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CHAIR'S MESSAGE
by Marsha Merrill

Greetings!

My message will be brief so the readers can get to some of the pretty potent stuff in this newsletter. This special legislative issue newsletter must be one of the most anxiously awaited editions to hit the Juvenile Law Section's press. If you have never found the time in the past to read our newsletter from cover to cover—now is a good time to get into the habit. There were a lot of changes in the juvenile law area. Take some of that quiet time in your practice to not only read this issue, but to also study and ponder how the new laws will impact our practice and society at large. The dialogue is just beginning.

Best regards,

Marsha Lynn Merrill

EDITOR'S FOREWORD
by Robert O. Dawson

Special Legislative Issue. This is the only Special Legislative Issue of the Juvenile Law Newsletter in the nine years of its being. Of course, this issue is made necessary by the massive changes that were enacted by the legislature during the 74th Regular Session.

This issue contains only legislation and commentary. Our regular September and December issues of the Newsletters will be published as usual.

Contributors to this Issue. Adhering to the view that "if it's important enough to do, it's important enough to delegate," I have recruited three excellent lawyers to assist in writing the commentary for this issue. **Howard Baldwin**, Director of Governmental Relations at the Department of Protective and Regulatory Services, was kind enough to comment upon the Child At-Risk Program expanded by the legislature and that will be operated by DPRS. **Lisa Capers**, General Counsel to the Texas Juvenile Probation Commission, agreed to write commentary in areas of particular interest to TJPC, including the voluminous changes in the Education Code that affect juvenile justice. **Neil Nichols**, General Counsel and Assistant Executive Director for Professional Services at the Texas Youth Commission, agreed to write commentary on sections of particular interest to the TYC, as well as upon sections relating to determinate sentencing and progressive sanctions. Their work is superb and we all

(especially I) owe them a great debt.

Magnitude of the Legislative Changes. Legislation affecting juvenile justice was contained in 10 separate bills, which printed out to 136 single-spaced pages. There were 68 sections in Title 3 at the beginning of the session and 42 (62%) of them were amended or repealed. Twenty new sections were added to Chapters 51 through 57 and two new chapters totaling 35 sections were added as Chapters 58 and 59. Title 3 had 68 sections at the beginning of the session and 123 sections at the end, for an increase of 81 percent. In addition to the changes in Title 3, numerous changes were made in other Codes or statutes as amendments or new sections. This was by far the largest number of legislative changes made in juvenile justice since Title 3 was enacted in 1973.

Significance of the Legislative Changes. The legislature provided more new resources for juvenile justice than at any time in the past. The major portions of those new resources are for state and local secure facilities, for TYC operating costs for a greatly-expanded state correctional system, for an increased number of probation officers, and for increased placements. No new resources were provided for the judicial phase of the system.

The major thrust of the legislative changes is to make the juvenile justice system more judicial, more adversarial, more criminal and less confidential than before. It is a much tougher system than before, although it is still significantly different from the criminal system.

Because the system is tougher than before, it will require more resources to handle the same number of cases that were handled under the old system. Police will probably refer to the juvenile court a higher percentage of children taken into custody than before because they are likely to perceive that even with respect to relatively minor offenses a referral will now be worth the effort.. Schools will be required to refer more cases to the juvenile court. Of cases referred, more will be handled judicially and fewer nonjudicially because prosecutors will have the opportunity to petition more cases than before and because of new restrictions on the handling of cases nonjudicially. There will be more certification proceedings and more determinate sentence proceedings than before because the scope of each has been expanded significantly.

New legislation greatly increases the stakes for the juvenile. For example, it provides that a felony adjudication accompanied by a TYC commitment or sentence counts as a prior felony conviction under Penal Code repeat offender provisions and that a juvenile will have a state-wide record that is computer-accessible but with greatly restricted sealing rights for felony adjudications. New resources will mean that more judicial probations will be accompanied by up-front time in some secure facility than before. Because of expanded TYC capacity, it is anticipated that indeterminate commitments will be accompanied by much longer minimum lengths of stay than before. The new statutory minimum lengths of stays under the determinate sentence act for capital and first degree felonies (10 and 3 years, respectively) will be significant.

Plea bargaining will no longer be the genteel experience it is in some juvenile courts because of the enhanced stakes for both the State and the juvenile. There will also likely be more trials before the court and jury trials and fewer pleas and stipulations than before, although how many more is difficult to predict.

All of this adds up to the need for greater judicial resources--more judges, referees, masters, prosecutors and defense attorneys--than before the new legislation. How much

more will depend to some extent of how each county system currently is operating. I shall attempt to provide some guidance to enable counties to calculate the need for new resources in the September issue of this Newsletter.

In Praise of Toby Goodman... This was, all things considered, a very good legislative session for juvenile justice. It certainly did not appear to be so before the session began. There was no real leadership at the legislature and ideas (some sane, some other than sane) abounded. Then, Speaker Laney named Representative Toby Goodman of Arlington to be Chairman of the new committee on Juvenile Justice and Family Issues, which turned out to be one of the best decisions made in the session.

Toby rapidly took control of the juvenile justice agenda. As the author of HB 327, destined to be the only major piece of juvenile legislation to reach the floor, he acted swiftly, fairly and with constant concern for the quality of the product that would result. An amazingly quick study, he rapidly mastered the intricacies of juvenile justice and became able intelligently to evaluate proposals for changing it. A tireless worker, he listened to all the special interests with courtesy and then acted in the public interest consistently.

We are very lucky that Toby assumed the leadership on the juvenile justice issue. Each of us owes him a huge debt. Just think of what might have been had it not been for him!

...And Chris Harris, Too. In the Senate, Senator Chris Harris, also of Arlington, was the Senate Sponsor of HB 327. Contributing original ideas that became part of the bill, he carried the legislation in the Senate and led many of the discussions in the bill's conference committee. Long a voice of enlightenment in other areas of the Family Code, he made his mark on juvenile justice as well during the 74th legislature. He, too, deserves our thanks.

I. THE MAIN EVENT: House Bill 327

With a few exceptions, House Bill 327 has an effective date of January 1,1996. It applies only to "conduct that occurs on or after January 1, 1996." Even if the amendment is procedural only, it applies only to cases in which the offense occurred on or after January 1, 1996.

Amendments to Chapter 55 and to section 61.077 Human Resources Code became effective when the Bill was signed by the Governor on May 31, 1995. Those amendments apply only to conduct that occurs on or after that date.

The provisions of Local Government Code sections 341.904, 351.903 and 370.002, dealing with the authority of a general law municipality and a county to enact juvenile curfew ordinances or orders, went into effect when signed on May 31, 1995.

Section 52.028, defining a juvenile curfew processing office, went into effect May 31, 1995. The designation of a juvenile curfew processing office by a municipality before May 31 is retroactively validated if the facility otherwise meets the requirements of section 52.028.

A. Family Code Title 3

TITLE 3. **JUVENILE JUSTICE CODE**
[~~DELINQUENT CHILDREN~~]
[~~AND CHILDREN IN NEED OF SUPERVISION~~]

CHAPTER 51. GENERAL PROVISIONS

§ 51.01. Purpose and Interpretation

This title shall be construed to effectuate the following public purposes:

(1) **to provide for the protection of the public and public safety;**

(2) consistent with the protection of the public and public safety:

(A) to promote the concept of punishment for criminal acts;

(B) to remove, where appropriate, the taint of criminality from children committing certain unlawful acts; and

(C) to provide treatment, training, and rehabilitation that emphasizes the accountability and responsibility of both the parent and the child for the child's conduct;

(3) to provide for the care, the protection, and the wholesome moral, mental, and physical development of children coming within its provisions;

(4) [~~(2)~~] to protect the welfare of the community and to control the commission of unlawful acts by children;

(5) [~~(3) consistent with the protection of the public interest, to remove from children committing unlawful acts the taint of criminality and the consequences of criminal behavior and to substitute a program of treatment, training, and rehabilitation;~~]

[~~(4)~~] to achieve the foregoing purposes in a family environment whenever possible, separating the child from **the child's** [~~his~~] parents only when necessary for **the child's** [~~his~~] welfare or in the interest of public safety and when a child is removed from **the child's** [~~his~~] family, to give **the child** [~~him~~] the care that should be provided by parents; and

(6) [~~(5)~~] to provide a simple judicial procedure through which the provisions of this title are executed and enforced and in which the parties are assured a fair hearing and their constitutional and other legal rights recognized and enforced.

Commentary by Robert Dawson

The amendments to this section are intended to express the mood of the legislature to emphasize protection of the public and juvenile and parental accountability in the juvenile justice system. The language in (2) concerning promoting "the concept of punishment for criminal acts" does not change the declaration in 51.13(a) that a juvenile court adjudication for a criminal act is not a conviction of crime, except for the purpose of enhancement of punishment as specified in 51.13(d).

Rehabilitation of the juvenile is not eliminated as a legislative purpose, but its focus is shifted to accountability and responsibility. It would be accurate to state that the concept of rehabilitation is shifted legislatively from the medical model that searches for a cure of a disease without assigning fault to a model that emphasizes the power of a person, even a juvenile, to choose the behaviors he or she will engage in. Both of these models have always been present in the juvenile justice system, so the question is not either/or but where the emphasis should be placed.

§ 51.02. Definitions

In this title:

(1) "Aggravated controlled substance felony" means an offense under Subchapter D, Chapter 481, Health and Safety Code, that is punishable by:

(A) a minimum term of confinement that is longer than the minimum term of confinement for a felony of the first degree; or

(B) a maximum fine that is greater than the maximum fine for a felony of the first degree.

(2) [~~(1)~~] "Child" means a person who is:

(A) ten years of age or older and under 17 years of age; or

(B) seventeen years of age or older and under 18 years of age who is alleged or found to have engaged in delinquent conduct or conduct indicating a need for supervision as a result of acts committed before becoming 17 years of age.

(3) [~~(4)~~] "Custodian" means the adult with whom the child resides.

(4) [~~(3)~~] "Guardian" means the person who, under court order, is the guardian of the person of the child or the public or private agency with whom the child has been placed by a court.

(5) [~~(6)~~] "Judge" or "juvenile court judge" means the judge of a juvenile court.

(6) [~~(5)~~] "Juvenile court" means a court designated under Section 51.04 of this code to exercise jurisdiction over proceedings under this title.

(7) [~~(8)~~] "Law-enforcement officer" means a peace officer as defined by Article 2.12, [~~Texas~~] Code of Criminal Procedure.

(8) "Nonoffender" means a child who:

(A) is subject to jurisdiction of a court under abuse, dependency, or neglect statutes under Title 5 for reasons other than legally prohibited conduct of the child; or

(B) has been taken into custody and is being held solely for deportation out of the United States.

(9) [~~(2)~~] "Parent" means the mother, the father whether or not the child is legitimate, or an adoptive parent, but does not include a parent whose parental rights have been terminated.

(10) "Party" means the state, a child who is the subject of proceedings under this subtitle, or the child's parent, spouse, guardian, or guardian ad litem.

(11) [~~(7)~~] "Prosecuting attorney" means the county attorney, district attorney, or other attorney who regularly serves in a prosecutory capacity in a juvenile court.

(12) "Referral to juvenile court" means the referral of a child or a child's case to the office or official, including an intake officer or probation officer, designated by the juvenile court to process children within the juvenile justice system.

(13) "Secure correctional facility" means any public or private residential facility, including an alcohol or other drug treatment facility, that:

(A) includes construction fixtures designed to physically restrict the movements and activities of juveniles or other individuals held in lawful custody in the facility; and

(B) is used for the placement of any juvenile who has been adjudicated as having committed an offense, any nonoffender, or any other individual convicted of a criminal offense.

(14) "Secure detention facility" means any public or private residential

facility that:

(A) includes construction fixtures designed to physically restrict the movements and activities of juveniles or other individuals held in lawful custody in the facility; and

(B) is used for the temporary placement of any juvenile who is accused of having committed an offense, any nonoffender, or any other individual accused of having committed a criminal offense.

(15) "Status offender" means a child who is accused, adjudicated, or convicted for conduct that would not, under state law, be a crime if committed by an adult, including:

(A) truancy under Section 51.03(b)(2);

(B) running away from home under Section 51.03(b)(3);

(C) a fineable only offense under Section 51.03(b)(1) transferred to the juvenile court under Section 51.08(b), but only if the conduct constituting the offense would not have been criminal if engaged in by an adult;

(D) failure to attend school under Section 4.251, Education Code;

(E) a violation of standards of student conduct as described by Section 51.03(b)(6);

(F) a violation of a juvenile curfew ordinance or order;

(G) a violation of a provision of the Alcoholic Beverage Code applicable to minors only; or

(H) a violation of any other fineable only offense under Section 8.07(a)(4) or (5), Penal Code, but only if the conduct constituting the offense would not have been criminal if engaged in by an adult.

(16) [~~(9)~~] "Traffic offense" means:

(A) a violation of a penal statute cognizable under Chapter 302, Acts of the 55th Legislature, Regular Session, 1957, as amended (Article **6701l-4** [~~802e~~], Vernon's Texas **Civil Statutes** [~~Penal Code~~]); or

(B) a violation of a motor vehicle traffic ordinance of an incorporated city or town in this state.

(17) "Valid court order" means a court order entered under Section 54.04 concerning a child adjudicated to have engaged in conduct indicating a need for supervision as a status offender.

Commentary by Robert Dawson

Seven new definitions were added to this section.

"Aggravated controlled substance felony" in (1) refers to those felonies in the Controlled Substances Act that are punishable more severely than a First Degree Felony. Aggravated controlled substance felonies are covered by the expanded determinate sentence act and are eligible offenses for the certification of 14 year olds to criminal court. They are discussed more fully in the Commentary to 53.045 and 54.02.

"Referral to juvenile court" in (12) was added to define when law enforcement officials are permitted to transmit information to the state-wide juvenile justice information system. This definition was intended to make it clear that a referral to juvenile court does not require the filing of a petition in juvenile court, but means a referral in the sense used in section 52.04. See the Commentary to 58.001.

The remaining five new definitions all are part of the package intended to conform Texas law to federal requirements regarding the secure confinement of juveniles. They are the Six Million Dollar Provisions--the amount of federal juvenile

justice aid Texas annually receives from the feds.

"Nonoffender" in (8) is a federal concept intended to encompass children in custody as dependent or neglected children or children in custody solely because of their immigration status. In conformity with federal law, Texas law in 54.011 prohibits the detention of a nonoffender in a juvenile detention facility for longer than 24 hours, excluding weekends and holidays.

"Secure correctional facility" in (13) defines those post-adjudicative facilities that because of their architectural design are subject to special federal requirements. Private as well as public facilities are included, as are facilities that serve a mixed juvenile-adult population. Under 54.04, there are severe restrictions on the placement of a status offender in a secure correctional facility. All secure correctional facilities, except those operated by or for TYC, are required to be inspected annually either by a juvenile board or TJPC.

"Secure detention facility" in (14) employs the same definition but for pre-adjudication facilities. Those facilities are subject to the same inspection requirements as secure correctional facilities.

Note that these restrictions apply only to "secure" facilities. Thus, they do not include shelter houses, group homes and other facilities that do not confine juveniles by locked doors.

"Status offender" in (15) is defined as a child being handled "for conduct that would not, under state law, be a crime if committed by an adult." For these purposes, an "adult" is someone 17 years of age or older. The eight examples of status offenses that follow that definition are only examples--there may be others. Those examples do not restrict the definition to only those eight.

The offense of failure to attend school in (15)(D) now appears in 25.094 of the revised Education Code. "Standards of student conduct" in (15)(E) refers to rules of alternative education programs for which a child can be expelled and referred to the juvenile court for the new CINS category under 51.03(b)(6). Under (15)(F), the various alcohol offenses by minors are status offenses even though they can also be committed by persons 17 but under 21. That conforms to federal definitions.

In conformity with federal law, there are severe restrictions on the detention of status offenders in secure detention facilities (54.011), on the detention of status offenders in other facilities (52.027, 52.028), and on placement of status offenders in secure correctional facilities (54.04).

"Valid court order" in (17) is a federal concept that defines a status offender who is being handled for violation of a court dispositional order. Texas law authorizes but restricts detention of such a child (54.011) and authorizes under limited circumstances the placement of a child adjudicated for violation of a valid court order in a secure correctional facility (54.04).

§ 51.03. Delinquent Conduct; Conduct Indicating a Need for Supervision

(a) Delinquent conduct is:

(1) and (2) unchanged.

(3) **conduct that violates a lawful order of a municipal court or justice court under circumstances that would constitute contempt of that court; or**

(4) renumbered from (3).

(b) Conduct indicating a need for supervision is:

(1) through (5) unchanged.

(6) an act that violates a school district's previously communicated written standards of student conduct for which the child has been expelled under Section 21.3011, Education Code; or

(7) conduct that violates a reasonable and lawful order of a court entered under Section 264.305.

Commentary by Robert Dawson

A new definition of delinquent conduct--contempt of a municipal or justice court--is added in (a)(3). This is intended to be the exclusive enforcement tool for dispositional orders entered by municipal and justice courts against children. Contempt of a municipal or justice court ordinarily carries a punishment of a fine of up to $100 and/or up to 3 days in jail. Since federal law prohibits confining a child in an adult jail under these circumstances, some other enforcement mechanism must be found if dispositional orders are to be meaningful. Other provisions in the Family Code, the Code of Criminal Procedure and the Government Code prohibit a municipal or justice court from holding a child in contempt of court for failure to obey a dispositional order. Instead, they authorize a referral to the juvenile court for delinquent conduct as defined by this section. The referral may, but need not, be accompanied by taking the child into custody upon probable cause to believe the child committed delinquent conduct, as authorized by § 52.01. Once a referral is made, it is up to the juvenile court as to how the case will be handled.

Two new CINS categories are added. The first, in (b)(6), refers to conduct for which a child was expelled from an alternative education program. Every child removed from class and placed in an alternative education program and every child expelled from school must be referred to the juvenile court under 52.041 of the Family Code and 37.010 of the revised Education Code to enable the juvenile court to determine whether to proceed with delinquency or CINS proceedings. Revised Education Code 37.006 requires the removal of a student from class and placement in an alternative education code for a wide variety of criminal offenses committed on school property or at a school function. Revised Education Code 37.007 requires or authorizes expulsion of a student for the commission of a wide variety of serious criminal offenses on school property or at a school function. Education Code 37.007(b) authorizes expulsion of a student from an alternative education program for "serious or persistent misbehavior that violates the district's student code of conduct" even if the conduct was not criminal. This new CINS category is intended for students expelled from an alternative education program on non-criminal grounds. Its reference to Education Code 21.3011 is to 37.007(b) of the revised Education Code, the replacement provision.

The second new CINS category in (b)(7) was added as the exclusive enforcement mechanism for court orders against children ten or older under the new Services for at-Risk Youth provisions of Family Code 264.301 that will be administered by the Department of Protective and Regulatory Services. Like the provision for municipal and justice court referral of contempt of court cases to the juvenile court, this provision enables the juvenile court to receive and handle a referral of a

child who has not complied with a court order entered in the at-risk program. There is one exception: the at-risk program extends to children as young as seven, while the minimum juvenile court age, including this new CINS category, extends only to age ten under 51.02(2)(a). Thus, a child under ten cannot be referred to the juvenile court under this CINS category..

§ 51.031. Habitual Felony Conduct

Habitual felony conduct is conduct violating a penal law of the grade of felony, other than a state jail felony, if:

(1) the child who engaged in the conduct has at least two previous adjudications as having engaged in delinquent conduct violating a penal law of the grade of felony; and

(2) the second previous adjudication is for conduct that occurred after the date the first previous adjudication became final.

Commentary by Robert Dawson

This definition is for a new category under the determinate sentence act--habitual felony conduct. It is intended to cover the child who does not engage in an offense otherwise covered by the act, but who commits felonies repeatedly. It is modeled on the habitual offender act in Penal Code 12.42(d). Like the habitual offender act, it requires proof of a particular sequence of events: commission and adjudication for first felony, followed by commission and adjudication for second felony, followed by commission of third felony. Thus, it would not be sufficient that the child was arrested for and charged with three felonies at the same time. State jail felonies qualify for the first or second felony, but not for the third. For the case in which the child may receive a determinate sentence, the adjudication must be for a capital, aggravated controlled substance, first, second or third degree felony.

The determinate sentence petition must charge the prior felony adjudications under 53.04(d)(5). The ranges of sentence under 54.04 are 10 years for a third degree felony, 20 years for a second degree felony, and 40 years for a first degree, aggravated controlled substance or capital felony.

The Court of Criminal Appeals has interpreted the habitual offender act in the Penal Code to require a prison sentence in each felony case--probation does not count as a prior conviction. It is unfortunately unclear whether the legislature intended to impose the same requirement here, only substituting prior commitments to the TYC for prior prison sentences. It can be argued that it did intend that result because it copied statutory language that had previously been interpreted to exclude probation. On the other hand, it can be argued that given the limited time in a person's life when he or she is subject to the juvenile laws (10 to 17), restricting the statute to prior TYC commitments would make it a dead letter because it could never be applied in the real world.

It is also unfortunately unclear whether the first offense must have been committed on or after January 1, 1996, the effective date of this provision, or only the third offense. Since in theory, the juvenile is being punished only for the third offense and since the legal consequences of that offense were defined before he or she engaged in the prohibited conduct, it can be argued that the statute requires only that the third offense be committed on or after January 1, 1996. If that interpretation is employed, however, it is arguable that any prior felony adjudication based on a juvenile's plea of true or on a stipulation of evidence would be invalid (and, therefore, could not be employed as a prior adjudication under the determinate sentence act) because there was no way at the time of the plea or stipulation that the juvenile could have anticipated the now-severe consequences of the prior proceedings. In other words, such a plea or stipulation could not have been knowing and voluntary as required by constitutional law and 51.09(a)..

In light of these difficulties, only a prosecutor possessed with a true sense of adventure would seek to invoke the determinate sentence act for habitual felony conduct. It would be wiser to await legislative clarification.

§ 51.041. Jurisdiction After Appeal

The court retains jurisdiction over a person, without regard to the age of the person, for conduct engaged in by the person before becoming 17 years of

age if, as a result of an appeal by the person under Chapter 56 of an order of the court, the order is reversed or modified and the case remanded to the court by the appellate court.

Commentary by Robert Dawson

This section states what has been the law in certification proceedings by caselaw for some time--that once the juvenile court's jurisdiction is invoked by the timely (before age 18) filing of a petition, that jurisdiction continues until the judicial proceedings are concluded. The fact that the juvenile has appealed an order and become 18 before the resumption of proceedings in the juvenile court on remand from the appellate court does not preclude the juvenile court from exercising jurisdiction on remand.

This section generalizes that caselaw to include adjudications as well as certifications. While a direct appeal from a certification order no longer is possible under 56.01, requiring instead that any appeal await a criminal conviction for a certified offense, the intent of this section is to include certifications.

§ 51.042. Objection to Jurisdiction Because of Age of the Child

(a) A child who objects to the jurisdiction of the court over the child because of the age of the child must raise the objection at the adjudication hearing or discretionary transfer hearing, if any.

(b) A child who does not object as provided by Subsection (a) waives any right to object to the jurisdiction of the court because of the age of the child at a later hearing or on appeal.

Commentary by Robert Dawson

Age of the person before the juvenile court is an element of the State's case in every juvenile proceeding. It must show that the person was at least 10 but not older than 17 at the time of the offense or, in the case of a certification proceeding, that he or she was within the certification age bracket at the time of the felony being considered for transfer. Under current law, the juvenile can raise a failure of the State to prove age for the first time on appeal.

This section does not remove the burden of proving age from the State. It does, however, preclude the respondent from raising age in challenging a juvenile court judgment on appeal or in collateral proceedings unless an age-objection was made in the adjudication or certification hearing. The idea is that the objection must be made at a time when the State has the opportunity to supply the omitted proof if it can.

§ 51.06. Venue

(a) Unchanged.

(b) An application for a writ of habeas corpus brought by or on behalf of a **person** [~~child~~] who has been committed to an institution under the jurisdiction of the Texas Youth Commission and which attacks the validity of the judgment of commitment shall be brought in the county in which the court that entered the judgment of commitment is located.

Commentary by Robert Dawson

The purpose of this change was to recognize that some persons in the custody of TYC are not technically children because they are over 18 years of age. There will be an increasing number of such persons under the revisions to the determinate sentence act.

§ 51.09. Waiver of Rights

(a) Unchanged.

(b) Notwithstanding any of the provisions of Subsection (a) of this section, the statement of a child is admissible in evidence in any future proceeding concerning the matter about which the statement was given if:

(1) when the child is in a detention facility or other place of confinement or in the custody of an officer, the statement is made in writing and the statement shows that the child has at some time prior to the making thereof received from a magistrate a warning that:

(A) through (D) unchanged.

(E) if the child is **14** [~~15~~] years of age or older at the time of the violation of a penal law of the grade of **capital** felony**, aggravated controlled substance felony, or felony of the first degree, or is 15 years of age or older at the time of the violation of a penal law of the grade of felony of the second or third degree or a state jail felony,** the juvenile court may waive its jurisdiction and the child may be tried as an adult**, except that if the child has previously been transferred to a district court or criminal district court for criminal proceedings and has violated a penal law of the grade of felony, the juvenile court is required to waive its jurisdiction and the child can be tried as an adult**;

(F) the child may be sentenced to commitment in the Texas Youth Commission with a **possible** transfer to the institutional division **or the pardons and paroles division** of the Texas Department of Criminal Justice for a **maximum** term **of** [~~not to exceed~~] 40 years **for a capital felony, felony of the first degree, or aggravated controlled substance felony, 20 years for a felony of the second degree, or 10 years for a felony of the third degree** if the child is found to have engaged in **habitual felony conduct by violating a penal law of the grade of felony, other than a state jail felony, if the child has at least two previous adjudications as having engaged in delinquent conduct violating a penal law of the grade of felony and the second previous adjudication is for conduct that occurred after the date the first previous adjudication became final, alleged in a petition approved by a grand jury, or if the child is found to have engaged in** delinquent conduct, alleged in a petition approved by a grand jury, that included:

(i) murder;

(ii) capital murder;

(iii) aggravated kidnapping;

(iv) **sexual assault or** aggravated sexual assault;

(v) **aggravated robbery;**

(vi) aggravated assault [~~deadly assault on a law enforcement officer, corrections officer, court participant, or probation personnel~~]; [~~or~~]

(vii) injury to a child, elderly individual, or disabled individual that is punishable as a felony, other than a state jail felony, under section 22.04, Penal Code;

(viii)

(ix) an offense that is a felony of the first degree or an aggravated controlled substance felony under Subchapter D, Chapter 481, Health and Safety Code (certain

offenses involving controlled substances);

(x) criminal solicitation;

(xi) indecency with a child that is punishable under Section 21.11(a)(1), Penal Code;

(xii) criminal solicitation of a minor (Section 15.031, Penal Code); or

(xiii) aggravated robbery [~~(vi) attempted capital murder~~]; and

(G) unchanged.

(2) and (3) unchanged.

(c) A warning under Subsection (b)(1)(E) or [~~Subsection~~] (b)(1)(F) [~~of this section~~] is required only when applicable to the facts of the case. A failure to warn a child under Subsection (b)(1)(E) [~~of this section~~] does not render a statement made by the child inadmissible unless the child is transferred to a [~~criminal~~] district court under Section 54.02 [~~of this code~~]. A failure to warn a child under Subsection (b)(1)(F) [~~of this section~~] does not render a statement made by the child inadmissible unless the state proceeds against the child on a petition approved by a grand jury under Section 53.045 [~~of this code~~].

Commentary by Neil Nichols

The statutory warnings a magistrate is required to give are not just the standard Miranda warnings, but also include fairly detailed warnings about the possibility of transfer to criminal court and the possibility of determinate sentencing. HB 327 amendments of 51.09(b)(1)(E) and (F) relate to changes in the warnings that correspond to other amendments in the bill related to discretionary transfer [54.02] and determinate sentencing [53.045 & 54.04].

The bill lowers the age of discretionary transfer to age 14 (from age 15) for aggravated controlled substance felonies [51.02(1)] and for capital felonies and felonies of the first degree. It provides that once a transfer occurs for a child of any age, transfer is generally required for any subsequent felony offense.

criminal attempt to commit any of t

Nine offenses and criminal attempt to commit six offenses are added to the list of offenses for which a child might receive a determinate sentence. Also, the child must be warned of an added habitual felony offender provision that makes it possible for the child to be sentenced for any felony offense, other than a state jail felony, if the child has at least two previous separate felony adjudications. Since some of the added offenses are classified as second and third degree felonies (currently all determinate sentence offenses, except capital murder, are classified as felonies of the first degree), the maximum sentence terms are set to correspond to the maximum terms an adult could receive for the same offense (20 years and 10 years respectively).

Finally, in 51.09(F), a clause is added to indicate that a transfer to prison or to adult parole is possible following commitment to the Texas Youth Commission under a determinate sentence. This change corresponds to an amendment of 61.084, Human Resources Code, that requires all sentenced youth to be transferred, without a hearing, to the Pardons and Paroles Division of the Texas Department of Criminal Justice at age 21, or earlier if they are released on parole after they reach age 19, if they have not completed their

sentences by that time. Under current law, only transfer to the Institutional Division of the Texas Department of Criminal Justice is possible following a transfer hearing in the juvenile court.

§ 51.10. Right to Assistance of Attorney; Compensation

(a) and (b) unchanged.

(c) If the child was not represented by an attorney at the detention hearing required by Section 54.01 of this code and a determination was made to detain the child, the child shall immediately be entitled to representation by an attorney. The court **shall** [~~may~~] order the retention of an attorney according to **Subsection (d)** [~~Section 51.10(d) of this code~~] or appoint an attorney according to **Subsection (f)** [~~Section 51.10)(f) of this code~~].

(d) through (i) unchanged.

Commentary by Robert Dawson

The amendment in (c) changes "may" to "shall" to reinforce the obligation of the system to provide counsel when a child has been detained as a consequence of a detention hearing held without counsel. The court is required either to appoint counsel, order the parents to retain counsel, or appoint counsel and order the parents to pay counsel.

An attorney appointed under (c) may demand a de novo detention hearing. See the Commentary to 54.01.

§ 51.115. Attendance at Hearing: Parent or Other Guardian

(a) Each parent of a child, each managing and possessory conservator of a child, each court-appointed custodian of a child, and a guardian of the person of the child shall attend each hearing affecting the child held under:

(1) Section 54.02 (waiver of jurisdiction and discretionary transfer to criminal court);

(2) Section 54.03 (adjudication hearing);

(3) Section 54.04 (disposition hearing);

(4) Section 54.05 (hearing to modify disposition); and

(5) Section 54.11 (release or transfer hearing).

(b) Subsection (a) does not apply to:

(1) a person for whom, for good cause shown, the court waives attendance;

(2) a person who is not a resident of this state; or

(3) a parent of a child for whom a managing conservator has been appointed and the parent is not a conservator of the child.

(c) A person required under this section to attend a hearing is entitled to reasonable written or oral notice that includes a statement of the place, date, and time of the hearing and that the attendance of the person is required. The notice may be included with or attached to any other notice required by this chapter to be given the person. Separate notice is not required for a disposition hearing that convenes on the adjournment of an adjudication hearing. If a person required under this section fails to attend a hearing, the juvenile court may proceed with the hearing.

(d) A person who is required by Subsection (a) to attend a hearing, who receives the notice of the hearing, and who fails to attend the hearing may be punished by the court for contempt by a fine of not less than $100 and not more

than $1,000. In addition to or in lieu of contempt, the court may order the person to receive counseling or to attend an educational course on the duties and responsibilities of parents and skills and techniques on raising children.

Commentary by Robert Dawson

This the first of several sections intended to induce greater parental responsibility for the conduct of a child. It requires parental and other adult presence at all major title 3 hearings except detention hearings. Notice is required, which may, but need not, be in the form of a summons served on the parent or other adult. Failure of a noticed adult to attend does not preclude the juvenile court from proceeding with the hearing. In the event of non-appearance, however, appointment of a guardian ad litem might be required under 51.11. Failure of a noticed adult to appear is punishable by contempt in the form of a fine, but not jailing. Presumably, however, the juvenile court may order the arrest of a non-appearing adult to bring him or her before the court for contempt proceedings. Parenting classes can be ordered in addition to or in lieu of a fine.

§ 51.116. Right to Reemployment

(a) An employer may not terminate the employment of a permanent employee because the employee is required under Section 51.115 to attend a hearing.

(b) An employee whose employment is terminated in violation of this section is entitled to return to the same employment that the employee held when notified of the hearing if the employee, as soon as practical after the hearing, gives the employer actual notice that the employee intends to return.

(c) A person who is injured because of a violation of this section is entitled to reinstatement to the person's former position and to damages, but the damages may not exceed an amount equal to six months' compensation at the rate at which the person was compensated when required to attend the hearing.

(d) The injured person is also entitled to reasonable attorney's fees in an amount approved by the court.

(e) It is a defense to an action brought under this section that the employer's circumstances changed while the employee attended the hearing so that reemployment was impossible or unreasonable. To establish a defense under this subsection, an employer must prove that the termination of employment was because of circumstances other than the employee's attendance at the hearing.

Commentary by Robert Dawson

This is a companion to 51.115. Modeled on Civil Practices and Remedies Code § 122.001 protecting employees from termination for responding to a jury summons, it creates a cause of action in the employee for wrongful termination, with reinstatement, damages and attorney's fees.

§ 51.12. Place and Conditions of Detention

(a) Except **as provided by Subsection (h)** [~~after transfer to criminal court for prosecution under Section 54.02 of this code~~], a child **may** [~~shall not~~] be detained **only in a:**

(1) juvenile processing

office in compliance with Section 52.025;

(2) place of nonsecure custody in compliance with Section 52.027; or

(3) certified juvenile detention facility that complies with the requirements of Subsection (f) [~~in or committed to a compartment of a jail or lockup in which adults arrested for, charged with, or convicted of crime are detained or committed, nor be permitted contact with such persons~~].

(b) unchanged.

(c) In each county, the judge of the juvenile court and the members of the juvenile board shall personally inspect the detention facilities **and any public or private secure correctional facilities used for post-adjudication confinement that are located in the county and operated under authority of the juvenile board** at least annually and shall certify in writing to the authorities responsible for operating and giving financial support to the facilities **and to the Texas Juvenile Probation Commission** that they are suitable or unsuitable for the detention of children in accordance with:

(1) the requirements of **Subsection** [~~Subsection~~] (a)**, (f), and (g)** [~~of this section~~]; **and**

(2) **minimum** [~~the requirements of Subchapter A, Chapter 351, Local Government Code, if the detention facility is a county jail; and~~]

[~~(3) recognized~~] professional standards for the detention of child **in pre-adjudication or post-adjudication secure confinement** [~~deemed appropriate by the board, which may include minimum standards~~] promulgated by the Texas Juvenile Probation Commission **or, at the election of the juvenile board, the current standards promulgated by the American Correctional Association**[~~. The juvenile board shall annually provide to the Texas Juvenile Probation Commission a copy of the standards used under this section~~].

(d) and (e) unchanged.

(f) A child detained in a building that contains a jail, lockup, or other place of secure confinement, including an alcohol or other drug treatment facility, shall be separated by sight and sound from adults detained in the same building. Children and adults are separated by sight and sound only if they are unable to see each other and conversation between them is not possible. The separation must extend to all areas of the facility, including sally ports and passageways, and those areas used for admission, counseling, sleeping, toileting, showering, dining, recreational, educational, or vocational activities, and health care. The separation may be accomplished through architectural design.

(g) Except for a child detained in a juvenile processing office or a place of nonsecure custody, a child detained in a building that contains a jail or lockup may not have any contact with:

(1) part-time or full-time security staff, including management, who have contact with adults detained in the same building; or

(2) direct-care staff who have contact with adults detained in the same building.

(h) This section does not apply to a person:

(1) after transfer to criminal court for prosecution under Section 54.02; or

(2) who is at least 18 years of age and who has been taken into custody after having:

(A) escaped from a juvenile facility; or

(B) violated a condition of probation or of release under supervision of the Texas Youth commission.

Commentary by Robert Dawson

This section was amended to conform to the federal requirements for the secure confinement of children.

Subsection (a) provides that a child can be detained pre-adjudication in one of only three types of facilities: a juvenile processing office, a place of nonsecure custody, or a certified juvenile detention facility. To this list of three must be added a juvenile curfew processing office (52.028), a facility that must comply with the requirements of a place of nonsecure custody and is really just a special version of that facility. Placement in the county or city jail is no longer authorized unless the sight and sound separations of Subsection (f) are met.

Subsection (c) deals with the inspection and certification duties of the juvenile board. Under prior law, the board could use about any standards it wanted that could be described as professional. Under the new law, it must use either TJPC standards or current ACA standards. The choice is the board's. For the first time, the board is obligated to inspect and certify post-adjudicative secure facilities in the county that are operated under its authority. This duty includes private facilities if they are operated under the authority of the juvenile board. In other words, a juvenile board that chooses to contract out its detention or correctional care to a private operator must still inspect and certify the facility. A private, secure facility that contracts with several counties, and thus is not the responsibility of any particular juvenile board, is subject to inspection by TJPC. In addition to the commissioners courts of those counties that provide financial support for a certified facility, the juvenile board must report the certification to TJPC.

Subsections (f) and (g) deal with what the feds call "co-location" of juvenile and adult facilities. The feds discourage co-location and have recently promulgated new regulations that approve co-location only as a temporary measure.

Subsection (f) spells out the federal requirement of separation by sight and sound of juveniles from adults in co-located facilities. The subsection reaches jails, lockups and all other places of secure confinement, including alcohol and other drug treatment facilities. It requires total separation as to all areas of the facility. Previously, the feds approved of time-phased common use, such as a dining room in which adults and juveniles eat is separate shifts, but recent regulations disapprove of such use. So, although the final sentence of (f) says the separation "may" be accomplished through architectural design, under federal regulations the "may" is "must."

Subsection (g) deals with the requirement of separate staff for juveniles in co-located facilities. It requires separate juvenile staff if the juvenile facility is co-located with an adult jail or lockup. Exceptions are created for juvenile processing offices and places of nonsecure custody, which often will be a room in a building that contains a jail or lockup. Juvenile curfew processing offices (52.028), which are just a special type of place of nonsecure custody, are included by implication in this list of exceptions. It is important to note that subsection (g) applies only to jails and lockups. Unlike (f), it does not apply to other places of secure confinement, such as alcohol or other drug treatment facilities. In those facilities, there is no requirement of separate staff for juveniles; only the architectural requirements of (f) apply.

Finally, subsection (h) permits a juvenile who has been certified as an adult

to be detained in an adult jail or lockup, which is current law. It creates two new exceptions to the requirement that juveniles cannot be detained in adult facilities: an 18 or older person in custody for escape from a juvenile facility or for violation of a condition of probation or TYC parole. The latter is particularly important since such a youth is best placed in a jail rather than in a juvenile detention facility with younger children. Both of these exceptions have already received federal approval.

§ 51.13. Effect of Adjudication or Disposition

(a) **Except as provided by Subsection (d), an** [~~An~~] order of adjudication or disposition in a proceeding under this title is not a conviction of crime, and does not impose any civil disability ordinarily resulting from a conviction or operate to disqualify the child in any civil service application or appointment.

(b) and (c) unchanged.

(d) An adjudication under Section 54.03 that a child engaged in conduct that constitutes a felony offense resulting in commitment to the Texas Youth Commission under Section 54.04(d)(2), (d)(3), or (m) or 54.05(f) is a final felony conviction only for the purposes of Sections 12.42(a)-(c) and (e), Penal Code.

Commentary by Robert Dawson

This section is unchanged except for the addition of (d) that provides that an adjudication for a felony resulting in commitment to the TYC is a final conviction for the purpose of enhancement of punishment should the juvenile later be convicted of a felony in criminal court. The TYC commitment could be indeterminate or a determinate sentence, but probation does not qualify. With limited exceptions, a state jail felony also does not count as a prior conviction. See Penal Code §§ 12.42(e) and 12.35(c). Also, it is important to note that such an adjudication and commitment may not be used later under the habitual offender (two prior convictions) provision of 12.42(d), but only for enhancement of punishment.

The use of the word "only" in (d) was intended to restrict the reach of this subsection to enhancement provisions. Therefore, a felony adjudication and commitment is not a conviction of crime for any other purposes, such as the right to vote or to serve on a jury. It ought not to be counted as a criminal conviction on employment applications and the like as well. Nor should it count as a conviction of crime for impeachment of testimony under the Rules of Evidence or Rules of Criminal Evidence. As to all such matters, the principles of subsection (a) declaring that an adjudication is not a conviction of crime still apply with full vigor.

A juvenile court judge should take care under 54.03(b) to admonish any juvenile alleged to have committed a felony of the criminal enhancement of punishment consequence of an adjudication proceeding.

§ 51.14. Files and Records

Repealed and contents moved with changes to Chapter 58.

§ 51.15. Fingerprints and Photographs

Repealed and contents moved with changes to Chapter 58.

§ 51.16. Sealing of Files and Records

Repealed and contents moved with changes to Chapter 58.

§ 51.17. Procedure **and Evidence**

(a) Except **for the burden of proof to be borne by the state in adjudicating a child to be delinquent or in need of supervision under Section 54.03(f) or otherwise** when in conflict with a provision of this title, the Texas Rule of Civil Procedure govern proceedings under this title. [~~Particular reference is made to the burden of proof to be borne by the state in adjudicating a child to be delinquent or in need of supervision (Section 54.03(f)).~~]

(b) Discovery in a proceeding under this title is governed by the Code of Criminal Procedure and by case decisions in criminal cases.

(c) Except as otherwise provided by this title, the Texas Rules of Criminal Evidence and Chapter 38, Code of Criminal Procedure, apply in a judicial proceeding under this title.

Commentary by Robert Dawson

The amendment in (a) is grammatical only, but is welcome nevertheless.

Subsection (b) changes the rules for discovery from civil to criminal. This eliminates requests for admissions, interrogatories and the like. It also means that a deposition can be taken only with the permission of the juvenile court, not as a matter of right. The reference to "case decisions in criminal cases" is intended to encompass the various constitutional and common law discovery rights of a defendant in a criminal case, such as the right to disclosure from the State of information that is exculpatory or mitigatory in nature.

Subsection (c) changes the source of evidence law from the Rules of Evidence to the Rules of Criminal Evidence and Chapter 38 of the Code of Criminal Procedure. This will make little difference because title 3 requires adherence to the major rules of criminal evidence in any event.

CHAPTER 52. PROCEEDINGS BEFORE AND INCLUDING REFERRAL TO JUVENILE COURT

§ 52.01. Taking into Custody; Issuance of Warning Notice

(a) A child may be taken into custody:

(1) pursuant to an order of the juvenile court under the provisions of this subtitle;

(2) pursuant to the laws of arrest;

(3) by a law-enforcement officer, including a school district peace officer commissioned under Section 21.483, Education Code, if there **is probable cause** [~~are reasonable grounds~~] to believe that the child has engaged in**:**

(A) conduct that violates a penal law of this state or a penal ordinance of any political subdivision of this state; or

(B) delinquent conduct or conduct indicating a need for supervision; [~~or~~]

(4) by a probation officer if there **is probable cause** [~~are reasonable grounds~~] to believe that the child has violated a condition of probation imposed by the juvenile court**; or**

(5) pursuant to a directive to apprehend issued as provided by Section 52.015.

