initiate judicial proceedings . . .”

C.R.S. § 22-33-104(4)(b).

# PHASE 1. BEFORE FILING WITH THE COURT

## Develop a Plan to Assist the Student to Remain in School

Once a school district identifies the child as “habitually truant,” it is required to develop an intervention plan.

- The plan must be developed with the goal of assisting the student to remain in school. When practicable, the school district should create and implement the plan with the full participation of the child's parent, guardian, or legal custodian.
- School personnel must make all reasonable efforts to meet with the parent, guardian, or legal custodian of the child to review and evaluate the reasons for the child's truancy.
- School personnel are encouraged to work with local community services to develop the plan and the plan must include appropriate sanctions other than placement in a juvenile detention facility for a child who is habitually truant and who has refused to comply with the plan.

The “local community services group” = Center for Restorative Programs

CRP Info — (719) 589-5255 | <https://restorativeprograms.org>

# PHASE 1. BEFORE FILING WITH THE COURT

## **Develop a Plan to Assist the Student to Remain in School**

- Statutory provision:

“The board of education of each school district shall adopt and implement policies and procedures concerning elementary and secondary school attendance, including but not limited to policies and procedures to work with children who are habitually truant. The policies and procedures must include provisions for the development of a plan. The plan must be developed with the goal of assisting the child to remain in school and, when practicable, with the full participation of the child’s parent, guardian, or legal custodian. . . .”

C.R.S. § 22-33-107(3)(b).

# PHASE 1. BEFORE FILING WITH THE COURT

## Develop a Plan to Assist the Student to Remain in School

### ▶ Statutory provision cont'd:

“ . . . Appropriate school personnel shall make all reasonable efforts to meet with the parent, guardian, or legal custodian of the child to review and evaluate the reasons for the child’s truancy. The appropriate school personnel are encouraged to work with the local community services group to develop the plan. The plan must . . . include appropriate sanctions other than placement in a juvenile detention facility for a child who is habitually truant and who has refused to comply with the plan.”

C.R.S. § 22-33-107(3)(b).

## PHASE 1. BEFORE FILING WITH THE COURT

If the plan isn't successful, the school district may file a petition with the court.

However, a school district “shall employ best practices and research-based strategies to minimize the need for court action . . .” Court proceedings are a “last-resort approach” and, as such, can only be initiated after the school district has created and implemented an intervention plan and the student continues to be habitually truant.

C.R.S. § 22-33-108(5)(a),(b).



# PHASE 1. BEFORE FILING WITH THE COURT

## Provide Written Notice

Once a school district decides to file a petition with the court, it must provide *written* notice to the student's parent, legal guardian, or legal custodian in two ways:

- a. Send a letter (Attachment 1 - Sample Letter); or
- b. Combine the written notice with the summons and the petition (Attachment 2 - Petition to Compel Attendance and Attachment 3 – Summons to Appear)

The school district must send the written notice **5 days** before filing with the court.

# PHASE 1. BEFORE FILING WITH THE COURT

## Provide Written Notice

### ► Statutory provision:

“Before initiating court proceedings to compel compliance with [the School Attendance Law], the school district shall give the child and the child’s parent written notice that the school district will initiate proceedings if the child does not comply with the attendance requirements of this article. The school district may combine the notice and summons. If combined, the petition must state the date on which the school district will initiate proceedings, which date must not be less than five days after the date of the notice and summons. The notice must state the provisions of [the School Attendance Law] with which compliance is required and must state that the school district will not initiate proceedings if the child complies with the identified provisions before the proceedings are filed.”

C.R.S. § 22-33-108(5)(c).

# The Phases of a truancy case

1. Before filing with the court
- 2. Filing with the court**
3. Appearing in court
4. Enforcing the court's order



## PHASE 2. FILING WITH THE COURT

When the school district files a petition with the court, it must also file a Summons to Appear and Notice (Attachment 2);

**Note:** The school district must serve the petition and the summons on the parents of the truant student *at least 5 days before the court date.*

## PHASE 2. FILING WITH THE COURT

The Petition (Attachment 2) must also include:

- A copy of the written notice (either the letter or the combined forms);
- The student's attendance record (before and after the student was identified as habitually truant);
- Information about the intervention plan (i.e., its successes and failures)



## PHASE 2. FILING WITH THE COURT

Once the school district satisfies these requirements, a court date will be set.



# The phases of a truancy case

1. Before filing with the court
2. Filing with the court
3. **Appearing in court**
4. Enforcing the court's order



## PHASE 3. THE TRUANCY HEARING

The purpose of the truancy hearing is to determine whether there are grounds for the court to order the student to attend school, order the parents to assist the student, and order other plans designed to improve the student's attendance.

