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## YEAR 2005 CASE SUMMARIES

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By  
**The Honorable Pat Garza**

Associate Judge  
386th District Court  
San Antonio, Texas

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### **Juvenile petition is less stringent than the standard applicable to criminal indictments in that it requires only that the juvenile be given notice of the offense charged. [In the Matter of J.B.M.](05-2-36)**

**On February 3, 2005 the Fort Worth Court of Appeals found that the State's petition, which tracked the language of the criminal attempt statute and stated the offense allegedly attempted, gave defendant fair notice of the offense charged**

05-2-36. In The Matter of J.B.M., 157 S.W. 823, 2005 Tex.App.Lexis 917 [Tex.App.—Fort Worth (2<sup>nd</sup> Dist.) 2/3/05].

Facts: On July 22, 2003, the State filed its petition against J.B.M. alleging that he committed attempted sexual assault. J.B.M. pleaded not true, a jury found the allegation to be true, and the trial court ordered that J.B.M. be committed to the Texas Youth Commission for an indeterminate period not to exceed his 21st birthday. This appeal followed.

In his third point, J.B.M. complains that the State's petition should have been quashed because it failed to indicate how he was going to effect a sexual assault, and it did not allege the requisite mental state.

Held: Affirmed

Opinion: Under the Texas Family Code, the petition must state "with reasonable particularity the time, place, and manner of the acts alleged and the penal law or standard of conduct allegedly violated by the acts." *TEX. FAM. CODE ANN. § 53.04(d)(1)* (Vernon 2004). This standard is less stringent than the standard applicable to criminal indictments in that it requires only that the juvenile be given notice of the offense charged. *In re A.B.*, 868 S.W.2d 938, 940 (Tex. App.--Fort Worth 1994, no writ). Furthermore, when a defendant is charged under the criminal attempt statute, the State is only required to plead the elements of a criminal attempt offense, n1 and need not allege the constituent elements of the underlying offense. *Id.* Here, the State's petition alleged the following:

That on or about the 22nd of June, 2003, in Denton County, Texas said [J.B.M.] did violate a penal law of this State, punishable by Imprisonment to-wit: *Section 15.01 of the Texas Penal Code*, in that the said child did then and there, with specific intent to commit the offense of Sexual Assault, of [R.S.], do an act, to-wit: holding [R.S.] down, kissing [R.S.], spreading [R.S.'s] legs, and reaching under [R.S.'s] shirt, which amounted to more than mere preparation that tended but failed to effect the commission of the offense intended.

Because the State's petition tracks the language of the criminal attempt statute and states the offense

allegedly attempted, J.B.M. received fair notice of the offense charged. *Id. at 940-41*. Accordingly, the trial court did not err in overruling J.B.M.'s motion to quash the petition. We overrule J.B.M.'s third point.

n1 The elements of criminal attempt are as follows: (1) a person; (2) with specific intent to commit an offense; (3) does an act amounting to more than mere preparation; (4) that tends but fails to effect the commission of the offense intended. *TEX. PENAL CODE ANN. § 15.01(a)* (Vernon 2004).

Conclusion: State's petition, which tracked the language of the criminal attempt statute and stated the offense allegedly attempted, gave defendant fair notice of the offense charged.