(b) through (d) unchanged.

Commentary by Robert Dawson

In (a)(3) and (4) "reasonable grounds" is replaced by "probable cause." "Reasonable grounds" is the traditional statutory statement of the evidence required to arrest, while "probable cause" is the constitutional standards. They have always been interpreted to mean the same thing, but it is undoubtedly preferable to use the constitutional term to avoid any possible confusion.

The addition of (A) to (a)(3) does not add any arrest power for a felony or jailable misdemeanor, since a law enforcement officer under (B) has the power to arrest without a warrant for delinquent conduct. However, the addition of "a penal ordinance of any political subdivision of this state" is significant. Such a violation, except for public intoxication, becomes CINS only upon transfer to the juvenile court from municipal or justice court. Under current law, an arrest is possible pursuant to the laws of arrest under (a)(2), but that might require an arrest warrant for an offense committed outside the presence of the officer. Under the amended law, an officer can arrest without a warrant for a fineable misdemeanor or an ordinance violation without a warrant. Of course, probable cause is still required.

The directive to apprehend of (5) is the new juvenile arrest warrant created by the next section.

The reference to 21.483 of the Education Code is to 37.081 of the revised Education Code.

§ 52.015. Directive to Apprehend

(a) On the request of a law-enforcement or probation officer, a juvenile court may issue a directive to apprehend a child if the court finds there is probable cause to take the child into custody under the provisions of this title.

(b) On the issuance of a directive to apprehend, any law-enforcement or probation officer shall take the child into custody.

(c) An order under this section is not subject to appeal.

Commentary by Robert Dawson

This is a juvenile arrest warrant. It may be issued only upon a showing of probable cause, like any other arrest warrant. The reference to "probable cause to take the child into custody under the provisions of this title" mean that the juvenile court must be shown probable cause to believe that a violation of 51.03 has occurred or that some other justification for taking the child into custody exists. Examples of other grounds might be a probation violation, a failure to appear for a juvenile court hearing, or violation of conditions upon which the child was released from detention.

Although the statute does not so state, the Fourth Amendment, which has been applied to juveniles, probably requires that the statement of probable cause be a sworn one. It makes that requirement for arrest warrants. It would certainly be wise for a juvenile court judge to insist that the probable cause shown in the request for a directive to apprehend be under oath to satisfy any constitutional requirement that may exist.

§ 52.027. Children Taken Into Custody for Traffic Offenses, Other Fineable Only Offenses, or as a Status Offender

(a) A child may be released to the child's parent, guardian, custodian, or other responsible adult as provided in Section 52.02(a)(1) if the child is

taken into custody:

(1) for a traffic offense;

(2) for an offense other than public intoxication punishable by fine only; or

(3) as a status offender or nonoffender.

(b) A child described by Subsection (a) must be taken only to a place previously designated by the head of the law enforcement agency with custody of the child as an appropriate place of nonsecure custody for children unless the child:

(1) is released under Section 52.02(a)(1);

(2) is taken before a municipal court or justice court; or

(3) for truancy or running away, is taken to a juvenile detention facility.

(c) A place of nonsecure custody for children must be an unlocked, multipurpose area. A lobby, office, or interrogation room is suitable if the area is not designated, set aside, or used as a secure detention area and is not part of a secure detention area. A place of non-secure custody may be a juvenile processing office designated under Section 52.025 if the area is not locked when it is used as a place of nonsecure custody.

(d) The following procedures shall be followed in a place of nonsecure custody for children:

(1) a child may not be secured physically to a cuffing rail, chair, desk, or other stationary object;

(2) the child may be held in the nonsecure facility only long enough to accomplish the purpose of identification, investigation, processing, release to parents, or the arranging of transportation to the appropriate juvenile court, juvenile detention facility, municipal court, or justice court;

(3) residential use of the area is prohibited; and

(4) the child shall be under continuous visual supervision by a law enforcement officer or facility staff person during the time the child is in nonsecure custody.

(e) Notwithstanding any other provision of this section, a child may not, under any circumstances, be detained in a place of nonsecure custody for more than six hours.

(f) A child taken into custody for a traffic offense or an offense, other than public intoxication, punishable by fine only may be presented or detained in a detention facility designated by the juvenile court under Section 52.02(a)(3) only if:

(1) the child's non-traffic case is transferred to the juvenile court by a municipal court or justice court under Section 51.08(b); or

(2) the child is referred to the juvenile court by a municipal court or justice court for contempt of court under Subsection (h).

(g) A law enforcement officer may issue a field release citation, as provided by Article 14.06, Code of Criminal Procedure, in place of taking a child into custody for a traffic offense or an offense, other than public intoxication, punishable by fine only.

(h) A municipal court or justice court may not hold a child in contempt for intentionally refusing to obey a lawful order of disposition after an adjudication of guilt of a traffic offense or other offense punishable by fine only. The municipal court or justice court shall instead refer the child to the

appropriate juvenile court for delinquent conduct for contempt of the municipal court or justice court order.

(i) In this section, "child" means a person who is at least 10 years of age and younger than 18 years of age and who:

(1) is charged with or convicted of a traffic offense or an offense, other than public intoxication, punishable by fine only as a result of an act committed before becoming 17 years of age;

(2) is a status offender and was taken into custody as a status offender for conduct engaged in before becoming 17 years of age; or

(3) is a nonoffender and became a nonoffender before becoming 17 years of age.

Commentary by Robert Dawson

This section speaks to the juvenile justice system and to its shadow system in the municipal and justice courts for handling fineable offenses committed by children. When the legislature gave fineable offense jurisdiction to municipal and justice courts in 1991, it neglected to provide rules for the detention of children arrested for and charged with criminal offenses in those courts. This section, which conforms Texas law to federal requirements, is intended to fill that gap. It is also intended to provide handling rules of juvenile court status offenders.

Subsection (a) authorizes the release of a child taken into custody for a fineable only offense who will be handled in the criminal courts to the child's parents or other adult on the same terms a child taken into custody for delinquent conduct or CINS may be released. In other words, this subsection authorizes the release to a parent or other adult without bond even though the proceedings are criminal rather than juvenile.

Subsection (b) tells police that a child taken into custody for a fineable offense must be taken to a place of nonsecure custody or directly to court unless the child is released to a parent or other adult. A child taken into custody for truancy or running away, CINS categories, may be taken to a juvenile detention facility.

Subsection (c) describes the characteristics of a "place of nonsecure custody." That oxymoronic phrase is federal. The place is essentially a room, which is like a juvenile processing office, except that it may not be locked when being used as a place of nonsecure custody. It can be in a law enforcement facility, but cannot be a cell or other place for overnight accommodation within that facility. Under (b) the place of nonsecure custody is selected and designated by the head of the law enforcement agency, not by the juvenile court or juvenile board.

Subsection (d) establishes restrictive procedures to be employed when a child is in a place of nonsecure custody, including the requirement of constant visual supervision.

Subsection (e) imposes an absolute limit of six hours for detention in a place of nonsecure custody. At the end of that time, the child must be released or taken elsewhere. If the child is detained for truancy, running away or as a nonoffender, he or she may be transported to the juvenile detention facility if not released at the end of six hours. A child detained for a non-traffic fineable offense may be transported to the juvenile detention facility, but only on a transfer order of a municipal or justice court under 51.08(b). There are no particular procedural requirements for such an order and it may

even be given by the judge by telephone if necessary. A traffic offender must be released at the end of six hours and cannot be transported to juvenile detention.

Subsection (f) makes it clear that children taken into custody for traffic offenses or other fineable offenses are not ordinarily detainable in the juvenile detention facility. The two exceptions are upon transfer of a non-traffic case by a municipal or justice court under 51.08(b) or upon referral for contempt of court for refusal to comply with a dispositional order of a municipal or justice court.

Subsection (g) makes it clear that a field release citation may be issued to a child for a traffic or other fineable offense as in the case of adults, thus avoiding the issue of detention altogether.

Subsection (h) prohibits a municipal or justice court from holding a child in contempt of court for refusing to obey a dispositional order in a traffic or other fineable case. Instead, a referral to the juvenile court for delinquent conduct under 51.03(a)(3) is the sole remedy.

Subsection (i) defines a child for this section only. It is the same as the definition of child in 51.02(2) but has been modified to include a person who has been charged with or convicted of a criminal offense. The critical feature of this definition is that the conduct must have been engaged in before the child became 17. Because of this definition of child, a person under 18 cannot be confined in a jail or lockup for failure to pay a fine with regard to an offense committed before age 17.

§ 52.028. Children Taken Into Custody for Violation of Juvenile Curfew Ordinance or Order

(a) A peace officer taking into custody a person under 17 years of age for violation of a juvenile curfew ordinance of a municipality or order of the commissioners court of a county shall, without unnecessary delay:

(1) release the person to the person's parent, guardian, or custodian;

(2) take the person before a municipal or justice court to answer the charge; or

(3) take the person to a place designated as a juvenile curfew processing office by the head of the law enforcement agency having custody of the person.

(b) A juvenile curfew processing office must observe the following procedures:

(1) the office must be an unlocked, multipurpose area that is not designated, set aside, or used as a secure detention area or part of a secure detention area;

(2) the person may not be secured physically to a cuffing rail, chair, desk, or stationary object;

(3) the person may not be held longer than necessary to accomplish the purposes of identification, investigation, processing, release to parents, guardians, or custodians, and arrangement of transportation to school or court;

(4) a juvenile curfew processing office may not be designated or intended for residential purposes;

(5) the person must be under continuous visual supervision by a peace officer or other person during the time the person is in the juvenile curfew processing office; and

(6) a person may not be held in a juvenile curfew processing office for more than six hours.

(c) A place designated under this

section as a juvenile curfew processing office is not subject to the approval of the juvenile board having jurisdiction where the governmental entity is located.

Commentary by Robert Dawson

The effective date of this section is May 31, 1995, when the Governor signed HB 327.

This section authorizes the use of juvenile curfew processing offices, which are designated by the head of the law enforcement agency that took the child into custody. For all practical purposes, a juvenile curfew processing office is identical to a place of nonsecure custody. It appears here as a separate section merely because it was originally in a separate bill with the provisions authorizing general law municipalities and counties to enact curfew ordinances and orders. When those provisions were moved to HB 327, this procedural provision came along for the ride.

As a matter of precaution, it would be wise for the head of a law enforcement agency to designate all places of nonsecure custody also to be juvenile curfew processing offices so there will be no confusion as to where a child can be taken. In some communities, it may make sense to designate other places, perhaps on school property, exclusively as juvenile curfew processing offices.

The six hour limit is absolute. If the child is not released before the end of that period, he or she may be transported to the juvenile detention facility, but only upon order of a municipal or justice court under 51.08(b). Upon arrival at the detention facility, custody is permitted but only for 24 hours, because the child is a status offender and comes under the special rules of 54.011.

Subsection (c) states, for local political reasons, that the juvenile board has no power to approve or disapprove of the selection by the head of a law-enforcement agency of a place as a juvenile curfew processing office.

§ 52.03. Disposition Without Referral to Court

(a) A law-enforcement officer authorized by this title to take a child into custody may dispose of the case of a child taken into custody without referral to juvenile court, if:

(1) guidelines for such disposition have been issued by the law-enforcement agency in which the officer works;

(2) the guidelines have been approved by the juvenile **board** [~~court~~] of the county in which the disposition is made;

(3) the disposition is authorized by the guidelines; and

(4) the officer makes a written report of his disposition to the law-enforcement agency, identifying the child and specifying the grounds for believing that the taking into custody was authorized.

(b) unchanged.

(c) A disposition authorized by this section may involve:

(1) referral of the child to an agency other than the juvenile court; [~~or~~]

(2) a brief conference with the child and his parent, guardian, or custodian**; or**

(3) referral of the child and the child's parent, guardian, or custodian for services under Section 264.302.

Commentary by Robert Dawson

The amendment in (a)(2) shifting approval power from the juvenile court to the juvenile board is consistent with a pattern in HB 327 of giving increasing duties to the juvenile board.

The reference in (c)(3) is to the child at-risk program operated by the Department of Protective and Regulatory Services.

§ 52.031. First Offender Program

(a) A juvenile board may establish a first offender program under this section for the referral and disposition of children taken into custody for:

(1) conduct indicating a need for supervision; or

(2) delinquent conduct other than conduct that constitutes:

(A) a felony of the first, second, or third degree, an aggravated controlled substance felony, or a capital felony; or

(B) a state jail felony or misdemeanor involving violence to a person or the use or possession of a firearm, illegal knife, or club, as those terms are defined by Section 46.01, Penal Code, or a prohibited weapon, as described by Section 46.05, Penal Code.

(b) Each juvenile board in the county in which a first offender program is established shall designate one or more law enforcement officers and agencies, which may be law enforcement agencies, to process a child under the first offender program.

(c) The disposition of a child under the first offender program may not take place until:

(1) guidelines for the disposition have been issued by the agency designated under Subsection (b); and

(2) the juvenile board has approved the guidelines.

(d) A law enforcement officer taking a child into custody may refer the child to the law enforcement officer or agency designated under Subsection (b) for disposition under the first offender program and not refer the child to juvenile court only if:

(1) the child has not previously been adjudicated as having engaged in delinquent conduct;

(2) the referral complies with guidelines for disposition under Subsection (c); and

(3) the officer reports in writing the referral to the agency, identifying the child and specifying the grounds for taking the child into custody.

(e) A child referred for disposition under the first offender program may not be detained in law enforcement custody.

(f) The parent, guardian, or other custodian of the child must receive notice that the child has been referred for disposition under the first offender program. The notice must:

(1) state the grounds for taking the child into custody;

(2) identify the law enforcement officer or agency to which the child was referred;

(3) briefly describe the nature of the program; and

(4) state that the child's failure to complete the program will result in the child being referred to the juvenile court.

(g) The child and the parent, guardian, or other custodian of the child must consent to participation by the child in the first offender program.

(h) Disposition under a first offender program may include:

(1) voluntary restitution by the child or the parent, guardian, or other custodian of the child to the victim of the conduct of the child;

(2) voluntary community service restitution by the child;

(3) educational, vocational training, counseling, or other rehabilitative services; and

(4) periodic reporting by the child to the law enforcement officer or agency to which the child has been referred.

(i) The case of a child who successfully completes the first offender program is closed and may not be referred to juvenile court, unless the child is taken into custody under circumstances described by Subsection (j)(3).

(j) The case of a child referred for disposition under the first offender program shall be referred to juvenile court if:

(1) the child fails to complete the program;

(2) the child or the parent, guardian, or other custodian of the child terminates the child's participation in the program before the child completes it; or

(3) the child completes the program but is taken into custody under Section 52.01 before the 90th day after the date the child completes the program for conduct other than the conduct for which the child was referred to the first offender program.

(k) A statement made by a child to a person giving advice or supervision or participating in the first offender program may not be used against the child in any proceeding under this title or any criminal proceeding.

(l) The law enforcement agency must report to the juvenile board in December of each year the following:

(1) the last known address of the child, including the census tract;

(2) the gender and ethnicity of the child referred to the program; and

(3) the offense committed by the child.

Commentary by Robert Dawson

The first offender program is a special version of disposition without referral authorized by the previous section. The only substantive difference is that periodic reporting to a law enforcement agency is authorized under this section but prohibited under the previous section.

Although the program is administered by the law enforcement agency, it is established by the juvenile board. If the juvenile board wishes to establish a first offender program under this section, it must comply with the restrictions of this section. However, the law enforcement agency and juvenile board may establish a similar program under 52.03--without periodic reporting--and avoid complying with these restrictions.

The reporting provisions in (l) reflect concern that a first offender program may be used in a discriminatory manner. The information required to be reported, when combined with other data, would enable the juvenile board to determine whether that is occurring. While there is no similar reporting requirement in 52.03, it would be wise policy to include the same data in the annual report required by that section as are required by this section.

§ 52.041. Referral of Child to Juvenile Court After Expulsion

(a) A school district that expels a child shall refer the child to juvenile court in the county in which the child resides.

(b) The board of the school district or a person designated by the board shall deliver a copy of the order expelling the student and any other information required by Section 52.04 on or before the second working day after the date of the expulsion hearing to the authorized officer of the juvenile court.

Commentary by Lisa Capers

This new section mandates a school to make a formal referral of each child who is expelled. A copy of the expulsion order and any pertinent referral information must be sent to the juvenile court in the county where the child resides by the second working day after the expulsion hearing. While this section is new to the Family Code, it is currently the law in the newly effective and recodified Texas Education Code Section 37.010. This statute previously existed, in substantially the same form, in Section 21.3011(g) of the old Education Code.

CHAPTER 53. PROCEEDINGS PRIOR TO JUDICIAL PROCEEDINGS

§ 53.01. Preliminary Investigation and Determinations; Notice to Parents

(a) On referral of **a person believed to be a** child or **on referral of the person's** [~~a child's~~] case to the office or official designated by the juvenile court, the intake officer, probation officer, or other person authorized by the court shall conduct a preliminary investigation to determine whether:

(1) the person referred to juvenile court is a child within the meaning of this title; **and**

(2) there is probable cause to believe the **person** [~~child~~] engaged in delinquent conduct or conduct indicating a need for supervision[~~, and~~]

[~~(3) further proceedings in the case are in the interest of the child or the public~~].

(b) If it is determined that the person is not a child[~~,~~] or there is no probable cause, [~~or further proceedings are not warranted,~~] the **person** [~~child~~] shall immediately be released [~~and proceedings terminated~~].

(c) unchanged.

(d) Unless the juvenile board approves a written procedure proposed by the office of prosecuting attorney and chief juvenile probation officer which provides otherwise, if it is determined that the person is a child and, regardless of a finding of probable cause, or a lack thereof, there is an allegation that the child engaged in delinquent conduct of the grade of felony, or conduct constituting a misdemeanor offense involving violence to a person or the use or possession of a firearm, illegal knife, or club, as those terms are defined by Section 46.01, Penal Code, or prohibited weapon, as described by Section 46.05, Penal Code, the case shall be promptly forwarded to the office of the prosecuting attorney, accompanied by:

(1) all documents that accompanied the current referral; and

(2) a summary of all prior referrals of the child to the juvenile court, juvenile probation department, or juvenile detention facility.

(e) If a juvenile board adopts an

alternative referral plan under Subsection (d), the board shall register the plan with the Texas Juvenile Probation Commission.

(f) A juvenile board may not adopt an alternate referral plan that does not require the forwarding of a child's case to the prosecuting attorney as provided by Subsection (d) if probable cause exists to believe that the child engaged in delinquent conduct that violates Section 19.03, Penal Code (capital murder), or Section 19.02, Penal Code (murder).

Commentary by Robert Dawson

The amendments in this section will require a dramatic change in the intake process in many counties. Under current law, intake determines whether the person referred is a child, whether probable cause exists and whether further proceedings are in the interest of the public or the child. Unless there is an affirmative finding on all three questions, the child must be released and all juvenile proceedings terminated. Under the revised intake structure in subsection (a), the intake officer determines only whether the person referred is a child and whether there is probable cause. If intake determines that the person is not a child, all proceedings are terminated. However, if intake determines there is not probable cause, subsection (b) requires ht the person referred must be released immediately, but the case is not necessarily terminated. Intake no longer makes a determination whether further proceedings are warranted.

Subsection (d) authorizes the prosecutor and chief probation officer to devise a plan for referral of certain cases to the prosecuting attorney for review. The plan must be approved by the juvenile board. The plan can include any offenses or circumstances (such as prior referrals), but under subsection (f) it must require referral of any murder or capital murder charge for which intake has found probable cause to the prosecutor. Subsection (e) requires that any plan created under this section be filed with TJPC.

Unless a plan is in place, subsection (d) requires that all felony referrals, all misdemeanor referrals "involving violence to a person" (such as assault with bodily injury), and all misdemeanor weapons offenses must be referred to the prosecutor. This referral is required whether or not intake has determined that probable cause exists. In other words, a finding by intake of no probable cause requires release of the child from detention, but does not necessarily terminate the case. If such a case falls within the mandatory referral provisions of (d), it must be sent to the prosecutor for his or her determination whether probable cause exists.

If intake makes a finding of no probable cause and prosecutorial referral is not required by a plan or by subsection (d), the child should be released and the case terminated since there will be no further review of the finding of no probable cause.

The intake referral to the prosecutor must include all documents receiving from the referring source (such as offense or incident report and statement of prior contacts with the referring agency) as well as a summary of prior referrals, if any, to the juvenile court. This information is necessary to enable the prosecutor to make an informed decision under the next section whether to file a petition.

Nothing in this section prevents intake from referring any case to the prosecutor for his or her decision whether to file a petition.

§ 53.012. Review by Prosecutor

(a) The prosecuting attorney shall promptly review the circumstances and allegations of a referral made under Section 53.01 for legal sufficiency and the desirability of prosecution and may file a petition without regard to whether probable cause was found under Section 53.01.

(b) If the prosecuting attorney does not file a petition requesting the adjudication of the child referred to the prosecuting attorney, the prosecuting attorney shall:

(1) terminate all proceedings, if the reason is for lack of probable cause; or

(2) return the referral to the juvenile probation department for further proceedings.

(c) The juvenile probation department shall promptly refer a child who has been returned to the department under Subsection (b)(2) and who fails or refuses to participate in a program of the department to the prosecuting attorney for review of the child's case and determination of whether to file a petition.

Commentary by Robert Dawson

Under (a) there is no specific deadline for the prosecutor to review the referral from intake--only that it occur "promptly." The prosecutor is authorized to file a petition without regard to whether intake has found probable cause. This authorization overrides the language in 53.04(a) that authorizes a petition only if intake has made a determination "that further proceedings are authorized."

Subsection (a) requires the prosecutor to review the referral for "legal sufficiency and the desirability of prosecution." "Legal sufficiency" means probable cause to believe that an offense was committed. "Desirability of prosecution" means whether the prosecutor, in his or her discretion, believes that prosecution should occur in a case in which probable cause has been found. The prosecutor is not required to file a petition just because probable cause has been found. He or she has discretion not to file. Such a decision can be based on a number of considerations, including whether the limited resources of the office should be expended on this particular case as opposed to other competing cases. Under common law, all prosecutors have such discretion in all criminal and juvenile cases. The "desirability of prosecution" language in (a) merely codifies that common law rule for juvenile proceedings.

Subsection (b) requires that the prosecutor dispose of a case in which he or she has decided not to file a petition in one of two ways. If the reason is no probable cause, all proceedings must be terminated. Although not required by law, intake should be notified of such a decision so that the referral can be reported as terminated by the prosecutor. If the prosecutor found probable cause but determined that prosecution was not desirable, the case is referred back to intake for a nonjudicial intake disposition. Under progressive sanctions guidelines, such a disposition would be a level one or two disposition.

Subsection (c) requires that the probation officer report a violation of a nonjudicial disposition to the prosecutor if the case had originally been referred to the prosecutor and returned for nonjudicial disposition. If the case resulting in nonjudicial disposition was not referred originally to the prosecutor, then a violation of a nonjudicial program should be reported to the juvenile court.

§ 53.013. Progressive Sanctions Program

Each juvenile board may adopt a progressive sanctions program using the guidelines for progressive sanctions in Chapter 59.

Commentary by Neil Nichols

One of the most significant components of juvenile justice reform in HB 327 is the provision of statutory guidelines for making dispositions and for formulating appropriate sanctions based primarily on offense severity and chronicity. These progressive sanctions guidelines are added in a new Chapter 59.

The greatest concern expressed regarding enactment of the guidelines was that the cost of full implementation would be extremely high and, at least for now, would be impossible to project with any confidence due to the lack of sufficient data. Accordingly, great care was taken in the legislation to ensure that the guidelines not be interpreted as unfunded mandates and that provision of services to meet the guidelines not be mandatory. The permissive language in 53.013 reflects this legislative intent. The juvenile board's authority to provide all the various programs and services described in the guidelines is not new.

(a) unchanged.

(b) A child taken into custody may be detained prior to hearing on the petition only if:

(1) he is likely to abscond or be removed from the jurisdiction of the court;

(2) suitable supervision, care, or protection for him is not being provided by a parent, guardian, custodian, or other person;

(3) he has no parent, guardian, custodian, or other person able to return him to the court when required;

(4) he [~~is accused of committing a felony offense and~~] may be dangerous to himself or **he may threaten the safety of the public** [~~others~~] if released; or

(5) he has previously been found to be a delinquent child or has previously been convicted of a penal offense punishable by a term in jail or prison and is likely to commit an offense if released.

(c) unchanged.

(d) A release of a child to an adult under Subsection (a) must be conditioned on the agreement of the adult to be subject to the jurisdiction of the juvenile court and to an order of contempt by the court if the adult, after notification, is unable to produce the child at later proceedings.

Commentary by Robert Dawson

Commentary by Robert Dawson

The fourth detention criterion was broadened to eliminate the requirement that the child is accused of a felony and to permit a general threat to the public, rather than to particular persons, to suffice for detention. By eliminating the felony requirement, a child taken into custody for misdemeanor assault with bodily injury, for example, could be detained if there were a risk of further violence, such as might exist with respect to a gang fight. Strangely, there was no change in the identical detention criterion in 54.01 applicable at the detention hearing.

Subsection (d) requires that if the respondent is released by intake to a parent or other adult, that person must agree to submit to the jurisdiction of the court for contempt proceedings if "unable" to produce the child for court proceedings. Curiously, there is no similar requirement in 54.01 dealing with release following a detention hearing.

It is unclear how the contempt power of the juvenile court could be used unless it is shown that the parent or other adult chose not to return the child to court. Inherent in the concept of contempt of court is willfulness, which requires that the individual had the power to obey the court's order but choose not to do so. An inability to return the child to court, if not willful, could not be contempt of court.

§ 53.03. **Deferred Prosecution** [~~Intake Conference and Adjustment~~].

(a) **Subject to Subsection (e), if** [~~If~~] the preliminary investigation required by Section 53.01 of this code results in a determination that further proceedings in the case are authorized [~~and warranted~~], the probation officer or other designated officer of the court, subject to the direction of the juvenile court, may advise the parties for a reasonable period of time not to exceed six months concerning **deferred prosecution** [~~an informal adjustment~~] and [~~voluntary~~] rehabilitation of a child if:

(1) **deferred prosecution** [~~advice without a court hearing~~] would be in the interest of the public and the child;

(2) the child and his parent, guardian, or custodian consent with knowledge that consent is not obligatory; and

(3) the child and his parent, guardian, or custodian are informed that they may terminate the **deferred prosecution** [~~adjustment process~~] at any point and petition the court for a court hearing in the case.

(b) xcept as otherwise permitted by this title, the child may not be detained during or as a result of the **deferred prosecution** [~~adjustment~~] process.

(c) An incriminating statement made by a participant to the person giving advice and in the discussions or conferences incident thereto may not be used against the declarant in any court hearing.

(d) [~~An informal adjustment authorized by this section may involve:~~]

[~~(1) voluntary restitution by the child or his parent to the victim of an offense; or~~]

[~~(2) voluntary community service restitution by the child.~~]

[~~(e)~~] The court may adopt a fee schedule for **deferred prosecution** [~~informal adjustment~~] services and rules for the waiver of a fee for financial hardship in accordance with guidelines that the Texas Juvenile Probation Commission shall provide. The maximum fee is $15 a month. If the court adopts a schedule and rules for waiver, the

probation officer or other designated officer of the court shall collect the fee authorized by the schedule from the parent, guardian, or custodian of a child for whom **a deferred prosecution** [~~an informal adjustment~~] is authorized under this section or waive the fee in accordance with the rules adopted by the court. The officer shall deposit the fees received under this section in the county treasury to the credit of a special fund that may be used only for juvenile probation or community-based juvenile corrections services or facilities in which a juvenile may be required to live while under court supervision. If the court does not adopt a schedule and rules for waiver, a fee for **deferred prosecution** [~~informal adjustment~~] services may not be imposed.

(e) A prosecuting attorney may defer prosecution for any child. A probation officer or other designated officer of the court:

(1) may not defer prosecution for a child for a case that is required to be forwarded to the prosecuting attorney under Section 53.01(d); and

(2) may defer prosecution for a child who has previously been adjudicated for conduct that constitutes a felony only if prosecuting attorney consents in writing.

(f) The probation officer or other officer designated by the court supervising a program of deferred prosecution for a child under this section shall report to the juvenile court any violation by the child of the program.

Commentary by Robert Dawson

The legislature chose to change the name of this six month program of nonjudicial probation from Intake Conference and Adjustment to Deferred Prosecution to reflect the more central role of the prosecutor in the initiation decision.

The language in (d) that previously authorized restitution to the victim by the child or a parent and community service by the child was repealed. The authority to require the child to make restitution or perform community service as a condition of Deferred Prosecution now appears in the description of the Progressive Sanctions Guidelines for Sanction Level Two in 59.005(a)(2). There is no comparable provision dealing with parental community service, so the ability to seek such service as part of Deferred Prosecution no longer exists.

Subsection (e) adds new restrictions to this program. A prosecutor is authorized to grant Deferred Prosecution in any case anytime before the beginning of an adjudication hearing, even after a court petition has been filed in the case. But a probation officer may grant Deferred Prosecution only in a case for which intake referral to the prosecutor is not mandatory. In the absence of an alternative referral plan between the probation department and the prosecutor's office, a probation officer could not place a child on Deferred Prosecution whose current referral is for a felony, a misdemeanor involving violence to the person or a misdemeanor weapons offense. If there is an alternative referral plan, the probation officer would be unable to place on Deferred Prosecution a child whose case is required to be referred to the prosecutor under that plan.

If intake has referred a case to the prosecutor and the prosecutor has determined that probable cause exists but that the filing of a petition is not desirable, 53.012 permits the prosecutor to return the case to the probation department "for further proceedings." Under those

circumstances, probation may place the child on Deferred Prosecution because the prosecutor returned the case to probation. In such a circumstance, the Deferred Prosecution is ordered by the prosecuting attorney as authorized by (e) and probation is functioning as the prosecutor's agent.

Even if the current referral is for an offense for which referral to the prosecutor is not mandatory by statute or plan, a probation officer is not authorized to place a child on Deferred Prosecution without the prosecutor's written consent who had previously been adjudicated for a felony.

Subsection (f) requires the probation officer to report to the court any violation of the terms of Deferred Prosecution. Although not required by law, it would be good practice to copy the prosecutor with the violation report since it will be the responsibility of the prosecutor to decide whether to file a court petition in the case. Section 53.012(c) requires making a violation report to the prosecutor in a Deferred Prosecution case that was previously referred to the prosecutor by intake.

§ 53.04. Court Petition and Answer

(a) through (c) unchanged.

(d) The petition must state:

(1) through (4) unchanged.

(5) if the child is alleged to have engaged in habitual felony conduct, the previous adjudications in which the child was found to have engaged in conduct violating penal laws of the grade of felony.

(e) unchanged.

Commentary by Robert Dawson

The allegations required by (d)(5) are part of the habitual felony conduct category of the determinate sentence act. See 51.031, 53.045, and 54.04. If the prosecutor seeks to bring a determinate sentence case on the theory that the child is charged with a felony and has two previous felony adjudications, this subdivision requires that the prior adjudications be alleged in the petition. This is similar to the criminal pleading practice of alleging prior convictions in an indictment.

§ 53.045. **Violent or Habitual Offenders** [~~Referral to Grand Jury~~].

(a) Except as provided by Subsection (e) of this section, the prosecuting attorney may refer the petition to the grand jury of the county in which the court in which the petition is filed presides if the petition alleges that the child engaged in delinquent conduct that **constitutes habitual felony conduct as described by Section 51.031 or that** included the violation of any of the following provisions [~~of the Penal Code~~]:

(1) Section 19.02**, Penal Code** (murder);

(2) Section 19.03**, Penal Code** (capital murder);

(3) Section 20.04**, Penal Code** (aggravated kidnapping);

(4) **Section 22.011, Penal Code (sexual assault) or** Section 22.021**, Penal Code** (aggravated sexual assault);

(5) Section **22.02, Penal Code (aggravated assault)** [~~22.03 (deadly assault on a law enforcement officer, corrections officer, or court participant)~~]; [~~or~~]

(6) **Section 29.03, Penal Code (aggravated robbery);**

(7) Section 22.04, Penal Code (injury to a child, elderly individual, or disabled individual), if the offense is punishable as a felony, other

than a state jail felony;

(8) Section 22.05(b), Penal Code (felony deadly conduct involving discharging a firearm);

(9) Subchapter D, Chapter 481, Health and Safety Code, if the conduct constitutes a felony of the first degree or an aggravated controlled substance felony (certain offenses involving controlled substances);

(10) Section 15.03, Penal Code (criminal solicitation);

(11) Section 21.11(a)(1), Penal Code (indecency with a child);

(12) Section 15.031, Penal Code (criminal solicitation of a minor); or

(13) Section 15.01**, Penal Code** (criminal attempt), if the offense attempted was an offense under Section **19.02, Penal Code (murder) or Section** 19.03**, Penal Code** (capital murder)**, or an offense listed by Section 3g(a)(1), Article 42.12, Code of Criminal Procedure**.

(b) through (d) unchanged.

(e) The prosecuting attorney may not refer a petition that alleges the child engaged in conduct that violated **Section 22.011(a)(2), Penal Code, or** Sections 22.021(a)(1)(B) and (2)(B), Penal Code, unless the child is more than **three** [~~two~~] years older than the victim of the conduct.

Commentary by Neil Nichols

Referral of a delinquency petition to the grand jury is the first of several determinate sentence provisions which were enacted in 1987 as an alternative to lowering the age children may be transferred for prosecution in criminal court. Instead of transfer, children as young as age 10 who commit certain violent offenses may be kept in juvenile court and provided all of the procedural protections that an adult in criminal court would be provided, including referral of the delinquency petition for grand jury approval. Later, at a juvenile court release/transfer hearing which is conducted after youth who are committed to the Texas Youth Commission under a determinate sentence reach age 17½, there is the possibility of transfer to prison in order to complete a sentence term which could be as long as 40 years. Juvenile court approval is required to release a sentenced youth on parole before age 18.

HB 327 makes several important changes in the determinate sentence provisions: (1) it expands the number of offenses for which a child might receive a determinate sentence [53.045 and 54.04]; (2) it establishes maximum sentence terms for second degree and third degree felony offenses [54.04]; (3) it eliminates the mandatory release/transfer hearing for all sentenced youth at age 17½ [54.11 and 61.081, Human Resources Code]; (4) it authorizes TYC to request a transfer hearing to consider transfer of a sentenced youth to prison at any time after the youth reaches age 16 and before the youth reaches age 21 [54.11 and 61.079, Human Resources Code]; (5) it requires a juvenile court release hearing for TYC to release sentenced youth on parole prior to the completion of certain statutory minimum periods of confinement [54.11 and 61.081, Human Resources Code]; (6) it requires automatic transfer of all sentenced youth to adult parole at age 21, or earlier if they are released on parole after age 19, if they have not completed their sentences [61.084, Human Resources Code]; and (7) it requires automatic transfer of youth to prison at age 21 who are sentenced for the offense of capital murder and who have not already been transferred or released on parole by the court [61.084, Human

Resources Code]. Each of these changes is discussed in the commentary of the sections where they occur.

The first of these changes has to do with the addition of offenses for which a petition may be referred to the grand jury for approval under 53.045(a). Only five of the most serious felony offenses are currently included: capital murder, attempted capital murder, murder, aggravated kidnapping, and aggravated sexual assault (a sixth offense, deadly assault on a law enforcement officer, corrections officer, or court participant, was deleted from the Penal Code effective September 1, 1994). HB 327 adds nine offenses and criminal attempt to commit the six offenses listed in Section 3g(a)(1), Article 42.12, Code of Criminal Procedure (murder, capital murder, indecency with a child, aggravated kidnapping, aggravated sexual assault and aggravated robbery). Gang-related crime, serious controlled substance offenses and serious assaultive behavior of any kind, particularly with a firearm, are the focus of the additions. Also, an habitual felony conduct provision is added, making it possible to impose a determinate sentence for any felony offense, other than a state jail felony, if the youth has at least two previous separate felony adjudications [51.031].

Section 53.045(e) is amended to apply the same exclusion to the newly added offense of sexual assault that currently applies to aggravated sexual assault when the conduct is of a consensual nature and the actor is not more than three years (currently two years) older than the child victim.

Adding offenses to the determinate sentencing list was one of the least controversial of the HB 327 provisions. Almost all the proposals for juvenile justice reform that were made by the interim legislative committees and other interested groups called for some expansion. Though not a substitute for lowering the age of discretionary transfer to criminal court (the age was lowered to age 14 for certain offenses, 54.02), the expansion of determinate sentencing, with some modification, was generally viewed as a proven effective way to punish the great majority of violent and habitual offenders while providing one last, and very real, incentive for them to choose to take advantage of the rehabilitative services offered in the juvenile justice system.

Proposals to add offenses in previous legislative sessions failed primarily because of the additional cost of confining these youth for longer periods in TYC facilities without having to shorten the lengths of stay of other committed youth in order to make room. The approach this session was broader and more balanced. There is increased bedspace in TYC facilities (an increase of 1,500 beds over the next two years, primarily through the transfer of facilities from the Texas Department of Criminal Justice and the Texas Department of Mental Health and Mental Retardation) and there is also increased state assistance to counties for the establishment of county-operated intermediate sanctions residential facilities, for additional intensive supervision probation officers and for other services to handle youth who may otherwise have been committed to TYC.

A proposal was rejected that would have authorized TYC to turn back all new commitments, other than youth who commit offenses which are eligible for determinate sentencing, when certain targeted levels are reached.

The change of the 53.045 caption is probably attributable to a preference by legislators that determinate sentence provisions be referred to as the "violent and habitual offenders statute." The reference is included here and in the revised caption of 61.079, Human Resources Code, that relates to the referral of violent and habitual offenders to the juvenile court for approval of transfer to prison.

§ 53.05. Time Set for Hearing

(a) unchanged.

(b) The time set for the hearing shall not be later than 10 **working** days after the day the petition was filed if:

(1) the child is in detention; or

(2) the child will be taken into custody under Section 53.06(d) of this code.

Commentary by Robert Dawson

The deadline for setting the hearing when a child is in custody has been extended from 10 days to 10 working days. "Working days" means weekends and holidays are excluded in computing the time. This amendment conforms to the amendment changing the length of a detention order from 10 days to 10 working days. See 54.01.

§ 53.06. Summons

(a) and (b) unchanged.

(c) The court may endorse on the summons an order [~~directing the parent, guardian, or custodian of the child to appear personally at the hearing and~~] directing the person having the physical custody or control of the child to bring the child to the hearing. A person who violates an order entered under this subsection may be proceeded against under Section **53.08 or** 54.07 of this code.

(d) unchanged.

Commentary by Robert Dawson

A writ of attachment under 53.08 is made available in addition to contempt of court under 54.07 as a remedy for failure of a parent or other adult to bring a child before the court.

The language permitting the court to order parents to appear personally at the hearing was deleted because 51.115 requires their appearance by statute in every case.

§ 53.08. Writ of Attachment

(a) The juvenile court may issue a writ of attachment for a person who violates an order entered under Section 53.06(c).

(b) A writ of attachment issued under this section is executed in the same manner as in a criminal proceeding as provided by Chapter 24, Code of Criminal Procedure.

Commentary by Robert Dawson

The ordered referenced in subsection (a) is the juvenile court order directed to the parent or other adult to bring the child to a hearing. The "writ of attachment" authorized by this section is directed to

that parent or other adult. The "directive to apprehend" defined in 52.015 is to take the child into custody.

In criminal practice under the Code of Criminal Procedure, a writ of attachment is a court order to take a material witness into custody. It is used primarily when the witness has refused to obey a subpoena or when there is reason to believe the witness is about to move out of the county of prosecution. See Code of Criminal Procedure articles 24.11 through 24.15. An attached witness is entitled to bond and may be released on personal bond. See Code of Criminal Procedure articles 24.23 through 24.27.

CHAPTER 54. JUDICIAL PROCEEDINGS

§ 54.01. Detention Hearing

(a) through (g) unchanged.

(h) A detention order extends to the conclusion of the disposition hearing, if there is one, but in no event for more than 10 **working** days. Further detention orders may be made following subsequent detention hearings. **The initial detention hearing may not be waived but subsequent** [~~Subsequent~~] detention hearings may be waived in accordance with the requirements of Section 51.09 of this code**. Each subsequent**[~~, but each~~] detention order shall extend for no more than 10 **working** days.

(i) through (k) unchanged.

(l) The juvenile board or, if there is none, the juvenile court, may appoint a referee to conduct the detention hearing. The referee shall be an attorney licensed to practice law in this state. Such payment or additional payment as may be warranted for referee services shall be provided from county funds. Before commencing the detention hearing, the referee shall inform the parties who have appeared that they are entitled to have the hearing before the juvenile court judge or a substitute judge authorized by Section 51.04(f) of this code. If a party objects to the referee conducting the detention hearing, an authorized judge shall conduct the hearing within 24 hours. At the conclusion of the hearing, the referee shall transmit written findings and recommendations to the juvenile court judge or substitute judge. The juvenile court judge or substitute judge shall adopt, modify, or reject the referee's recommendations **not later than the next working day after the day that the judge receives the recommendations** [~~within 24 hours~~]. Failure to act within that time results in release of the child by operation of law. A recommendation that the child be released operates to secure his immediate release, subject to the power of the juvenile court judge or substitute judge to reject or modify that recommendation. The effect of an order detaining a child shall be computed from the time of the hearing before the referee.

(m) unchanged.

(n) An attorney appointed by the court under Section 51.10(c) because a determination was made under this section to detain a child who was not represented by an attorney may request on behalf of the child and is entitled to a de novo detention hearing under this section. The attorney must make the request not later than the 10th working day after the date the attorney is appointed. The hearing must take place not later than the second working day after the date the attorney filed a formal request with the court for a hearing.

(o) The court or referee shall find whether there is probable cause to believe that a child taken into custody

without an arrest warrant or a directive to apprehend has engaged in delinquent conduct or conduct indicating a need for supervision. The court or referee must make the finding within 48 hours, including weekends and holidays, of the time the child was taken into custody. The court or referee may make the finding on any reasonably reliable information without regard to admissibility of that information under the Texas Rules of Criminal Evidence. A finding of probable cause is required to detain a child after the 48th hour after the time the child was taken into custody. If a court or referee finds probable cause, additional findings of probable cause are not required in the same cause to authorize further detention.

Commentary by Robert Dawson

Subsection (h) changes the life of a detention order from 10 days to 10 working days, thus excluding weekends and holidays from the computation. It also provides that the initial detention hearing cannot be waived, which will change the practice in some counties. This was done in the belief that it is important to require the matter of detention to be considered in at least one judicial hearing in order thereby to minimize the possibility of unnecessary detention of juveniles.