## PHASE 3. THE TRUANCY HEARING

The school district should bring these documents to the hearing:

- An up-to-date report on the student's attendance and efforts to secure his/her attendance. (Attachment 6 - "Valid Court Order Written Report")
- An advisement of rights (Attachment 7) for the student and parents to fill out.
- A return of service (Attachment 4), showing that the respondents were served.

In addition to these documents, the school district will have to prepare other forms, but the other forms will depend on whether the school district, the student, and the parents reach a stipulation.

## PHASE 3. THE TRUANCY HEARING

If the parties reach a stipulation (an agreed-upon resolution) before the hearing, the school district must prepare the following documents:

- A Stipulation (Attachment 8).
- A proposed Valid Court Order for Status Offenders (Attachment 9).



## PHASE 3. THE TRUANCY HEARING

The Stipulation (Attachment 8) must be signed by all parties before the hearing.

The Stipulation must be served on all parties after the judge signs it.

However, if the parties do not reach a stipulation, the school district must prepare and file a Valid Court Order Compelling Attendance (Attachment 9).

# PHASE 3. THE TRUANCY HEARING

## Review of Required Documents

Stipulation	No Stipulation
Report (Attachment 6)	Report (Attachment 6)
Advisement of Rights (Attachment 7)	Advisement of Rights (Attachment 7)
Return of Service (Attachment 4)	Return of Service (Attachment 4)
Stipulation (Attachment 8)	Valid Court Order (Attachment 9)
Valid Court Order (Attachment 9)	

# PHASE 3. THE TRUANCY HEARING

## A Note on Preparing for the Hearing

In preparing for the hearing, keep in mind that the school district will need to prove the facts asserted in the Valid Court Order Compelling Attendance (Attachment 9).

## PHASE 3. THE TRUANCY HEARING

For example, the school district will need to prove that the student has four unexcused absences in one month and/or the student has ten unexcused absences during any school year.

Even if the school district does not have an attorney, it will still have to comply with the Colorado Rules of Evidence in presenting its case.

## PHASE 3. THE TRUANCY HEARING

- If the respondents dispute the school district's assertions, the case will involve more than just preparing the forms.
  - The school district will have to consider how to present its evidence during the hearing.
- The court must remain neutral. As such, unless the statutory requirements are satisfied, the court cannot enter an order compelling attendance.

## PHASE 3. THE TRUANCY HEARING

For most cases, the order compelling attendance will be the end of the court proceedings.

However, if the school district finds that the student and/or the parent(s) are not following the court's order, the school district can begin proceedings to enforce the order (i.e., contempt proceedings).



# The phases of a truancy case

1. Before filing with the court
2. Filing with the court
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- 4. Enforcing the court's order**



## PHASE 4. ENFORCING THE COURT'S ORDER

The school district must initiate enforcement proceedings by filing:

- A Verified Motion for Contempt Citation (Attachment 10); and
- The corresponding proposed order to issue a contempt citation (Attachment 11).

## PHASE 4. ENFORCING THE COURT'S ORDER

When filing a Verified Motion for Contempt Citation, the school district must:

1. Provide the title of the court order and the date it was issued; and
2. Specify how the student or the parents or both violated the court order.

## PHASE 4. ENFORCING THE COURT'S ORDER

If the court grants the school district's motion and issues the contempt citation, a contempt hearing will be set.



## PHASE 4. ENFORCING THE COURT'S ORDER

Before the hearing, the school district must determine whether it is seeking detention or some other consequence for violating the court order and bring the appropriate proposed order:

- If the school district is seeking detention, it must prepare a proposed order imposing it (Attachment 13).
- Otherwise, the school district must prepare a proposed order imposing some other type of sanctions (Attachment 12).

## PHASE 4. ENFORCING THE COURT'S ORDER

If, after a contempt hearing is scheduled, the school district decides it is unnecessary to go through with the hearing, the district must file the following:

- A Motion to Dismiss (Attachment 15), and
- The corresponding proposed order granting dismissal (Attachment 16).



## PHASE 4. ENFORCING THE COURT'S ORDER

If the school district goes forward with the hearing, the district will have to consider how to present its case.

If the court finds that the respondents failed to comply with the order compelling attendance, the court will impose a sentence. The school district and respondents will have an opportunity to recommend an appropriate sentence.

As discussed in the truancy protocol and 12JD CJA0 16-04, it is the policy of the 12JD that alternatives to detention be used as sanctions whenever possible.

# THANKS FOR ATTENDING

- To download the Protocol, Checklist, Attachments, and this Powerpoint, visit the 12JD Court Business Resources Website:

<https://www.coloradojudicial.gov/courts/trial-courts/alamosa-county/court-business-resources?topic=10&wrapped=true>

