

Drafting the School Incurrigibility or Truancy Petition

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This memorandum is designed to help schools prepare legally valid petitions for school incurrigibility and truancy cases. A valid petition submitted at the beginning of the court process can save weeks of delay in getting a matter into the court system. With the information below, a school official can prepare a document that will withstand the scrutiny of the screener - the juvenile court referee.

Background

The court process starts with a form entitled "PETITION (DELINQUENCY PROCEEDINGS)." The school prepares the petition and submits it to the juvenile court's intake department, along with supporting documents.¹ A juvenile court referee reviews the materials and determines how the matter is to be handled. The referee may set up an informal conference for the petitioner, juvenile and parent. A conference often results in the signing of an agreement. If the juvenile complies with the agreement, the referee promises that the juvenile will not go to formal court to face trial on the charges, have a juvenile "record", or face removal from home.

The referee may send a petition to the court's formal docket if the juvenile violates the agreement or if the referee feels that informal proceedings cannot effectively handle the problem outlined in the petition. Once the petition is sent to formal court (the petition is "authorized" by the referee), an initial hearing is scheduled. At this hearing, the juvenile decides if he wants to plead guilty or set the matter for trial. If convicted after a plea of guilty or a finding of guilt after trial, the court takes jurisdiction over the juvenile and sets the case for "disposition". Disposition is typically a period of probation but may include out of home placement at Crossroads for Youth or Children's Village.

The Problem

When writing the petition, the petitioner should keep in mind the end result - whether the court is able to take jurisdiction over the juvenile. Jurisdiction comes only after a plea of guilty or a finding of guilt by a judge, jury or referee. The petition is the document to which the juvenile pleads guilty or demands a trial. If the petition fails to recite specific allegations of truancy or incurrigibility, the juvenile will not know what to plead guilty to or what he must defend against at trial.

A typical unsatisfactory truancy petition is one in which the petitioner writes "see attached" in #2 of the petition, "Citations and allegations", and attaches a computerized attendance record. The court cannot decipher the record and does not know what the petitioner is relying on to support the charge. A typical unsatisfactory incurrigibility petition is one that only alleges that a child is incurrigible and has been suspended numerous times. Without specifics, the juvenile does not have adequate notice of what he or she has done wrong. The juvenile's attorney cannot effectively address the petition with the juvenile because of this lack of specifics. In most cases, unsatisfactory petitions will be sent back to the petitioner with a letter stating that the court can not proceed on the information submitted, thereby delaying the court's response to the problem.

The Solution

The petition should specifically allege the reasons for jurisdiction in individual paragraphs. The paragraphs should be preceded by a caption describing the offense, either SCHOOL INCORRIGIBILITY or SCHOOL TRUANCY. Truancy and incurrigibility charges may be combined in the same petition.

If the charge is school incurrigibility, each allegation following the caption should contain a date and a single behavioral episode. The allegations should not consist of the school's internal computer records of the child's

¹ *Oakland County juvenile court accepts petitions filed and received BEFORE April 1st of any given school year. Petitions filed after that date will be returned with instructions to re-file if the problems continue after the beginning of the following school year. The court cannot effectively deal with school issues after April 1st as the summer break prevents enforcement of court orders and school personnel are not available to appear in court to support their petitions. Contact Scott Hamilton at hamiltons@oakgov.com for an e-mailed copy of the petition that can be filled in by the school official.*

behavior problems. The episodes should be placed directly into the petition itself. The court will **reject** a petition if the allegations are made in a school document printout with the phrase, “see attached” substituted into paragraph #2 of the petition. If additional pages are needed to include lengthy allegations, a copy can be made of page two of the petition.

Here are some examples of proper incorrigibility allegations:

“COUNT I: SCHOOL INCORRIGIBILITY – MCL 712A.2(a)(4)

The juvenile is enrolled at _____ school in _____, Michigan. The juvenile repeatedly violates rules and regulations of the school by engaging in the following incorrigible behaviors:

- 1. On September 19, 20__, the juvenile assaulted (name), his 4th hour teacher, by throwing an eraser at her. The juvenile was suspended for 5 days for this behavior.*
- 2. On September 28, 20__, the juvenile shouted, “Shut the f__ up” and “You’re a b____” while Assistant Principal (name) was speaking to the entire student body during a school assembly. The juvenile was ejected from the assembly and received in-school suspension for 10 days for this behavior.*
- 3. On October 5, 20__, the juvenile pulled the fire alarm during 1st hour. The school had to be evacuated. The juvenile was suspended until the end of the first quarter for this behavior.*
- 4. On November 15, 20__, the juvenile disrupted his 3rd hour class by getting into a verbal argument with the teacher over a failing grade he received on a homework assignment. The juvenile threw his textbook and folder across the room and walked out in the middle of class. The juvenile received 3 days of in-school suspension for this behavior.”*

If the charge is school truancy, each date absent should be specifically listed. Only absences in which a child purposely “skipped” school can be listed. Suspensions are not included.

“COUNT I: SCHOOL TRUANCY – MCL 712A.2(a)(4)

The juvenile is enrolled at _____ in _____, Michigan. The juvenile is required by law to attend school and repeatedly absents him/herself from school without good cause, to wit:

- 1. The juvenile was absent from school for whole days on September 7, 8, 9, 12-15, 19, 21, 22, 24, 25, October 6-15, 18, 22, 23, 28, 30, November 4, 5, 8, 10, 13, 14, 17-22, and 30th. These absences were unexcused and were the fault of the juvenile.*
- 2. The juvenile was absent from school for 5 out of 6 periods on (list each date individually). These absences were unexcused and were the fault of the juvenile.*
- 3. The juvenile was absent from school for 4 out of 6 periods on (list each date individually). These absences were unexcused and were the fault of the juvenile.*
- 4. The juvenile was absent from school for 3 out of 6 periods on (list each date individually). These absences were unexcused and were the fault of the juvenile.*
- 5. The juvenile was tardy for the following class periods on the following days:*
 - a. (date and number of hours tardy)*
 - b. (etc.)”*

Conclusion

A properly drafted petition will ensure that the court handles the school status offense expeditiously. Without it, the matter will be delayed until the materials are returned to the petitioner, re-drafted, and resubmitted. If you have any questions, please contact Scott Hamilton at (248) 858-0977 or hamiltons@oakgov.com.