Subsection (l) changes the deadline for judicial approval of a detention recommendation from a referee from 24 hours to the conclusion of the next working day after the day the judge receives the recommendations. The subsection merely requires that the referee transmit his or her recommendations to the judge as the conclusion of the hearing; presumably, that means as soon as possible. Curiously, there was no similar change made in the 24 hour deadline for judicial approval of other referee recommendations in 54.10.

Section 51.10(c), as amended, requires the court immediately to provide counsel for a child detained in a detention hearing conducted without counsel. Subsection (n) of this section gives such an attorney the ability to demand a de novo detention hearing within the second working day after making the demand. The idea underlying this provision is that the newly provided attorney for the child may have information to present that will persuade the judge or referee to release the child from detention.

Subsection (o) restates the requirement of the United States Supreme Court that the Fourth Amendment to the United States Constitution requires that there be a judicial determination of probable cause within 48 hours, including weekends and holidays, of the taking of a person into custody without an arrest warrant. While this determination must be made by a judicial officer--a judge, referee, or master--and may be made at the initial detention hearing if it is held in a timely fashion, it need not be made in a formal hearing or with any particular formality. Indeed, in an emergency, or during a weekend, the determination could be made through a police officer, prosecutor or probation officer relaying the facts supporting the arrest and receiving a telephonic determination of probable cause that could be memorialized later in writing. The determination can be based upon hearsay information, such as by reading an offense, incident or prosecution report. Only one finding of probable cause is required to detain a child in a case--it is not necessary to make additional determinations in subsequent detention hearings. If probable cause is

found not to exist, the child must be released from detention.

§ 54.011. Detention Hearings for Status Offenders and Nonoffenders

(a) The detention hearing for a status offender or nonoffender who has not been released administratively under Section 53.02 shall be held before the 24th hour after the time the child arrived at the designated detention facility, excluding hours of a weekend or a holiday. Except as otherwise provided by this section, the judge or referee conducting the detention hearing shall release the status offender or nonoffender from secure detention.

(b) The judge or referee may order a child in detention accused of the violation of a valid court order as defined by Section 51.02 detained not longer than 72 hours after the time the detention order was entered, excluding weekends and holidays, if:

(1) the judge or referee finds at the detention hearing that there is probable cause to believe the child violated the valid court order; and

(2) the detention of the child is justified under Section 54.01(e)(1), (2), or (3).

(c) Except as provided by Subsection (d), a detention order entered under Subsection (b) may be extended for one additional 72-hour period, excluding weekends and holidays, only on a finding of good cause by the juvenile court.

(d) A detention order for a child under this section may be extended on the demand of the child's attorney only to allow the time that is necessary to comply with the requirements of Section 51.10(h), entitling the attorney to 10 days to prepare for an adjudication hearing.

(e) A status offender may be detained for a necessary period, not to exceed five days, to enable the child's return to the child's home in another state under Chapter 60.

Commentary by Robert Dawson

The purpose of this section is to conform Texas law to federal requirements for the secure detention of status offenders and nonoffenders.

Only a status offender who comes within the purview of Title 3 may be presented to a certified juvenile detention facility. Only a child in custody for truancy, for running away, for a fineable offense but only upon referral by a municipal or justice court, or for a violation of standards of student conduct may be presented to the certified juvenile detention facility. Such a person can be kept in secure confinement, but only for 24 hours, excluding weekends and holidays. Unless the status offender is being proceeded against for the violation of a valid court order or is being held for transportation to the child's home in another state, he or she must be released from secure confinement within 24 hours of arriving at the detention center. The same rules apply to nonoffenders. The release can be absolute or to a shelter or other non-secure setting.

A judicial officer under Subsection (b) in the 24 hour detention hearing is authorized to order an additional 72 hours of detention, excluding weekends and holidays, upon a finding of probable cause to believe the child violated a valid court order and that detention is justified under the first three of the five detention criteria--each of which relates to detention as necessary to assure appearance at trial.

Under (c) one additional 72 hour period of detention, excluding weekends and holidays, may be ordered upon a finding of good cause.

No further extensions are permitted unless the child's attorney demands the ten days to prepare for trial to which he or she is entitled under Section 51.10(h). In the absence of such a demand, the maximum period of time a status offender may be kept in secure detention in proceedings to determine whether he or she has violated a valid court order is 24 plus 72 plus 72 hours, or 7 days, excluding weekends and holidays.

If the child is a runaway from out of state, the judicial officer at the 24 hour detention hearing may order a period of detention of up to 5 days to permit arrangement of return under the Interstate Compact.

Because these special detention hearings must be held quickly, there will be a particular need to use the services of detention magistrates, as authorized by 51.04(f), to conduct them when the designated juvenile court judge is unavailable. The use of the word "judge" in 54.011 is intended to encompass municipal court judges and justices of the peace. However, only the juvenile court judge may order the second 72 hour extension of detention for a status offender accused of violating a valid court order under (c); it is anticipated there will be very few second extensions.

§ 54.012. Interactive Video Recording of Detention Hearing

(a) A detention hearing under Section 54.01, other than the first detention hearing, may be held using interactive video equipment if:

(1) the child and the child's attorney agree to the video hearing; and

(2) the parties to the proceeding have the opportunity to cross-examine witnesses.

(b) A detention hearing may not be held using video equipment unless the video equipment for the hearing provides for a two-way communication of image and sound among the child, the court, and other parties at the hearing.

(c) A recording of the communications shall be made. The recording shall be preserved until the earlier of:

(1) the 91st day after the date on which the recording is made if the child is alleged to have engaged in conduct constituting a misdemeanor;

(2) the 120th day after the date on which the recording is made if the child is alleged to have engaged in conduct constituting a felony; or

(3) the date on which the adjudication hearing ends.

(d) An attorney for the child may obtain a copy of the recording on payment of the reasonable costs of reproducing the copy.

Commentary by Robert Dawson

This new section permits interactive video recording of subsequent, but not initial, detention hearings. Use of this technology would permit the judicial officer to be in one location, while the child is at another and, conceivably, other participants are at a third location. This procedure is similar to that used in some cities to conduct arraignment of prisoners in the criminal process.

The existence of a videotape of the hearing does not modify the provision in 54.01(g) immunizing a child's testimony from subsequent use in judicial proceedings.

§ 54.02. Waiver of Jurisdiction and Discretionary Transfer to Criminal Court

(a) The juvenile court may waive its exclusive original jurisdiction and transfer a child to the appropriate district court or criminal district court for criminal proceedings if:

(1) the child is alleged to have violated a penal law of the grade of felony;

(2) the child was**:**

(A) 14 [~~15~~] years of age or older at the time he is alleged to have committed the offense**, if the offense is a capital felony, an aggravated controlled substance felony, or a felony of the first degree,** and no adjudication hearing has been conducted concerning that offense; **or**

(B) 15 years of age or older at the time the child is alleged to have committed the offense, if the offense is a felony of the second or third degree or a state jail felony, and no adjudication hearing has been conducted concerning that offense; and

(3) after **a** full investigation and **a** hearing**,** the juvenile court determines that there is probable cause to believe that the child before the court committed the offense alleged and that because of the seriousness of the offense **alleged** or the background of the child the welfare of the community requires criminal proceedings.

(b) through (e) unchanged.

(f) In making the determination required by Subsection (a) of this section, the court shall consider, among other matters:

(1) whether the alleged offense was against person or property, with greater weight in favor of transfer given to offenses against the person;

(2) [~~whether the alleged offense was committed in an aggressive and premeditated manner;~~]

[~~(3) whether there is evidence on which a grand jury may be expected to return an indictment;~~]

[~~(4)~~] the sophistication and maturity of the child;

(3) [~~(5)~~] the record and previous history of the child; and

(4) [~~(6)~~] the prospects of adequate protection of the public and the likelihood of the rehabilitation of the child by use of procedures, services, and facilities currently available to the juvenile court.

(g) If the **petition alleges multiple offenses that constitute more than one criminal transaction, the juvenile court shall either retain or transfer all offenses relating to a single transaction. A** [~~juvenile court retains jurisdiction, the~~] child is not subject to criminal prosecution at any time for any offense **arising out of a criminal transaction for which the juvenile court retains jurisdiction** [~~alleged in the petition or for any offense within the knowledge of the juvenile court judge as evidenced by anything in the record of the proceedings~~].

(h) If the juvenile court waives jurisdiction, it shall state specifically in the order its reasons for waiver and certify its action, including the written order and findings of the court, and shall transfer the **person** [~~child~~] to the appropriate court for criminal proceedings. On transfer of the **person** [~~child~~] for criminal proceedings, **the person** [~~he~~] shall be dealt with as an adult and in accordance with the Code of Criminal Procedure. The transfer of custody is an arrest. [~~The court to which the child is transferred shall determine if good cause exists for an examining trial.~~

~~If there is no good cause for an examining trial, the court shall refer the case to the grand jury. If there is good cause for an examining trial, the court shall conduct an examining trial and may remand the child to the jurisdiction of the juvenile court.~~]

(i) **A waiver under this section is a waiver of jurisdiction over the child and the criminal court may not remand the child to the jurisdiction of the juvenile court.** [~~If the child's case is brought to the attention of the grand jury and the grand jury does not indict for the offense charged in the complaint forwarded by the juvenile court, the district court or criminal district court shall certify the grand jury's failure to indict to the juvenile court. On receipt of the certification, the juvenile court may resume jurisdiction of the case.~~]

(j) The juvenile court may waive its exclusive original jurisdiction and transfer a person to the appropriate district court or criminal district court for criminal proceedings if:

(1) the person is 18 years of age or older;

(2) the person was**:**

(A) 14 [~~15~~] years of age or older and under 17 years of age at the time he is alleged to have committed a **capital** felony**, an aggravated controlled substance felony, or a felony of the first degree**; **or**

(B) 15 years of age or older and under 17 years of age at the time the person is alleged to have committed a felony of the second or third degree or a state jail felony;

(3) no adjudication concerning the alleged offense has been made or no adjudication hearing concerning the offense has been conducted;

(4) the juvenile court finds from a preponderance of the evidence that**:**

(A) for a reason beyond the control of the state it was not practicable to proceed in juvenile court before the 18th birthday of the person; or

(B) after due diligence of the state it was not practicable to proceed in juvenile court before the 18th birthday of the person because:

(i) [~~(A)~~] the state did not have probable cause to proceed in juvenile court and new evidence has been found since the 18th birthday of the person; [~~or~~]

(ii) [~~(B)~~] the person could not be found; **or**

(iii) a previous transfer order was reversed by an appellate court or set aside by a district court; and

(5) the juvenile court determines that there is probable cause to believe that the child before the court committed the offense alleged.

(k) and (l) unchanged.

(m) Notwithstanding any other provision of this section, the juvenile court shall waive its exclusive original jurisdiction and transfer a child to the appropriate district court or criminal court for criminal proceedings if:

(1) the child has previously been transferred to a district court or criminal district court for criminal proceedings under this section, unless:

(A) the child was not indicted in the matter transferred by the grand jury;

(B) the child was found not guilty in the matter transferred;

(C) the matter transferred was dismissed with prejudice; or

(D) the child was

convicted in the matter transferred, the conviction was reversed on appeal, and the appeal is final; and

(2) the child is alleged to have violated a penal law of the grade of felony.

(n) A mandatory transfer under Subsection (m) may be made without conducting the study required in discretionary transfer proceedings by Subsection (d). The requirements of Subsection (b) that the summons state that the purpose of the hearing is to consider discretionary transfer to criminal court does not apply to a transfer proceeding under Subsection (m). In a proceeding under Subsection (m), it is sufficient that the summons provide fair notice that the purpose of the hearing is to consider mandatory transfer to criminal court.

Commentary by Robert Dawson

The amendments in (a)(2) lower the minimum certification age from 15 to 14, but only for capital, aggravated controlled substance or first degree felonies. The minimum age remains at 15 for all other felonies. The conduct must have occurred when the respondent was at least 14 or 15 as the case may be.

The addition of "alleged" in (a)(3) is intended to underscore the rule that the juvenile court is required to find probable cause only, not that the offense was in fact committed, to permit certification.

Two of the six certification factors in (f) were eliminated. The "aggressive and premeditated manner" factor was eliminated presumably because that describes virtually all offenses that will be proceeded against by certification, so it is not helpful in assisting the judge to decide whether to certify. The "evidence on which a grand jury may be expected to return an indictment" factor was eliminated because the juvenile court is already required to find probable cause, which is the same standard that would be used by a grand jury. Courts of Appeals have used the grand jury factor to justify refusing to impose any evidence admissibility standards at certification hearings. It is an open question whether the elimination of this factor will induce a change in that position.

The amendments in (g) are intended to change the rule of Richardson v. State, 770 S.W.2d 797 (Tex.Crim.App. 1989) that in multiple count cases the juvenile court must transfer all offenses to criminal court or it may transfer none. The amendment requires the juvenile court to transfer all offenses that related to a single criminal transaction, but permits it to transfer fewer than all criminal transactions. Thus, if the evidence shows probable cause to believe that the respondent engaged in one charged criminal transaction but not in others, the juvenile court is authorized to transfer the transaction supported by probable cause but to retain jurisdiction over the other. The criminal court prosecutor would be permitted to charge any offense arising out of the transferred transaction.

The amendment in (h) repealing the last three sentences eliminates the final traces of the post-certification examining trial from juvenile law. Upon transfer, the case occupies exactly the same position as any other pre-indictment felony case. The district court is not required to consider whether there is good cause for an examining trial.

The amendment in (i) eliminates the remand of a certified case to juvenile court if a grand jury fails to indict. Once the respondent is certified, it remains a criminal case unless the certification is set

aside for legal insufficiency by the district court or by an appellate court.

Subsection (j) deals with the certification of a person 18 years of age or older. The amendments in (j)(2) mirror the lowering of the minimum certification age to 14. The amendment in (j)(4) adds two new grounds for bringing a certification case when the respondent is over 17: it was not practicable for the State to proceed in juvenile court before the respondent's 18th birthday and a previous certification was set aside by a district court or reversed by an appellate court. The first is intended to deal with the situation in which the certification petition or motion was filed before the respondent's 18th birthday, but it was not possible to conduct the hearing until after. The second restates current case law to the effect that the jurisdiction of the juvenile court over the case continues despite the 18th birthday of the respondent when a prior order was set aside or reversed.

Subsections (m) and (n) enact a principle that once a juvenile is certified, he or she will always be certified. Under current law, if a juvenile is certified and then commits a new felony before becoming 17, a completely new certification proceeding is required to try him or her as an adult on the new charge. Under the amendments, the prosecutor need only file a petition alleging the prior certification and the new offense. Upon a showing of probable cause that the new offense was committed, the juvenile court judge is required to certify the respondent to the criminal court, unless the previous certification proceeding has not yet resulted in indictment or has been terminated in the respondent's favor. Under (n) a study and evaluation are not required because the juvenile court has not discretion in the matter. The idea of these subsections is to have only the pleadings and hearing necessary to enable the prosecutor to establish that the circumstances requiring mandatory certification exist.

§ 54.021. Justice **or Municipal** Court Truancy

(a) The juvenile court may waive its exclusive original jurisdiction and transfer a child to an appropriate justice **or municipal** court, with the permission of the justice **or municipal** court, for disposition in the manner provided by Subsection (b) of this section if the child is alleged to have engaged in conduct described in Section 51.03(b)(2) of this code. A waiver of jurisdiction under this subsection may be for an individual case or for all cases in which a child is alleged to have engaged in conduct described in Section 51.03(b)(2) of this code. The waiver of a juvenile court's exclusive original jurisdiction for all cases in which a child is alleged to have engaged in conduct described in Section 51.03(b)(2) of this code is effective for a period of one year.

(b) A justice **or municipal** court may exercise jurisdiction over a **person** [~~child~~] alleged to have engaged in conduct indicating a need for supervision by engaging in conduct described in Section 51.03(b)(2) in a case where the juvenile court has waived its original jurisdiction under this section. A justice **or municipal** court may exercise jurisdiction under this section without regard to whether the justice of the peace **or municipal judge** for the court is a licensed attorney or the hearing for a case is before a jury consisting of six persons.

(c) On a finding that a **person** [~~child~~] has engaged in conduct described

by Section 51.03(b)(2), the justice **or municipal** court shall enter an order appropriate to the nature of the conduct.

(d) On a finding by the justice **or municipal** court that the **person** [~~child~~] has engaged in truant conduct and that the conduct is of a recurrent nature, the court **has jurisdiction to** [~~may~~] enter an order that includes one or more of the following provisions requiring that:

(1) the **person** [~~child~~] attend a preparatory class for the high school equivalency examination provided under Section **7.11** [11.35], Education Code, if the court determines that the **person** [~~child~~] is too old to do well in a formal classroom environment;

(2) the **person** [~~child~~] attend a special program that the court determines to be in the best interests of the **person** [~~child~~], including an alcohol and drug abuse program;

(3) the **person** [~~child~~] and the **person's** [~~child's~~] parents, managing conservator, or guardian attend a class for students at risk of dropping out of school designed for both the **person** [~~child~~] and the **person's** [~~child's~~] parents, managing conservator, or guardian;

(4) the **person** [~~child~~] complete reasonable community service requirements;

(5) the **person's** [~~child's~~] driver's license be suspended in the manner provided by Section 54.042 of this code;

(6) the **person** [~~child~~] attend school without unexcused absences; or

(7) the **person** [~~child~~] participate in a tutorial program provided by the school attended by the **person** [~~child~~] in the academic subjects in which the **person** [~~child~~] is enrolled for a total number of hours ordered by the court.

(e) An order under Subsection **(d)(3) that requires the parent, managing conservator, or guardian of a person to attend a class for students at risk of dropping out of school** [~~(d) of this section~~] is enforceable in the justice court by contempt.

(f) A school attendance officer may refer a **person** [~~child~~] alleged to have engaged in conduct described in Section 51.03(b)(2) of this code to the justice court in the precinct where the **person** [~~child~~] resides or in the precinct where the **person's** [~~child's~~] school is located if the juvenile court having exclusive original jurisdiction has waived its jurisdiction as provided by Subsection (a) of this section for all cases involving conduct described by Section 51.03(b)(2) of this code.

(g) A court having jurisdiction under this section shall endorse on the summons issued to the parent, guardian, or custodian of the **person** [~~child~~] who is the subject of the hearing an order directing the parent, guardian, or custodian to appear personally at the hearing and directing the person having custody of the **person** [~~child~~] to bring the **person** [~~child~~] to the hearing.

(h) A person commits an offense if the person is a parent, guardian, or custodian who fails to attend a hearing under this section after receiving notice under Subsection (g) of this section that the person's attendance was required. An offense under this subsection is a Class C misdemeanor.

Commentary by Robert Dawson

Under current law, the juvenile court may transfer a truancy case only to a justice court. Under amended (a), the transfer may be to a municipal court or a justice court.

The addition of the words "has jurisdiction to" in subsection (d) is

necessitated by Attorney General Opinion No. DM-320 (2/6/95) stating that the legislature must expressly give jurisdiction to a justice court to use a disposition in addition to a fine.

Amendments in subsection (e) restrict the ability of the municipal or justice court to hold a participant in contempt of court to adults. As to children, the court must make a referral to the juvenile court for contempt of court as delinquent conduct under 51.03(a)(3).

§ 54.022. Justice or Municipal Court: Certain Misdemeanors

(a) On a finding by a justice or municipal court that a child committed a misdemeanor offense punishable by fine only other than a traffic offense or public intoxication or committed a violation of a penal ordinance of a political subdivision other than a traffic offense, the court has jurisdiction to enter an order:

(1) referring the child or the child's parents, managing conservators, or guardians for services under Section 264.302; or

(2) requiring that the child attend a special Program that the court determines to be in the best interest of the child and that is approved by the county commissioners court, including a rehabilitation, counseling, self-esteem and leadership, work and job skills training, job interviewing and work preparation, self-improvement, Parenting, manners, violence avoidance, tutoring, sensitivity training, parental responsibility, community service, restitution, advocacy, or mentoring program.

(b) On a finding by a justice or municipal court that a child committed an offense described by Subsection (a) and that the child has previously been convicted of an offense described Subsection (a), the court has the jurisdiction to enter an order that includes one or more of the following provisions, in addition to the provisions under Subsection (a), requiring that:

(1) the child attend a special program that the court determines to be in the best interest of the child and that is approved the county commissioners court;

(2) the child's parents, managing conservator, or guardian attend a parenting class or parental responsibility program if the court finds the parent, managing conservator, or guardian, by willful act or omission, contributed to, caused, or encouraged the child's conduct; or

(3) the child and the child's parents, managing conservator, or guardian attend the child's school classes or functions if the court finds the parent, managing conservator, or guardian, by willful act or omission, contributed to, caused, or encouraged the child's conduct.

(c) The justice or municipal court may order the parents, managing conservator, or guardian of a child required to attend a program under Subsection (a) or (b) to pay an amount not greater than $100 to pay for the costs of the program.

(d) A justice or municipal court may require a child, parent, managing conservator, or guardian required to attend a program, class, or function under this section to submit proof of attendance to the court.

(e) A justice or municipal court shall endorse on the summons issued to a parent, managing conservator, or a

guardian an order to appear personally at the hearing with the child.

(f) An order under this section involving a child is enforceable under Section 51.03(a)(3) by referral to the juvenile court.

(g) Any other order under this section is enforceable by the justice or municipal court by contempt.

Commentary by Robert Dawson

This new section is intended to spell out what a municipal or justice court is empowered to do when a child is convicted of a Class C misdemeanor or ordinance violation. This section does not apply to traffic offenses, which are handled separately under other laws or public intoxication, which is a CINS category and handled by the juvenile court. The sanctions authorized by this section are intended to be in addition to the fine authorized upon conviction of the offense. Nothing in this section prevents a municipal or justice court from using the provisions of article 45.54 of the Code of Criminal Procedure in disposing of Class C misdemeanors involving juveniles.

The reference in (a)(1) is to the child at risk program operated by the Department of Protective and Regulatory Services. Subsection (a)(2) authorizes the court to place a child in a wide variety of community programs that will vary from county to county.

Subsection (b) specifies dispositional alternatives for a child who has previously been convicted of a fineable offense. These include requiring parents and other adults to attend a variety of community programs.

Subsection (e) requires the court to order the parent or other adult to appear personally at the hearing with the child.

Court orders against the child are enforceable by juvenile court referral for contempt of court; the court may hold parents and other adults in contempt. Contempt of a municipal or justice court is punishable by a fine of up to $100 and confinement in jail for up to three days. Government Code § 21.002(c).

§ 54.03. Adjudication Hearing

(a) though (c) unchanged

(d) Except as provided by Section 54.031 of this chapter, only material, relevant, and competent evidence in accordance with the **Texas Rules of Criminal Evidence and Chapter 38, Code of Criminal Procedure,** [~~requirements for the trial of civil cases~~] may be considered in the adjudication hearing. Except in a detention or discretionary transfer hearing, a social history report or social service file shall not be viewed by the court before the adjudication decision and shall not be viewed by the jury at any time.

(e) through (h) unchanged.

Commentary by Robert Dawson

The source of evidentiary law is changed from civil to criminal here and in 51.17(c). See Commentary to that section.

§ 54.032. Deferral of Adjudication and Dismissal of Certain Cases on Completion of Teen Court Program

(a) through (f) unchanged.

(g) In addition to the fee authorized by Subsection (e), the court may require a child who requests a teen court program to pay a $10 fee to cover the cost to the teen court for performing its duties under this section. The court shall pay the fee to the teen court program, and the teen court program

must account to the court for the receipt and disbursal of the fee. A child who pays a fee under this subsection is not entitled to a refund of the fee, regardless of whether the child successfully completes the teen court program.

Commentary by Robert Dawson

Subsection (g) was added by HB 120, effective September 1, 1995.

§ 54.04. Disposition Hearing

(a) The disposition hearing shall be separate, distinct, and subsequent to the adjudication hearing. There is no right to a jury at the disposition hearing unless the child is in jeopardy of a determinate sentence under Subsection (d)(3) **or (m)** of this section, in which case, the child is entitled to a jury of 12 persons to determine the sentence.

(b) and (c) unchanged.

(d) If the court or jury makes the finding specified in Subsection (c) of this section allowing the court to make a disposition in the case:

(1) the court or jury may, in addition to any order required or authorized under Section 54.041 or 54.042 of this code, place the child on probation on such reasonable and lawful terms as the court may determine:

(A) in his own home or in the custody of a relative or other fit person; [~~or~~]

(B) subject to the finding under Subsection (c) of this section on the placement of the child outside the child's home, in:

(i) a suitable foster home; or

(ii) a suitable public or private institution or agency, except the Texas Youth Commission; **or**

(C) after an adjudication that the child engaged in delinquent conduct and subject to the finding under Subsection (c) on the placement of the child outside the child's home, in an intermediate sanction facility operated under Chapter 61, Human Resources Code;

(2) if the court or jury found at the conclusion of the adjudication hearing that the child engaged in delinquent conduct and if the petition was not approved by the grand jury under Section 53.045 of this code, the court may commit the child to the Texas Youth Commission without a determinate sentence; [~~or~~]

(3) if the court or jury found at the conclusion of the adjudication hearing that the child engaged in delinquent conduct that included a violation of a penal law listed in Section 53.045(a) of this code and if the petition was approved by the grand jury under Section 53.045 of this code, the court or jury may sentence the child to commitment in the Texas Youth Commission with a **possible** transfer to the institutional division **or the pardons and paroles division** of the Texas Department of Criminal Justice for **a** [~~any~~] term of**:**

(A) not more than [~~years not to exceed~~] 40 years **if the conduct constitutes:**

(i) a capital felony;

(ii) a felony of the first degree; or

(iii) an aggravated controlled substance felony;

(B) not more than 20 years if the conduct constitutes a felony of the second degree; or

(C) not more than 10 years if the conduct constitutes a felony

of the third degree;

(4) the court may assign the child an appropriate sanction level and sanctions as provided by the assignment guidelines in Section 59.003; or

(5) if applicable, the court or jury may make a disposition under Subsection (m) of this section.

(e) The Texas Youth Commission shall accept a **person** [~~child~~] properly committed to it by a juvenile court even though the **person** [~~child~~] may be 17 years of age or older at the time of commitment.

(f) unchanged.

(g) If the court orders a disposition under Subsection (d)(3) **or (m)** of this section and there is an affirmative finding that the defendant used or exhibited a deadly weapon during the commission of the conduct or during immediate flight from commission of the conduct, the court shall enter the finding in the order. If there is an affirmative finding that the deadly weapon was a firearm, the court shall enter that finding in the order.

(h) At the conclusion of the dispositional hearing, the court shall inform the child of**:**

(1) the child's [~~his~~] right to appeal, as required by Section 56.01 of this code**; and**

(2) the procedures for the sealing of the child's records under Section 58.003 of this code.

(i) and (j) unchanged.

(k) **Except as provided by Subsection (m), the** [~~The~~] period to which a court or jury may sentence a **person** [~~child~~] to commitment to the Texas Youth Commission with a transfer to the Texas Department of Criminal Justice under Subsection (d)(3) of this section applies without regard to whether the **person** [~~child~~] has previously been adjudicated as having engaged in delinquent conduct.

(l) unchanged.

(m) The court or jury may sentence a child adjudicated for habitual felony conduct as described by Section 51.031 to a term prescribed by Subsection (d)(3) and applicable to the conduct adjudicated in the pending case if:

(1) a petition was filed and approved by a grand jury under Section 53.045 alleging that the child engaged in habitual felony conduct; and

(2) the court or jury finds beyond a reasonable doubt that the allegation described by Subdivision (l) in the grand jury petition is true.

(n) A court may order a disposition of secure confinement of a status offender adjudicated for violating a valid court order only if:

(1) before the order is issued, the child received the full due process rights guaranteed by the Constitution of the United States or the Texas Constitution; and

(2) the juvenile probation department in a report authorized by Subsection (b):

(A) reviewed the behavior of the child and the circumstances under which the child was brought before the court;

(B) determined the reasons for the behavior that caused the child to be brought before the court; and

(C) determined that all dispositions, including treatment, other than placement in a secure detention facility or secure correctional facility, have been exhausted or are clearly inappropriate.

(o) A status offender may not, under any circumstances, be committed to the Texas Youth Commission for

engaging in conduct that would not, under state or local law, be a crime if committed by an adult.

Commentary by Neil Nichols

HB 327 amends 54.04 to include: (1) determinate sentence provisions related to the maximum sentence terms that might be imposed for various offense classifications and to procedures regarding habitual felony conduct petitions; (2) authorization to place children on probation under certain circumstances in intermediate sanction facilities established by the Texas Youth Commission; and (3) special rules for ordering secure confinement of status offenders.

The first change has to do with the establishment of maximum sentence terms for second and third degree felony offenses under the violent and habitual offenders statute. Under current law the maximum term which might be imposed for a capital or first degree felony offense is 40 years. That sentence term is not changed in 54.04(d)(3)(A), but the new classification, aggravated controlled substance felony [defined in 51.02(1)], is added under the maximum 40-year sentence category. Since some of the offenses that are added to the list of offenses eligible for determinate sentencing in 53.045 are classified as second or third degree felony offenses, the maximum sentence terms that are established in 54.04(d)(3)(B) and (C) correspond to the maximum sentence an adult could receive for committing the same offense (twenty years and ten years respectively).

Subsection 54.04(m) is a new determinate sentence provision that authorizes the imposition of a determinate sentence for habitual felony conduct. The petition must allege habitual felony conduct as described in 51.031, including both the present conduct that is a felony offense (other than a state jail felony) and the previous adjudications of delinquent conduct for felony offenses, the second adjudication being for an offense that occurred after the first adjudication became final [53.04(d)(5)]. Grand jury approval of the petition is required and the requisite findings must be made just as they are for other offenses under determinate sentence provisions. The maximum sentence term that can be imposed for habitual felony conduct is the maximum sentence established in Subsection (d)(3) for the classification of felony found regarding the offense currently pending before the court, even though previous adjudications may have been for more serious offenses.

A second important change in 54.04 is the new authorization in Subsection (d)(1)(C) to place a child on probation in an intermediate sanction facility established by the Texas Youth Commission under 61.0386, Human Resources Code (Intermediate Sanction Facilities) or 61.101, Human Resources Code (Youth Boot Camp Programs). Notwithstanding current law in (d)(1)(B) which authorizes placement of a child on probation outside the child's home in any suitable public or private institution or agency except the Texas Youth Commission, the new provisions distinguish commitments to TYC from this limited authorization to make use of certain facilities the agency may establish for the purpose [61.0386(e) and 61.101(d), Human Resources Code].

There are two main requirements for the placement: (1) the usual findings must be made that the child engaged in delinquent conduct and that there is a need for disposition and for placement outside the home; and (2) TYC must have established an intermediate sanction facility and agree to the child's placement there. Since TYC did not receive funding to establish intermediate sanction facilities for this purpose, this new provision will see only limited use in the near future. However, authorization and funding has been provided to the Texas Juvenile Probation Commission to assist the establishment of private or county-operated programs and facilities designed for the same purpose (141.0432 and 141.086, Human Resources Code). Sanction Level Five of the Progressive Sanctions Guidelines (59.008) describes intermediate sanction programs and establishes their place in the range of possible dispositions.

A third change in 54.04 is the addition of new subsections (n) and (o) which relate to the secure confinement of status offenders. Drafted to conform with requirements of federal law, the provisions include the requirements for placing status offenders who violate valid court orders in secure confinement. 51.02 includes the definition of "status offender" (a child whose conduct would not be a crime if committed by an adult); "valid court order" (an order entered on a finding that the child engaged in conduct indicating a need for supervision for a status offense); and "secure correctional facility" and "secure detention facility" (public and private facilities with construction fixtures designed to restrict movement or activities). The exceptional requirement is that the probation department's report which is submitted to the court must specifically include the department's review of the circumstances of the child's behavior; a determination of the reasons for the child's behavior; and a determination that secure confinement in a secure correctional or detention facility is the only remaining disposition possible because all other dispositions and treatment have been exhausted or are clearly inappropriate. Subsection (o) expressly prohibits the commitment of a status offender to TYC for conduct that would not be a crime if committed by an adult.

Two other amendments in 54.04 make reference to two new sections of the Juvenile Justice Code added by HB 327. Subsection (d)(4) makes reference to the new 59.003 which provides guidelines for assigning sanction levels based primarily on offense severity and chronicity. The permissive language in (d)(4) reflects the legislative intent that the guidelines not be interpreted as a mandate requiring that all the services described at each sanction level be provided to all the youth who would qualify for them under the guidelines. The court's authority to impose sanctions as provided in the guidelines is not new, but the guidelines provide a means of ensuring that the sanctions are consistently applied and correspond to the seriousness of the offense and the needs of the youth. While assignment of sanction levels according to the guidelines is not mandatory, 59.003(e) does require the court to state in writing its reasons for deviating from the guidelines and to submit the statement to the juvenile board. Such information gathered from juvenile boards across the state can be used, then, for improved statewide

juvenile justice planning and for determining needed resources.

Finally, subsection (h)(2) makes reference to the new 58.003 which relates to procedures for the sealing of records. Now, in addition to informing the child of the right to appeal at the conclusion of the dispositional hearing, subsection (h) requires the court to
inform the child of the procedures for the sealing of the child's records.

§ 54.041. Orders Affecting Parents and Others

(a) unchanged.

(b) If a child is found to have engaged in delinquent conduct **or conduct indicating a need for supervision** arising from the commission of an offense in which property damage or loss or personal injury occurred, the juvenile court, on notice to all persons affected and on hearing, may order the child or a parent to make full or partial restitution to the victim of the offense. The program of restitution must promote the rehabilitation of the child, be appropriate to the age and physical, emotional, and mental abilities of the child, and not conflict with the child's schooling. When practicable and subject to court supervision, the court may approve a restitution program based on a settlement between the child and the victim of the offense. An order under this subsection may provide for periodic payments by the child or a parent of the child for the period specified in the order but that period may not extend past the **date of the** 18th birthday of the child **or past the date the child is no longer enrolled in an accredited secondary school in a program leading toward a high school diploma, whichever date is later**. [~~If the child or parent is unable to make full or partial restitution or if a restitution order is not appropriate under the circumstances, the court may order the child to render personal services to a charitable or educational institution in the manner prescribed in the court order in lieu of restitution.~~]

(c) Restitution under this section is cumulative of any other remedy allowed by law and may be used in addition to other remedies; except that a victim of an offense is not entitled to receive more than actual damages under a juvenile court order. [~~A city, town, or county that establishes a program to assist children in rendering personal services to a charitable or educational institution as authorized by this subsection may purchase insurance policies protection the city, town, or county against claims brought by a person other than the child for a cause of action that arises from an act of the child while rendering those services. The city, town, or county is not liable under this Act to the extent that damages are recoverable under a contract of insurance or under a plan of self insurance authorized by statute. The liability of the city, town, or county for a cause of action that arises from an action of the child while rendering those services may not exceed $100,000 to a single person and $300,000 for a single occurrence in the case of personal injury or death, and $10,000 for a single occurrence of property damage. Liability may not extend to punitive or exemplary damages. This subsection does not waive a defense, immunity, or jurisdictional bar available to the city, town, or county or its officers or employees, nor shall this Act be construed to waive, repeal, or modify any provision~~

~~of the Texas Tort Claims Act, as amended (Article 6252-19, Vernon's Texas Civil Statutes).~~]

(d) [~~(c)~~] A person subject to an order proposed under Subsection (a) of this section is entitled to a hearing on the order before the order is entered by the court.

(e) [~~(d)~~] An order made under this section may be enforced as provided by Section 54.07 of this code.

(f) [~~(e)~~] If a child is found to have engaged in conduct indicating a need for supervision described under Section 51.03(b)(2) of this code, the court may order the child's parents or guardians to attend a class provided under Section 21.035(h), Education Code, if the school district in which the child's parents or guardians reside offers a class under that section.

(g) On a finding by the court that a child's parents or guardians have made a reasonable good faith effort to prevent the child from engaging in delinquent conduct or engaging in conduct indicating a need for supervision and that, despite the parents' or guardians' efforts, the child continues to engage in such conduct, the court shall waive any requirement for restitution that may be imposed on a parent under this section.

Commentary by Robert Dawson

Subsection (b) adds an adjudication for conduct indicating a need for supervision as a predicate for ordering the child or a parent to pay restitution to the victim of the offense. It also extends the period of liability for payment to the conclusion of high school if that is later than the child's 18th birthday, which conforms to the parental liability of support under Title 5. Finally, the authorization to order community service was repealed here but moved to section 54.044.

The repealed language in (c), dealing with immunity of a governmental unit for injuries in a community supervision program was moved to section 54.044.

Subsection (g) gives the parents a defense of reasonable good faith effort to control the child to any requirement of restitution.

§ 54.042. License Suspension

(a) unchanged.

(b) The order under Subsection (a)(1) of this section shall specify a period of suspension or denial that is[~~:~~]

[~~(1)~~] until the child reaches the age of **19** [~~17~~] or for a period of 365 days, whichever is longer[~~;or~~]

[~~(2) if the court finds that the child has engaged in conduct violating the laws of this state prohibiting driving while intoxicated, by reason of the introduction of alcohol into the body, under Article 67011-1, Revised Statutes, and also determines that the child has previously been found to have engaged in conduct violating the same laws, until the child reaches the age of 19 or for a period of 365 days, whichever is longer~~].

(c) unchanged.

(d) A juvenile court, in a disposition hearing under Section 54.04 of this code, may order the Department of Public Safety to suspend a child's driver's license or permit or, if the child does not have a license or permit, to deny the issuance of a license or permit to the child for a period not to exceed **12** [~~six~~] months if the court finds that the child has engaged in conduct in need of supervision or delinquent conduct other than the conduct described by Subsection (a) of this section.

(e) A juvenile court that places a child on probation under Section 54.04 of this code may require as a reasonable condition of the probation that if the child violates the probation, the court may order the Department of Public Safety to suspend the child's driver's license or permit or, if the child does not have a license or permit, to deny the issuance of a license or permit to the child for a period not to exceed **12** [~~six~~] months. The court may make this order if a child that is on probation under this condition violates the probation. A suspension under this subsection is cumulative of any other suspension under this section.

Commentary by Robert Dawson

The period of mandatory suspension under (a) was by (b) increased by two years from age 17 to 19, the same period that previously was reserved for repeat violators by (b)(2) which is, for that reason, repealed.

The maximum period of discretionary suspension was increased in (d) and (e) from six to 12 months.

§ 54.044. Community Service

(a) If the court places a child on probation under Section 54.04(d), the court shall require as a condition of probation that the child work a specified number of hours at a community service project approved by the court and designated by the juvenile board as provided by Subsection (e), unless the court determines and enters a finding on the order placing the child on probation that:

(1) the child is physically or mentally incapable of participating in the project;

(2) participating in the project will be a hardship on the child or the family of the child; or

(3) the child has shown good cause that community service should not be required.

(b) The court may also order under this section that the child's parent perform community service with the child.

(c) The court shall order that the child and the child's parent perform a total of not more than 500 hours of community service under this section.

(d) A municipality or county that establishes a program to assist children and their Parents in rendering community service under this section may purchase insurance policies protecting the municipality or county against claims brought by a person other than the child or the child's Parent for a cause of action that arises from an act of the child or parent while rendering community service. The municipality or county is not liable under this section to the extent that damages are recoverable under a contract of insurance or under a plan of self-insurance authorized by statute. The liability of the municipality or county for a cause of action that arises from an action of the child or the child's parent while rendering community service may not exceed $100,000 to a single person and $300,000 for a single occurrence in the case of personal injury or death, and $10,000 for a single occurrence of property damage. Liability may not extend to punitive or exemplary damages. This subsection does not waive a defense, immunity, or jurisdictional bar available to the municipality or county or its officers or employees, nor shall this section be construed to waive, repeal, or modify

any provision of Chapter 101, Civil Practice and Remedies Code.

(e) For the purposes of this section, a court may submit to the juvenile probation department a list of organizations or projects approved by the court for community service. The juvenile probation department may:

(1) designate an organization or project for community service only from the list submitted by the court; and

(2) reassign or transfer a child to a different organization or project on the list submitted by the court under this subsection without court approval.

(f) A person subject to an order proposed under Subsection (a) or (b) is entitled to a hearing on the order before the order is entered by the court.

(g) On a finding by the court that a child's parents or guardians have made a reasonable good faith effort to prevent the child from engaging in delinquent conduct or engaging in conduct indicating a need for supervision and that, despite the parents' or guardians' efforts, the child continues to engage in such conduct, the court shall waive any requirement for community service that may be imposed on a parent under this section.

(h) An order made under this section may be enforced as provided by Section 54.07.

Commentary by Lisa Capers

This new section requires the juvenile court to order community service as a condition of probation in every case unless the court makes a finding that the child is physically or mentally incapable of performing the community service, the service will be a hardship on the child or family, or other good cause is shown. Community service is no longer authorized only instead of monetary restitution as it was previously under 54.041(b), but can now be used in addition to it.

The court may order the child's parent to perform the community service with the child. Presumably, this means working in the same community service program with the child. The total hours required of child and parent cannot exceed 500. Both the child and parent are entitled to a hearing on the order before it is entered by the court. The court must waive any requirement for community service for a parent if the court finds the child continued to engage in delinquent conduct or conduct indicating a need for supervision despite the parents' or guardians' reasonable good faith efforts to prevent the child from engaging in the conduct. Community service court orders are enforceable by contempt of court.

The community service project to which the probation department assigns the child must be one approved by the court and designated by the juvenile board. The probation department may reassign or transfer the child, without court approval, among those projects pre-approved by the court and juvenile board.

Subsection (d) recodifies a portion of current Family Code Section 54.041(b) related to the purchase of insurance protection for community service projects. This section authorizes a county or municipality to purchase insurance to protect against claims for a cause of action arising out of an act of the child or parent while rendering community service. Liability caps, in the case of personal injury or death, are set at $100,000 for a single person, $300,000 for a single occurrence, and $10,000 for a single

occurrence of property damage. Punitive or exemplary damages are not authorized, and this section does not waive, repeal or modify any provision of the Tort Claims Act as it pertains to the officers and employees of the municipality or county.

§ 54.045. Admission of Unadjudicated Conduct

(a) During a disposition hearing under Section 54.04, a child may:

(1) admit having engaged in delinquent conduct or conduct indicating a need for supervision for which the child has not been adjudicated; and

(2) request the court to take the admitted conduct into account in the disposition of the child.

(b) If the prosecuting attorney agrees in writing, the court may take the admitted conduct into account in the disposition of the child.

(c) A court may take into account admitted conduct over which exclusive venue lies in another county only if the court obtains the written permission of the prosecuting attorney for that county.

(d) A child may not be adjudicated by any court for having engaged in conduct taken into account under this section, except that, if the conduct taken into account included conduct over which exclusive venue lies in another county and the written permission of the prosecuting attorney of that county was not obtained, the child may be adjudicated for that conduct, but the child's admission under this section may not be used against the child in the adjudication.

Commentary by Robert Dawson

This section is modeled on § 12.45 of the Penal Code. This section, unlike the Penal Code provision, requires that the permission of the prosecutor must be in writing.

Subsection (d) has no counterpart in the Penal Code. It deals with a situation in which an offense from another county was taken into account, but without the written permission of the juvenile prosecutor for that county. In that event, the child can still be prosecuted for the offense, but his admission cannot be used in that prosecution.

§ 54.05. Hearing to Modify Disposition

(a) through (e) unchanged.

(f) A disposition based on a finding that the child engaged in delinquent conduct may be modified so as to commit the child to the Texas Youth Commission if the court after a hearing to modify disposition finds **by a preponderance of the evidence** [~~beyond a reasonable doubt~~] that the child violated a reasonable and lawful order of the court. A disposition based on a finding that the child engaged in **habitual felony conduct as described by Section 51.031 of this code or in** [~~a~~] delinquent conduct that included a violation of a penal law listed in Section 53.045(a) of this code may be modified to commit the child to the Texas Youth Commission with a **possible** transfer to the institutional division **or the pardons and paroles division** of the Texas Department of Criminal Justice for a definite term **prescribed by Section 54.04(d)(3) of this code** [~~not to exceed 40 years~~] if the original petition was approved by the grand jury under Section 53.045 of this code and if after a hearing to modify the disposition the court or jury finds that the child violated a reasonable and lawful

order of the court.

(g) through (i) unchanged.

Commentary by Robert Dawson

The burden of persuasion in probation revocation is changed in (f) from beyond a reasonable doubt to preponderance of the evidence, which is what it is in adult probation revocation proceedings.

The reference to "pardons and paroles division" in (f) was added because under many circumstances a juvenile who has received a determinate sentence will be supervised by that division at some point in the case. The reference to 40 years was eliminated in favor of a statutory cross-reference because under the new determinate sentence provisions the sentence can be up to 40 years, 20 years or 10 years, depending upon the offense.

§ 54.06. Judgments for Support

(a) and (b) unchanged.

(c) A court may enforce an order for support under this section by ordering garnishment of the wages of the person ordered to pay support **or by any other means available to enforce a child support order under Title 5**.

(d) An order [~~(c) Orders~~] for support may be enforced as provided in Section 54.07 of this code.

(e) The court shall apply the child support guidelines under Subchapter C, Chapter 154, in an order requiring the payment of child support under this section. The court shall also require in an order to pay child support under this section that health insurance be provided for the child. Subchapter D, Chapter 154, applies to an order requiring health insurance for a child under this section.

(f) An order under this section prevails over any previous child support order issued with regard to the child to the extent of any conflict between the orders.

Commentary by Howard Baldwin

The Legislature has clarified that orders for child support rendered under Title 3 are subject to the same statutory provisions as child support orders rendered in Suits Affecting the Parent-Child Relationship under Title 5 (formerly Title 2). Subsection (c) has been amended to make available to the court the full-range of enforcement tools, including income withholding, confirmation of arrearages and contempt. It can be argued that the child support due under an order under this section accrues interest as provided in 157.265 as that is a "means available to enforce a child support order under Title 5".

New subsection (e) provides that support orders must be based on the child support guidelines contained in Chapter 154 and include provisions for the "medical" support of a child as provided in that chapter.

§ 54.061. Payment of Probation Fees

(a) through (c) unchanged.

(d) If the court finds that a child, parent, or other person responsible for the child's support is financially unable to pay the probation fee required under Subsection (a), the court shall enter into the records of the child's case a statement of that finding. The court may waive a fee under this section only if the court makes the finding under this subsection.

§ 54.08. Public Access to Court Hearings

(a) Except as provided by Subsection (b), the court shall open [~~Except for any hearing on a petition that has been approved by the grand jury under Section 53.045 of this code and in which the child is subject to a determinate sentence, the general public may be excluded from~~] hearings under this title **to the public unless the court, for good cause shown, determines that the public should be excluded**.

(b) The court **may not prohibit a person who is a victim of the conduct of a child from personally attending a hearing under this title relating to the conduct by the child unless the victim is to testify in the hearing or any subsequent hearing relating to the conduct and the court determines that the victim's testimony would be materially affected if the victim hears other testimony at trial** [~~in its discretion may admit such members of the general public as it deems proper~~].

Commentary by Robert Dawson

Under prior law, the presumption in a non-determinate sentence case was that the public would be excluded from juvenile court proceedings, unless the court provided otherwise. Under the amended version, the presumption is that the public may attend court hearings unless the juvenile court closes them. Although the legislature may not intended this result, the statute now permits the juvenile court to exclude the public from a hearing in a determinate sentence case, which it lacked the power to do under prior law.

New (b) gives the victim the right to attend the hearing, even if the hearing is closed to the public, unless the victim is to be a witness and his or her testimony would be "materially affected if the victim hears other testimony." This provision states exactly the same standard as the Rule on Witnesses in Rule 613 of the Texas Rules of Criminal Evidence.

§ 54.11. Release **or Transfer** Hearing

(a) On receipt of a **referral** [~~notice required~~] under Section 61.079(a), Human Resources Code, **for** [~~of~~] the transfer to the **institutional division of the** Texas Department of **Criminal Justice** [~~Corrections~~] of a person committed to the Texas Youth Commission under **Section 54.04(d)(3), 54.04(m), or 54.05(f)** [~~a determinate sentence~~], or on receipt of a request by the commission under Section 61.081**(g)** [~~(f)~~], Human Resources Code, for approval of the release under supervision of a person committed to the commission under **Section 54.04(d)(3), 54.04(m), or 54.05(f)** [~~a determinate sentence~~], the court shall set a time and place for a hearing on the release of the person.

(b) unchanged.

(c) Except for the person to be transferred or released under supervision and the prosecuting attorney, the failure to notify a person listed in Subsection (b) of this section does not affect the validity of a [~~release~~] hearing **conducted** or [~~a release~~] determination **made under this section** if the record in the case reflects that the whereabouts of the persons who did not receive notice were unknown to the court and a reasonable effort was made by the court to locate those persons.

(d) At a [~~release~~] hearing **under this section** the court may consider written reports from probation officers, professional court employees, or professional consultants, in addition to the testimony of witnesses. At least one day

before the [~~release~~] hearing, the court shall provide the attorney for the person to be transferred or released under supervision with access to all written matter to be considered by the court.

(e) At **the** [~~any release~~] hearing**,** the person to be transferred or released under supervision is entitled to an attorney, to examine all witnesses against him, to present evidence and oral argument, and to previous examination of all reports on and evaluations and examinations of or relating to him that may be used in the hearing.

(f) A [~~release~~] hearing **under this section** is open to the public unless the person to be transferred or released under supervision waives a public hearing with the consent of his attorney and the court.

(g) A [~~release~~] hearing **under this section** must be recorded by a court reporter or by audio or video tape recording, and the record of the hearing must be retained by the court for at least two years after the date of the final determination on the **transfer or** release of the person by the court.

(h) The [~~release~~] hearing on a person who is **referred for** [~~the subject of a notice of~~] transfer **under Section 61.079(a), Human Resources Code, shall** [~~must~~] be held **not later than the 60th day after the date the court receives the referral** [~~before 30 days before the person's 18th birthday~~].

(i) On conclusion of the [~~release~~] hearing on a person who is **referred for** [~~the subject of a notice of~~] transfer **under Section 61.079(a), Human Resources Code**, the court may order:

(1) the **return** [~~recommitment~~] of the person to the Texas Youth Commission [~~without a determinate sentence~~]; **or**

(2) the transfer of the person to the custody **of the institutional division** of the Texas Department of Criminal Justice for the completion of the person's [~~determinate~~] sentence[~~; or~~]

[~~(3) the final discharge of the person~~].

(j) **On conclusion of the hearing on a person who is referred for release under supervision under Section 61.081(f), Human Resources Code, the court may order the return of the person to the Texas Youth Commission:**

(1) with approval for the release of the person under supervision; or

(2) without approval for the release of the person under supervision.

(k) renumbered from (j).

Commentary by Neil Nichols

HB 327 reduces the number of juvenile court release/transfer hearings that are conducted for youth committed to the Texas Youth Commission under a determinate sentence and narrows the options available to the court at the conclusion of the hearings. Under current law, when a youth who has not completed a determinate sentence reaches age 17½, TYC notifies the court and a release/transfer hearing is held at least 30 days before the youth's 18th birthday. The court's options at the conclusion of the hearing are to recommit the youth to TYC without a determinate sentence, transfer the youth to the Texas Department of Criminal Justice for completion of the sentence, or finally discharge the youth. HB 327 eliminates this release/transfer hearing after age 17½.

Section 54.11(h) is amended to require that a juvenile court transfer hearing be held not later than the 60th day after TYC refers a sentenced youth to the court for approval of the youth's transfer to prison. Section 61.079(a), Human Resources Code, is amended to authorize TYC to make such a referral at any time after the youth reaches age 16, but before the youth reaches age 21. The commission is not required to make such a referral, but may do so if it determines the youth's conduct (even after release on TYC parole) indicates that the welfare of the community requires it. Section 54.11(i) limits the court's option at the conclusion of the transfer hearing either to transfer the youth to the institutional division of TDCJ or to return the youth to TYC. Neither the court nor TYC is authorized to discharge a youth before completion of the youth's sentence. If the sentence is not completed by age 21 and the youth has not already been transferred by that time, 61.084(g), Human Resources Code, requires that the youth be transferred without a hearing to the pardons and paroles division of TDCJ to complete the sentence on adult parole.

These changes to the determinate sentence provisions were proposed for a number of reasons. The fixed date for court review of sentenced youth means that some youth who are sentenced to commitment after age 16 have too short a period of time to prove they can reform themselves in TYC before the transfer hearing. By the same token, hardened sentenced youth may have too long a period of time to waste costly TYC resources before they can be considered for transfer. Also, as a practical matter, with the change in the law requiring completion of all sentence terms in TDCJ after age 21 (at the latest), the court's only real determination would have been when, rather than whether, most sentenced youth will serve time in the adult criminal justice system, either in prison or on adult parole. Given the substantial increase in the number of release/transfer hearings that would have been required, continued juvenile court review of all cases was determined to be unwarranted. Requiring sentenced youth to serve the entire term of their sentence without exception ensures greater accountability of the youth for their offense.

Section 54.11(j) is a new provision regarding the release hearing for sentenced youth referred to the court for approval of their release on parole. Current law prohibits TYC's releasing a sentenced youth under parole supervision before the youth reaches age 18 without first obtaining the court's approval. HB 327 amends 61.081, Human Resources Code, to change that. The bill provides that court approval for release under supervision is required until the youth has served at least 10 years for capital murder; 3 years for an aggravated controlled substance felony or for a felony of the first degree; 2 years for a felony of the second degree; or 1 year for a felony of the third degree. The court's option at the conclusion of a release hearing is limited to either approving or disapproving the parole release at that time.

This change in the determinate sentence provisions, proposed primarily to provide a range of minimum confinement periods that corresponds to the classification range of the added offenses, is not likely to have much effect in practice. The Texas Youth Commission

only rarely refers a case to the court for approval of parole release and, with few exceptions, is not likely to do so in the future. The primary exception will be the possible referral of youth who are sentenced for capital murder. HB 327 amends 61.084(d), Human Resources Code, to require that youth who are sentenced for capital murder be transferred to prison at age 21 to serve the remainder of their sentence unless they have served at least 10 years of their sentence or unless they have been transferred or released under supervision by court order before then. Since it is not likely that these youth will have served 10 years by age 21, they have little incentive to perform well in TYC or to apply themselves to their education and rehabilitation programs unless there is some possibility that their good performance will be rewarded. To provide that incentive, TYC may indicate to these youth its willingness to refer them to the court for consideration of parole release if they prove themselves worthy of it before age 21. If the court approves the release, the youth will still be transferred to TDCJ to complete their sentences at age 21, but it will be to the Pardons and Paroles Division rather than to the Institutional Division.

CHAPTER 55. PROCEEDINGS CONCERNING CHILDREN WITH MENTAL ILLNESS **OR MENTAL**[~~,~~] RETARDATION[~~, DISEASE, OR DEFECT~~]

Introductory Commentary

The amendments to Chapter 55 went into effect when HB 327 was signed by the Governor on May 31, 1995.

§ 55.01. Physical or Mental Examination

(a) At any stage of the proceedings under this title, the juvenile court may **order a** [~~cause the~~] child **alleged by petition or found to have engaged in delinquent conduct or conduct indicating a need for supervision** to be examined by **appropriate experts, including** a physician, psychiatrist, or psychologist.

(b) If an examination ordered under Subsection (a) of this section is to determine whether the child is mentally retarded, the examination must consist of a **determination of mental retardation and an interdisciplinary team recommendation, as provided by Chapter 593** [~~comprehensive diagnosis and evaluation as defined in Subtitle D, Title 7~~], Health and Safety Code, and shall be conducted at a facility approved **or operated** by the Texas Department of Mental Health and Mental Retardation **or at a community center established in accordance with Chapter 534, Health and Safety Code**.

Commentary by Robert Dawson

The amendment in (a) requiring that the child must be charged or adjudicated for the court to order an examination should not be construed to restrict the provision of emergency medical or psychiatric services to a child who, for example, is in detention but not yet charged with an offense. This entire section is intended to deal only with the evidentiary employment of medical, psychiatric or psychological examinations in the juvenile process to the extent they are relevant to pending juvenile proceedings.

The amendments in (b) are intended

merely to modernize terminology without changing the substance of the provision.

§ 55.02. [~~Mentally Ill~~] Child **With Mental Illness**

(a) **The** [~~If it appears to the juvenile court, on suggestion of a party or on the court's own notice, that a child alleged by petition or found to have engaged in delinquent conduct or conduct indicating a need for supervision may be mentally ill, the~~] court shall initiate proceedings to order temporary **or extended mental health services, as provided in Subchapter C, Chapter 574, Health and Safety Code, for a** [~~hospitalization of the~~] child **alleged or found to have engaged in delinquent conduct or conduct indicating a need for supervision, if:**

(1) on motion by a party or the court it is alleged that the child is mentally ill; or

(2) a child is found or alleged to be unfit to proceed as a result of mental illness under Section 55.04 of this chapter or is found not responsible for the child's conduct as a result of mental illness under Section 55.05 of this chapter [~~for observation and treatment~~].

(b) Subtitle C, Title 7, Health and Safety Code, governs proceedings for **court-ordered mental health services** [~~temporary hospitalization~~] except that the juvenile court shall conduct the proceedings whether or not the juvenile court is also a county court.

(c) If the juvenile court **orders mental health services for** [~~enters an order of temporary hospitalization of~~] the child, the child shall be cared for, treated, and released in conformity to Subtitle C, Title 7, Health and Safety Code, except:

(1) a juvenile court order **for mental health services** [~~of temporary hospitalization~~] of a child automatically expires **on the 120th day after the date** [~~when~~] the child becomes 18 years of age; **and**

(2) the **administrator** [~~head~~] of a mental **health facility** [~~hospital~~] shall notify**, in writing,** the juvenile court that ordered **mental health services of the intent to discharge the child** [~~temporary hospitalization~~] at least 10 days prior to discharge. [~~of the child; and~~]

[~~(3) appeal from juvenile court proceedings under this section shall be to the court of civil appeals as in other proceedings under this title~~].

(d) If the juvenile court orders **mental health services for the** [~~temporary hospitalization of a~~] child, the proceedings under this title then pending in juvenile court shall be stayed.

(e) If the child is discharged from the mental **health facility** [~~hospital~~] before reaching 18 years of age, the juvenile court may:

(1) dismiss the juvenile court proceedings with prejudice; or

(2) continue with proceedings under this title as though no order of **mental health services** [~~temporary hospitalization~~] had been made.

(f) The juvenile court shall transfer all pending proceedings from the juvenile court to a criminal court on the 18th birthday of a child for whom the court has ordered mental health services under this section if:

(1) the child is not discharged or furloughed from the residential care facility before reaching 18 years of age; and

(2) the child is alleged to have engaged in delinquent conduct that

included a violation of a penal law listed in Section 53.045.

(g) The juvenile court shall send notification of the transfer of a child under Subsection (f) to the residential care facility. The criminal court shall, within 90 days of the transfer, institute proceedings under Article 46.02, Code of Criminal Procedure. If those or any subsequent proceedings result in a determination that the defendant is competent to stand trial, the defendant may not receive a punishment for the delinquent conduct described by Subsection (f)(2) that results in confinement for a period longer than the maximum period of confinement the defendant could have received if the defendant had been adjudicated for the delinquent conduct while still a child and within the jurisdiction of the juvenile court.

Commentary by Robert Dawson

Commentary by Robert Dawson

The amendments in (a) are primarily to modernize terminology. However, the amendments permit extended as well as temporary mental health services, which may include, but are not limited to, hospitalization. A child may come within the provisions of (a) under any one of three circumstances: (1) on motion of a party or the court, (2) upon a finding that the child is unfit to proceed, or (3) on a finding that the child is not responsible for his or her conduct.

The reference to Subtitle C, Title 7 of the Health and Safety Code is to the Texas Mental Health Code that begins with § 571.001.

The amendments in (c) extending control from age 18 to 120 days past age 18 are designed to facilitate the new provisions in (f) and (g). The requirement in (c) that discharge notice must be in writing is new.

The right to appeal is provided by Family Code § 56.01(c)(1)(E). The intent of the repealed language in (c)(3) was to permit direct appeal to a Court of Appeals, rather than requiring a trial de novo before a District Court. The repealed language has been obsolete for quite some time.

Subsections (f) and (g) establish a special transfer procedure for a child who is in residential care under juvenile court order when he become 18 years old. If the child is not alleged to have committed an offense covered by the determinate sentence act, the administrator of the facility must discharge him under (c)(1) on 120 days after his 18th birthday. If the child is charged with an offense covered by the determinate sentence act, the juvenile court is required to transfer the patient to the criminal court. No hearing is required because the transfer is mandatory.

The criminal court is required to initiate proceedings to determine whether the person is competent to stand trial under the Code of Criminal Procedure. If found to be competent, the person can be tried, but can be sentenced only in accordance with the penalties authorized for determinate sentence offenders by 54.04.

The applicability of (f) and (g) are limited by the Double Jeopardy Clause. If the child is confined because of a verdict he or she is not responsible for conduct under 55.05, the child cannot be criminally prosecuted for that offense following transfer to the criminal court.

§ 55.03. [~~Mentally Retarded~~] Child **With Mental Retardation**

(a) If [~~it appears to the juvenile court, on the suggestion of a party or on the court's own notice, that~~] a child **is** [~~alleged or~~] found **or alleged** to **be unfit to proceed as a result of mental retardation under Section 55.04 of this chapter or is found not responsible for the child's conduct as a result of mental retardation under Section 55.05 of this chapter** [~~have engaged in delinquent conduct or conduct indicating a need for supervision may be mentally retarded~~], the court shall order a **determination of mental retardation and an interdisciplinary team recommendation** [~~comprehensive diagnosis and evaluation~~] of the child**, as provided by Chapter 593, Health and Safety Code,** to be performed at a facility approved **or operated** by the Texas Department of Mental Health and Mental Retardation **or at a community center established in accordance with Chapter 534, Health and Safety Code**. If the court finds that the results of such **determination of mental retardation** [~~comprehensive diagnosis and evaluation~~] indicate a significantly subaverage general intellectual function of 2.5 or more standard deviations below the age-group mean for the tests used existing concurrently with **significantly related** deficits in adaptive behavior [~~of Levels I-IV~~], the court shall initiate proceedings to order commitment of the child to a **residential care** facility**, as that term is defined by Section 591.003, Health and Safety Code** [~~for the care and treatment of mentally retarded persons~~].

(b) **A child alleged or found to have engaged in delinquent conduct or conduct indicating a need for supervision may be committed to a residential care facility if:**

(1) the child is found unfit to proceed as a result of mental retardation under Section 55.04 of this chapter or is found not responsible for the child's conduct as a result of mental retardation under Section 55.05 of this chapter; and

(2) the child meets the criteria for commitment as provided in Subchapter C, Chapter 593, Health and Safety Code.

(c) Subtitle D, Title 7, Health and Safety Code, governs proceedings for commitment of a child **under** [~~meeting the criteria set forth in Subsection (a) of~~] this section except that:

(1) the juvenile court shall conduct the proceedings whether or not the juvenile court is also a county court; and

(2) on receipt of the court's order entering the findings **required by** [~~set forth in Subsection (a) of this section, together with those findings set forth in~~] Subtitle D, Title 7, Health and Safety Code, **and Subsection (b)(1) of this section** [~~as prerequisites for court commitments~~], the Texas Department of Mental Health and Mental Retardation or the appropriate community center shall [~~thereupon~~] admit the child to a residential care facility [~~for the mentally retarded~~].

(d) [~~(c)~~] If the juvenile court enters an order committing the child **to** [~~for care and treatment in~~] a **residential care** facility [~~for mentally retarded persons~~], the child shall be cared for, treated, and released in conformity to Subtitle D, Title 7, Health and Safety Code, except **that the administrator of the residential care facility shall notify, in writing,**[~~:~~]

[~~(1)~~] the juvenile court that ordered commitment of the child **of the intent** [~~shall be notified at least 10 days prior~~] to discharge [~~of~~] the child **from the residential care facility or to furlough**

the child to an alternative placement at least 20 days prior to the date of the discharge or furlough[~~; and~~]

[~~(2) appeal from juvenile court proceedings under this section shall be to the court of civil appeals as in other proceedings under this title~~].

(e) [~~(d)~~] If the juvenile court orders commitment of a child to a **residential care** facility [~~for the care and treatment of mentally retarded persons~~], the proceedings under this title then pending in juvenile court shall be stayed.

(f) [~~(e)~~] If the child **committed to a residential care facility** is discharged **or furloughed** from the **residential care** facility **as provided by Subsection (d) of this section and in accordance with Subtitle D, Title 7, Health and Safety Code,** [~~for the care and treatment of mentally retarded persons~~] before reaching 18 years of age, the juvenile court may:

(1) dismiss the juvenile court proceedings with prejudice; or

(2) continue with proceedings under this title as though no order of commitment had been made.

(g) The juvenile court shall transfer all pending proceedings from the juvenile court to a criminal court on the 18th birthday of a child committed to a residential care facility if:

(1) the child is not discharged or furloughed from the residential care facility before reaching 18 years of age; and

(2) the child is alleged to have engaged in delinquent conduct that included a violation of a penal law listed in Section 53.045.

(h) The juvenile court shall send notification of the transfer of a child under Subsection (g) to the residential care facility. The criminal court shall, within 90 days of the transfer, institute proceedings under Article 46.02, Code of Criminal Procedure. If those or any subsequent proceedings result in a determination that the defendant is competent to stand trial, the defendant may not receive a punishment for the delinquent conduct described by Subsection (g)(2) that results in confinement for a period longer than the maximum period of confinement the defendant could have received if the defendant had been adjudicated for the delinquent conduct while still a child and within the jurisdiction of the juvenile court.

Commentary by Robert Dawson

A major change in philosophy underlies the amendments to section 55.03. Prior law provided that a child in juvenile court who is believed to be mentally retarded should first be dealt with by TDMHMR and only if released by it should juvenile proceedings be resumed. Under the amendments, unless such a child is declared unfit to proceed or not responsible because of mental retardation, the child will stay in the juvenile system. He or she can be handled as any other juvenile is handled, including commitment to the TYC. The prohibition on TYC accepting a mentally retarded youth that appeared in Human Resources Code § 61.077 has been repealed. Aside from the testing and evaluating process, TDMHMR becomes involved with a retarded child who is in juvenile court only if the child has been found unfit to proceed because of mental retardation or not responsible because of mental retardation. The key language effecting this change of philosophy is in (b).

Under (d) the administrator of the facility is required to give 20 days written notice of intent to discharge to the juvenile

court, instead of the 10 days required for mentally ill children.

Subsections (g) and (h) are identical to (f) and (g) of 55.02 and are subject to the same double jeopardy limitations discussed in the commentary to 55.02.

§ 55.04. **Unfitness** [~~Mental Disease or Defect Excluding Fitness~~] to Proceed

§ 55.04. **Unfitness** [~~Mental Disease or Defect Excluding Fitness~~] to Proceed

(a) **A** [~~No~~] child **alleged by petition or found to have engaged in delinquent conduct or conduct indicating a need for supervision** who as a result of mental **illness or mental retardation** [~~disease or defect~~] lacks capacity to understand the proceedings in juvenile court or to assist in his own defense **is unfit to proceed and** shall **not** be subjected to discretionary transfer to criminal court, adjudication, disposition, or modification of disposition as long as such incapacity endures.

(b) If **on motion by a party or the court** it **is alleged** [~~appears to the juvenile court, on suggestion of a party or on the court's own notice,~~] that a child [~~alleged or found to have engaged in delinquent conduct or conduct indicating a need for supervision~~] may be unfit to proceed **as a result of mental illness or mental retardation**, the court shall order appropriate **examinations as provided by Section 55.01 of this chapter. The information obtained from the examinations must include expert opinion as to** [~~medical and psychiatric inquiry to assist in determining~~] whether the child is unfit to proceed **as a result** [~~because~~] of mental **illness or mental retardation** [~~disease or defect~~].

(c) The court or jury shall determine **whether the child is unfit to proceed as a result of mental illness or mental retardation** [~~from the psychiatric and other evidence~~] at a hearing separate from[~~, but conducted in accordance with the requirements for,~~] the adjudication hearing [~~whether the child is fit or unfit to proceed~~].

(d) Unfitness to proceed **as a**

result of mental illness or mental retardation must be proved by a preponderance of the evidence.

(e) unchanged.

(f) If the court or jury determines that the child is unfit to proceed **as a result of mental illness or mental retardation**, the court [~~or jury~~] shall **initiate proceedings under** [~~determine whether the child should be committed for a period of temporary hospitalization for observation and treatment in accordance with~~] Section 55.02 **or** [~~of this code or committed to a facility for mentally retarded persons for care and treatment in accordance with~~] Section 55.03 of this **chapter** [~~code~~].

(g) **A proceeding** [~~Proceedings~~] to determine fitness to proceed may be joined with proceedings under Sections 55.02 and 55.03 of this **chapter** [~~code~~].

(h) The fact that the child is unfit to proceed **as a result of mental illness or mental retardation** does not preclude any legal objection to the juvenile court proceedings which is susceptible of fair determination prior to the adjudication hearing and without the personal participation of the child.

Commentary by Robert Dawson

Amendments to this section are for the purpose of modernizing terminology. No substantive changes were intended.

§ 55.05. **Lack of Responsibility for Conduct** [~~Mental Disease or Defect Excluding Responsibility~~]

(a) A child **alleged by petition to have engaged in** [~~is not responsible for~~] delinquent conduct or conduct indicating a need for supervision **is not responsible for the conduct** if at the time of **the** [~~such~~] conduct, as a result of mental **illness or mental retardation** [~~disease or defect~~], he lacks substantial capacity either to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law.

(b) If [~~it appears to the juvenile court,~~] on **motion** [~~suggestion~~] of a party or [~~on~~] the **court it is** [~~court's own notice, that a child~~] alleged **that the child** [~~to have engaged in delinquent conduct or conduct indicating a need for supervision~~] may not be responsible as a result of mental **illness or mental retardation for the child's conduct** [~~disease or defect~~], the court shall order appropriate **examinations as provided by Section 55.01 of this chapter. The information obtained from the examinations must include expert opinion as to** [~~medical and psychiatric inquiry to assist in determining~~] whether the child is [~~or is~~] not responsible **for the child's conduct as a result of mental illness or mental retardation**.

(c) The issue of whether the child is not responsible for his conduct as a result of mental **illness or mental retardation** [~~disease or defect~~] shall be tried to the court or jury in the adjudication hearing.

(d) **Lack of** [~~Mental disease or defect excluding~~] responsibility **for conduct as a result of mental illness or mental retardation** must be proved by a preponderance of the evidence.

(e) In its findings or verdict the court or jury must state whether the child is not responsible for his conduct as a result of mental **illness or mental retardation** [~~disease or defect~~].

(f) If the court or jury finds the child **is not** responsible for his conduct **as a result of mental illness or mental retardation,** the **court shall initiate proceedings under Section 55.02 or 55.03 of this chapter** [~~proceedings shall continue as though no question of mental disease or defect excluding responsibility had been raised~~].

(g) **A** [~~If the court or jury finds that the~~] child **found** [~~is~~] not responsible for his conduct as a result of mental **illness or mental retardation** [~~disease or defect, the court shall dismiss the proceedings with prejudice, and the court~~] shall **not be subject to proceedings under this title with respect to such conduct, other than** [~~initiate~~] proceedings under Section 55.02 or 55.03 of this **chapter** [~~code to determine whether the child should be committed for care and treatment as a mentally ill or mentally retarded child~~].

[~~(h) A child declared not responsible for his conduct because of mental disease or defect shall not thereafter be subject to proceedings under this title with respect to~~

~~such conduct, other than proceedings under Section 55.02 or 55.03 of this code.~~]

Commentary by Robert Dawson

Amendments to this section are for the purpose of modernizing terminology. No substantive changes were intended.

CHAPTER 56. APPEAL

§ 56.01. Right to Appeal

(a) and (b) unchanged.

(c) An appeal may be taken:

(1) by or on behalf of a child from an order entered under:

(A) [~~Section 54.02 of this code respecting transfer of the child to criminal court for prosecution as an adult;~~]

[~~(B)~~]

(B) [~~(C)~~] Section 54.04 of this code disposing of the case;

(C) [~~(D)~~] Section 54.05 of this code respecting modification of a previous juvenile court disposition; or

(D) [~~(E)~~] Chapter 55 of this code committing a child to a facility for the mentally ill or mentally retarded; or

(2) unchanged.

(d) through (h) unchanged.

(i) The appellate court may affirm, reverse, or modify the judgment or order, including an order of disposition or modified disposition, from which appeal was taken. It may reverse or modify an order of disposition or modified order of disposition while affirming the juvenile court adjudication that the child engaged in delinquent conduct or conduct indicating a need for supervision. **It may remand an order that it reverses or modifies for further proceedings by the juvenile court.**

(j) unchanged.

(k) The appellate court shall dismiss an appeal on the state's motion, supported by affidavit showing that the appellant has escaped from custody pending the appeal and, to the affiant's knowledge, has not voluntarily returned to the state's custody on or before the 10th day after the date of the escape. The court may not dismiss an appeal, or if the appeal has been dismissed, shall reinstate the appeal, on the filing of an affidavit of an officer or other credible person showing that the appellant voluntarily returned to custody on or before the 10th day after the date of the escape.

(l) The court may order the child, the child's parent, or other person responsible for support of the child to pay the child's costs of appeal, including the costs of representation by an attorney, unless the court determines the person to be ordered to pay the costs is indigent.

(m) For purposes of determining indigency of the child under this section, the court shall consider the assets and income of the child, the child's parent, and any other person responsible for the support of the child.

Commentary by Robert Dawson

The repeal of language in (c)(1)(A) abolishes the direct appeal of a juvenile court discretionary transfer order. However, under article 44.47 of the Code of Criminal Procedure, in an appeal from a criminal conviction a transferred juvenile may raise all issues that could have been raised in the direct appeal.

The provisions of (k) respecting dismissal of an appeal when a child escapes from custody are drawn from Rule 60(b) of the Rules of Appellate Procedure.

Subsections (l) and (m) restate current law that if the child's family can

afford to prosecute an appeal, they must pay the freight.

CHAPTER 57. RIGHTS OF VICTIMS
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§ 57.001. Definitions

(1) and (2) unchanged.

(3) "Victim" means a person who:

(A) is the victim of the delinquent conduct of a child that includes the elements under the penal law of this state of sexual assault, kidnapping, or aggravated robbery; [~~or~~]

(B) has suffered bodily injury or death as a result of the conduct of a child that violates a penal law of this state**; or**

(C) is the owner or lessor of property damaged or lost as a result of the conduct of a child that violates a penal law of this state.

Commentary by Lisa Capers

This amendment expands the definition of "victim" to include owners and lessors of property damaged or lost as a result of an offense committed by a juvenile offender. With this expansion of the definition, victims of juvenile offenders now have greater rights than victims of adult offenders because the Code of Criminal Procedure Chapter 56 does not define victim this expansively.

§ 57.002. Victim's Rights

A victim, guardian of a victim, or close relative of a deceased victim is entitled to the following rights within the juvenile justice system:

(1) and (2) unchanged.

(3) the right, if requested, to be informed of relevant court proceedings**, including appellate proceedings,** and to be informed in a timely manner if those court proceedings have been canceled or

rescheduled;

(4) the right to be informed, when requested, by the court or a person appointed by the court concerning the procedures in the juvenile justice system, including general procedures relating to**:**

(A) the preliminary investigation and **deferred prosecution** [~~informal adjustment~~] of a case; **and**

(B) the appeal of the case;

(5) unchanged.

(6) the right to receive information regarding compensation to victims as provided by **Subchapter B, Chapter 56, Code of Criminal Procedure** [~~the Crime Victims Compensation Act (Article 8309-1, Vernon's Texas Civil Statutes)~~], including information related to the costs that may be compensated under that Act and the amount of compensation, eligibility for compensation, and procedures for application for compensation under that Act, the payment of medical expenses under **Section 56.06, Code of Criminal Procedure** [~~Section 1, Chapter 299, Acts of the 63rd Legislature, Regular Session, 1973 (Article 4447m, Vernon's Texas Civil Statutes)~~], for a victim of a sexual assault, and when requested, to referral to available social service agencies that may offer additional assistance;

(7) the right to be informed, upon request, of procedures for release under supervision **or transfer of the person to the custody of the pardons and paroles division of the Texas Department of Criminal Justice for parole**, to participate in the release **or transfer for parole** process, to be notified, if requested, of release **or transfer for parole** proceedings concerning the **person** [~~child~~], to provide to the Texas Youth Commission for inclusion in the **person's** [~~child's~~] file information to be considered by the commission before the release under supervision **or transfer for parole** of the **person** [~~child~~], and to be notified, if requested, of the **person's** [~~child's~~] release **or transfer for parole**;

(8) through (10) unchanged.

(11) the right to be present at all public court proceedings related to the conduct of the child **as provided by Section 54.08**, subject to **that section; and**

(12) any other right appropriate to the victim that a victim of criminal conduct has under Article 56.02, Code of Criminal Procedure [~~the approval of the court~~].

Commentary by Lisa Capers

This section has been amended to expand victims' rights to parallel those rights available to victims of adult offenders. These new rights include 1) notification, if requested, of appellate proceedings; 2) explanation of juvenile procedures related to deferred prosecution and appeal of juvenile cases; 3) the right to be informed, if requested, of the procedures for a TYC youth who received a determinate sentence to be transferred to adult parole supervision; 4) to participate in and provide information regarding the transfer to adult parole process; and 5) notification of the transfer to adult parole. Additionally, victims of juvenile offenders are given all other rights under the Code of Criminal Procedure that are given to victims of adult offenders, including the right to counseling, on request, regarding HIV/AIDS.

§ 57.003. Duty of Juvenile Board

(a) The juvenile board shall ensure to the extent practicable that a victim,

guardian of a victim, or close relative of a deceased victim is afforded the rights granted by Section 57.002 [~~of this code~~] and, on request, an explanation of those rights.

(b) The juvenile board may designate a person to serve as victim assistance coordinator in the juvenile board's jurisdiction for victims of juvenile offenders.

(c) The victim assistance coordinator shall ensure that a victim, or close relative of a deceased victim, is afforded the rights granted victims, guardians, and relatives by Section 57.002 and, on request, an explanation of those rights. The victim assistance coordinator shall work closely with appropriate law enforcement agencies, prosecuting attorneys, the Texas Juvenile Probation Commission, and the Texas Youth Commission in carrying out that duty.

(d) The victim assistance coordinator shall ensure that at a minimum, a victim, guardian of a victim, or close relative of a deceased victim receives:

(1) a written notice of the rights outlined in Section 57.002,

(2) an application for compensation under the Crime Victims' Compensation Act (Subchapter B, Chapter 56, Code of Criminal Procedure); and

(3) a victim impact statement with information explaining the possible use and consideration of the victim impact statement at detention, adjudication, and release proceedings involving the juvenile.

(e) The victim assistance coordinator shall, on request, offer to assist a person receiving a form under Subsection (d) to complete the form.

(f) The victim assistance coordinator shall send a copy of the victim impact statement to the court conducting a disposition hearing involving the juvenile.

Commentary by Lisa Capers

Section 57.003 is amended to give juvenile boards the discretion to designate a victim assistance coordinator to work with victims of juvenile offenders. While this designation is not mandatory, if a juvenile board chooses to have a coordinator, the duties of this person are mandated specifically by the section. These duties include providing 1) an explanation of a victim's rights; 2) written notification of the rights along with a Crime Victims' Compensation Act application for compensation; and 3) a victim impact statement kit. The coordinator, on request, shall provide assistance in completing all forms, and ensure a copy of the impact statement is sent to the juvenile court hearing the case.

The provision in (f) that implies that a victim impact statement may be considered by the juvenile court at disposition is subject to the requirement of 54.04(b) of disclosure to the child of "all written matter to be considered in disposition."

§ 57.0031. Notification of Rights of Victims of Juveniles

At the initial contact or at the earliest possible time after the initial contact between the victim of a reported crime and the juvenile probation office having the responsibility for the disposition of the juvenile, the office shall provide the victim a written notice:

(1) containing information about the availability of emergency and

medical services, if applicable;

(2) stating that the victim has the right to receive information regarding compensation to victims of crime as provided by the Crime Victims' Compensation Act (Subchapter B, Chapter 56, Code of Criminal Procedure), including information about:

(A) the costs that may be compensated and the amount of compensation, eligibility for compensation, and procedures for application for compensation;

(B) the payment for a medical examination for a victim of a sexual assault; and

(C) referral to available social service agencies that may offer additional assistance;

(3) stating the name, address, and phone number of the victim assistance coordinator for victims of juveniles;

(4) containing the following statement: "You may call the crime victim assistance coordinator for the status of the case and information about victims' rights.";

(5) stating the rights of victims of crime under Section 57.002;

(6) summarizing each procedural stage in the processing of a juvenile case, including preliminary investigation, detention, informal adjustment of a case, disposition hearings, release proceedings, restitution, and appeals;

(7) suggesting steps the victim may take if the victim is subjected to threats or intimidation;

(8) stating the case number and assigned court for the case; and

(9) stating that the victim has the right to file a victim impact statement and to have it considered in juvenile proceedings.

Commentary by Lisa Capers

Section 57.0031 is a new section that mandates juvenile probation departments to provide victims of juvenile offenders with certain written information. This information must be provided to the victim at the initial contact with the probation department after the offense or as soon as possible thereafter. This written notice must tell the victim 1) about emergency and medical services; 2) the Crime Victims' Compensation Act eligibility and application procedures; 3) contacting the victim assistance coordinator; 4) the victim's rights under Chapter 57; 5) a summary of each procedural step in a juvenile case; 6) the steps a victim can take if threatened or intimated; 7) the cause or case number and court hearing the case; and 8) information about the availability and use of a victim impact statement.

The purpose of this section is to ensure that victims of juvenile offenders receive notification of their rights in a timely manner. Juvenile cases often progress very quickly, and prior to this new law, many victims learned of their rights only to subsequently discover the disposition of the case had been completed. All juvenile probation departments must now have a procedure in place to provide the victim with this information as quickly as possible after the commission of the offense.

§ 57.008. Court Order for Protection from Juveniles

(a) A court may issue an order for protection from juveniles directed against a child to protect a victim of the

child's conduct who, because of the victim's participation in the juvenile justice system, risks further harm by the child.

(b) In the order, the court may prohibit the child from doing specified acts or require the child to do specified acts necessary or appropriate to prevent or reduce the likelihood of further harm to the victim by the child.

Commentary by Lisa Capers

Section 57.008 is a new section that allows a court to issue a protective order for a victim of a juvenile offender if the victim risks further harm by the child because of the victim's participation in the juvenile justice system. The court may prohibit the child from doing certain acts or require the child to perform appropriate acts to protect the victim. This subsection was needed because a protective order under Chapter 71 of the Family Code can not be issued against a juvenile offender unless the juvenile is a family member of the victim and a member or former member of the victim's household. The section does not limit the issuance of the protective order to only a juvenile court.

CHAPTER 58. RECORDS; JUVENILE JUSTICE INFORMATION SYSTEM

Introductory Commentary

Chapter 58 is a comprehensive treatment of juvenile records. Subchapter A deals mainly with local records and imposes restrictions on the creation and maintenance of those records. Subchapter B creates a state-wide computerized system of juvenile records and regulates the maintenance of that system by the DPS and access to it. The state-wide system is closely modeled in the Criminal History Record System created by Chapter 60 of the Code of Criminal Procedure.

SUBCHAPTER A. RECORDS

§ 58.001. Collection of Records of Children

(a) Law enforcement officers and other juvenile justice personnel shall collect information described by Section 58.104 as a part of the juvenile justice information system created under Subchapter B.

(b) The information is available as provided by Subchapter B.

(c) A law enforcement agency may forward information, including photographs and fingerprints, relating to a child who has been detained or taken into custody by the agency to the Department of Public Safety of the State of Texas for inclusion in the juvenile justice information system created under Subchapter B only if the child is referred to juvenile court on or before the 10th day after the date the child is detained or taken into custody. If the child is not referred to juvenile court within that time, the law enforcement agency shall destroy all information, including photographs and fingerprints, relating to the child unless the child is placed in a first offender program under Section 52.031 or on informal disposition under Section 52.03. The law enforcement agency may not forward any information to the Department of Public Safety of the State of Texas relating to the child while the child is in a first offender program under Section 52.031 or on informal disposition under Section 52.03. On successful completion by the child of a first offender program under Section 52.031 or informal disposition under Section 52.03, the law enforcement agency shall destroy all information, including photographs and fingerprints, relating to the child.

Commentary by Robert Dawson

This section defines the duties of local law enforcement and other juvenile justice agencies to collect information concerning juveniles taken into custody and defines their duties to transmit that information to the state-wide system

maintained by the DPS.

Subsection (c) authorizes law enforcement to forward to DPS information, including photographs and fingerprints, from any child taken into custody. Section 58.002 restricts the authority of law enforcement to photograph or fingerprint to those children taken into custody for a felony or a jailable misdemeanor.

Although a child may be photographed and fingerprinted for any Class B misdemeanor or above, there are restrictions on what can be done with information collected as part of this booking procedure. The information can be sent to the state-wide system only if the child is referred to the juvenile court within 10 days of being taken into custody. "Referral to juvenile court" is defined by 51.02(12) in such a way as to make it clear that it means referral to juvenile court intake--it does not require the filing of a court petition to make a referral.

Failing to refer within 10 days requires immediate destruction of all records created by the arrest unless the child is placed in a first offender program or other informal disposition program. The local records must be destroyed by the law enforcement agency when and if the child successfully completes the program.

What if the program is terminated in some way other than successful completion? Section 52.031(j) requires law enforcement to refer a child to the juvenile court (1) if the child fails to complete the program, or (2) the child's parents terminate the child's participation in the program, or (3) the child completes the program but is taken into custody for different conduct within 90 days of completion. Section 52.04 requires law enforcement to transmit to the juvenile court accompanying referral all information in its possession concerning the offense and child being referred.

If a first offender program or informal disposition is terminated without successful completion under (1) or (2), law enforcement must refer the child to the juvenile court and must accompany that referral by full information concerning the offense and the child. Therefore, the 10 day restriction on forwarding information to the state-wide system must be read in light of these circumstances. The referral must be made within 10 days of the child's unsuccessful termination of the program and must be accompanied by full law enforcement information concerning the offense and child. In addition, the required information respecting a Class B misdemeanor or above must be forwarded to the state-wide system at that point, since the child has been referred to the juvenile court.

What if the child successfully completes a first offender program under 52.031 but is arrested for different conduct within 90 days of completion? Section 52.031(j) requires law enforcement to refer the original offense to the juvenile court with full information, but it cannot do so if it has already complied with the literal command of 58.001(c) that it destroy that information. Therefore, when a child is placed in a first offender program under 52.031 and has successfully completed that program, law enforcement should not destroy records until the 91st day after completion in order to have that information available for a referral of the original offense to the juvenile court in the event of re-offending. Since the 90 day rule applies only to a first offender program under 52.031, but not to other informal dispositions under 52.03, the requirement of retention for 90 days beyond successful completion applies only

to first offender programs. It does not apply to informal disposition under 52.03.

§ 58.002. Photographs and Fingerprints of Children

(a) Except as provided by Chapter 79, Human Resources Code, a child may not be photographed or fingerprinted without the consent of the juvenile court unless the child is taken into custody for conduct that constitutes a felony or a misdemeanor punishable by confinement in jail.

(b) On or before December 31 of each year, the head of each municipal or county law enforcement agency located in a county shall certify to the juvenile board for that county that the photographs and fingerprints required to be destroyed under Section 58.001 have been destroyed. The juvenile board shall conduct an audit of the records of the law enforcement agency to verify the destruction of the photographs and fingerprints and the law enforcement agency shall make its records available for this purpose. If the audit shows that the certification provided by the head of the law enforcement agency is false, that person is subject to prosecution for perjury under Chapter 37, Penal Code.

Commentary by Robert Dawson

Subsection (a) prohibits the fingerprinting or photographing of a child with three exceptions: (1) consent of the juvenile court, (2) for inclusion in the missing children clearinghouse under Human Resources Code Chapter 79, and (3) when a child is taken into custody for a felony or jailable misdemeanor. The third exception greatly expands current law, which restricts routine fingerprinting and photographing to offenses subject to certification or to handing under the determinate sentence act.

House Bill 1252, with an effective date of August 28, 1995, amended Section 51.15, which was then the fingerprint section of the Family Code and which was repealed by HB 327, by adding (j) to read as follows: "This section does not apply to fingerprints which are required or authorized to be submitted or obtained on application for a driver's license or personal identification card." Under the Code Construction Act, that amendment survived the repeal of section 51.15 and is law. It should be read as a fourth exception to the prohibition of 58.002(a).

Subsection (b) is intended to provide an enforcement mechanism for the obligations of law enforcement agencies under 58.001 to destroy juvenile fingerprint and photograph records. It requires law enforcement annually to certify to the juvenile board that records required to be destroyed by 58.001 have been destroyed. It also requires the juvenile board to audit law enforcement records to determine whether the annual certification is truthful. Implicitly, the audit must be an annual one.

§ 58.003. Sealing of Records

(a) Except as provided by Subsections (b) and (c), on the application of a person who has been found to have engaged in delinquent conduct or conduct indicating a need for supervision, or a person taken into custody to determine whether the person engaged in delinquent conduct or conduct indicating a need for supervision, on the juvenile court's own motion or on receipt of a certification from the Department of Public Safety of the State of Texas that the records of a

person are eligible for sealing under this section, the court shall order the sealing of the records in the case if the court finds that:

(1) two years have elapsed since final discharge of the person or since the last official action in the person's case if there was no adjudication; and

(2) since the time specified in Subdivision (1), the person has not been convicted of a felony or a misdemeanor involving moral turpitude or found to have engaged in delinquent conduct or conduct indicating a need for supervision and no proceeding is pending seeking conviction or adjudication.

(b) A court may not order the sealing of the records of a person who has received a determinate sentence for engaging in delinquent conduct that violated a penal law listed in Section 53.045 or engaging in habitual felony conduct as described by Section 51.031.

(c) Subject to Subsection (b), a court may order the sealing of records concerning a person adjudicated as having engaged in delinquent conduct that violated a penal law of the grade of felony only if:

(1) the person is 21 years of age or older;

(2) the person was not transferred by a juvenile court under Section 54.02 to a criminal court for prosecution;

(3) the records have not been used as evidence in the punishment phase of a criminal proceeding under Section 3(a), Article 37.07, Code of Criminal Procedure; and

(4) the person has not been convicted of a penal law of the grade of felony after becoming age 17.

(d) The court may grant the relief authorized in Subsection (a) at any time after final discharge of the person or after the last official action in the case if there was no adjudication. If the child is referred to the juvenile court for conduct constituting any offense and at the adjudication hearing the child is found to be not guilty of each offense alleged, the court shall immediately order the sealing of all files and records relating to the case.

(e) Reasonable notice of the hearing shall be given to:

(1) the person who made the application or who is the subject of the records named in the motion;

(2) the prosecuting attorney for the juvenile court;

(3) the authority granting the discharge if the final discharge was from an institution or from parole;

(4) the public or private agency or institution having custody of records named in the application or motion; and

(5) the law enforcement agency having custody of files or records named in the application or motion.

(f) A copy of the sealing order shall be sent to each agency or official named in the order.

(g) On entry of the order:

(1) all law enforcement, prosecuting attorney, clerk of court, and juvenile court records ordered sealed shall be sent to the court issuing the order;

(2) all records of a public or private agency or institution ordered sealed shall be sent to the court issuing the order;

(3) all index references to the records ordered sealed shall be

deleted;

(4) the juvenile court, clerk of court, prosecuting attorney, public or private agency or institution, and law enforcement officers and agencies shall properly reply that no record exists with respect to the person on inquiry in any matter; and

(5) the adjudication shall be vacated and the proceeding dismissed and treated for all purposes other than a subsequent capital prosecution, including the purpose of showing a prior finding of delinquent conduct, as if it had never occurred.

(h) Inspection of the sealed records may be permitted by an order of the juvenile court on the petition of the person who is the subject of the records and only by those persons named in the order.

(i) On the final discharge of a child or on the last official action in the case if there is no adjudication, the child shall be given a written explanation of the child's rights under this section and a copy of the provisions of this section.

(j) A person whose records have been sealed under this section is not required in any proceeding or in any application for employment, information, or licensing to state that the person has been the subject of a proceeding under this title and any statement that the person has never been found to be a delinquent child shall never be held against the person in any criminal or civil proceeding.

(k) A prosecuting attorney may, on application to the juvenile court, reopen at any time the files and records of a person adjudicated as having engaged in delinquent conduct that violated a penal law of the grade of felony sealed by the court under this section for the purposes of Sections 12.42(a)-(c) and (e), Penal Code.

(l) On the motion of a person in whose name records are kept or on the court's own motion, the court may order the destruction of records that have been sealed under this section if:

(1) the records relate to conduct that did not violate a penal law of the grade of felony or a misdemeanor punishable by confinement in jail;

(2) five years have elapsed since the person's 16th birthday; and

(3) the person has not been convicted of a felony.

Commentary by Robert Dawson

This section replaces 51.16, which was repealed. It specifies the circumstances under which juvenile records can be sealed or destroyed.

Under (b), records relating to a case in which the juvenile received a determinate sentence can never be sealed.

Under (c), in felony cases not covered by (b), the juvenile may petition and the juvenile court *has discretion* to order the sealing of a record, but only when the respondent becomes 21 years of age and has had no felony convictions since becoming 17. If the respondent was certified to criminal court or the record was used in adult penalty phase proceedings, it cannot be sealed.

Under (a), for non-felony cases, the juvenile *has a right* to sealing when two years have elapsed since he or she exited the juvenile justice system and after the time of exit the respondent has not been adjudicated in juvenile court or convicted of a felony or a misdemeanor involving moral turpitude in criminal court and proceedings are not pending.

Also under (a), the juvenile court must seal non-felony records upon receipt

of notice from the DPS that they are eligible for sealing. Section 58.104(f) places an obligation upon DPS to determine when two years have elapsed following discharge from the system for a non-felony offense and to determine from its own records whether since discharge the respondent has been adjudicated or convicted of a disqualifying offense.

Under (d), the juvenile court *has discretion* to seal non-felony records anytime after the child has exited the juvenile justice system.

Also under (d), *immediate sealing is required* if the child is found not guilty of each offense alleged. Implicitly, this is an automatic consequence of the not guilty verdict or finding and requires no affirmative action by the respondent to obtain. This provision also reaches determinate sentence cases in which there was a complete verdict of not guilty, since such a respondent "has not received a determinate sentence" under (b).

The procedural aspects of sealing in (e) through (j) are identical to prior law.

Under (k) the prosecutor has the power to move to reopen sealed records for purposes of showing a felony adjudication under 12.42 of the Penal Code. Since under (g) all references to the sealed record are required to be sealed or destroyed upon entry of a sealing order, the prosecutor must of necessity have learned of the record from some other source, perhaps from the respondent himself or herself. There is no time limit on the right to move to reopen a sealed felony adjudication.

Under (j), the juvenile court has *discretion to destroy* sealed records of cases other than felonies or jailable misdemeanors when the respondent becomes 21 if he or she has not been convicted of a felony.

Note that under section 58.006, records must automatically be destroyed upon a finding of no probable cause by intake or the prosecutor.

§ 58.004. Compilation of Information Pertaining to a Criminal Combination

(a) A local criminal justice agency may compile criminal information into a local system for the purpose of investigating or prosecuting the criminal activities of criminal combinations. Criminal information relating to a child associated with a combination, utilizing the meaning assigned by Section 71.01, Penal Code, may be compiled and released to other local, state, or federal criminal justice agencies and any court having jurisdiction over a child, regardless of the age of the child. The information may be compiled on paper, by photographs, by computer, or in any other useful manner.

(b) In this section, "local criminal justice agency" means a municipal or county agency, or school district law enforcement agency, that is engaged in the administration of criminal justice under a statute or executive order.

Commentary by Robert Dawson

This section authorizes the creation of "gang books." However, it is not law. House Bill 327 contained an Assisted Suicide Clause to the effect that if House Bill 466, which also authorizes gang books, passed the legislature after House Bill 327, the provisions of House Bill 466 would take effect and section 58.004 would expire peacefully. That scenario occurred and, therefore, 58.004 is not law.

See the House Bill 466 and Commentary for the "gang book"

provisions that are law.

§ 58.005. Confidentiality of Records

(a) Information obtained for the purpose of diagnosis, examination, evaluation, or treatment or for making a referral for treatment of a child by a public or private agency or institution providing supervision of a child by arrangement of the juvenile court or having custody of the child under order of the juvenile court may be disclosed only to:

(1) the professional staff or consultants of the agency or institution;

(2) the judge, probation officers, and professional staff or consultants of the juvenile court;

(3) an attorney for the child;

(4) a governmental agency if the disclosure is required or authorized by law;

(5) a person or entity to whom the child is referred for treatment or services if the agency or institution disclosing the information has entered into a written confidentiality agreement with the person or entity regarding the protection of the disclosed information;

(6) the Texas Department of Criminal Justice and the Texas Juvenile Probation Commission for the purpose of maintaining statistical records of recidivism and for diagnosis and classification; or

(7) with leave of the juvenile court, any other person, agency, or institution having a legitimate interest in the proceeding or in the work of the court.

(b) This section does not apply to information collected under Section 58.104.

Commentary by Robert Dawson

This section preserves the confidentiality of diagnostic and treatment records in a fashion similar to current law under section 51.14(b).

Section 58.007 also contains a confidentiality provision relating to other juvenile justice local records.

The reference to 58.104 is to the state-wide juvenile justice information system. It contains its own confidentiality provisions.

§ 58.006. Destruction of Certain Records

The court shall order the destruction of the records relating to the conduct for which a child is taken into custody, including records contained in the juvenile justice information system, if:

(1) a determination that no probable cause exists to believe the child engaged in the conduct is made under Section 53.01 and the case is not referred to a prosecutor for review under Section 53.012; or

(2) a determination that no probable cause exists to believe the child engaged in the conduct is made by a prosecutor under Section 53.012.

Commentary by Robert Dawson

If intake determines there was no probable cause to believe the child referred to the court engaged in delinquent conduct or conducting indicating a need for supervision and the case is not one that is required by 53.01 or local agreement to be referred for prosecutorial review, the case is terminated. If there is a prosecutorial review and the prosecutor determines there is no probable cause, the case is also

terminated.

In either of these situations, this section requires the juvenile court to order the destruction, not just the sealing, of all records relating to the case, including records that may have been sent the state-wide juvenile justice information system. Implicitly, there is no requirement that the child must petition the court for this relief. Similarly to the sealing required upon a finding of not guilty by 58.003(d), this provision requiring destruction is supposed to be automatic.

Implicitly, when intake or the prosecutor, as the case may be, makes a no probable cause determination, it should also take steps to notify the designated agent of the juvenile court so that a records destruction order will be issued and sent to the appropriate agencies.

§ 58.007. Physical Records or Files

(a) This section applies only to the inspection and maintenance of a physical record or file concerning a child and does not affect the collection, dissemination, or maintenance of information as provided by Subchapter B. This section does not apply to a record or file relating to a child that is required or authorized to be maintained under the laws regulating the operation of motor vehicles in this state.

(b) Except as provided by Article 15.27, Code of Criminal Procedure, the records and files of a juvenile court, a clerk of court, a juvenile probation department, or a prosecuting attorney relating to a child who is a party to a proceeding under this title are open to inspection only by:

(1) the judge, probation officers, and professional staff or consultants of the juvenile court;

(2) a juvenile justice agency as that term is defined by Section 58.101;

(3) an attorney for a party to the proceeding;

(4) a public or private agency or institution providing supervision of the child by arrangement of the juvenile court, or having custody of the child under juvenile court order; or

(5) with leave of the juvenile court, any other person, agency, or institution having a legitimate interest in the proceeding or in the work of the court.

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child shall:

(1) be kept separate from adult files and records; and

(2) be maintained on a local basis only and not sent to a central state or federal depository.

(d) The law enforcement files and records of a person who is transferred from the Texas Youth Commission to the institutional division or the pardons and paroles division of the Texas Department of Criminal Justice may be transferred to a central state or federal depository for adult records on or after the date of transfer.

(e) Law enforcement records and files concerning a child may be inspected by a juvenile justice agency as that term is defined by Section 58.101 and a criminal justice agency as that term is defined by Section 411.082, Government Code.

(f) If a child has been reported missing by a parent, guardian, or conservator of that child, information about the child may be forwarded to and disseminated by the Texas Crime

Information Center and the National Crime Information Center

Commentary by Robert Dawson

Commentary by Robert Dawson

Subsection (b) restates current law as contained in 51.14(a), but subsection (a) restricts the entire section to physical records and excludes information that has been sent to the juvenile justice information system. The reference in (b) to article 15.27 of the Code of Criminal Procedure is to information about juvenile cases required to be communicated to schools.

Subsection (c) restates current law as contained in 51.14(c), but it is restricted to physical records and does not restrict the transmittal of information to the juvenile justice information system.

Subsections (d) and (f) restate current law as contained in 51.14(c).

Subsection (e) broadens the right to inspect law enforcement files and records from current law as contained in 51.14(d), which restricts inspection to the juvenile court, an attorney for a party, and law enforcement officers.

Under (e), inspection is permitted by a juvenile justice agency or a criminal justice agency. A "juvenile justice agency" is defined broadly by 58.001(5) to be any agency that has custody or control over juvenile offenders. It would, therefore, include a juvenile court, juvenile probation, TYC, or a public or private agency having custody or control under placement arrangements or court order. Government Code § 411.082(3) defines a criminal justice agency as a federal or state agency that "is engaged in the administration of criminal justice" under authorization that "allocates a substantial portion of its budget to the administration of criminal justice."

SUBCHAPTER B. JUVENILE

JUSTICE INFORMATION SYSTEM

§ 58.101. Definitions

In this subchapter:

(1) "Criminal justice agency" has the meaning assigned by Section 411.082, Government Code.

(2) "Department" means the Department of Public Safety of the State of Texas.

(3) "Disposition" means an action that results in the termination, transfer of jurisdiction, or indeterminate suspension of the prosecution of a juvenile offender.

(4) "Incident number" means a unique number assigned to a child during a specific custodial or detention period or for a specific referral to the office or official designated by the juvenile court, if the juvenile offender was not taken into custody before the referral.

(5) "Juvenile Justice agency" means an agency that has custody or control over juvenile offenders.

(6) "Juvenile offender" means a child who has been assigned an incident number.

(7) "State identification number" means a unique number assigned by the department to a child in the juvenile justice information system.

(8) "Uniform incident fingerprint card" means a multiple-part form containing a unique incident number with space for information relating to the conduct for which a child has been taken into custody, detained, or referred, the child's fingerprints, and other relevant information.

Commentary by Robert Dawson

Under (1), a "criminal justice agency" is defined as a federal or state agency that "is engaged in the administration of criminal justice" under authorization that "allocates a substantial portion of its budget to the administration of criminal justice."

Under (4), an "incident number" is assigned by the local law enforcement agency with respect to a child taken into custody by it or by juvenile court intake with respect to a child referred without custody. Under 58.109(c)(1), the incident number is assigned by selecting a Uniform Incident Fingerprint Card with a pre-printed unique incident number on it. By contrast, under (7) a "state identification number" is a number assigned to each child by the DPS to permit tracking of that child and may identify only one or a number of incidents.

Under (8), a "uniform incident fingerprint card" is the basic vehicle for transmitting information to the juvenile justice information system. It is transmitted to DPS by law enforcement to report an arrest and referral to the juvenile court or by the juvenile court to report a non-custodial referral to it. When the prosecutor makes the decision whether to petition a case, that is reported to the DPS on the second page of the same form. Finally, when the case is disposed of judicially or non-judicially, that information is reported to DPS, by using the third page of the same form..

§ 58.102. Juvenile Justice Information System

(a) The department is responsible for recording data and maintaining a database for a computerized juvenile justice information system that serves:

(1) as the record creation

point for the juvenile justice information system maintained by the state; and

(2) as the control terminal for entry of records, in accordance with federal law, rule, and policy, into the federal records system maintained by the Federal Bureau of Investigation.

(b) The department shall develop and maintain the system with the cooperation and advice of the:

(1) Texas Youth Commission;

(2) Texas Juvenile Probation Commission;

(3) Criminal Justice Policy Council; and

(4) juvenile courts and clerks of juvenile courts.

(c) The department may not collect or retain information relating to a juvenile if this chapter prohibits or restricts the collection or retention of the information.

(d) The database must contain the information required by this subchapter.

(e) The department shall designate the offense codes and has the sole responsibility for designating the state identification number for each juvenile whose name appears in the juvenile justice system.

Commentary by Robert Dawson

The state-wide system is the responsibility of DPS. Note that under (a)(2) DPS is authorized to send juvenile information to the FBI for inclusion in the nation-wide criminal history system.

§ 58.103. Purpose of System

The purpose of the juvenile justice information system is to:

(1) provide agencies and personnel within the juvenile justice system accurate information relating to children who come into contact with the juvenile justice system of this state;

(2) provide, where allowed by law, adult criminal justice agencies accurate and easily accessible information relating to children who come into contact with the juvenile justice system;

(3) provide an efficient conversion, where appropriate, of juvenile records to adult criminal records;

(4) improve the quality of data used to conduct impact analyses of proposed legislative changes in the juvenile justice system; and

(5) improve the ability of interested parties to analyze the functioning of the juvenile justice system.

Commentary by Robert Dawson

Broadly speaking, there are three major purposes of this system: (1) to provide a state-wide database of information about prior contacts by a juvenile with the law (what in adult parlance is called a "rap sheet") in order to permit more informed decision-making respecting subsequent cases involving the same person, (2) to assist in the solution of crimes by enabling the computerized comparison of latent fingerprints with those on file in the database, and (3) to facilitate research concerning the juvenile justice system for operational, legislative and academic purposes.

§ 58.104. Types of Information Collected

(a) Subject to Subsection (f), the

juvenile justice information system shall consist of information relating to delinquent conduct committed by a juvenile offender that, if the conduct had been committed by an adult, would constitute a criminal offense other than an offense punishable by a fine only, including information relating to:

(1) the juvenile offender;

(2) the intake or referral of the juvenile offender into the juvenile justice system;

(3) the detention of the juvenile offender;

(4) the prosecution of the juvenile offender;

(5) the disposition of the juvenile offender's case, including the name and description of any program to which the juvenile offender is referred; and

(6) the probation or commitment of the juvenile offender.

(b) To the extent possible and subject to Subsection (a), the department shall include in the juvenile justice information system the following information for each juvenile offender taken into custody, detained, or referred under this title for delinquent conduct:

(1) the juvenile offender's name, including other names by which the juvenile offender is known;

(2) the juvenile offender's date and place of birth;

(3) the juvenile offender's physical description, including sex, weight, height, race, ethnicity, eye color, hair color, scars, marks, and tattoos;

(4) the juvenile offender's state identification number, and other identifying information, as determined by the department;

(5) the juvenile offender's fingerprints;

(6) the juvenile offender's last known residential address, including the census tract number designation for the address;

(7) the name and identifying number of the agency that took into custody or detained the juvenile offender;

(8) the date of detention or custody;

(9) the conduct for which the juvenile offender was taken into custody, detained, or referred, including level and degree of the alleged offense;

(10) the name and identifying number of the juvenile intake agency or juvenile probation office;

(11) each disposition by the juvenile intake agency or juvenile probation office;

(12) the date of disposition by the juvenile intake agency or juvenile probation office;

(13) the name and identifying number of the prosecutor's office;

(14) each disposition by the prosecutor;

(15) the date of disposition by the prosecutor;

(16) the name and identifying number of the court;

(17) each disposition by the court, including information concerning custody of a juvenile offender by a juvenile justice agency or probation;

(18) the date of disposition by the court;

(19) any commitment or release under supervision by the Texas Youth Commission;

(20) the date of any commitment or release under supervision by the Texas Youth

Commission; and

(21) a description of each appellate proceeding.

(c) The department may designate codes relating to the information described by Subsection (b).

(d) The department shall designate a state identification number for each juvenile offender.

(e) This subchapter does not apply to a disposition that represents an administrative status notice of an agency described by Section 58.102(b).

(f) Records maintained by the department in the depository are subject to being sealed under Section 58.003. The department shall send to the appropriate juvenile court its certification of records that are eligible for sealing under Section 58.003(a).

Commentary by Robert Dawson

The information required as part of the system is comprehensive and includes every step in the processing of a juvenile case from arrest to discharge from parole.

Under (a) the eligible information consists only of information relating to (1) delinquent conduct (2) that would be a criminal offense if committed by an adult (3) other than an offense punishable by fine only.

The delinquent conduct requirement means that inhalant abuse, which is sometimes punishable only by fine and sometimes by jail, would be excluded from the state-wide system because it is always CINS rather than delinquent conduct. The requirement that the delinquent conduct must be a criminal offense if committed by an adult means that delinquent conduct in the form of violation of a reasonable and lawful dispositional order of a juvenile court would be excluded, because that conduct would not be criminal if engaged in by an adult. By contrast, delinquent conduct for contempt of a justice or municipal court would be included because an adult can receive a three-day jail sentence for that offense. The third requirement--that the offense be other than one punishable by fine only--currently excludes no cases not already excluded by (1) or (2).

What of driving while intoxicated? For third offense, it clearly is included in the state-wide system because it is delinquent conduct that could carry prison time for an adult. What of first or second offense DWI? Either could carry jail time for an adult, but under the Family Code it is CINS, not delinquent conduct. All DWIs should be reported to the state-wide system because at the time of referral there is no way of knowing, and unless a report is made, it will never be known with certainty whether there are prior adjudications for DWI. In other words, at the time the decision whether to report a DWI to the state-wide system must be made (upon referral to the juvenile court), the reporting agency has no way to know with certainty that the DWI is not delinquent conduct. Since delinquent conduct cannot be excluded in any DWI case, each such case should be reported to the state-wide system.

Under (e) an administrative status change, for example, placing a child in administrative segregation within the TYC, is not permitted to be included in the system.

Under (f) information in the system is subject to being sealed under the terms of 58.003. DPS has the duty to notify the juvenile court of information in its system that is subject to the sealing provisions.

With respect the information that has been forwarded to the FBI by DPS, the

policy of the FBI is to return that information upon request by the submitting state agency. A sealing order should, therefore, require the DPS to request the FBI to return information sent by it to the FBI respecting the records being sealed.

§ 58.105. Duties of Juvenile Board

Each juvenile board shall provide for:

(1) the compilation and maintenance of records and information needed for reporting information to the department under this subchapter;

(2) the transmittal to the department, in the manner provided by the department, of all records and information required by the department under this subchapter; and

(3) access by the department to inspect records and information to determine the completeness and accuracy of information reported.

Commentary by Robert Dawson

The juvenile board has the responsibility for assuring that the court, the clerk, and the probation department comply with the record compilation, maintenance and transmittal requirements of Chapter 58. That will mean that arrangements will have to be made for the photographing and fingerprinting of juveniles referred to the court who have not been booked by law enforcement. This could be done directly by the probation department or indirectly through arrangements with a local law enforcement agency.

§ 58.106. Confidentiality

(a) Except as provided by Subsection (b), information contained in the juvenile justice information system is confidential information for the use of the department and may not be disseminated by the department except:

(1) with the permission of the juvenile offender, to military personnel of this state or the United States;

(2) to a person or entity to which the department may grant access to adult criminal history records as provided by Section 411.083, Government Code;

(3) a juvenile justice agency; and

(4) to the Criminal Justice Policy Council, the Texas Youth Commission, and the Texas Juvenile Probation Commission for analytical purposes.

(b) Subsection (a) does not apply to a document maintained by a juvenile justice agency that is the source of information collected by the department.

Commentary by Robert Dawson

The information in the state-wide system is not available to the public. It is confidential and cannot be disseminated outside DPS except as provided by (a).

Under (a)(2), DPS may release juvenile justice information to (1) a criminal justice agency, (2) the person who is the subject of the records, (3) persons working on certain research or statistical projects, (4) persons or agencies providing service under contract with a criminal justice agency, and (5) certain noncriminal justice agencies, as authorized by state statute to "receive criminal history record information."

A long list of noncriminal justice

agencies is permitted access to criminal history information and, therefore, to information in the juvenile justice information system. Government Code § 411.090 and following authorize over 40 public and private agencies and organizations to have access to information under Government Code § 411.083. Each statutory grant of access contains restrictions on the uses for which the information can be requested and to which it can be put. For a more detailed description, see Brian Stettin, Texas's Computerized Criminal History Record System: A Profile for the Juvenile Bar, 9 State Bar of Texas Juvenile Law Section Report 4-13 (No. 2, June 1995).

§ 58.107. Compatibility of Data

Data supplied to the juvenile justice information system must be compatible with the system and must contain both incident numbers and state identification numbers.

Commentary by Robert Dawson

This section gives DPS control over the form in which the data are submitted to the juvenile justice information system to insure that it is compatible with the system.

§ 58.108. Duties of Agencies and Courts

(a) A juvenile justice agency and a clerk of a juvenile court shall:

(1) compile and maintain records needed for reporting data required by the department;

(2) transmit to the department in the manner provided by the department data required by the department;

(3) give the department or its accredited agents access to the agency or court for the purpose of inspection to determine the completeness and accuracy of data reported; and

(4) cooperate with the department to enable the department to perform its duties under this chapter.

(b) A juvenile justice agency and clerk of a court shall retain documents described by this section.

Commentary by Robert Dawson

Local agencies must create and maintain records from which information required by the Juvenile Justice Information System can be transmitted to DPS. Under (a)(2), DPS could require, when feasible, that data be transmitted electronically. DPS has the right under (a)(3) to inspect local records to audit the quality of information being transmitted to it.

The record retention requirement of (b) must be read in light of the sealing and destruction provisions of 58.003 and 58.006, which would control.

§ 58.109. Uniform Incident Fingerprint Card

(a) The department may provide for the use of a uniform incident fingerprint card in the maintenance of the juvenile justice information system.

(b) The department shall design, print, and distribute to each law enforcement agency and juvenile intake agency uniform incident fingerprint cards.

(c) The incident cards must:

(1) be serially numbered with an incident number in a manner that allows each incident of referral of a juvenile offender who is the subject of

the incident fingerprint card to be readily ascertained; and

(2) be multiple-part forms that can be transmitted with the juvenile offender through the juvenile justice process and that allow each agency to report required data to the department.

(d) Subject to available telecommunications capacity, the department shall develop the capability to receive by electronic means from a law enforcement agency the information on the uniform incident fingerprint card. The information must be in a form that is compatible to the form required of data supplied to the juvenile justice information system.

Commentary by Robert Dawson

The uniform incident fingerprint card is the basic reporting vehicle for the system. As a case progresses through the juvenile justice system, each decision-maker reports to DPS the step taken via the uniform incident fingerprint card.

§ 58.110. Reporting

(a) The department by rule shall develop reporting procedures that ensure that the juvenile offender processing data is reported from the time a juvenile offender is initially taken into custody, detained, or referred until the time a juvenile offender is released from the jurisdiction of the juvenile justice system.

(b) The law enforcement agency or the juvenile intake agency that initiates the entry of the juvenile offender into the juvenile justice information system for a specific incident shall prepare a uniform incident fingerprint card and initiate the reporting process for each incident reportable under this subchapter.

(c) The clerk of the court exercising jurisdiction over a juvenile offender's case shall report the disposition of the case to the department. A clerk of the court who violates this subsection commits an offense. An offense under this subsection is a Class C misdemeanor.

(d) In each county, the reporting agencies may make alternative arrangements for reporting the required information, including combined reporting or electronic reporting, if the alternative reporting is approved by the juvenile board and the department.

(e) Except as otherwise required by applicable state laws or regulations, information required by this chapter to be reported to the department shall be reported promptly. The information shall be reported not later than the 30th day after the date the information is received by the agency responsible for reporting the information, except that a juvenile offender's custody, detention, or referral without previous custody shall be reported to the department not later than the seventh day after the date of the custody, detention, or referral.

(f) Subject to available telecommunications capacity, the department shall develop the capability to receive by electronic means the information required under this section to be reported to the department. The information must be in a form that is compatible to the form required of data to be reported under this section.

Commentary by Robert Dawson

This section spells out the reporting duties of local agencies toward the DPS.

Under (e) initial entries must be made within seven days of referral to the juvenile court. This must be read in light of the specific provisions of 58.001(c) requiring a referral within 10 days of making an arrest before law enforcement information can be transmitted to the state-wide system. In light of that specific provision, the language in (e) requiring a report within seven days of "custody, detention, or referral" must be read to mean "referral" only.

Subsequent entries in the same case must be made within 30 days of the action that triggers the obligation to transmit data to the state-wide system.

§ 58.111. Local Data Advisory Boards

The commissioners court of each county may create a local data advisory board to perform the same duties relating to the juvenile justice information system as the duties performed by a local data advisory board in relation to the criminal history record system under Article 60.09, Code of Criminal Procedure.

§ 58.112. Report to Legislature

Not later than January 15 of each year, the Criminal Justice Policy Council shall submit to the lieutenant governor, the speaker of the house of representatives, and the governor a report that contains the following statistical information relating to children referred to a juvenile court during the preceding year:

(1) the ages, races, and counties of residence of the children transferred to a district court or criminal district court for criminal proceedings; and

(2) the ages, races, and counties of residence of the children committed to the Texas Youth Commission, placed on probation, or discharged without any disposition.

§ 58.113. Warrants

The department shall maintain in a computerized database that is accessible by the same entities that may access the juvenile justice information system information relating to a warrant of arrest, as that term is defined by Article 15.01, Code of Criminal Procedure, or a directive to apprehend under Section 52.015 for any child, without regard to whether the child has been taken into custody.

Commentary by Robert Dawson

Warrants are kept on a database that is separate from case history information. Under this section, juvenile warrants and directives to apprehend may be placed on the DPS database.

CHAPTER 59. PROGRESSIVE SANCTIONS GUIDELINES

Introductory Comment by Neil Nichols

One of the most significant components of juvenile justice reform in HB 327 is the provision of statutory guidelines for making dispositional decisions and for formulating appropriate sanctions based on offense severity and chronicity, but allowing consideration of individual needs and circumstances and of the effectiveness of prior interventions. These "progressive sanctions guidelines" are not particularly new. They describe seven sanction levels,

each one more restrictive and demanding than the previous one, beginning with a supervisory caution at level one and ending with a sentence to commitment to the Texas Youth Commission at level seven. They reflect generally how most juvenile justice practitioners believe the juvenile justice system has always worked -- or at least how it should work when resources are adequate to meet the needs. A group of practitioners from the Texas Juvenile Probation Commission and the Texas Youth Commission had already developed the guidelines for possible administrative implementation before the guidelines were proposed for inclusion in HB 327.

The greatest concern expressed regarding enactment of the guidelines was that the cost of full implementation would be extremely high and, at least for now, would be impossible to project with any confidence due to the lack of sufficient data. The permissive language used throughout the chapter reflects the legislature's intent that the guidelines not be regarded as unfunded mandates requiring that all the services described at each sanction level be provided to all the youth who would be qualified under the guidelines to receive them. However, the legislature did appropriate a large amount of money to both TYC and TJPC to fund the progressive sanctions guidelines with the expectation of good faith implementation.

§ 59.001. Purposes

The purposes of the progressive sanctions guidelines are to:

(1) ensure that juvenile offenders face uniform and consistent consequences and punishments that correspond to the seriousness of each offender's current offense, prior delinquent history, special treatment or training needs, and effectiveness of prior interventions;

(2) balance public protection and rehabilitation while holding juvenile offenders accountable;

(3) permit flexibility in the decisions made in relation to the juvenile offender to the extent allowed by law;

(4) consider the juvenile offender's circumstances; and

(5) improve juvenile justice planning and resource allocation by ensuring uniform and consistent reporting of disposition decisions at all levels.

Commentary by Neil Nichols

One of the conclusions consistently reached by the interim legislative committees and other interested groups that studied juvenile justice reform is that the difficulty in defining the "system" of juvenile justice contributes significantly to the problem of determining how to evaluate its effectiveness and how to apply resources where they might have the greatest positive impact. One of the key purposes of the guidelines, then, is to provide a means of identifying very basically what it is the system is designed to provide (the sanction level descriptions) and who the system is designed to serve (the sanction level assignments). With that as a baseline, it is possible to determine how closely the system is per-

forming as it was designed and whether it is achieving the desired results.

Another key purpose of the guidelines is to inform youth what they can expect from their juvenile justice system. It makes sense that if we are to expect children to obey the law, we must work to make the consequences for disobedience reasonably predictable and sure and reasonably proportionate to the offense.

Finally, the guidelines are meant to preserve the broad discretion traditionally associated with juvenile justice to fashion sanctions and services uniquely suited to the needs of the individual. Implementation of the guidelines is not intended to preclude the exercise of such discretion -- another reason for the permissive language used throughout Chapter 59.

§ 59.002. Sanction Level Assignment by Probation Department

(a) The probation department may assign a sanction level of one to a child referred to the probation department under Section 53.012.

(b) The probation department may assign a sanction level of two to a child for whom deferred prosecution is authorized under Section 53.03.

Commentary by Neil Nichols

Provisions in Chapter 59 are not intended to affect procedural requirements in other sections of the Juvenile Justice Code related to dispositional decision-making. The pre-trial dispositions of "supervisory caution" and "deferred prosecution" are governed by 53.012 and 53.03 respectively. Section 59.002 provides that when an appropriate referral to the probation department is made under those sections, the description of sanctions and services under sanction level one corresponds to a disposition under 53.012 and the description of sanctions and services under sanction level two corresponds to a disposition under 53.03. The imposition of those sanctions and the provision of those services are permitted, but not required.

§ 59.003. Sanction Level Assignment Guidelines

(a) Subject to Subsection (e), after a child's first commission of delinquent conduct or conduct indicating a need for supervision, the probation department may or the juvenile court may, in a disposition hearing under Section 54.04, assign a child one of the following sanction levels according to the child's conduct:

(1) for conduct indicating a need for supervision, other than a Class A or B misdemeanor, the sanction level is one;

(2) for a Class A or B misdemeanor, other than a misdemeanor involving the use or possession of a firearm, or for delinquent conduct under Section 51.03(a)(2) or (3), the sanction level is two;

(3) for a misdemeanor involving the use or possession of a firearm or for a state jail felony or a felony of the third degree, the sanction

level is three;

(4) for a felony of the second degree, the sanction level is four;

(5) for a felony of the first degree, other than a felony involving the use of a deadly weapon or causing serious bodily injury, the sanction level is five;

(6) for a felony of the first degree involving the use of a deadly weapon or causing serious bodily injury or for an aggravated controlled substance felony, the sanction level is six or, if the petition has been approved by a grand jury under Section 53.045, seven; or

(7) for a capital felony, the sanction level is seven.

(b) For a child's refusal to comply with the restrictions and standards of behavior established by the parent or guardian and the court, a parent or guardian may notify the court of the child's refusal to comply, and the court may place the child at the next level of sanction. Notification of the court by the parent or guardian of the child's refusal satisfies the requirement of the parent to make a reasonable good faith effort to prevent the child from engaging in delinquent conduct or engaging in conduct indicating a need for supervision.

(c) Subject to Subsection (e), if the child's subsequent commission of delinquent conduct or conduct indicating a need for supervision involves a violation of a penal law of a classification that is the same as or greater than the classification of the child's previous conduct, the juvenile court may assign the child a sanction level that is one level higher than the previously assigned sanction level, unless the child's previously assigned sanction level is seven.

(d) Subject to Subsection (e), if the child's previously assigned sanction level is four or five and the child's subsequent commission of delinquent conduct is of the grade of felony, the juvenile court may assign the child a sanction level that is one level higher than the previously assigned sanction level.

(e) A juvenile court or probation department that deviates from the guidelines under this section shall state in writing its reasons for the deviation and submit the statement to the juvenile board. Nothing in this chapter prohibits the imposition of appropriate sanctions that are different from those provided at any sanction level.

(f) The probation department may extend a period of probation specified under sanction levels one through five if the circumstances of the child warrant the extension and the probation department notifies the juvenile court in writing of the extension and the period of and reason for the extension. The court may on notice to the probation department deny the extension.

Commentary by Neil Nichols

In 59.003(a), offenses are matched with appropriate sanctions -- the more serious the offense, the more restrictive and demanding the sanction. Except for the possibility of pre-trial dispositions made by the probation department, these assignments are made by the juvenile court in dispositional hearings.

In 59.003(c), provision is made for the sanction to increase one level with each subsequent offense that is as serious or

more serious than the previous one. An exception is made in 59.003(d) for youth who are already on sanction level four or five. Their subsequent offense need not be more serious, or even as serious, as the previous one. Any felony offense calls for the sanction to increase one level.

Some degree of misbehavior is expected at any sanction level, particularly during an initial period of orientation and limit-testing. Some extension or modification of the activities at the current sanction level may be adequate, and almost certainly would be less costly than progression to the next sanction level. However, if it is not, particularly if more serious misconduct occurs, adjudication and assignment to the next sanction level is
appropriate.

Section 59.003(e) is the subsection to highlight. It makes it clear that sanctions may be imposed that are different from those provided at any sanction level. However, it requires a court or probation department that deviates from the sanction level assignment guidelines to state in writing the reasons for the deviation and to submit the statement to the juvenile board. At least quarterly, then, the juvenile board is required to complete and return a form provided by the Texas Juvenile Probation Commission including those reasons (59.011). Finally, when all the information is compiled from across state, the Criminal Justice Policy Council is required to analyze it and submit a report to the governor and both houses of the legislature showing the primary reasons for deviations and the effect of guideline implementation on recidivism rates (59.012).

Section 59.003(b) provides that a parent's or guardian's report to the court of a child's refusal to comply with restrictions or standards of behavior established by the parents or the court satisfies "reasonable good faith effort" requirements. Under 54.041(g), 54.044(g) and 59.015, the court is required to waive restitution or community service requirements and any sanction that may be imposed on parents if it finds they have made a reasonable good faith effort to prevent the child from engaging in misconduct.

Finally, 59.003(f) authorizes a probation department to extend a period of probation in sanction levels one through five by notifying the court in writing of the reasons for the extension. The court may deny the extension. As the sanction level descriptions are written, it is not clear without this provision that probation departments have this authority.

§ 59.004. Sanction Level One

(a) For a child at sanction level one, the juvenile court or probation department may:

(1) require counseling for the child regarding the child's conduct;

(2) inform the child of the progressive sanctions that may be imposed on the child if the child continues to engage in delinquent conduct or conduct indicating a need for supervision;

(3) inform the child's parents or guardians of the parents' or guardians' responsibility to impose reasonable restrictions on the child to

prevent the conduct from recurring;

(4) provide information or other assistance to the child or the child's parents or guardians in securing needed social services;

(5) require the child or the child's parents or guardians to participate in a program for services under Section 264.302;

(6) refer the child to a community-based citizen intervention program approved by the juvenile court; and

(7) release the child to the child's parents or guardians.

(b) The probation department shall discharge the child from the custody of the probation department after the provisions of this section are met.

Commentary by Neil Nichols

Section 59.004 is a description of activities associated with a "Supervisory Caution" disposition. It is the first and least restrictive of the seven progressive sanction levels. As indicated in 59.002(a) and 59.003(a)(1), this sanction level is designed for youth who are (1) referred to the probation department for disposition under 53.012; or (2) adjudicated for conduct indicating a need for supervision, but not including Class A or B misdemeanor offenses.

In most cases, this sanction level is the first contact a child has with the juvenile justice system. Referral of the child and the child's parents to the Department of Protective and Regulatory Services for early youth intervention services or to other community intervention programs approved by the court is important in order to avoid deeper, and more expensive, involvement in the system.

§ 59.005. Sanction Level Two

(a) For a child at sanction level two, the juvenile court or the probation department may

(1) place the child on court-ordered or informal probation for not less than three months or more than six months;

(2) require the child to make restitution to the victim of the child's conduct or perform community service restitution appropriate to the nature and degree of harm caused and according to the child's ability;

(3) require the child's parents or guardians to identify restrictions the parents or guardians will impose on the child's activities and requirements the parents or guardians will set for the child's behavior;

(4) provide the information required under Sections 59.004(a)(2) and (4);

(5) require the child or the child's parents or guardians to participate in a program for services under Section 264.302;

(6) refer the child to a community-based citizen intervention program approved by the juvenile court; and

(7) if appropriate, impose additional conditions of probation.

(b) The juvenile court or the probation department shall discharge the child from the custody of the probation department on the date the provisions of this section are met or on

the child's 18th birthday, whichever is earlier.

Commentary by Neil Nichols

Section 59.005 is a description of activities associated with a "Deferred Prosecution" disposition. As indicated in 59.002(b), 59.003(a)(2) and 59.003(c), this sanction level is designed for children who are (1) referred to the probation department for disposition under 53.03; (2) adjudicated for a Class A or B misdemeanor, other than a misdemeanor involving the use or possession of a firearm; (3) adjudicated for conduct that violates an order of the juvenile court (but not if the violation consists only of a fineable offense, truancy or running away); (4) adjudicated for violating an order of a municipal or justice court under circumstances that would constitute contempt of court; or (5) adjudicated for a law violation that is classified the same or greater than the classification of the offense that prompted the child's assignment to sanction level one.

It is not clear what the legislative intent is for assigning a child who engages in delinquent conduct under 51.03(a)(2), relating to certain conduct that violates a juvenile court order, to sanction level two. It seems to contradict the intent of 59.003(c) to assign a child the next higher sanction level when there is a subsequent law violation of equal or greater severity. In any event, the intent is clear that at least a precautionary probation disposition at sanction level two is appropriate whenever there are violations of court orders.

The activities described at each sanction level are generally cumulative. Activities described in previous sanction levels are included, plus new activities that are intended to be progressively more restrictive and demanding depending on offense severity and chronicity. At sanction level two a probation period of from three to six months is added and victim restitution or community service restitution is required. Other activities are the same as those listed in sanction level one.

§ 59.006. Sanction Level Three

(a) For a child at sanction level three, the juvenile court may:

(1) place the child on probation for not less than six months;

(2) require the child to make restitution to the victim of the child's conduct or perform community service restitution appropriate to the nature and degree of harm caused and according to the child's ability;

(3) impose specific restrictions on the child's activities and requirements for the child's behavior as conditions of probation;

(4) require a probation officer to closely monitor the child's activities and behavior;

(5) require the child or the child's parents or guardians to participate in programs or services designated by the court or probation officer; and

(6) if appropriate, impose additional conditions of probation.

(b) The juvenile court shall discharge the child from the custody of the probation department on the date the provisions of this section are met or on the child's 18th birthday, whichever

is earlier.

Commentary by Neil Nichols

Section 59.006 is a description of activities associated with a "Probation" disposition. As indicated in 59.003(a)(3) and 59.003(c), this sanction level is designed for youth who are adjudicated for (1) a misdemeanor involving the use or possession of a firearm; (2) a state jail felony or a felony of the third degree; or (3) a law violation that is classified the same or greater than the classification of the offense that prompted the youth's assignment to sanction level two.

At sanction level three, probation for not less than six months, court imposed conditions of probation and close monitoring by a probation officer are added to the level description. The requirement that was included in the first two sanction levels regarding referral to the Department of Protective and Regulatory Services for early youth intervention services is not included at sanction level three since those services are unavailable to youth who are referred to the juvenile court for felony offenses, except for state jail felonies [264.302(c)].

§ 59.007. Sanction Level Four

(a) For a child at sanction level four, the juvenile court may:

(1) require the child to participate as a condition of probation for not less than three months in a highly intensive and regimented program that emphasizes discipline, physical fitness, social responsibility, and productive work;

(2) after release from the program described by Subdivision (1), continue the child on probation supervision for not less than six months or more than 12 months;

(3) require the child to make restitution to the victim of the child's conduct or perform community service restitution appropriate to the nature and degree of harm caused and according to the child's ability;

(4) impose highly structured restrictions on the child's activities and requirements for behavior of the child as conditions of probation;

(5) require a probation officer to closely monitor the child;

(6) require the child or the child's parents or guardians to participate in programs or services designed to address their particular needs and circumstances; and

(7) if appropriate, impose additional sanctions.

(b) The juvenile court shall discharge the child from the custody of the probation department on the date the provisions of this section are met or on the child's 18th birthday, whichever is earlier.

Commentary by Neil Nichols

Section 59.007 is a description of activities associated with an "Intensive Supervision Probation" disposition. As indicated in 59.003(a)(4) and 59.003(c), this sanction level is designed for youth who are adjudicated for (1) a felony of the second degree; or (2) a law violation that is classified the same or greater than the classification of the offense that prompted the youth's assignment to sanction level three.

At sanction level four, a highly intensive and regimented program lasting no less than three months and followed by continued probation supervision for six to twelve months is added to the level description. Other activities are the same as those listed in sanction level three.

§ 59.008. Sanction Level Five

(a) For a child at sanction level five, the juvenile court may:

(1) require the child to participate as a condition of probation for not less than six months or more than nine months in a highly structured residential program that emphasizes discipline, accountability, physical fitness, and productive work;

(2) after release from the program described by Subdivision (1), continue the child on probation supervision for not less than six months or more than 12 months;

(3) require the child to make restitution to the victim of the child's conduct or perform community service restitution appropriate to the nature and degree of harm caused and according to the child's ability;

(4) impose highly structured restrictions on the child's activities and requirements for behavior of the child as conditions of probation;

(5) require a probation officer to closely monitor the child;

(6) require the child or the child's parents or guardians to participate in programs or services designed to address their particular needs and circumstances; and

(7) if appropriate, impose additional sanctions.

(b) The juvenile court shall discharge the child from the custody of the probation department on the date the provisions of this section are met or on the child's 18th birthday, whichever is earlier.

Commentary by Neil Nichols

Section 59.008 is a description of activities associated with placement on probation in an "Intermediate Sanction Facility." As indicated in 59.003(a)(5) and 59.003(d), this sanction level is designed for youth who are adjudicated for (1) a felony of the first degree, other than a felony involving the use of a deadly weapon or causing serious bodily injury; or (2) any felony offense committed after the youth's assignment to sanction level four.

Section 59.003(d) calls for an increased sanction level when intensive supervision probation (sanction level four) or, following that, an intermediate sanction program (sanction level five) is not adequate to prevent the youth's commission of a felony offense -- including a felony offense that is classified as less serious than one adjudicated previously. The sanction levels become more restrictive and demanding as they progress and the assignment guidelines become less tolerant of repeated felony conduct.

At sanction level five, a highly structured residential program lasting from six to nine months is added to the level description. Other activities are the same as those listed in sanction level four.

§ 59.009. Sanction Level Six

(a) For a child at sanction level six, the juvenile court shall commit the child to the custody of the Texas Youth Commission. The commission may:

(1) require the child to participate in a highly structured residential program that emphasizes discipline, accountability, fitness, training, and productive work for not less than nine months or more than 24 months unless the commission extends the period and the reason for an extension is documented;

(2) require the child to make restitution to the victim of the child's conduct or perform community service restitution appropriate to the nature and degree of the harm caused and according to the child's ability, if there is a victim of the child's conduct;

(3) require the child and the child's parents or guardians to participate in programs and services for their particular needs and circumstances; and

(4) if appropriate, impose additional sanctions.

(b) On release of the child under supervision, the Texas Youth Commission parole programs may:

(1) impose highly structured restrictions on the child's activities and requirements for behavior of the child as conditions of release under supervision;

(2) require a parole officer to closely monitor the child for not less than six months; and

(3) if appropriate, impose any other conditions of supervision.

(c) The Texas Youth Commission may discharge the child from the commission's custody on the date the provisions of this section are met or on the child's 19th birthday, whichever is earlier.

Commentary by Neil Nichols

§59.009 is a description of activities associated with "Commitment to the Texas Youth Commission." As indicated in §59.003(a)(6) and §59.003(d), this sanction level is designed for youth who are adjudicated for (1) a felony of the first degree involving the use of a deadly weapon or causing serious bodily injury or for an aggravated controlled substance felony; or (2) any felony offense committed after the youth's assignment to sanction level five.

At sanction level six, a highly structured TYC residential program lasting from nine to twenty-four months, followed by close parole supervision for not less than six months, is added to the level description. Other activities are the same as those listed in sanction level five. Though TYC's jurisdiction extends to age 21, Subsection (c) calls for discharge by age 19. As in all the other sanction level descriptions, the language used is permissive rather than mandatory.

One effect of implementation of the progressive sanctions guidelines will be a much higher percentage of violent and habitual felony offenders in TYC's population. Most of the increase in TYC's bedspace capacity will be used to accommodate the longer periods of confinement these offenders experience on average over less serious offenders and to ensure that all youth committed to TYC

are confined for at least nine months. The number of new commitments to the agency is not expected to increase significantly over the next two years relative to this fiscal year -- increasing by approximately 100 the first year and 200 the second.

Use of the phrase "juvenile court shall" in (a) is not intended to require the juvenile court to commit a child to the TYC rather than use a diversionary probation disposition. Under 59.003(e), the juvenile court retains total discretion in disposing of a case within the limits imposed by 54.04.

§ 59.010. Sanction Level Seven

(a) For a child at sanction level seven, the juvenile court shall sentence the child to commitment to the Texas Youth Commission under Section 54.04(d)(3), 54.04(m), or 54.05(f). The commission may:

(1) require the child to participate in a highly structured residential program that emphasizes discipline, accountability, fitness, training, and productive work for not less than 12 months or more than 10 years unless the commission extends the period and the reason for the extension is documented;

(2) require the child to make restitution to the victim of the child's conduct or perform community service restitution appropriate to the nature and degree of harm caused and according to the child's ability, if there is a victim of the child's conduct;

(3) require the child and the child's parents or guardians to participate in programs and services for their particular needs and circumstances; and

(4) impose any other appropriate sanction.

(b) On release of the child under supervision, the Texas Youth Commission parole programs may:

(1) impose highly structured restrictions on the child's activities and requirements for behavior of the child as conditions of release under supervision;

(2) require a parole officer to monitor the child closely for not less than 12 months; and

(3) impose any other appropriate condition of supervision.

Commentary by Neil Nichols

Section 59.010 is a description of activities associated with "Sentence to Commitment to the Texas Youth Commission." As indicated in 59.003(a)(6), 59.003(a)(7) and 59.003(d), this sanction level is designed for youth who are adjudicated and given a determinate sentence for (1) a felony of the first degree involving the use of a deadly weapon or causing serious bodily injury or for an aggravated controlled substance felony; (2) a capital felony; or (3) any felony (other than a state jail felony) committed after the youth's assignment to sanction level five (if the requirements of 54.04(m) are met).

At sanction level seven a highly structured residential program lasting from one to ten years, followed by close parole supervision for not less than one year, is added to the level description. Other activities are the same as those listed in sanction level six.

Section 59.010 does not include a subsection on discharge as the other sanction level descriptions do. For youth sentenced to commitment to TYC for offenses committed on or after January 1, 1996, there is no discretionary discharge prior to completion of the sentence (61.084, Human Resources Code).

Obviously, the Youth Commission lacks the power to retain jurisdiction over a child who has served the determinate sentence given by a judge or jury; absolute discharge upon full service of sentence is required by law.

Sanction level seven is one last "second look" opportunity for violent or habitual offenders to take advantage of the final step in the juvenile justice system. Transfer to adult prison is possible for those who do not (54.11).

As in sanction level six, use of the phrase "juvenile court shall" in (a) is not intended to curtail the discretion of the juvenile court under 54.04 to employ probation in a determinate sentence case.

§ 59.011. Duty of Juvenile Board

A juvenile board shall prepare a report to the Texas Juvenile Probation Commission, at least quarterly on forms provided by the commission, showing the referrals, probation or progressive sanctions violations, and commitments to the Texas Youth Commission administered under this chapter according to the progressive sanctions guidelines and the reasons for any deviations from the guidelines.

Commentary by Neil Nichols

Section 59.003(e) requires a juvenile court or probation department that deviates from the progressive sanctions guidelines to state in writing its reasons for the deviation and to submit the statement to the juvenile board. This section requires the juvenile board to report that information to the Texas Juvenile Probation Commission at least quarterly, along with other information pertaining to dispositions under the guidelines. TJPC is required to provide reporting forms for this purpose.

§ 59.012. Reports by Criminal Justice Policy Council

(a) The Texas Youth Commission shall compile information, at least quarterly, showing the commitments, placements, parole releases, and revocations administered under this chapter according to the progressive sanctions guidelines and the reasons for any deviation from the guidelines.

(b) The Texas Juvenile Probation Commission and the Texas Youth Commission shall compile the information obtained under this section and Section 59.011 and submit this information to the Criminal Justice Policy Council.

(c) The Criminal Justice Policy Council shall analyze the information compiled by the Texas Juvenile Probation Commission and the Texas Youth Commission under this section and submit the council's findings and recommendations at least annually to

the governor and both houses of the legislature showing the primary reasons for any deviation and the effect of the implementation of the sanctions guidelines on recidivism rates.

Commentary by Neil Nichols

The Texas Youth Commission is required to compile information, at least quarterly, pertaining to TYC commitments and TYC implementation of the progressive sanctions guidelines. That information and the information compiled from the juvenile boards by the Texas Juvenile Probation Commission is submitted to the Criminal Justice Policy Council which will use it to inform the governor and legislature of the overall reasons for deviations from the guidelines and the effect of guideline implementation on recidivism rates. The results could be used to identify where increased funding assistance is needed or where changes are needed in the guidelines.

§ 59.013. Liability

The Texas Youth Commission, a juvenile board, a court, a person appointed by a court, an attorney for the state, a peace officer, or a law enforcement agency is not liable for a failure or inability to provide a service listed under Sections 59.004-59.010.

§ 59.014. Appeal

The failure or inability of any person to provide a service listed under Sections 59.004-59.010 or the failure of a court or of any person to make a sanction level assignment as provided in Section 59.002 or 59.003 may not be used by a child as a ground for appeal or for a postconviction writ of habeas corpus.

§ 59.015. Waiver of Sanctions on Parents or Guardians

On a finding by the juvenile court or probation department that a child's parents or guardians have made a reasonable good faith effort to prevent the child from engaging in delinquent conduct or engaging in conduct indicating a need for supervision and that, despite the parents' or guardians' efforts, the child continues to engage in such conduct, the court or probation department shall waive any sanction that may be imposed on the parents or guardians at any sanction level.

Commentary by Neil Nichols

Section 59.003(b) provides that a parent's or guardian's notification to the court of the child's refusal to comply with restrictions or standards of behavior imposed by the parents or by the court satisfies this "reasonable good faith effort" requirement.

CHAPTER 60. UNIFORM INTERSTATE COMPACT ON JUVENILES

Note: The Interstate Compact was moved without substantive change from Chapter 25 in Title 2. Because no substantive changes were made, the Compact is not reprinted here.

B. Family Code Title 5

§ 264.301. Services for [~~Runaway and~~] at-Risk Youth

(a) The department shall operate a program to provide services for [~~runaway and other~~] children in at-risk situations and for the families of those children.

(b) The services under this section may include:

(1) crisis family intervention;

(2) emergency short-term residential care;

(3) family counseling;

(4) parenting skills training; [~~and~~]

(5) youth coping skills training**;**

(6) mentoring; and

(7) advocacy training.

Commentary by Howard Baldwin

Since 1984, the state has operated a program to provide services for runaways and truants. H.B. 327 amends 264.301 to expand the type of services to be provided by DPRS and to mandate that services be provided to at-risk youth. DPRS also received a substantial funding increase to ensure that these services are available throughout the state.

§ 264.302. Early Youth Intervention Services

(a) This section applies to a child who:

(1) is seven years of age or older and under 17 years of age; and

(2) has not had the disabilities of minority for general purposes removed under Chapter 31.

(b) The department shall operate a program under this section to provide services for children in at-risk situations and for the families of those children.

(c) The department may not provide services under this section to a child who has at any time been referred to juvenile court for engaging in conduct that violates a Penal law of this state of the grade of felony other than a state jail felony.

(d) The department may provide services under this section to a child who engages in conduct for which the child may be found by a court to be an at-risk child, without regard to whether the conduct violates a penal law of this state of the grade of felony other than a state jail felony, if the child was younger than 10 years of age at the time the child engaged in the conduct.

(e) The department shall provide services, directly or by contract, for a child and the child's family if the child is referred to the department as an at-risk child by:

(1) a court under Section 264.304;

(2) a juvenile court or probation department as part of a progressive sanctions program under Chapter 59;

(3) a law enforcement officer or agency under Section 52.03; or

(4) a justice or municipal court under Section 54.022.

(f) The services under this section may include:

(1) crisis family intervention;

(2) emergency short-term residential care for children 10 years of age or older;

(3) family counseling;

(4) parenting skills training;

(5) youth coping skills

training;

(6) advocacy training; and

(7) mentoring.

Commentary by Howard Baldwin

This section has been substantially revised to authorize DPRS to provide services to at-risk youth, age 7 to 17, as an option to juvenile proceedings under Title 3. DPRS may not provide services to a child who is ten years of age or older if that child has ever been referred to the juvenile court for delinquent conduct that would be a felony other than a state jail felony. Subsection (e) makes these services available to a child and the child's family if the referral is made to DPRS by:

1) a court as authorized by 264.304 if the court has found the child to be an at-risk child;

2) a juvenile court or probation department as part of a progressive sanctions program as authorized by 59.004 and 59.005;

3) a law enforcement officer as a disposition without court referral as authorized by 52.003; or

4) a justice or municipal court in disposing of certain misdemeanors under 54.022.

§ 264.303. Commencement of Civil Action for Determination of At-Risk Children

(a) The department may file a civil action to request any district court or county court, other than a juvenile court, to determine that a child is an at-risk child. A person with whom the department contracts to provide services under Section 264.302 may file an action under this section if the department has approved the filing.

(b) Notice of the action must be provided to:

(1) the child;

(2) the parent, managing conservator, or guardian of the child; and

(3) any other member of the child's household who may be affected by an order of the court if the court finds that the child is an at-risk child.

(c) A person served with notice of the action may, but is not required, to file a written answer. Any answer must be filed before the hearing on the action begins.

Commentary by Howard Baldwin

This section authorizes DPRS to file an action seeking a court order finding a child to be at-risk and ordering the child and the child's parent, guardian or managing conservator to participate in the services listed in 264.302.

§ 264.304. Hearing; Determination of At-Risk Child

(a) Unless a later date is requested by the department, the court shall set a date and time for the hearing not later than 30 days after the date the action is filed.

(b) The court is the trier of fact at the hearing.

(c) The court shall determine that the child is an at-risk child if the court finds that the child has engaged in the following conduct:

(1) conduct, other than a traffic offense and except as provided by Subsection (d), that violates:

(A) the penal laws of this state; or

(B) the penal ordinances of any political subdivision

of this state;

(2) the unexcused voluntary absence of the child on 10 or more days or parts of days within a six-month period or three or more days or parts of days within a four-week period from school without the consent of the child's parent, managing conservator, or guardian;

(3) the voluntary absence of the child from the child's home without the consent of the child's parent, managing conservator, or guardian for a substantial length of time or without intent to return;

(4) conduct that violates the laws of this state prohibiting driving while intoxicated or under the influence of intoxicating liquor (first or second offense) or driving while under the influence of any narcotic drug or of any other drug to a degree that renders the child incapable of safely driving a vehicle (first or second offense); or

(5) conduct that evidences a clear and substantial intent to engage in any behavior described by Subdivisions (1)-(4).

(d) The court may not determine that a child is an at-risk child if the court finds that the child engaged in conduct violating the penal laws of this state of the grade of felony other than a state jail felony when the child was 10 years of age or older.

Commentary by Howard Baldwin

Section 264.304 provides the framework for a court's determination that a child is an at-risk child. A child is at-risk if the child has violated a penal law or ordinance, been absent from school for a certain number of days within a given time period, been a runaway or has violated DWI or DUI laws.

§ 264.305. Court-order for Services

(a) Except as provided by Subsection (b), if the court finds that the child is an at-risk child under Section 264.304, the court may order the child, the child's parent, managing conservator, or guardian or any other member of the child's household to participate in services provided by the department under Section 264.302 and contained in a plan approved by the court.

(b) The court may order an at-risk child to participate in services involving emergency short-term residential care only if the court finds that the child engaged in conduct described by Section 264.304(c)(1), (2), (3), or (4).

(c) An order rendered by a court under this section expires not later than six months after the date the order was rendered.

Commentary by Howard Baldwin

This section authorizes a court to declare a child to be an at-risk child and to order the child, the child's parents, managing conservator, or guardian to participate in services provided by DPRS.

§ 264.306. Sanctions

(a) A child who violates a court order under Section 264.305 by failing to participate in services provided by the department engages in conduct indicating a need for supervision and the department shall refer the child to an appropriate juvenile authority for proceedings under Title 3 for that conduct.

(b) A parent, managing

conservator, guardian, or other member of the child's household who violates a court order under Section 264.305 by failing to participate in services provided by the department is subject to contempt of court. The court may under its contempt powers impose a community service requirement.

Commentary by Howard Baldwin

A child who fails to participate in services ordered under 264.305 may be referred for CINS proceedings under Title 3 by the court. Additionally, a court has the power to hold in contempt a parent, managing conservator, or guardian who fails to participate in such services as ordered by the court under 264.305.

Revised Statutes, Article 4413(503) § 16. Community Youth Development Grants

Subject to available funding, the department shall award community Youth development grants to identified communities by incidence of crime. These grants are for the purpose of assisting communities in alleviating family and community conditions that lead to juvenile crime. The department shall give priority in awarding grants under this section to areas of the state in which there is a high incidence of crime committed by children.

Commentary by Howard Baldwin

DPRS is authorized to award to communities grants to try to remedy some of the community and family problems that result in juvenile crime. DPRS must give priority to communities having a high incidence of such crime. In H.B. 1, the Appropriations Act, the legislature appropriated approximately $10 million for fiscal years 96-97 to fund these grants.

C. Human Resources Code

C. Human Resources Code

§ 42.041. Required License

(a) unchanged.

(b) This section does not apply to:

(1) through (13) unchanged.

(14) a juvenile detention facility certified under Section 51.12, Family Code, or Section 141.042(d) or a juvenile facility providing services solely for the Texas Youth Commission.

(c) through (e) unchanged.

Commentary by Robert Dawson

This amendment exempts from the requirement that a child-care facility be licensed by DPRS (1) a juvenile detention facility certified under 51.12 of the Family Code, (2) a private post-adjudicative secure correctional facility inspected by TJPC under 141.042(d) of the Human Resources Code, or (3) a facility owned and operated by TYC or which contracts exclusively for the care of TYC youth.

§ 42.052. Certification and Registration

(a) through (f) unchanged.

(g) The certification requirements of this section do not apply to a juvenile detention facility certified under Section 51.12, Family Code, or Section 141.042(d).

Commentary by Robert Dawson

This section deals with the certification by DPRS of state-operated child-care facilities. The amendment exempts from the certification requirement a detention facility certified by the juvenile board or a private post-adjudicative secure correctional facility inspected by TJPC.

§ 61.0315. Review of Treatment Programs

(a) The commission shall annually review the effectiveness of the commission's programs for the rehabilitation and reestablishment in society of children committed to the commission, including programs for sex offenders, capital offenders, children who are chemically dependent, and emotionally disturbed children.

(b) On or before December 31 of each year, the commission shall make a report on the effectiveness of the programs to the Legislative Budget Board.

§ 61.0386. Intermediate Sanction Facilities

(a) The commission may establish, or contract with another person to establish, one or more intermediate sanction facilities that provide secure residential care for children.

(b) The commission may refuse to accept a child proposed to be placed in an intermediate sanction facility under Section 54.04(d)(1)(C), Family Code, if:

(1) the commission determines that the services and level of security at the facility are not appropriate for the child; or

(2) space for the child is not available.

(c) In determining whether space is available in an intermediate sanction facility for a child on probation, the commission shall consider the extent the county from which the child is to be placed, in comparison to other counties, has exceeded targeted levels for annual commitments to the commission without

relying on placements in an intermediate sanction facility.

(d) The commission may return to the juvenile court a child on probation in an intermediate sanction facility at any time the commission determines that:

(1) the services and level of security at the facility are not appropriate for the child; or

(2) the child's return is necessary to prevent overcrowding of the facility.

(e) The Placement of a child in an intermediate sanction facility under Section 54.04(d)(1), Family Code, is not a commitment to the commission, and the child may not be transferred by the commission to, or be a resident of, any other type of commission facility other than a medical facility.

Commentary by Neil Nichols

HB 327 amends 54.04, Family Code, to add a new Subsection (d)(1)(C) to authorize the placement of a child on probation in an intermediate sanction facility established by the Texas Youth Commission under this section or under 61.101 related to youth boot camp programs. As Subsection (e) indicates, this placement is not a commitment to the Texas Youth Commission, so the child remains under the court's jurisdiction and is expected to comply with conditions of probation. TYC does not have the authority to transfer the child to any other facility other than a medical facility.

To help ensure equal access to TYC intermediate sanction facilities, Subsection (c) requires TYC to consider the extent the placing county has met targeted levels of commitments to TYC (relative to other counties) without relying on placements in these intermediate sanction facilities. Subsection (b) authorizes TYC to refuse to accept a child when the placement is not appropriate for the child or when space is not available.

TYC did not receive funding to establish intermediate sanction facilities during this legislative session. However, authorization and funding have been provided to the Texas Juvenile Probation Commission to assist the establishment of private or county-operated programs and facilities designed for the same purpose (141.0432 and 141.086, Human Resources Code).

Sanction level five of the Progressive Sanctions Guidelines (59.008, Family Code) describes intermediate sanction programs and establishes their place in the range of possible dispositions.

§. 61.073. Records of Examinations and Treatment

The commission shall keep written records of all examinations and conclusions based on them and of all orders concerning the disposition or treatment of each child subject to its control. These records are not public and are available only according to the provisions of Section **58.005** [~~51.14(b)~~], Family Code.

§ 61.077. Mentally Ill or Retarded Child

(a) If the commission determines that a child committed to it is mentally ill [~~or retarded~~], the commission, without delay, shall return the child to the court of original jurisdiction for appropriate disposition or shall request that the court in the county where the child is located take any action required by the condition of the child.

(b) The commission shall accept a child committed to the commission who is mentally retarded.

Commentary by Neil Nichols

HB 327 amends 61.077 to repeal the provision in Subsection (a) that requires TYC to return youth with mental retardation to the committing court for appropriate disposition and adds a new Subsection (b) requiring TYC to accept them. These amendments, and the amendments to Chapter 55 of the Family Code related to children with mental illness and mental retardation, took effect immediately when the bill was signed by the Governor on May 31, 1995 and apply only to conduct that occurs on or after that date.

Since this is not a population of youth TYC has served before, the number of youth with mental retardation who will be committed each year is difficult to project. Fewer than twenty youth are expected each year, based on the number of youth who have been referred by juvenile courts to the Department of Mental Health and Mental Retardation in the past. These are youth whose committing offense or delinquent history would warrant commitment to TYC without regard to their mental retardation.

§ Sec. 61.079. Referral **of Violent and Habitual Offenders** for **Transfer** [~~Review~~]

(a) **After a child sentenced to commitment under Section 54.04(d)(3), 54.04(m), or 54.05(f), Family Code, becomes 16 years of age but before the child becomes 21 years of age, the commission may refer the child to the juvenile court that entered the order of commitment for approval of the child's transfer to the institutional division of the Texas Department of Criminal Justice if:**

(1) the child has not completed the sentence; and

(2) the child's conduct, regardless of whether the child was released under supervision under Section 61.081, indicates that the welfare of the community requires the transfer [~~During the sixth month before the month in which a person committed to the commission under a determinate sentence becomes 18 years old, the commission shall send to the juvenile court that to the Texas Department of Corrections if:~~]

[~~(1) the person will not have completed the sentence before the person's 18th birthday; and~~]

[~~(2) the person has not been finally released by the commission with the approval of the juvenile court that entered the order of commitment~~].

(b) The commission shall cooperate with the court on any proceeding on the **transfer** [~~release~~] of **the child** [~~a person~~].

(c) If a child is released under supervision, a determination under

Section 61.075(4) revoking the child's release under supervision is required before referral of the child to the juvenile court under Subsection (a).

Commentary by Neil Nichols

HB 327 amends 61.079 to authorize TYC to refer a youth who is committed to TYC under a determinate sentence to the court for approval of the youth's transfer to prison at any time after the youth reaches age 16, but before the youth reaches age 21. TYC is not required to make such a referral, but may do so if it determines the youth's conduct (even after release on parole) indicates that the welfare of the community requires it. TYC must conduct a parole revocation hearing and revoke the parole of a sentenced youth who has been released under parole supervision before it can refer the youth to court for a transfer hearing under 54.11(h), Family Code. The court's option at the conclusion of the transfer hearing is either to transfer the youth to the Institutional Division of the Texas Department of Criminal Justice or to return the youth to TYC.

Under current law, when a youth who has not completed a determinate sentence reaches age 17½, TYC notifies the court and a release/transfer hearing is held at least 30 days before the youth's 18th birthday. TYC does not have the authority to request a hearing to consider the youth's transfer at any other time. The court's options at the conclusion of the hearing are to recommit the youth to TYC without a determinate sentence, transfer the youth to the Texas Department of Criminal Justice for completion of the sentence, or finally discharge the youth.

§ 61.081. Release Under Supervision

(a) through (e) unchanged.

(f) If a child [~~under the age of 18~~] is committed to the commission under a determinate sentence under Section 54.04(d)(3)**, Section 54.04(m),** or Section 54.05(f), Family Code, the commission may not release the child under supervision without approval of the juvenile court that entered the order of commitment **unless the child has served at least:**

(1) 10 years, if the child was sentenced to commitment for conduct constituting capital murder;

(2) 3 years, if the child was sentenced to commitment for conduct constituting an aggravated controlled substance felony or a felony of the first degree;

(3) 2 years, if the child was sentenced to commitment for conduct constituting a felony of the second degree; or

(4) 1 year, if the child was sentenced to commitment for conduct constituting a felony of the third degree.

(g) The commission may request the approval of the court under this section at any time.

(h) [~~(g)~~] If the commission finds that a child has violated an order under which the child is released under supervision, on notice by any reasonable method to all persons affected, the commission may order the child:

(1) to return to an institution;

(2) if the violation resulted in property damage or personal injury:

(A) to make full or

partial restitution to the victim of the offense; or

(B) if the child is financially unable to make full or partial restitution, to perform services for a charitable or educational institution; or

(3) to comply with any other conditions the commission considers appropriate.

Commentary by Neil Nichols

HB 327 amends 61.081 to require TYC to obtain court approval to release sentenced youth under parole supervision until the youth has served at least 10 years for capital murder; 3 years for an aggravated controlled substance felony or for a felony of the first degree; 2 years for a felony of the second degree; or 1 year for a felony of the third degree. The court's option at the conclusion of a release hearing requested by TYC for this purpose is limited to either approving or disapproving the parole release at that time (54.11(j), Family Code). After the youth has served the minimum confinement period, TYC is authorized to release the youth under parole supervision without obtaining court approval.

Current law prohibits TYC from releasing a sentenced youth under parole supervision before the youth reaches age 18 without first obtaining the court's approval.

§ Sec. 61.0812. Treatment for Substance Abuse

Subject to an express appropriation to fund the treatment programs required by this section, the commission may not release a child under supervision or parole a child if:

(1) the child has a substance abuse problem, including the use of a controlled substance, hazardous inhalable substances, or alcohol habitually; and

(2) the child has not completed a treatment program for the problem.

Commentary by Neil Nichols
Commentary by Neil Nichols

TYC did not receive an express appropriation to fund the substance abuse treatment programs required by this section. Sixty-five percent of youth who are committed to TYC are determined to have a substance abuse problem.

§ Sec. 61.084. Termination of Control

(a) Except as provided by Subsections (b) and (c), if a person is committed to the commission under a determinate sentence under Section 54.04(d)(3)**, Section 54.04(m),** or Section 54.05(f), Family Code, the commission may not discharge the person from its custody [~~before the person's 18th birthday without the approval of the juvenile court that entered the order of commitment~~].

(b) The commission shall discharge without a court hearing a person committed to it for a determinate sentence under Section 54.04(d)(3)**, Section 54.04(m),** or Section 54.05(f), Family Code, who has not been transferred to the **institutional division of the** Texas Department of Criminal Justice [~~or discharged~~] under a court order on the date that the time spent by the person in detention in connection with the committing case plus the time spent at the Texas Youth Commission under the order of commitment equals the period of the [~~determinate~~] sentence.

(c) The commission shall transfer to the **institutional division of the** Texas Department of Criminal Justice a person who is the subject of an order under Section 54.11(i)(2), Family Code, transferring the person to the custody of the **institutional division of the** Texas Department of Criminal Justice for the completion of the person's [~~determinate~~] sentence.

(d) **The commission shall transfer a person sentenced under a determinate sentence to commitment under Section 54.04(d)(3), 54.04(m), or 54.05(f), Family Code, for delinquent conduct constituting the offense of capital murder to the institutional division of the Texas Department of Criminal Justice on the person's 21st birthday to serve the remainder of the sentence if the person has not:**

(1) served at least 10 years of the person's sentence; or

(2) been transferred or released under supervision by court order.

(e) Except as provided by Subsection (d), (f), or (g), the [~~The~~] commission shall discharge from its custody a person not already discharged [~~or transferred~~] on the person's 21st birthday.

(f) The commission shall transfer a person who has been sentenced under a determinate sentence to commitment under Section 54.04(d)(3), 54.04(m), or 54.05(f), Family Code, or who has been returned to the commission under Section 54.11(i)(1), Family Code, to the custody of the pardons and paroles division of the Texas Department of Criminal Justice to serve the remainder of the person's sentence on parole as provided by Section 29, Article 42.18, Code of Criminal Procedure, when the person is released under supervision after becoming 19 years of age.

(g) The commission shall

transfer a person who has been sentenced under a determinate sentence to commitment under Section 54.04(d)(3), 54.04(m), or 54.05(f), Family Code, or who has been returned to the commission under Section 54.11(i)(1), Family Code, to the custody of the pardons and paroles division of the Texas Department of Criminal Justice on the person's 21st birthday, if the person has not already been discharged or transferred, to serve the remainder of the person's sentence on parole as provided by Section 29, Article 42.18, Code of Criminal Procedure.

Commentary by Neil Nichols

HB 327 amends 61.084 to eliminate discretionary discharge prior to completion of the sentence [Subsection (a)]. It requires automatic transfer of all sentenced youth to adult parole at age 21 [Subsection (g)], or earlier if they are released on parole after age 19 [Subsection (f)], if they have not completed their sentences. It requires automatic transfer of youth to prison at age 21 who are sentenced for the offense of capital murder, have not served at least 10 years of their sentence and have not already been transferred or released on parole by the court [Subsection (d)]. A new Section 29 has been added to Art. 42.18, Code of Criminal Procedure, related to determinate sentence parole in the Pardons and Paroles Division of the Texas Department of Criminal Justice.

Under current law, the court has the option to discharge a youth before the end of the youth's sentence term at the time of the release/transfer hearing that is held just before the youth's 18th birthday [54.11(i)(3), Family Code]. TYC has the option to discharge a youth before the end of the youth's sentence term at any time after the youth's 18th birthday, if the youth is recommitted to TYC without a determinate sentence. All sentenced youth are automatically discharged at age 21, unless at age 18 the court orders their transfer to prison to complete their sentences.

Since it is not likely that youth who are sentenced to commitment for capital murder will have served 10 years by age 21, they have little incentive to perform well in TYC or to apply themselves to their education and rehabilitation programs unless there is some possibility that their good performance will be rewarded. To provide that incentive, Subsection (d) leaves open the possibility for TYC to indicate to these youth its willingness to refer them to the court for consideration of parole release if they prove themselves worthy of it before age 21. If the court approves the release, the youth will still be transferred at age 21 to the Texas Department of Criminal Justice to complete their sentences [under Subsection (g)], but it will be to the Pardons and Paroles Division rather than to the Institutional Division.

§ 61.0911. Coordinated Strategic Plan

The Texas Youth Commission shall biennially develop with the Texas Juvenile Probation Commission a coordinated strategic plan as required by Section 141.0471.

SUBCHAPTER H. YOUTH BOOT CAMP PROGRAMS

§ 61.101. Youth Boot Camp Programs

(a) The commission may establish a youth boot camp program and may employ necessary personnel to operate the youth boot camps.

(b) The commission, in consultation with the Texas Juvenile Probation Commission, may develop a program of moral, academic, vocational, physical, and correctional training and activities in which a child placed in a youth boot camp as an intermediate sanction under Section 54.04(d)(1)(C), Family Code, is required to participate, including programs to educate the child as to the conditions under which children committed to the Texas Youth Commission and the institutional division of the Texas Department of Criminal Justice live and follow-up programs to aid successful community reintegration.

(c) The commission may refuse to accept a child in a youth boot camp as an intermediate sanction under Section 54.04(d)(1)(C), Family Code, and may return the child to the juvenile court in the same manner and under the same conditions provided under Section 61.0386.

(d) The placement of a child in a youth boot camp as an intermediate sanction under Section 54.04(d)(1)(C), Family Code, is not a commitment to the commission, and the child may not be transferred by the commission, or be a resident of, any other type of commission facility other than a medical facility.

(e) The commission, in consultation with the Texas Juvenile Probation Commission, shall develop guidelines for a program of physical and correctional training and military-style discipline for children placed in youth boot camps operated by local probation departments for violating the conditions of release under supervision or parole under Section 61.081.

(f) The commission shall develop a program of physical and correctional training and military-style discipline for children committed to the commission who are placed in youth boot camps or other commission facilities.

(g) The commission shall adopt rules of conduct for children participating in the program under this section.

Commentary by Neil Nichols

Section 61.101 authorizes TYC to establish a youth boot camp program, in consultation with the Texas Juvenile Probation Commission, for the placement of youth on probation under 54.04(d)(1)(C), Family Code. The provisions regarding operation of the program are the same as those regarding the operation of intermediate sanction facilities under 61.0386. Since TYC did not receive funding to establish youth boot camp programs for this purpose, this provision will see only limited use in the near future. However, TJPC is authorized to assist the establishment of private and county-operated youth boot camp programs (141.0432, Human Resources Code) for the same purpose.

In addition to provisions authorizing TYC to establish youth boot camp programs for probation youth, 61.101 includes two provisions related to youth boot camp programs for youth committed to TYC.

Subsection (e) relates to the establishment of guidelines for the operation of county-operated youth boot camp programs in which TYC parole violators might be placed as an intermediate sanction before possible parole revocation. Subsection (f) requires TYC to develop a program of physical and correctional training and military-style discipline for all youth committed to TYC, not just for those who may be placed in youth boot camp programs.

§ 61.102. Contracts with Private Vendors

§ 61.102. Contracts with Private Vendors

The commission may contract with a private vendor for the financing, construction, operation, maintenance, or management of a youth boot camp. The commission may not award a contract under this section unless the commission requests proposals and receives a proposal that meets or exceeds, in addition to requirements specified in the request for proposals, the requirements specified in Section 61.103.

§ 61.103. Additional Requirements for Contracts with Private Vendors

(a) Any contract entered into by the commission with a private vendor for the financing, construction, operation, maintenance, or management of a youth boot camp under Section 61.102 must comply with the following requirements:

(1) a person proposing to enter into a contract with the commission under this section must demonstrate the qualifications and the operations and management experience to carry out the terms of the contract; and

(2) in addition to meeting the requirements specified in the requests for proposals, a proposal must:

(A) provide for regular, on-site monitoring by the commission;

(B) offer a level and quality of programs at least equal to those provided by any other state-run youth boot camp;

(C) permit the

commission to terminate the contract for cause, including as cause the failure of the private vendor to meet the conditions required by this section and other conditions required by the contract;

(D) if the proposal includes construction of a facility, contain a performance bond approved by the commission that is adequate and appropriate for the proposed contract;

(E) provide for assumption of liability by the private vendor for all claims arising from the services performed under the contract by the private vendor;

(F) provide for an adequate plan of insurance for the private vendor and its officers, guards, employees, and agents against all claims, including claims based on violations of civil rights arising from the services performed under the contract by the private vendor; and

(G) provide for an adequate plan of insurance to protect the commission against all claims arising from the services performed under the contract by the private vendor and to protect the commission from actions by a third party against the private vendor and its officers, guards, employees, and agents as a result of the contract.

(b) A private vendor operating under a contract authorized by this subchapter may not claim sovereign immunity in a suit arising from the services performed under the contract by the private vendor. This subsection does not deprive the private vendor or the commission of the benefit of any law limiting exposure to liability, setting a limit on damages, or establishing a defense to liability.

SUBCHAPTER I. INDUSTRIES PROGRAM

§ 61.121. Purpose; Implementation

The purposes of the commission industries program are:

(1) to provide adequate employment and vocational training for children; and

(2) to develop and expand public and private commission industries.

Commentary by Neil Nichols

HB 327 authorizes TYC to establish two job training and employment programs that have proven successful in adult correctional settings. This Subchapter authorizes TYC to work with private businesses to establish an Industries Program and Chapter 217 of the Labor Code authorizes TYC to work with the Texas Workforce Commission (formerly Texas Employment Commission) to expand Project RIO, an employment assistance program for adult parolees.

Employment opportunities are limited for any youth, but most particularly for those who are several grade levels behind in school, are emotionally disturbed, abuse drugs or alcohol and have lengthy delinquent histories. For those who are younger than 16, federal and state child labor laws limit the types and hours of employment available to them. While all youth need to be encouraged to continue their academic education and technical training, the reality is that a large number will not. Real world job training, followed by actual job placement, is essential if they

are to be successful.

Under the Industries Program, an advisory committee will be appointed by TYC to include representatives of industries appropriate for hiring children. The committee will encourage private businesses to provide training and employment opportunities for TYC youth, including the possibility of locating in or near TYC facilities. Franchise tax credits and ad valorem tax abatements may be available to businesses who contract with TYC to be a part of the Industries Program.

§ 61.122. Advisory Committee

(a) A commission industries advisory committee is created consisting of nine members appointed by the commission.

(b) Members serve staggered three-year terms, with the terms of three members expiring February 1 of each odd-numbered year.

(c) In making appointments under this section, the commission shall endeavor to include representatives of industries appropriate for hiring children committed to the commission.

§ 61.123. Pay and Distribution of Pay

The commission shall apportion wages earned by a child working under the industries program in amounts determined at the discretion of the commission, in the following priority:

(1) a person to whom the child has been ordered by a court or to whom the child has agreed to pay restitution;

(2) a person to whom the child has been ordered by a court to pay child support; and

(3) the child's student account.

§ 61.124. Industries Fund

(a) A Texas Youth Commission industries program fund is created in the state treasury.

(b) Proceeds from the operation of the industries program shall be deposited in the fund.

(c) Money from the fund may be appropriated only for use by the commission for the administration of this subchapter.

(d) Sections 403.094 and 403.095, Government Code, do not apply to the fund.

§ 61.125. Contracts

To encourage the development and expansion of the industries program, the commission may enter into necessary contracts related to the program.

§ 61.126. Donations

The industries program may be financed through contributions donated for this purpose by private businesses contracting with the commission.

§ 61.127. Grants

(a) The commission may accept a grant for the vocational rehabilitation of children.

(b) The commission shall maintain a record of the receipt and disbursement of a grant and shall

annually report to the lieutenant governor and the speaker of the house of representatives on the administration of grant funds.

§ 61.128. Lease of Land

(a) The commission may lease land owned by the commission to a private business to expand and develop the industries program.

(b) The term of the lease may not exceed 20 years.

(c) The business must lease the land at fair market value.

(d) The business may construct a new facility on the land or convert an existing facility.

§ 61.129. Certification for Franchise Credit

The commission shall prepare and issue a certification that a corporation requires for the franchise tax credit for wages paid as provided by Subchapter M, Chapter 171, Tax Code.

§ 61.130. Optional Ad Valorem Tax Abatement

(a) A business contracting with the commission may enter into an ad valorem tax abatement agreement under Subchapter B and C, Chapter 312, Tax Code, with the governing body of the municipality and county in which the business is located.

(b) If an area in which businesses contracting with the commission under this subchapter is designated as a reinvestment zone under Chapter 312, Tax Code, the area satisfies Section 312.202(a)(6), Tax Code, in that the area would be reasonably likely as a result of the designation to contribute to the retention or expansion of primary employment or to attract major investment in the zone that would be a benefit to the property and that would contribute to the economic development of the entity designating the area as a reinvestment zone.

§ Sec. 141.042. Rules Governing Juvenile Boards, **Probation Departments,** Probation Officers, Programs, and Facilities

(a) The commission shall adopt reasonable rules that provide:

(1) through (3) unchanged.

(4) minimum standards for juvenile detention facilities**, public post-adjudication juvenile secure correctional facilities that are operated under the authority of a juvenile board, and private post-adjudication juvenile secure correctional facilities, except those facilities exempt from certification by Section 42.052(e)**.

(b) unchanged.

(c) The commission shall annually monitor compliance with the standards established under Subsection (a)(4) if the juvenile board has elected to comply with those standards or shall annually ensure that the facility is certified by the American Correctional Association if the juvenile board has elected to comply with those standards.

(d) The commission shall annually inspect any private, post-adjudication juvenile secure correctional facility if the juvenile board of the county in which the facility is located has not inspected it during the previous year, except a facility exempt from certification by Section 42.052(e).

(e) The commission shall develop

for voluntary use by juvenile probation departments a standard assessment tool for the initial assessment of children under the jurisdiction of probation departments. The commission shall give priority to training in the use of this tool in any preservice or in-service training that the commission provides for probation officers. The assessment tool shall:

(1) facilitate assessment of a child's mental health, family background, and level of education; and

(2) assist juvenile probation departments in determining when a child in the department's jurisdiction is in need of comprehensive psychological or other evaluation.

(f) The commission shall monitor compliance with alternative referral programs adopted by juvenile boards under Section 53.01, Family Code.

Commentary by Lisa Capers

Section 141.042 of the Human Resources Code is a part of the enabling legislation of the Texas Juvenile Probation Commission (TJPC). This section mandates TJPC to adopt rules regarding various issues related to juvenile probation. The amendment requires TJPC to adopt minimum standards for 1) public post-adjudication secure juvenile correctional facilities that are operated by or under a juvenile board's authority; and 2) private post-adjudication secure juvenile correctional facilities, except TYC facilities which are exempt under Human Resources Code 42.052(e).

The amendment further requires TJPC to annually monitor both pre-adjudication and post-adjudication facilities to ensure they meet either 1) TJPC's minimum standards for pre-adjudication and post-adjudication detention facilities; or 2) American Correctional Association (ACA) accreditation and certification standards, if the juvenile board has elected to be certified by ACA.

At a minimum, TJPC must annually inspect any private post-adjudication facility that has not been inspected by the county juvenile board, except TYC facilities. TJPC is in the process of drafting the new post-adjudication standards and revising the current pre-adjudication standards. These new and revised standards should be formally adopted as new administrative rules by January 1, 1996 at the latest.

This section also mandates TJPC to develop a standard assessment tool for the initial assessment of juveniles referred to probation departments. This tool will facilitate assessment of the child's mental health, family background and education level. The assessment instrument will assist probation departments in determining whether comprehensive psychological or other evaluations of the child are needed. TJPC is required to provide training in the use of this assessment instrument and juvenile boards have the discretion to use this instrument in their probation departments pursuant to 152.007 of the Human Resources Code (discussed below).

TJPC is further required to monitor compliance with any alternative referral plans adopted by the juvenile boards as authorized under the amendments to 53.01, Family Code. Section 53.01 authorizes a juvenile board to approve a plan by the prosecutor and chief juvenile probation officer to deal with juvenile case referrals. These plans must be registered with TJPC, and TJPC will monitor the plan to ensure compliance with the statute.

§ 141.0432. Youth Boot Camp Programs

(a) The commission shall work with local juvenile boards and local juvenile probation departments to establish policies and guidelines for youth boot camp programs for children.

(b) The commission, local juvenile boards, and local juvenile probation departments may work together to develop a program of moral, academic, vocational, physical, and correctional training and military-style discipline for children placed in youth boot camps on probation under Section 54.04(d)(1)(B), Family Code, or for violating the conditions of probation as determined under Section 54.05(f), Family Code, including follow-up programs to aid successful community reintegration.

(c) The commission, local juvenile boards, and local juvenile probation departments shall adopt rules of conduct for children participating in the program under this section.

(d) Local juvenile boards and local juvenile probation departments may enter into agreements with each other to jointly establish regional youth boot camps.

(e) Local juvenile probation departments may contract with the Texas Youth Commission to provide services to persons who violate conditions of parole as determined under Section 61.075.

Commentary by Lisa Capers

Section 141.0432 is a new section added to TJPC's enabling legislation to facilitate programming for boot camp facilities that are currently being built or are expected to be built within the state in the near future. TJPC is mandated to work with local juvenile boards and probation departments to 1) establish policies and guidelines for boot camp programs; 2) develop a program of moral, academic, vocational, physical, and correctional training and military-style discipline for juveniles placed in boot camps as a condition of probation, as an intermediate sanction for violating probation, and as a part of reintegration into the community; and 3) develop rules of conduct for children placed in boot camps. These boot camps may be developed jointly on a regional basis via agreements between juvenile boards and probation departments in different counties. Local probation departments may also contract with the Texas Youth Commission (TYC) to provide intermediate sanction services to TYC parole violators.

§ 141.0433. Contracts with Private Vendors

§ 141.0433. Contracts with Private Vendors

The commission may contract with a private vendor for the financing, construction, operation, maintenance, or management of a youth boot camp. The commission may not award a contract under this section unless the commission requests proposals and receives a proposal that meets or exceeds, in addition to requirements specified in the request for proposals, the requirements specified in Section 141.0434.

Commentary by Lisa Capers

Section 141.0433 is a new section added to TJPC's enabling legislation that authorizes TJPC to contract with private entities for the financing, construction, operation, maintenance, or management of a boot camp for juveniles. The contract for such a facility must be awarded through a Request For Proposal (RFP) procedure that meets minimum requirements set by TJPC and additional statutory requirements.

§ 141.0434. Additional Requirements for Contracts with Private Vendors

(a) Any contract entered into by the commission with a private vendor for the financing, construction, operation, maintenance, or management of a youth boot camp under Section 141.0433 must comply with the following requirements:

(1) a person proposing to enter into a contract with the commission under that section must demonstrate the qualifications and the operations and management experience to carry out the terms of the contract; and

(2) in addition to meeting the requirements specified in the requests for proposals, a proposal must:

(A) provide for regular, on-site monitoring by the commission;

(B) offer a level and quality of programs at least equal to those provided by any other state-run youth boot camp;

(C) permit the commission to terminate the contract for cause, including as cause the failure of the private vendor to meet the conditions required by this section and other conditions required by the contract;

(D) if the proposal includes construction of a facility, contain a performance bond approved by the commission that is adequate and appropriate for the proposed contract;

(E) provide for assumption of liability by the private vendor for all claims arising from the services performed under the contract by the private vendor;

(F) provide for an adequate plan of insurance for the private vendor and its officers, guards, employees, and agents against all claims, including claims based on violations of civil rights arising from the services performed under the contract by the private vendor; and

(G) provide for an adequate plan of insurance to protect the commission against all claims arising from the services performed under the contract by the private vendor and to protect the commission from actions by a third party against the private vendor and its officers, guards, employees, and

agents as a result of the contract.

(b) A private vendor operating under a contract authorized by this subchapter may not claim sovereign immunity in a suit arising from the services performed under the contract by the private vendor. This subsection does not deprive the private vendor or the commission of the benefit of any law limiting exposure to liability, setting a limit on damages, or establishing a defense to liability.

Commentary by Lisa Capers

Section 141.0434 is another new section added to TJPC's enabling legislation and is the companion statute to 141.0433 discussed above. This section sets out, in specific detail, the contractual requirements that are necessary for any contract TJPC executes with private vendors for the financing, construction, operation, maintenance, or management of a youth boot camp under 141.0433. These requirements include demonstrated qualifications and management experience of the private vendor. The proposals must 1) provide for regular, on-site monitoring by TJPC; 2) offer a certain level of quality programming; 3) permit termination of the contract by TJPC for cause; 4) provide a performance bond if construction is involved in the RFP; 5) provide for assumption of liability by the vendor for all claims arising from services performed by the vendor under the contract; 6) provide adequate insurance to protect the vendor and all its employees and agents; and 7) provide adequate insurance to protect TJPC against claims that may arise pursuant to the contract and from third party claims against the vendor. Private vendors may not claim sovereign immunity in a suit arising from the services performed by the vendor under the contract.

§ 141.0471. Coordinated Strategic Plan for Juvenile Justice System

(a) The commission and the Texas Youth Commission shall biennially develop a coordinated strategic plan which shall guide, but not substitute for, the strategic plans developed individually by the agencies.

(b) The plan shall:

(1) identify short-term and long-term policy goals;

(2) identify time frames and strategies for meeting the goals identified under Subdivision (1);

(3) estimate population projections, including projections of population characteristics;

(4) estimate short-term and long-term capacity, programmatic, and funding needs;

(5) describe intensive service and surveillance parole pilot programs to be jointly developed;

(6) include an evaluation of aftercare services emphasizing concrete outcome measures, including recidivism and educational progress;

(7) identify objective criteria for the various decision points throughout the continuum of juvenile justice services and sanctions to guard against disparate treatment of minority youth; and

(8) identify cross-agency outcome measures by which to evaluate the effectiveness of the system generally.

(c) Each agency shall by rule adopt the coordinated strategic plan on or before December 1st of each odd-numbered year, or before the adoption of the agency's individual strategic plan, whichever is earlier.

Commentary by Lisa Capers

Section 141.0471 is a new section that further expands TJPC's enabling legislation. This section requires TJPC and TYC to biennially prepare a coordinated strategic plan for the juvenile justice system. While both agencies have not formally prepared a coordinated plan in the past, they have worked closely to develop consistent statistical projections that both agencies have used in their individual plans. This statute will require a coordinated strategic plan in addition to the individual strategic plans now required. A coordinated strategic plan will maximize the efficiency of activities across state agency boundaries. Additionally, the effectiveness of activities of state government in general is maximized in terms of cost savings to state government through sharing common features of agencies' strategic planning processes and by standardization of some measures of agency and client performance.

§ 141.085. Refusal, Reduction, or Suspension of State Aid

(a) The commission shall refuse, reduce, or suspend payment of state aid to**:**

(1) a juvenile board that fails to comply with the commission's rules or fails to maintain local financial support**; or**

(2) a county that fails to comply with the minimum standards provided under Section 141.042(a)(4).

(b) unchanged.

Commentary by Lisa Capers

Section 141.085 of TJPC's enabling legislation addresses those situations where the agency is mandated to refuse, reduce, or suspend payment of state financial aid. This amendment provides that a county may face loss or suspension of state funding if it fails to comply with the TJPC's minimum standards for pre-adjudication and post-adjudication secure detention facilities. Although a juvenile board has the option under 51.12 of the Family Code to choose either ACA or TJPC standards on which to certify the suitability of their detention facility, they must also comply with TJPC's minimum standards for such facilities if they plan to receive state financial aid.

§ 141.086. Funding and Construction of Post-Adjudication Facilities

(a) The commission may provide state aid to a county to acquire, construct, and equip post-adjudication residential or day-treatment centers from money appropriated for those purposes. The facilities may be used for children who are placed on probation by a juvenile court under Section 54.04, Family Code, as an alternative to commitment to the facilities of the Texas Youth Commission.

(b) State funds provided to counties under Subsection (a) must be matched by local funds equal to at least one-fourth of the state funds.

(c) From money appropriated for construction of the facilities described by Subsection (a), the commission shall contract with the Texas Department of Criminal Justice for construction management services, including:

(1) evaluation of project plans and specifications; and

(2) review and comment on the selection of architects and engineers, change orders, and sufficiency of project inspection.

(d) On completion of the review of project plans and specifications

under Subsection (c), the Texas Department of Criminal Justice shall issue a comprehensive report that states in detail the proposed cost of the Project. The commission shall use the report in making a comparative evaluation of proposed projects and shall give priority to the projects the commission finds are the most effective and economical.

(e) The commission may not award money for a capital construction project for a facility under this section unless the commission receives from the commissioners court of the county intending to use the facility a written commitment that the commissioners court has reviewed and accepted the conditions of the award. If more than one county intends to use the facility, the commission must receive from each county a written commitment that the county will agree with the other counties to an interlocal contract to operate the facility in accordance with the conditions of the award.

(f) A county receiving state aid under this section shall adhere to commission standards for the construction and operation of a post-adjudication secure residential facility.

(g) For a facility constructed under this section, the following amounts may be appropriated:

(1) not more than 50 percent of the operating costs of the facility during the 1997 fiscal year; and

(2) not more than 25 percent of the operating costs of the facility during each of the 1998 and 1999 fiscal years.

(h) It is the intent of the legislature to appropriate the full amount of money authorized under Subsection (g)(2).

(i) On and after September 1, 1999, a facility constructed under this section must be operated entirely by the county using the facility.

(j) The commission shall conduct an annual audit of the operating costs for a fiscal year of a facility constructed under this section for each fiscal year through fiscal year 1999. The commission shall submit a report on the results of the audit to the Legislative Budget Board and the governor not later than the 60th day after the last day of the fiscal year covered by the audit.

(k) In this section, "operating costs" means the operating costs of a facility at an 80-percent occupancy rate.

Commentary by Lisa Capers

Section 141.086 is a new section added to TJPC's enabling legislation that authorizes the agency to award the $37.5 million dollars of general obligation bond proceeds that were appropriated to TJPC in House Bill 1, the General Appropriations Act. The $37.5 million in bond money was appropriated to provide state aid for counties to acquire, construct, and equip local post-adjudication residential or day-treatment centers for juvenile offenders in an effort to divert suitable children from commitment to TYC.

This section and Rider #11 to TJPC's appropriations bill require the Commission to contract with the Texas Department of Criminal Justice (TDCJ) for construction management services for all construction projects involving the expenditure of bond funds. The construction management services will include review and evaluation of county proposals, project plans and specs, development of a prototype facility, and actual construction site management. TDCJ will be paid a

portion of the bond proceeds for their services.

TJPC is currently in the process of developing the guidelines and rules necessary to implement the bond construction process. Upon completion of this initial planning stage, the Commission will issue a Request for Proposals (RFP) to all interested counties who will submit individual or regional proposals/plans for facilities. After review of all proposals, the TJPC Board will select those proposals that will be funded.

Section 141.086 and several riders to TJPC's appropriations bill define restrictions and requirements for the bond proceeds. TJPC cannot award any money unless the agency receives a written commitment from the county commissioners of the county where the facility is located, and a written commitment from the commissioners of any county that will use the facility, that they accept the conditions of the award. These conditions will include, among other things, a commitment to operate the facility as a juvenile facility for at least the length of the bond debt service (minimum of 20 years). Additionally, any juvenile facility constructed with the bond proceeds shall adhere to TJPC's post-adjudication detention facility standards for construction and operation.

Rider #12 provides that at least 50 percent of the boot camp program funds shall be used for facilities that are established on a regional (multi-county) basis and involve school districts and counties. This rider envisions that some part of the bond proceeds will be used for boot camp type facilities, or facilities or day treatment programs that have a boot camp component.

Rider #13 lists certain guidelines that TJPC must follow regarding the bond proceeds: 1) 50 percent of the amount for distribution to counties shall be made available for Harris, Dallas, Bexar, Tarrant, El Paso, Hidalgo, and Travis counties; 2) 50 percent of the amount for distribution to counties shall be made available to all remaining counties for regional facilities; 3) at least 25 percent of the cost of constructing or acquiring the facility must be born by the county or regional authority, unless this requirement is waived or reduced by TJPC for good cause; and 4) the maximum amount of state assistance shall not exceed $4 million per facility.

Although no funds were specifically appropriated this session, the statute provides that a portion of the operating expenses of these facilities may be appropriated for the first three years. Not more than 50 percent in the 1997 fiscal year and not more than 25 percent during each of the 1998 and 1999 fiscal years can be appropriated. On and after September 1, 1999, the facility must be operated entirely by the county using the facility. Conceivably, the 75th Legislature in 1997 may appropriate the actual operating funds authorized by this section of the statute. TJPC is required to conduct annual audits of the operating costs of these facilities through fiscal year 1999.

§ 152.0007. Duties

(a) The juvenile board shall:

(1) establish a juvenile probation department and employ personnel to conduct probation services, including a chief probation officer and, if more than one officer is necessary, assistant officers, who meet the standards set by the Texas Juvenile Probation Commission; and

(2) operate or supervise

juvenile services in the county and make recommendations as to the need for and purchase of services.

(b) The board may establish guidelines for the initial assessment of a child by the juvenile probation department. The guidelines shall provide a means for assessing a child's mental health status, family background, and level of education. The guidelines shall assist the proba

tion department in determining whether a comprehensive psychological evaluation of the child should be conducted. The board shall require that probation department personnel use assessment information compiled by the child's school, if the information is available, before conducting a comprehensive psychological evaluation of the child. The board may adopt all or part of the Texas Juvenile Probation Commission's minimum standards for assessment under Section 141.042 in complying with this subsection.

tion department in determining whether a comprehensive psychological evaluation of the child should be conducted. The board shall require that probation department personnel use assessment information compiled by the child's school, if the information is available, before conducting a comprehensive psychological evaluation of the child. The board may adopt all or part of the Texas Juvenile Probation Commission's minimum standards for assessment under Section 141.042 in complying with this subsection.

Commentary by Lisa Capers

Section 152.0007 of the Human Resources Code is part of the general enabling legislation of all juvenile boards. This statute is amended to allow juvenile boards to establish guidelines for the initial assessment of a child by the probation department. The juvenile board may choose to use the standard assessment instrument to be developed by TJPC or they may develop their own instrument.

§ 152.0010. Advisory Council

(a) Each juvenile board shall appoint an advisory council consisting of

not more than nine citizen members**, including:**

(1) a prosecuting attorney as defined by Section 51.02, Family Code;

(2) a mental health professional;

(3) a medical health professional; and

(4) a representative of the education community.

Commentary by Lisa Capers

Section 152.0010 is also a part of the general enabling legislation of all juvenile boards found in the Human Resources Code. Each juvenile board is mandated to appoint an advisory council of not more than nine citizen members. This amendment requires certain categories of persons be among the nine members, including a prosecuting attorney, a mental health professional, a medical health professional, and a representative of the education community. Earlier versions of House Bill 327 and Senate Bill 6 attempted to place these four categories of persons as actual members of the juvenile board. There was much opposition to that approach, so this was the compromise language that was finally adopted.

§ 152.0011. Local Youth Boot Camps; Contracts with Private Vendors

(a) The juvenile board or local probation department may establish a youth boot camp and employ necessary personnel to operate the camp.

(b) The juvenile board or local probation department may contract with a private vendor for the financing, construction, operation, maintenance, or management of a youth boot camp in the same manner as the state. The juvenile board may not award a contract under this subsection unless the board requests proposals and receives a proposal that meets or exceeds, in addition to requirements specified in the request for proposals, the requirements specified in Section 141.0434.

(c) A juvenile board youth boot camp must offer a program that complies with the requirements of the youth boot camps set forth in Section 141.0432.

(d) If a juvenile board or its designee determines that a child is not complying with the rules of conduct promulgated by the commission or is medically or psychologically unsuitable for the program, the board shall terminate the child's participation in the program and request the sentencing court to reassume custody of the child.

Commentary by Lisa Capers

Section 152.0011 is a new section added to the general enabling legislation of juvenile boards. This statute authorizes juvenile boards and probation departments to establish and operate youth boot camps. This can be accomplished by contracting with private vendors for the financing, construction, operation, maintenance, or management of a boot camp if necessary. The same contractual requirements for these type contracts that House Bill 327 placed on TJPC are also applicable to juvenile boards, as specified in 141.0432 discussed earlier. All boot camps must comply with the jointly developed rules and guidelines created and promulgated by TJPC in cooperation with local juvenile boards and probation departments previously discussed in 141.0432. If a child does not comply with the rules of conduct or is medically or psychologically unsuitable for the program, the juvenile board or their designee (typically the probation department) shall request the sentencing court to reassume custody of the child.

§ 152.0012. Budget

§ 152.0012. Budget

The juvenile board shall prepare a budget for the juvenile probation department and the other facilities and programs under the jurisdiction of the juvenile board. The commissioners court shall review and consider only the amount of county funds derived from county taxes, fees, and other county sources in the budget. The commissioners court may not review any part of the budget derived from state funds.

Commentary by Lisa Capers

Section 152.0012 is the last of the new sections added to the general enabling legislation of juvenile boards. This section requires the juvenile board to prepare the budget for the probation department and any other facilities and programs under their jurisdiction (this would include any pre- and post-adjudication detention facilities, boot camps, etc.). The commissioners' court is authorized to review and consider the budget only as to local funds being expended; however, the commissioners are not given veto power over the budget. This legislative intent was made explicitly clear during the adoption of the conference committee report for House Bill 327 on the floor of the House. Representative Goodman, the author of House Bill 327, stated that it was his intent and the intent of the conference committee to allow commissioners' courts an opportunity to review the juvenile probation budgets in order to adequately prepare for the level of county funding necessary, but not to have veto authority over those budgets. [See Tape 191 B: Tape Log #4, Pg. 20-21 of the official House tapes.] Under this amendment, the commissioners' court may not review any part of the budget consisting of state funds that the juvenile board receives either through TJPC or any other state agency or state grant.

Thus, this new section does not alter the budgeting process for juvenile probation departments and juvenile boards. Section 152.0012 is consistent with the current budgeting procedures in place pursuant to Attorney General Opinion MW-587 (1982) which interpreted the law to provide a limited review of the juvenile board budget by the commissioners' courts. The budget must be approved and funded unless the commissioners' court can show an abuse of discretion on the part of the juvenile board.

Section 140.004 of the Local Government Code is the statute that provides the time frames in which these budgets must be submitted to the commissioners' court. Before the 45th day before the beginning of the county fiscal year, the juvenile board and probation department must prepare and finalize their budget. Before the 14th day before the meeting to finalize the budget, the juvenile board or probation department must file a copy of the proposed budget with the commissioners' court stating the date on which the budget will be finally approved. This section also requires the juvenile board or probation department to file their financial statement with the commissioner's court no later than 90 days after the close of the fiscal year or the date the county auditor's annual report is made to the commissioners' court.

D. Penal Code

§ 8.07. Age Affecting Criminal

Responsibility

(a) A person may not be prosecuted for or convicted of any offense that he committed when younger than 15 years of age except:

(1) unchanged.

(2) a violation of a penal statute cognizable under Chapter 302, Acts of the 55th Legislature, Regular Session, 1957 (Article 6701l-4, Vernon's Texas Civil Statutes)[~~, except conduct which violates the laws of this state prohibiting driving while intoxicated or under the influence of intoxicating liquor (firs or subsequent offense) or driving while under the influence of any narcotic drug or of any other drug to a degree which renders him incapable of safely driving a vehicle (first or subsequent offense)~~];

(3) through (5) unchanged.

(6) a violation of a penal statute that is, or is a lesser included offense of, a capital felony, an aggravated controlled substance felony, or a felony of the first degree for which the person is transferred to the court under Section 54.02, Family Code, for prosecution if the person committed the offense when 14 years of age or older.

(b) Unless the juvenile court waives jurisdiction **under Section 54.02, Family Code,** and certified the individual for criminal prosecution **or the juvenile court has previously waived jurisdiction under that section and certified the individual for criminal prosecution**, a person may not be prosecuted for or convicted of any offense committed before reaching 17 years of age except **an offense described by Subsections (a)(1)-(5)**[~~:~~]

[~~(1) perjury and aggravated perjury when it appears by proof that he had sufficient discretion to understand the nature and obligation of an oath;~~]

[~~(2) a violation of a penal statute cognizable under Chapter 302, Acts of the 55th Legislature, Regular Session, 1957, as amended (Article 6701l, Vernon's Texas Civil Statutes), except conduct which violates the laws of this state prohibiting driving while intoxicated or under the influence of intoxicating liquor (first or subsequent offense) or driving while under the influence of any narcotic drug or of any other drug to a degree which renders him incapable of safely driving a vehicle (first or subsequent offense);~~]

[~~(3) a violation of a motor vehicle traffic ordinance of an incorporated city or town in this state;~~]

[~~(4) a misdemeanor punishable by fine only other than public intoxication; or~~]

[~~(5) a violation of a penal ordinance of a political subdivision~~].

(c) [~~Unless the juvenile court waives jurisdiction and certifies the individual for criminal prosecution, a person who has been alleged in a petition for an adjudication hearing to have engaged in delinquent conduct or conduct indicating a need for supervision may not be prosecuted for or convicted of any offense alleged in the juvenile court petition or any offense within the knowledge of the juvenile court judge as evidenced by anything in the record of the juvenile court proceedings;~~]

[~~(d)~~] No person may, in any case, be punished by death for an offense committed while he was younger than 17 years.

Commentary by Robert Dawson

The amendment in (a)(2) eliminates an obsolete provision excepting DWI from the definition of traffic offense. For a number of years, DWI has not been referenced in Article 670l1-4 of the Civil

Statutes.

The addition of (a)(6) conforms this section to the new provisions in 54.02 permitting certification for a capital felony, aggravated controlled substance felony, or first degree felony committed while the actor was 14 years of age.

The added language in (b) references the once-certified, always-certified principle added to 54.02.

Instead of repeating the provisions of (a)(1)-(5), in (b) those provisions are deleted and a reference is instead made to (a).

The elimination of (c) is part of the reform to overrule Richardson v. State in order to permit prosecution when the juvenile court certifies one criminal transaction but retains jurisdiction over another alleged in the same petition.

No change was made in the minimum age for eligibility for the death penalty.

§ 12.42. Penalties for Repeat and Habitual Felony Offenders

(a) through (e) unchanged.

(f) For the Purposes of Subsections (a)-(c) and (e), an adjudication by a juvenile court under Section 54.03, Family Code, that a child engaged in delinquent conduct constituting a felony offense for which the child is committed to the Texas Youth Commission under Section 54.04(d)(2), (d)(3), or (m), Family Code, or Section 54.05(f), Family Code, is a final felony conviction.

Commentary by Robert Dawson

The addition of (f) permits the use of a felony adjudication resulting in commitment or sentence to the TYC to qualify as a prior felony conviction under the repeat offender provisions of 12.42. Note that juvenile adjudications do not count as prior convictions under the habitual offender provisions of 12.42(d).

§ 15.031. Criminal Solicitation of a Minor

(a) A person commits an offense if, with intent that an offense listed by Section 3g(a)(1), Article 42.12, Code of Criminal Procedure, be committed, the person requests, commands, or attempts to induce a minor to engage in specific conduct that, under the circumstances surrounding the actor's conduct as the actor believes them to be, would constitute an offense listed by Section 3g(a)(1), Article 42.12, or make the minor a party to the commission of an offense listed by Section 3g(a)(1), Article 42.12.

(b) A person may not be convicted under this section on the uncorroborated testimony of the minor allegedly solicited unless the solicitation is made under circumstances strongly corroborative of both the solicitation itself and the actor's intent that the minor act on the solicitation.

(c) It is no defense to prosecution under this section that:

(1) the minor solicited is not criminally responsible for the offense solicited;

(2) the minor solicited has been acquitted, has not been prosecuted or convicted, has been convicted of a different offense or of a different type or class of offense, or is immune from prosecution;

(3) the actor belongs to a class of persons that by definition of the offense solicited is legally incapable of committing the offense in an individual

capacity; or

(4) the offense solicited was actually committed.

(d) An offense under this section is one category lower than the solicited offense.

(e) In this section, "minor" means an individual younger than 17 years of age.

Commentary by Robert Dawson

This section creates the new criminal offense of solicitation of a minor. It tracks the language of the criminal solicitation offense in 15.03, except that the offense solicited must be a 3(g) offense rather than a capital or first degree felony. Those offenses are murder, capital murder, indecency with a child by contact, aggravated kidnapping, aggravated sexual assault, and aggravated robbery. All except indecency with a child are capital or first degree felonies; indecency is a second degree felony.

E. Code of Criminal Procedure

Art. 4.18. Transfer of Jurisdiction from Juvenile Court

(a) A claim that a district court or criminal district court does not have jurisdiction over a person because jurisdiction is exclusively in the juvenile court and the juvenile court could not waive jurisdiction under Section 8.07(a), Penal Code, or did not waive jurisdiction under Section 8.07(b), Penal Code, must be made by written motion in bar of prosecution filed with the court in which criminal charges against the person are filed.

(b) The motion must be filed and presented to the presiding judge of the court:

(1) if the defendant enters a plea of guilty or no contest, before the plea;

(2) if the defendant's guilt or punishment is tried or determined by a jury, before selection of the jury begins; or

(3) if the defendant's guilt is tried by the court, before the first witness is sworn.

(c) Unless the motion is not contested, the presiding judge shall promptly conduct a hearing without a jury and rule on the motion. The party making the motion has the burden of establishing by a preponderance of the evidence those facts necessary for the motion to prevail.

(d) A person may not contest the jurisdiction of the court on the ground that the juvenile court has exclusive jurisdiction if:

(1) the person does not file a motion within the time requirements of this article; or

(2) the presiding judge finds under Subsection (c) that a motion made under this article does not prevail.

(e) An appellate court may review a trial court's determination under this article, if otherwise authorized by law, only after conviction in the trial court.

(f) A court that finds that it lacks jurisdiction over a case because exclusive jurisdiction is in the juvenile court shall transfer the case to the juvenile court as provided by Section 51.08, Family Code.

Commentary by Robert Dawson

This new section is intended to overrule Bannister v. State, 552 S.W.2d

124 (Tex.Crim.App. 1977) that permits the defendant not to claim underage in the trial court, but to raise it for the first time on appeal or post-conviction habeas corpus.

Under this section, underage is a bar to prosecution, but only if it is raised and shown in timely proceedings in the trial court. Appellate review is available only following conviction, if any.

This section is based on the proposed statute in Dawson, Responding to Misrepresentations, Nondisclosures and Incorrect Assumptions About the Age of the Accused: The Jurisdictional Boundary Between Juvenile and Criminal Courts in Texas, 18 St. Mary's Law Journal 1117 (1987).

Article 14.06. Must Take Offenders Before Magistrate

(a) unchanged.

(b) A peace officer who is charging a person, **including a child,** with committing an offense that is a Class C misdemeanor, other than an offense under Section 49.02, Penal Code, may, instead of taking the person before a magistrate, issue a citation to the person that contains written notice of the time and place the person must appear before a magistrate, the name and address of the person charged, and the offense charged.

Commentary by Robert Dawson

The amendment in (b) makes it abundantly clear that a peace officer may issue a field release citation to a child as well as an adult for a Class C misdemeanor.

Article 37.07. Verdict Must be General; Separate Hearing on Proper Punishment

Sec. 1 and 2 unchanged.

Sec. 3. Evidence of Prior Criminal Record in all Criminal Cases After a Finding of Guilty

(a) Regardless of the plea and whether the punishment be assessed by the judge or the jury, evidence may be offered by the state and the defendant as to any matter the court deems relevant to sentencing, including but not limited to the prior criminal record of the defendant, his general reputation, his character, an opinion regarding his character, the circumstances of the offense for which he is being tried, and, notwithstanding Rules 404 and 405, Texas Rules of Criminal Evidence, any other evidence of an extraneous crime or bad act that is shown beyond a reasonable doubt by evidence to have been committed by the defendant or for which he could be held criminally responsible, regardless of whether he has previously been charged with or finally convicted of the crime or act. A court may consider as a factor in mitigating punishment the conduct of a defendant while participating in a program under Chapter 17 of this code as a condition of release on bail. Additionally, notwithstanding Rule 609(d), Texas Rules of Criminal Evidence, evidence may be offered by the state and the defendant of an adjudication of delinquency based on a violation by the defendant of a penal law of the grade of**:**

(1) a felony**; or**

(2) a misdemeanor punishable by confinement in jail [~~unless:~~]

[~~(1) the adjudication is based on conduct committed more than five years before the commission of the for which the person is being tried; and~~]

[~~(2) in the five years preceding the date of the commission of the offense for which the person is being tried, the person did not engage in conduct for which the person has been adjudicated as a~~

~~delinquent child or a child in need of supervision and did not commit an offense for which the person has been convicted~~].

(b) through (g) unchanged.

Sec. 4 unchanged.

Commentary by Robert Dawson

The amendments to this section significantly broaden the admissibility of juvenile adjudications in the penalty phase of a criminal prosecution. Jailable misdemeanors as well as felonies are admissible under the amendments and the requirement that the adjudication must have been within the past five years is eliminated.

Juvenile court judges and referees should take care to change the admonitions required by 54.03(b) to reflect these changes.

Article 42.18, § 20. Inapplicable to Juveniles

(a) Except as provided by Subsection (b) of this section, the [~~The~~] provisions of this article shall not apply to parole from institutions for juveniles or to temporary furloughs granted to an inmate by the institutional division under Section 500.006, Government Code.

(b) The provisions of this article not in conflict with Section 29 of this article apply to Parole of a person from the Texas Youth Commission under that section.

Commentary by Neil Nichols

HB 327 amends 61.084(f) and 61.084(g) of the Human Resources Code to require the Texas Youth Commission, without a hearing, to transfer all youth who are sentenced to commitment to TYC (and who have not completed their determinate sentence) to adult parole authorities at age 21 [Subsection (g)], or earlier if they are released under parole supervision after age 19 [Subsection (f)]. This change applies only to conduct that occurs on or after January 1, 1996 for which youth are sentenced to commitment to TYC. It is intended to ensure that sentenced youth are held accountable for serving the entire term of their sentences, even after reaching the maximum age of TYC's jurisdiction.

Under current law, only sentenced youth who are transferred at age 18 by the juvenile court to the Institutional Division of the Texas Department of Criminal Justice [54.11(i)(2), Family Code] may eventually be released under the supervision of the Pardons and Paroles Division.

Art 42.18. Adult Parole and Mandatory Supervision Law

Sec. 1 through 28 unchanged.

Sec. 29 Determinate Sentence Parole

(a) Not later than the 90th day before the date the Texas Youth Commission transfers a person to the custody of the pardons and paroles division for release on parole under Section 61.081(f) or Section 61.084(f) or (g), Human Resources Code, the commission shall submit to the department all pertinent information relating to the person, including:

(1) the juvenile court judgment;

(2) the circumstances of the person's offense;

(3) the person's previous social history and juvenile court records;

(4) the person's physical and mental health record;

(5) a record of the person's conduct, employment history, and attitude while committed to the commission;

(6) a record of the sentence time served by the person at the commission and in a juvenile detention facility in connection with the conduct for which the person was adjudicated; and

(7) any written comments or information provided by the commission, local officials, or victims of the offense.

(b) Before the release of the person on parole, a parole panel shall review the person's records and may interview the person or any other person the panel deems is necessary to determine the conditions of parole. The panel may impose any reasonable condition of parole on the person that the panel may impose on an adult prisoner under this article.

(c) The panel shall furnish the person with a written statement clearly describing the conditions and rules of Parole. The person must accept and sign the written statement as a precondition to release on parole.

(d) While on parole, the person remains in the legal custody of the state and shall comply with the conditions of parole ordered by a panel under this section.

(e) The period of parole for a person released to parole under this section is the maximum term for which the person was sentenced less calendar time actually served at the Texas Youth Commission and in a juvenile detention facility in connection with the conduct for which the person was adjudicated.

(f) If a parole panel revokes the person's parole, the panel may require the person to serve the portion remaining of the person's sentence in the institutional division. The remaining portion of the person's sentence is calculated without credit for the time from the date of the person's release to the date of revocation. The panel may not recommit the person to the Texas Youth Commission.

(g) For purposes of this article, a person released from the Texas Youth Commission on parole under this section is deemed to have been convicted of the offense for which the person has been adjudicated.

(h) The Texas Youth Commission shall provide instruction for parole officers relating to juvenile programs at the commission. The Texas Youth Commission and the pardons and paroles division shall enter into a memorandum of understanding relating to the administration of this subsection.

Commentary by Neil Nichols

HB 327 adds a new Section 29 to the Adult Parole and Mandatory Supervision Law to clarify the authority and responsibility of the TDCJ Pardons and Paroles Division with regard to the supervision of persons transferred from TYC to complete a determinate sentence.

Subsection (e) establishes the parole term as the maximum sentence term less calendar time actually served at TYC and in a juvenile detention facility in connection with the offense. Subsection (f) provides that in the event of parole revocation, the remaining time may be served in the Institutional Division of TDCJ, but the person cannot be

recommitted to TYC (even if the person is still under age 21 at the time of the revocation).

Art. 44.47. Appeal of Transfer from Juvenile Court

(a) A defendant may appeal an order of a juvenile court certifying the defendant to stand trial as an adult and transferring the defendant to a criminal court under Section 54.02, Family Code.

(b) A defendant may appeal a transfer under Subsection (a) only in conjunction with the appeal of a conviction of the offense for which the defendant was transferred to criminal court.

(c) An appeal under this section is a criminal matter and is governed by this code and the Texas Rules of Appellate Procedure that apply to a criminal case.

(d) An appeal under this article may include any claims under the law that existed before January 1, 1996, that could have been raised on direct appeal of a transfer under Section 54.02, Family Code.

Commentary by Robert Dawson

Commentary by Robert Dawson

This new section spells out the details of an appeal from a juvenile court certification order. Under 56.01 a direct appeal from the certification order is no longer possible. Instead, issues that could have been raised in such an appeal may now be raised only in an appeal from the criminal conviction, if any, from the transaction that was certified.

Although this is a criminal appeal, with discretionary review by the Court of Criminal Appeals, the issues that may be raised are not restricted to jurisdictional issues. Any issue that in a direct appeal could have resulted in reversing a certification order (and setting aside any conviction that had resulted from that order) can be raised in this criminal appeal.

Art. 45.522. Failure to Pay Fine; Contempt; Juveniles

(a) A justice court or municipal court may not order the confinement of a person who is a child for the purposes of Title 3, Family Code, for the failure to pay all or any part of a fine or costs imposed for the conviction of an offense punishable by fine only.

(b) Section 51.03(a)(3), Family Code, and the procedures for the adjudication of a child for delinquent conduct apply to a child who fails to obey an order of a justice or municipal court under circumstances that would constitute contempt of court.

Commentary by Robert Dawson

This new section is part of a package that specifies what can and cannot be done with a child whose fineable misdemeanor case is being handled in criminal court.

Subsection (a) prohibits confinement for failure a fine or costs. Instead, (b) references the new definition of delinquent conduct in 51.03(a)(3) for contempt of a justice or municipal court.

F. Government Code

§ 21.002. Contempt of Court

(a) Except as provided by **Subsections** [~~Subsection~~] (g) **and (h)**, a court may punish for contempt.

(b) through (g) unchanged.

(h) A justice or municipal court may not punish by contempt a person who engages in conduct that violates an order of the court if the conduct of the person is delinquent conduct under Section 51.03(a)(3), Family Code. The justice or municipal court shall refer the person to the juvenile court for engaging in the delinquent conduct.

Commentary by Robert Dawson

The amendment in (h) prohibits a justice or municipal court from holding a child in contempt of court for violating a dispositional order. Instead, it requires a referral of the child's contempt case to the juvenile court for handling as delinquent conduct.

§ 413.009. Duties of Policy Council

(a) To accomplish its duties the policy council shall:

(1) conduct an in-depth analysis of the criminal justice system;

(2) determine the long-range needs of the criminal justice system and recommend policy priorities for the system;

(3) identify critical problems in the criminal justice system and recommend strategies to solve those problems;

(4) assess the cost-effectiveness of the use of state and local funds in the criminal justice system;

(5) recommend means to improve the deterrent and rehabilitative capabilities of the criminal justice system;

(6) advise and assist the legislature in developing plans, programs, and proposed legislation for improving the effectiveness of the criminal justice system;

(7) make computations of daily costs and compare interagency costs on services provided by agencies that are a part of the criminal justice system;

(8) make population computations for use in planning for the long-range needs of the criminal justice system;

(9) determine long-range information needs of the criminal justice system and acquire that information; and

(10) engage in other activities consistent with the responsibilities of the policy council.

(b) In addition to the policy council's duties under Section 413.008 and Subsection (a) of this section, the policy council may perform any function described in Subsection (a) to promote an effective and cohesive juvenile justice system.

Commentary by Neil Nichols

The Criminal Justice Policy Council is a state agency that is chaired by the Governor. The Speaker of the House and Lieutenant Governor are members and appoint eight other members in equal numbers from the House and the Senate. The Governor appoints an additional six

members who must include a district and county court judge, a district attorney, a sheriff and a county commissioner.

The duty of the Policy Council has been to promote a more effective and cohesive criminal justice system.

HB 327 expands the duties of the Policy Council to include activities that are aimed at promoting a more effective and cohesive juvenile justice system. One critical activity in that regard is the conduct of an in-depth analysis of the juvenile justice system to determine long-range needs of the system and recommend policy priorities.

HB 327 requires the Policy Council to make two specific reports to the Legislature each year. Under 58.112, Family Code, the Policy Council is required to report the ages, races and counties of residence of children who are transferred for criminal proceedings and who are committed to TYC, placed on probation, or discharged without any disposition. Section 59.012, Family Code, requires the Policy Council to analyze information regarding implementation of the Progressive Sanctions Guidelines, showing the primary reasons for deviations and the effect of guideline implementation on recidivism rates.

§ 511.009. General Duties

(a) The commission shall:

(1) through (10) unchanged.

(11) require that the chief jailer of each municipal lockup submit to the commission, on a form prescribed by the commission, an annual report of persons under 17 years of age securely detained in the lockup, including all information necessary to determine compliance with state law concerning secure confinement of children in municipal lockups; and

(12) require that the sheriff and commissioners court of each county submit to the commission, on a form prescribed by the commission, an annual report of persons under 17 years of age securely detained in the county jail, including all information necessary to determine compliance with state law concerning secure confinement of children in county jails.

(b) unchanged.

Commentary by Robert Dawson

"Commission" means the Commission on Jail Standards.

Subsection (11) requires the Commission to obtain annual reports from municipal lockups as to the children securely detained in their facilities and (12) requires the same reports from county jails.

These amendments are part of a package of legislation designed to facilitate compliance with federal requirements respecting custody of children in secure facilities.

§ 659.062. Hazardous Duty Pay

(a) An eligible employee is entitled to hazardous duty pay of $7 a month for each year of service as an employee of this state in a position that requires the performance of hazardous duty, not to exceed 30 years of such service. Except as provided by Subsection (c) **or Section 659.063(b)(1)**, this hazardous duty pay is

instead of other hazardous duty or longevity pay.

(b) unchanged.

§ 659.063. Hazardous Duty Pay: Texas Youth Commission Employees

(a) An employee of the Texas Youth Commission who has routine direct contact with youth placed in a residential facility of the Texas Youth Commission or with youth released under the commission's supervision may receive hazardous duty pay in an amount that does not exceed the amount authorized by Section 659.062(a).

(b) Hazardous duty pay under this section:

(1) is subject to the conditions and limitations in the General Appropriations Act, except that during periods when Texas Youth Commission employees do not receive the full amount of the hazardous duty pay for which they are eligible, they are entitled to receive longevity pay for time accrued in a hazardous duty position, but only until hazardous duty payments resume; and

(2) may not be made:

(A) from funds authorized for payment of an across-the-board employee salary increase; or

(B) to an employee who works at the central office of the commission or an employee whose work for the commission involves only occasional contact with Youth.

(c) The receipt of a payment under this section by an employee does not qualify the employee for retirement benefits from the law enforcement and custodial officer supplemental retirement fund.

Commentary by Neil Nichols

Section 659.063 recodifies existing statutory authority for Texas Youth Commission employees who are in hazardous duty positions to receive hazardous duty pay on a par with correctional officers of the Texas Department of Criminal Justice and other state employees who are in hazardous duty positions. Also, HB 327 includes a technical amendment to current law to authorize TYC employees to receive regular longevity pay for time accrued in a hazardous duty position during any period they do not receive the full amount of the hazardous duty pay for which they are eligible.

G. Labor Code

CHAPTER 217. PROJECT RIO (REINTEGRATION OF OFFENDERS)

Introductory Commentary by Neil Nichols

HB 327 authorizes TYC to establish two job training and job placement programs that have proven successful in adult correctional settings. One of the programs, an Industries Program, is described in 61.121, Human Resources Code. The other program, described in this Chapter, is an expansion of Project RIO (Reintegration of Offenders) to include TYC parolees.

The Project RIO, State of Texas Juvenile Offender Program (STJOP), is a cooperative effort between TYC and the Texas Workforce Commission (formerly Texas Employment Commission) to help secure employment for TYC youth who are released under parole supervision. Based on the successful adult parole model, TYC parole officers will refer unemployed youth to STJOP staff who are assigned in the pilot cities. STJOP staff will place the youth in job search workshops (if appropriate), provide bus tokens for seeking employment, offer employers fidelity bonding, provide job development and placement services and make referrals to supportive services and Job Training Partnership Act training programs.

A major part of the effort occurs in residential programs prior to parole release. TYC's staff is expected to prepare youth for release through education, training, support, opportunity and a systematic approach to changing attitudes about work. The Industries Program is an important part of that pre-release activity.

§. 217.001. Definitions

In this chapter:

(1) "Department" means the Texas Department of Criminal Justice.

(2) "Institutional division" means the institutional division of the department.

(3) "Project RIO" means the project for reintegration of offenders.

§ 217.002. Project Rio

The project for reintegration of offenders is a statewide employment referral program designed to reintegrate into the labor force persons formerly confined in the institutional division **and persons committed to the Texas Youth Commission**.

§ 217.003. Administration

The department**, the Texas Youth Commission,** and the commission shall cooperate to maximize the effectiveness of Project RIO. For that purpose, the commission shall administer the project.

§ 217.004. Memorandum of Understanding--Adoption

(a) The department**,** [~~and~~] the commission**, and the Texas Youth Commission** shall **each** adopt a memorandum of understanding that establishes the respective responsibilities of each agency and of the divisions within the department.

(b) The commission shall coordinate the development of the **memoranda** [~~memorandum~~] of understanding. The department **and the Texas Youth Commission** shall adopt rules as necessary to implement **their respective memoranda** [~~the memorandum~~] and may amend the memorandum and those rules as necessary.

§ 217.005. Memorandum of Understanding--Contents

§ 217.005. Memorandum of Understanding--Contents

(a) The memorandum of understanding **between the department and the commission** must establish the role of:

(1) the institutional division in ascertaining and encouraging an inmate's chances for employment by:

(A) providing vocational and educational assessment for the person while incarcerated in the division;

(B) developing a skills enhancement program for the person while incarcerated, in cooperation with other governmental, educational, and private entities, using available public or private financial resources authorized by statute; and

(C) referring the person on release to the project through the person's parole officer;

(2) the community justice assistance division and the pardons and paroles division of the department in:

(A) encouraging and referring persons to the project; and

(B) ensuring that those persons participate in the project and avail themselves of its services; and

(3) the commission in developing and maintaining a statewide network for finding positions of employment that require the skills possessed by project participants and in helping those participants to secure employment.

(b) The memorandum also must establish the methods by which the commission shall coordinate its efforts under this chapter with the operations of service providers operating under Chapter 301 (Texas Job-Training Partnership Act).

(c) The memorandum of understanding between the Texas Youth Commission and the commission must establish the roles of the institutional and community services division in the Texas Youth Commission and the role of the commission in the same manner the roles of the department and commission are established under Subsections (a) and (b).

H. Local Government Code

§ 341.904. Juvenile Curfew In General Law Municipalities

(a) To provide for the Public safety, the governing body of a general-law municipality has the same authority to adopt a juvenile curfew ordinance that a county has under Section 351.903.

(b) The governing body of a general-law municipality may adopt by ordinance a juvenile curfew order adopted by the commissioners court of the county in which any part of the municipality is located and may adapt the order to fit the needs of the municipality.

(c) If the governing body of a general-law municipality adopts an ordinance under this section, a person commits an offense if the person violates a restriction or prohibition imposed by the ordinance.

(d) An offense under this section is a Class C misdemeanor.

Commentary by Robert Dawson

This section and the next two went into effect when House Bill 327 were signed by the Governor May 31, 1995.

Home rule cities have constitutional power to enact juvenile curfew ordinances and many have. General law municipalities have only such powers as are specifically granted by the legislature.

Subsection (a) authorizes general law municipalities to promulgate juvenile curfew ordinances to the same extent counties are authorized by the next section to issue juvenile curfew orders.

Subsection (b) permits, alternatively, a general law municipality to adopt by ordinance the county curfew order of the county.

Violation of an ordinance is a Class C misdemeanor. A child taken into custody for violation of a curfew ordinance must be taken to the juvenile curfew processing office defined by section 52.028.

§ 351.903. County Juvenile Curfew

(a) To provide for the public safety, the commissioners court of a county by order may adopt a curfew to regulate the movements or actions of persons under 17 years of age during the period beginning one-half hour after sunset and extending until one-half hour before sunrise or during school hours, or both. The order applies only to the unincorporated area of the county.

(b) This authority includes the authority to:

(1) establish the hours of the curfew, including different hours for different days of the week;

(2) apply different curfew hours to different age groups of juveniles;

(3) describe the kinds of conduct subject to the curfew;

(4) determine the locations to which the curfew applies;

(5) determine which persons incur liability if a violation of the curfew occurs;

(6) prescribe procedures, in compliance with Section 52.028, Family Code, a police officer must follow in enforcing the curfew; and

(7) establish exemptions to the curfew, including but not limited to exemptions for times when there are no classes being conducted, for holidays, and for persons going to or from work.

(c) If the commissioners court adopts an order under this section a person commits an offense if the person

violates a restriction or prohibition imposed by the order.

(d) An offense under this section is a Class C misdemeanor.

Commentary by Robert Dawson

Subsection (a) gives county commissioners the power to adopt county curfew orders for unincorporated areas of the county. The curfews may be daytime, nocturnal, or both.

Violation is a Class C misdemeanor. A child taken into custody for violation of a county curfew order must be taken to a designated juvenile curfew ordinance processing office under section 52.028.

§ 370.002. Review of Juvenile Curfew Order or Ordinance

(a) Before the third anniversary of the date of adoption of a juvenile curfew ordinance by a general-law municipality or a home-rule municipality or an order of a county commissioners court, and every third year thereafter, the governing body of the general-law municipality or home-rule municipality or the commissioners court of the county shall:

(1) review the ordinance or order's effects on the community and on problems the ordinance or order was intended to remedy;

(2) conduct public hearings on the need to continue the ordinance or order; and

(3) abolish, continue, or modify the ordinance or order.

(b) Failure to act in accordance with Subsections (a)(1)-(3) shall cause the ordinance or order to expire.

Commentary by Robert Dawson

This section requires a review every three years of all curfew ordinances and orders. It applies to home rule cities as well as to counties and general law municipalities. Failure to re-enact the ordinance or order causes it to expire on its third anniversary.

I. Tax Code

SUBCHAPTER M. TAX CREDIT FOR WAGES PAID TO CERTAIN CHILDREN COMMITTED TO TEXAS YOUTH COMMISSION

Introductory Commentary by Neil Nichols

HB 327 authorizes TYC to establish an Industries Program modeled after industries programs that have proven successful in adult correctional settings (Subchapter I, Chapter 61, Human Resources Code). Private business involvement in job training and job placement activities is encouraged through various tax incentives.

A business may receive a franchise tax credit equal to 10% of the wages paid a youth who is committed to TYC (other than a determinate sentence youth) if the youth is employed continuously for at least six months. The credit continues for one year following discharge or parole release if the youth is continuously employed for one year in the same or similar employment the youth held during the previous six months of continuous employment while in TYC.

§ 171.681. Definitions

In this subchapter:

(1) "Commission" means the Texas Youth Commission.

(2) "Eligible child" means a person who:

(A) is committed to the commission under Title 3, Family Code, other than a commitment under a determinate sentence under Section 54.04(d)(3), 54.04(m), or 54.05(f), Family Code; and

(B) resides at a facility of the commission.

§ 171.682. Credit

A corporation that meets the eligibility requirements under this subchapter is entitled to a credit in the amount allowed by this subchapter against the tax imposed under this chapter.

§ 171.683. Credit for Wages Paid to Eligible Child

(a) The amount of the credit for wages paid by a corporation to an eligible child is equal to 10 percent of that portion of the wages the corporation paid to the eligible child or the commission for the benefit of the child.

(b) A corporation is eligible for the credit under this section only if it files, on or before the due date of its franchise tax-report for the privilege period for which the credit is claimed, a written certification issued by the commission stating the amount of the wages that the corporation paid to an eligible child or to the commission for the benefit of the child during:

(1) the privilege period; and

(2) not more than six months of the preceding privilege period for wages for which a credit has not previously been claimed.

(c) A-corporation is eligible for the credit under this section only if the eligible child to whom or for whose benefit it pays wages has been continuously employed by the corporation for not less than six months.

§ 171.684. Credit for Wages Paid to Employee Who Was an Eligible Child

(a) The amount of the credit for wages paid by a corporation to an employee who was first employed by the corporation when the employee was an eligible child is equal to 10 percent of the wages paid the employee.

(b) A corporation is eligible for the credit under this section only if:

(1) the employee who was formerly an eligible child was continuously employed for not less than six months while an eligible child and has been continuously employed by the corporation for at least one year after the date that the employee was released from commitment to the commission or released under supervision by the commission; and

(2) the nature of the employment is substantially similar to the employment the employee had with the corporation when the employee was an eligible child or the employment requires more skills or provides greater opportunities for the employee.

(c) A corporation may claim a credit under this section only for:

(1) wages paid an employee after the employee has been employed by the corporation for more than one year after the earlier of the date of the employee's release from commitment to the commission or release under supervision by the commission; and

(2) wages paid the employee for not longer than one year.

§ 171.685. Limitation

The total credits claimed under this subchapter for a privilege period may not exceed 50 percent of the amount of net franchise tax due for the privilege period after any other applicable tax credits.

§ 171.686. Application for Credit

(a) A corporation must apply for a credit under this subchapter on or with the tax report for the period for which the credit is claimed.

(b) The comptroller shall promulgate a form for the application for the credit. A corporation must use this form in applying for the credit.

§ 171.687. Period for Which Credit May be Claimed

A corporation may claim a credit under this subchapter for wages paid during an accounting period only against the tax owed for the corresponding privilege period.

SECTION 103 of HB 327

(a) The Texas Juvenile Probation Commission shall promulgate rules to ensure that funds appropriated to the commission by the General Appropriations Act, 74th Legislature, Regular Session, 1995, for the purpose of implementing progressive sanctions or basic state aid not be used by local juvenile probation departments to supplant local contributions for juvenile justice and corrections programs.

(b) The Texas Juvenile Probation Commission shall review the financial records of juvenile probation departments for evidence of supplantation as part of regular and periodic fiscal or program audits and, on a finding of supplantation by a department, shall reduce the next scheduled grant to the department by the amount of funds supplanted.

(c) Supplantation includes a finding by the Texas Juvenile Probation Commission that a juvenile probation department's per employee average compensation and benefit package has increased without a corresponding increase in total local funding.

(d) A juvenile board is eligible to receive basic and diversion services funding only if the board demonstrates to the satisfaction of the Texas Juvenile Probation Commission that the amount of local or county money budgeted for juvenile services for the county fiscal year, excluding construction and capital outlay expenses, equals or is greater than the amount spent for those services in the 1994 county fiscal year.

Commentary by Lisa Capers

Section 103 mandates TJPC to ensure that supplantation does not occur. According to Webster's dictionary, the definition of supplant is "to take the place of." In the General Appropriations Act, 74th Legislature, TJPC was given a substantial amount of new money to allocate to local juvenile boards for the

provision of juvenile services. The legislative intent was that local counties not use this new money to replace their local contribution to juvenile services. Thus, Section 103 attempts to provide some safeguards to prevent this from occurring. TJPC is mandated to review the financial records of probation departments on a periodic and regular basis and must check for supplantation. If supplantation is found, the departments next installment of state aid must be reduced by a corresponding amount to the amount supplanted.

The statute specifically mentions one form of supplantation. If a probation department's per employee average compensation and benefit package has increased without a corresponding increase in total local funding, this is supplantation and disallowed. Thus, any raises or increases in employee benefits must be a cost born entirely by local, county funds.

To be eligible to receive any state funding through TJPC, a juvenile board must demonstrate to TJPC that their local, county funding is at least equal to or greater than the amount spent for those services in the 1994 county fiscal year. This excludes construction and capital outlay expenses.

II. GANG BOOKS: House Bill 466

CODE OF CRIMINAL PROCEDURE

CHAPTER 61. COMPILATION OF INFORMATION PERTAINING TO A CRIMINAL COMBINATION

Art. 61.01. Definitions

In this chapter:

(1) "Combination" has the meaning assigned by Section 71.01, Penal Code.

(2) "Child" has the meaning assigned by Section 51.02, Family Code.

(3) "Criminal information" means facts, material, photograph, or data reasonably related to the investigation or prosecution of criminal activity.

(4) "Criminal activity" means conduct that is subject to prosecution.

(5) "Criminal justice agency" has the meaning assigned by Article 60.01 and also means a municipal or county agency, or school district law enforcement agency, that is engaged in the administration of criminal justice under a statute or executive order.

(6) "Administration of criminal justice" has the meaning assigned by Article 60.01.

Commentary by Robert Dawson

Section 58.004 of HB 327 contained an Assisted Suicide Clause to the effect that if HB 466 passed the legislature later than HB 327, the provisions of HB 466 would take effect and that 58.004 would expire peacefully. That happened. The effective date of HB 466 is August 28, 1995. It is <u>not</u> restricted to offenses that occur on or after that date.

Note that this Chapter applies to the activities of adults as well as juveniles.

Art. 61.02. Criminal Combination Information System

A criminal justice agency may compile criminal information into a system for the purpose of investigating or prosecuting the criminal activities of criminal combinations. The information may be compiled on paper, by computer, or in any other useful manner.

Commentary by Robert Dawson

Under section 71.01(a) of the Penal Code, a "combination" means "three or more persons who collaborate in carrying on criminal activities." "Criminal activity" is defined by the preceding section as "conduct that is subject to prosecution." "Criminal information" is defined by the preceding section as "facts, material, photograph, or data reasonably related to the investigation or prosecution of criminal activity."

This section authorizes a criminal justice agency to compile criminal information concerning the criminal activities of a combination. By its terms, it is not restricted to information that displays probable cause to believe that an offense has been committed, but must only be "reasonably related to the investigation or prosecution" of such an offense, which is intended to state a lower evidentiary standard. The information collected is background or intelligence information, not information related to the investigation of a known criminal offense.

Art. 61.03. Release of Information

(a) A criminal justice agency that maintains criminal information under this chapter may release the information on request to:

(1) another criminal justice agency;

(2) a court; or

(3) a defendant in a criminal proceeding who is entitled to the discovery of the information under Chapter 39.

(b) A criminal justice agency or court may use information received under this article only for the administration of criminal justice. A defendant may use information received under this article only for a defense in a criminal proceeding.

(c) A local criminal justice agency may not send information collected under this chapter to a statewide database.

Commentary by Robert Dawson

Subsection (a) restricts the use of information collected under the preceding section to the administration of criminal justice and it may be disclosed only to another criminal justice agency, a court or the defendant.

Under (c) information collected under the preceding section may not be sent to a statewide database. In other words, it cannot be made part of the statewide juvenile justice information system.

It is important to note that if information, such as fingerprints or photographs, are collected incidental to taking into custody or temporary field detention of a child, the police must comply with applicable constitutional and statutory standards for taking into custody or temporary field detention, as the case may be, in order lawfully to collect this information. That means there must be probable cause for taking into custody and

reasonable suspicion for a temporary field detention.

Art. 61.04. Criminal Information Relating to a Child

(a) Notwithstanding Section 51.14, Family Code, criminal information relating to a child associated with a combination may be compiled and released under this chapter regardless of the age of the child.

(b) A criminal justice agency that maintains information under this chapter may release the information to an attorney representing a child who is a party to a proceeding under Title 3, Family Code, if the juvenile court determines the information:

(1) is material to the proceeding; and

(2) is not privileged under law.

(c) An attorney may use information received under this article only for a child's defense in a proceeding under Title 3, Family Code.

Commentary by Robert Dawson

This section makes it clear the gang book information can be collected and disclosed even when a subject of the effort is a juvenile. The reference to 51.14, which has been repealed by HB 327, makes that intent clear. That reference should be read as though it referred to Chapter 58 of the Family Code.

Note that information may be collected relating to "a child associated with a combination." There is no requirement that there be evidence that the particular child has committed an offense--only that he or she is associated with a combination.

Art. 61.05. Unauthorized Use or Release of Criminal Information

(a) A person commits an offense if the person knowingly:

(1) uses criminal information obtained under this chapter for an unauthorized purpose; or

(2) releases the information to a person who is not entitled to the information.

(b) An offense under this article is a Class A misdemeanor.

Art. 61.06. Destruction of Records

Information collected under this chapter must be destroyed after two years if the individual has not been charged with criminal activity.

Commentary by Robert Dawson

Implicitly, the duty of a law enforcement or other agency is not only to check its own records on a two year cycle to determine whether destruction is required, but also to notify other criminal justice agencies to which it has disclosed information of their obligation to destroy information if charges have not been brought.

III. CRIMINAL PROCEEDINGS: House Bills 1648, 1375, 120 and 330

A. Municipal and Justice Court Jurisdiction: House Bill 1648

Code of Criminal Procedure Art. 4.11. Jurisdiction of Justice Courts

(a) Justices of the peace shall have **original** jurisdiction in criminal cases**:**

(1) punishable by fine only; or

(2) punishable by:

(A) a fine; and

(B) as authorized by statute, a sanction not consisting of confinement or imprisonment that is rehabilitative or remedial in nature [~~where the fine to be imposed by law may not exceed five hundred dollars~~].

(b) The fact that a conviction in a justice court has as a consequence the imposition of a penalty or sanction by an agency or entity other than the court, such as a denial, suspension, or revocation of a privilege, does not affect the original jurisdiction of the justice court.

Commentary by Robert Dawson

House Bill 1648 is effective September 1, 1995 and applies only to offenses committed on or after that date.

In Attorney General Opinion No. DM-320 (2/6/95), the Attorney General opined that a statute that authorized an alcohol awareness course as a punishment in addition to a fine was invalid unless the statute expressly gave the justice court "jurisdiction" to impose the non-fine punishment. The amendment in (a)(2)(B) is intended to authorize justice courts to impose non-fine punishments authorized by statute that are "rehabilitative or remedial in nature."

The language deleted in (a)(2)(B) was an unconstitutional restriction of the constitutional power of a justice court to try any fineable misdemeanor. See Attorney General Opinion No. DM-277 (1993).

The language in (b) overrules old case law that a punishment, such as suspension or revocation of a permit or license, for example a hunting license, takes the case from the jurisdiction of a justice court.

Government Code § 29.003. Jurisdiction
Government Code § 29.003. Jurisdiction

(a) A municipal court, including a municipal court of record, **shall have** [~~has~~] exclusive original jurisdiction within the territorial limits of the municipality in all criminal cases that:

(1) arise under the ordinances of the municipality;
and

(2) are punishable [~~only~~] by a fine not to exceed:

(A) $2,000 in all cases arising under municipal ordinances that govern fire safety, zoning, or public health and sanitation, including dumping of refuse; or

(B) $500 in all other cases **arising under a municipal ordinance**.

(b) The municipal court has concurrent jurisdiction with the justice court of a precinct in which the municipality is located in all criminal cases arising under state law that:

(1) arise within the territorial limits of the municipality; and

(2) are punishable only by a fine**, as defined in Subsection (c) of this section** [~~not to exceed $500~~].

(c) **In this section, an offense which is punishable by "fine only" is defined as an offense that is punishable by fine and such sanctions as authorized by statute not consisting of confinement in jail or imprisonment that are rehabilitative or remedial in nature.**

(d) The fact that a conviction in a municipal court has as a consequence the imposition of a penalty or sanction by an agency or entity other than the court, such as a denial, suspension, or revocation of a privilege, does not affect the original jurisdiction of the municipal court.

(e) The municipal court has jurisdiction in the forfeiture and final judgment of all bail bonds and personal bonds taken in criminal cases of which the court has jurisdiction.

Commentary by Robert Dawson

This section does for municipal courts what the preceding section did for justice courts.

Code of Criminal Procedure Art. 4.14. **Jurisdiction of Municipal Court**

(a) A municipal court, including a municipal court of record, shall have exclusive original jurisdiction within the territorial limits of the municipality in all criminal cases that:

(1) arise under the ordinances of the municipality;
and

(2) are punishable by a fine not to exceed:

(A) $2,000 in all cases arising under municipal ordinances that govern fire safety, zoning, or public health and sanitation, including dumping of refuse; or

(B) $500 in all other cases arising under a municipal ordinance.

(b) The municipal court shall have concurrent jurisdiction with the justice court of a precinct in which the municipality is located in all criminal cases arising under state law that:

(1) arise within the territorial limits of the municipality; and

(2) are punishable by fine only, as defined in Subsection (c) of this article.

(c) In this article, an offense which is punishable by "fine only" is

defined as an offense that is punishable by fine and such sanctions as authorized by statute not consisting of confinement in jail or imprisonment that are rehabilitative or remedial in nature.

(d) The fact that a conviction in a municipal court has as a consequence the imposition of a penalty or sanction by an agency or entity other than the court, such as a denial, suspension, or revocation of a privilege, does not affect the original jurisdiction of the municipal court [~~All municipal courts, including all municipal courts of record, in each incorporated city, town or village of this State shall have exclusive original jurisdiction within the corporate limits in all criminal cases in which punishment is by fine only and where the maximum of such fine does not exceed $2,000 in all cases arising under the ordinances of such city, town or village that govern fire safety, zoning, or public health and sanitation, including dumping of refuse and where the maximum of such fine does not exceed $500 in all other cases arising under the ordinances of such city, town or village, and shall have concurrent jurisdiction with any justice of the peace in any precinct in which the city, town or village is situated in all criminal cases arising under the criminal laws of this State, in which punishment is by fine only, and where the maximum of such fine may not exceed $500, and arising within such corporate limits~~].

(e) The municipal court has jurisdiction in the forfeiture and final judgment of all bail bonds and personal bonds taken in criminal cases of which the court has jurisdiction.

Commentary by Robert Dawson

This section is identical to the preceding section, only it is placed in the Code of Criminal Procedure rather than the Government Code.

Government Code § 30.035. Jurisdiction

(a) A municipal court of record created under this subchapter has **the** jurisdiction **provided by general law for a municipal court** [~~within the territorial limits of the city in all criminal cases arising under the ordinances of the city~~].

(b) [~~The court has concurrent jurisdiction with a justice of the peace in any precinct in which the city is located in criminal cases within the justice court jurisdiction that:~~]

[~~(1) arise within the territorial limits of the city; and~~]

[~~(2) are punishable only by fine not to exceed $500.~~]

[~~(c)~~] The court has jurisdiction over cases arising outside the territorial limits of the **municipality** [~~city~~] under ordinances authorized by Sections 215.072, 217.042, 341.903, and 401.002, Local Government Code.

Commentary by Robert Dawson

This and the next two sections give municipal courts of record the same jurisdiction given to municipal courts under Government Code § 29.003.

Government Code § 30.263. Jurisdiction

[~~(a)~~] A municipal court of record created under this subchapter has **the** jurisdiction **provided by general law for a municipal court** [~~within the territorial limits of the city in all criminal cases arising under the ordinances of the city~~].

[~~(b) The court has concurrent jurisdiction with a justice court in any precinct in which the city is located in criminal cases within the justice court~~

~~jurisdiction that:~~]

[~~(1) arise within the territorial limits of the city; and~~]

[~~(2) are punishable only with a fine not to exceed $500.~~]

Government Code § 30.653. Jurisdiction

(a) A municipal court of record created under this subchapter has **the** jurisdiction **provided by general law for a municipal court** [~~within the territorial limits of the city in all criminal cases arising under the ordinances of the city~~].

(b) [~~The court has concurrent jurisdiction with a justice of the peace in any precinct in which the city is located in criminal cases within the justice court jurisdiction that:~~]

[~~(1) arise within the territorial limits of the city; and~~]

[~~(2) are punishable only by fine not to exceed $500.~~]

[~~(c)~~] The court has jurisdiction over cases arising outside the territorial limits of the **municipality** [~~city~~] under ordinances authorized by **Sections 215.072, 217.042, 341.903, and 401.002, Local Government Code** [~~Subdivision 19, Article 1175, Revised Statutes~~].

B. Alcohol Awareness Course: House Bill 1375

Alcoholic Beverage Code § 106.115. Attendance at Alcohol Awareness Course

(a) **Except as provided by Subsection (b), on** [~~On the first~~] conviction of a minor of an offense under Section 106.02, 106.04, or 106.05 [~~of this code~~], the court, in addition to assessing a fine as provided by those sections, **shall** [~~may~~] require the defendant to attend an alcohol awareness course approved by the Texas Commission on Alcohol and Drug Abuse [~~or a similar alcohol awareness course approved by the court~~]. If the defendant is younger than 18 years of age, **the court may require** the parent or guardian of the defendant **to** [~~may~~] attend the course with the defendant. [~~The court shall require the defendant to present evidence to the court, in the manner prescribed by the court, of satisfactory participation in and completion of the course.~~]

(b) [~~If the conviction under Section 106.02, 106.04, or 106.05 of this code is for a second or subsequent offense, the court shall require the defendant to participate in an alcohol awareness course in addition to paying the fine assessed under that section. If the defendant is younger than 18 years of age, the parent or guardian of the defendant may attend the course with the defendant.~~]

[~~(c)~~] If the defendant resides in a rural or other area in which access to an alcohol awareness course is not readily available, the court **shall** [~~may~~] require the defendant to perform eight to 12 hours of community service instead of participating in an alcohol awareness course.

(c) [~~(d)~~] When requested, an alcohol awareness course may be taught in languages other than English.

(d) The [~~(e) If the court orders a defendant to attend an alcohol awareness course or to perform community service, the~~] court shall require the defendant to present to the court, within 90 days of the date of final conviction, evidence in the form prescribed by the court that the defendant, as ordered by the court, has satisfactorily completed an alcohol awareness course or performed the required hours of community service. **If**

the defendant presents the required evidence within the prescribed period, the court may reduce the assessed fine to an amount equal to no less than one-half of the amount of the initial fine.

(e) If the defendant does not present the required evidence within the prescribed period, the court shall order the Department of Public Safety to suspend the defendant's driver's license or permit for a period not to exceed six months or, if the defendant does not have a license or permit, to deny the issuance of a license or permit to the defendant for that period.

(f) The Department of Public Safety shall send notice of the suspension or prohibition order issued under Subsection (e) by certified mail, return receipt requested, to the defendant. The notice must include the date of the suspension or prohibition order, the reason for the suspension or prohibition, and the period covered by the suspension or prohibition.

Commentary by Robert Dawson

The effective date of House Bill 1375 is September 1, 1995 and it applies only to offenses committed on or after that date.

Subsection (a) makes attendance at an alcohol awareness course mandatory upon conviction of a minor for a violation of the Alcoholic Beverage Code. If the defendant is under 18 years old, the court may order the parent or guardian to attend the course with the child.

If an alcohol awareness course is unavailable, the court under amended (c) is required to order 12 hours of community service in lieu of attendance at the course.

Under amended (d), the court is empowered to cut the fine by up to one-half upon successful completion of the course or community service.

Under new (e) failure to complete the course or perform the community service requires the court to notify DPS to suspend the defendant's driver's license for up to 6 months or to deny issuance of a license for that period.

Civil Statutes Art. 6687b. Driver's, Chauffeur's, and Commercial Operator's Licenses; Accident Reports

Sec. 1 through 23 unchanged.

Sec. 24. Automatic Suspension of License

(a) through (g) unchanged

(h) The Department shall suspend the license of a person on receiving an order from a juvenile court under Section 54.042, Family Code, **or from a court under Section 106.115, Alcoholic Beverage Code,** to suspend that person's license. The period of the suspension shall be for the period specified in the order.

(i) through (l) unchanged.

C. Teen Court Fees: House Bills 120 and 330

Code of Criminal Procedure Art. 45.55. Dismissal of Misdemeanor Charge on Completion of Teen Court Program

(a) through (f) unchanged.

(g) In addition to the fee authorized by Subsection (e) of this article, the court may require a child who requests a teen court program to pay a $10 fee to cover the cost to the teen court for performing its duties under this article. The court shall pay the fee to the teen court program, and the teen court program must account to

the court for the receipt and disbursal of the fee. A child who pays a fee under this subsection is not entitled to a refund of the fee, regardless of whether the child successfully completes the teen court program.

Commentary by Robert Dawson

House Bill 120 has an effective date of September 1, 1995 and applies only to offenses committed on or after that date.

New (g) authorizes a $10 fee in addition to the $10 fee authorized by (e). See the next section.

Code of Criminal Procedure Art. 45.55. Dismissal of Misdemeanor Charge on Completion of Teen Court Program

(a) through (f) unchanged.

(g) A justice or municipal court may exempt a defendant for whom proceedings are deferred under this article from the requirement to pay a court cost or fee that is imposed by another statute.

Commentary by Robert Dawson

House Bill 330 has an effective date of September 1, 1995 and applies only to offenses committed on or after that date.

New (g) authorizes the court to waive any ordinary costs of court in a teen court case. See the preceding section.

Both new sections (g) in this and the preceding section are law, since they are not incompatible with each other.

IV. SEX OFFENDER REGISTRATION: Senate Bill 267

Revised Statutes Art. 6252-13c.1. Sexual Offender Registration Program

Sec. 1. Definitions

In this article:

(1) and (2) unchanged.

(3) "Penal institution" means **a confinement facility operated by or under a contract with any** [~~the institutional~~] division of the Texas Department of Criminal Justice**, a confinement facility operated by or under contract with the Texas Youth Commission,** or a county jail.

(4) unchanged.

(5) "Reportable conviction or adjudication" means:

(A) a conviction for violation of Section 21.11 (Indecency with a child), 22.011 (Sexual assault), 22.021 (Aggravated sexual assault), 25.02 **(Prohibited sexual conduct)** [~~(Incest)~~], Penal Code;

(B) a conviction for violation of Section 43.25 (Sexual performance by a child) or 43.26 (Possession or promotion of child pornography), Penal Code;

(C) **a conviction for a violation of Section 20.04(a)(4) (Aggravated kidnapping), Penal Code, if the defendant committed the offense with intent to violate or abuse the victim sexually;**

(D) a conviction for a

violation of Section 30.02 (Burglary), Penal Code, if the offense is punishable under Subsection (d) of that section and the defendant committed the offense with intent to commit a felony listed in Paragraph (A) or (C) of this subdivision;

(E) the **second** [~~fourth~~] conviction for a violation of Section 21.08 (Indecent exposure), Penal Code;

(F) a conviction for an attempt, conspiracy, or solicitation, as defined by Chapter 15, Penal Code, to commit an offense listed in Paragraph (A), (B), (C), or (D) of this subdivision;

(G) [~~(D)~~] an adjudication of delinquent conduct based on a violation of one of the offenses listed in Paragraph (A)**,** [~~or~~] (B)**, (C), (D), or (F)** of this subdivision or for which **two** [~~four~~] violations of the offenses listed in Paragraph **(E)** [~~(C)~~] of this subdivision are shown; [~~or~~]

(H) [~~(E)~~] a deferred adjudication for an offense listed in Paragraph (A)**,** [~~or~~] (B)**, (C), (D), or (F)** of this subdivision**;**

(I) a conviction under the laws of another state for an offense containing elements that are substantially similar to the elements of an offense listed under Paragraph (A), (B), (C), (D), or (F) of this subdivision; or

(J) the second conviction under the laws of another state for an offense containing elements that are substantially similar to the elements of the offense of indecent exposure.

Commentary by Robert Dawson

Senate Bill 267 has an effective date of September 1, 1995 and, with exceptions noted in subsequent commentaries, applies to adjudications that occur on or after that date.

The list of reportable adjudications has been expanded to include aggravated kidnapping with sexual intent, burglary of a habitation with intent to commit a listed sexual offense, or an attempt, conspiracy or solicitation to commit a listed offense. Indecent exposure becomes reportable on the second adjudication rather than the fourth. Offenses committed in other statutes that would have been reportable had they been committed in Texas now are reportable in Texas.

Revised Statutes Art. 6252-13c.1. Sexual Offender Registration Program

Sec. 2. Registration

(a) A person who has a reportable conviction or adjudication shall register **or, if the person is a person for whom registration is completed under this article, verify registration as provided by Subsection (d) of this section,** with the local law enforcement authority in any municipality where the person resides or intends to reside for more than seven days**. If** [~~or, if~~] the person does not reside or intend to reside in a municipality, **the person shall register or verify registration** in any county where the person resides or intends to reside for more than seven days. The person shall **satisfy the requirements of this subsection** [~~register~~] not later than the seventh day after the person's arrival in the municipality or county.

(b) The department shall provide **the Texas Department of Criminal Justice, the Texas Youth Commission, the Juvenile Probation Commission, and** each local law enforcement authority**, county jail, and court** with a form for

registering persons required by this article to register. The registration form shall require:

(1) the person's full name, each alias, date of birth, sex, race, height, weight, eye color, hair color, social security number, driver's license number, **shoe size,** and home address;

(2) **a photograph of the person and a complete set of the person's fingerprints;**

(3) the type of offense the person was convicted of, **the age of the victim,** the date of conviction, and the punishment received; and

(4) [~~(3)~~] any other information required by the department.

(c) unchanged.

(d) A person for whom registration is completed under this article shall report to the applicable local law enforcement authority to verify the information in the registration form received by the authority under this article. The authority shall require the person to produce proof of the person's identity and residence before the authority gives the registration form to the person for verification. If the information in the registration form is accurate, the person shall verify registration by signing the form. If the information is not accurate, the person shall make any necessary corrections before signing the form.

(e) If a person subject to registration under this article does not move to an intended residence by the end of the seventh day after the date on which the person is released on community supervision, parole, or mandatory supervision or the date on which the person leaves a previous residence, the person shall:

(1) report to the community supervision and corrections department officer or the parole officer supervising the person by not later than the seventh day after the date on which the person is released or the date on which the person leaves a previous residence, as applicable, and provide the officer with the address of the person's temporary residence; and

(2) continue to report to the person's supervising officer not less than weekly during any period of time in which the person has not moved to an intended residence and provide the officer with the address of the person's temporary residence.

Commentary by Robert Dawson

Amendments in (b) require a photograph and fingerprints to accompany the registration papers.

Subsection (d) requires a person to verify registration information that has been reported to a law enforcement agency by a penal institution under the next section.

Subsection (e) requires reporting of temporary residences to probation or parole officers of a person released on probation and parole.

Revised Statutes Art. 6252-13c.1. Sexual Offender Registration Program

Sec. 3. Prerelease Notification

(a) **Before** [~~At least 30 days, but not earlier than 90 days, before~~] a person who will be subject to registration under this article is due to be released from a penal institution, an official of the penal institution shall:

(1) inform the person **that:**

(A) not later than the seventh day after the date on which the

person is released on community supervision, parole, or mandatory supervision or the date on which the person moves from a previous residence to a new residence in this state, the person must:

(i) register or verify registration with the local law enforcement authority in the municipality or county in which the person intends to reside; or

(ii) if the person has not moved to an intended residence, report to the community supervision and corrections department officer or the parole officer supervising the person;

(B) not later than the seventh day before the date on which the person moves to a new residence in this state or another state, the person must report in person to the local law enforcement authority with whom the person last registered and to the community supervision and corrections department officer or the parole officer supervising the person; and

(C) not later than the 10th day after the date on which the person arrives in another state in which the person intends to reside, the person must register with the law enforcement agency that is identified by the department as the agency designated by that state to receive registration information, if the other state has a registration requirement for sex offenders;

(2) [~~of the person's duty to register under this article and~~] require the person to sign a written statement that the person was [~~so~~] informed **of the person's duties as described by Subdivision (1) of this subsection** or, if the person refuses to sign the statement, certify that the person was so informed;

(3) [~~(2)~~] obtain the address where the person expects to reside on the person's release **and other registration information, including a photograph and complete set of fingerprints**; and

(4) complete the registration form for the person.

(b) On the seventh day before the date on which a person who will be subject to registration under this article is due to be released from a penal institution, or on receipt of notice by a penal institution that a person who will be subject to registration under this article is due to be released in less than seven days, an official of the penal institution shall send the person's completed registration form to [~~(3) inform~~] the department and **to:**

(1) the applicable local law enforcement authority in the municipality or [~~unincorporated area of the~~] county in which the person expects to reside**, if the person expects to reside in this state; or**

(2) the law enforcement agency that is identified by the department as the agency designated by another state to receive registration information, if the person expects to reside in that other state and that other state has a registration requirement for sex offenders [~~of the person's name, release date, new address, and the offense of which the person was convicted~~].

(c) [~~(b)~~] If a person who is subject to registration under this article receives an order deferring adjudication, **community supervision** [~~probation~~], or only a fine, the court pronouncing the order or sentence shall **ensure that** [~~conduct~~] the prerelease notification **and registration requirements** specified in [~~Subsection (a) of~~] this section **are conducted** on the day of entering the order

or sentencing. **If a community supervision and corrections department representative is available in court at the time a court pronounces a sentence of deferred adjudication or community supervision, the representative shall immediately conduct the prerelease notification and registration requirements specified in this section. In any other case in which the court pronounces a sentence under this subsection, the court shall designate another appropriate individual to conduct the prerelease notification and registration requirements specified in this section.**

(d) If a person who has a reportable conviction for an offense described under Section 1(5)(I) or (J) of this article is placed under the supervision of the pardons and paroles division of the Texas Department of Criminal Justice or a community supervision and corrections department under Article 42.11, Code of Criminal Procedure, the division or community supervision and corrections department shall conduct the prerelease notification and registration requirements specified in this section on the date the person is placed under the supervision of the division or community supervision and corrections department.

(e) Not later than the eighth day after receiving a registration form under Subsection (b), (c), or (d) of this section, the local law enforcement authority shall verify the age of the victim and the basis on which the person is subject to registration under this article. If the victim is a child younger than 17 years of age and the basis on which the person is subject to registration is not an adjudication of delinquent conduct or a deferred adjudication and is not a conviction for an offense under Section 25.02, Penal Code, the authority shall immediately publish notice in English and Spanish in at least one newspaper of general circulation in the county in which the person subject to registration intends to reside. The authority shall publish a duplicate notice in the newspaper, with any necessary corrections, during the week immediately following the week of initial publication. If the victim is a child younger than 17 years of age, regardless of the basis on which the person is subject to registration, the authority shall immediately provide notice to the superintendent of public schools of the school district in which the person subject to registration intends to reside by mail to the district office.

(f) The local law enforcement authority shall include in the notice by publication in a newspaper the following information only:

(1) the person's age and gender;

(2) a brief description of the offense for which the person is subject to registration; and

(3) the municipality, street name, and zip code number where the person intends to reside.

(g) The local law enforcement authority shall include in the notice to the superintendent of public schools any information the authority determines is necessary to protect the public, except:

(1) the person's social security number, driver's license number, or telephone number; and

(2) any information that would identify the victim of the offense for which the person is subject to registration.

Commentary by Robert Dawson

Subsection (a) requires notice to a person about to be released from a penal institution, which includes the TYC, of that person's obligations to register or verify registration upon release. It also requires institutional officials to complete the registration form.

Under (b), the institution is required to send the registration information to the DPS and to the appropriate local law enforcement agency.

Subsection (c) requires court officials to conduct the registration process with respect to defendants who receive a fine or some sort of community supervision.

Subsection (d) requires registration of persons convicted in another state but whose supervision is transferred to Texas.

Subsection (e) requires the local law enforcement agency to publish information about persons with reportable convictions whose victims were younger than 17 years of age. The publication requirement does not apply to juvenile adjudications nor to deferred adjudication in adult court.

Subsection (e) also requires a local law enforcement agency to notify the superintendent of public schools of any reportable adjudication or conviction when the victim was under 17 years of age.

Revised Statutes Art. 6252-13c.1. Sexual Offender Registration Program

Sec. 4. Change of Address

(a) If a person required to register **intends to change** [~~changes~~] address, the person shall**,** [~~provide written notice~~] not later than the seventh day **before** [~~after~~] the **intended** change**, report in person** to the local law enforcement authority with whom the person last registered **and to the community supervision and corrections department officer or the parole officer supervising the person and provide the authority and the officer with the person's anticipated move date and new address**.

(b) Not later than the third day after receipt of notice under Subsection (a) of this section, the person's community supervision and corrections department officer or parole officer shall forward the information provided under Subsection (a) of this section to the local law enforcement authority with whom the person last registered and, if the person intends to move to another municipality or county in this state, to the applicable local law enforcement authority in that municipality or county.

(c) If the person moves to another state that has a registration requirement for sex offenders, the person shall, not later than the 10th day after the date on which the person arrives in the other state, register with the law enforcement agency that is identified by the department as the agency designated by that state to receive registration information.

(d) Not later than the third day after receipt of **information under Subsection (a) or (b) of this section, whichever is earlier** [~~this notice~~], the local law enforcement authority shall forward this information to the department **and, if the person intends to move to another municipality or county in this state, to the applicable local law enforcement authority in that municipality or county**.

(e) If a person who reports to a local law enforcement authority under Subsection (a) of this section does not

move on or before the anticipated move date or does not move to the new address provided to the authority, the person shall:

(1) report to the local law enforcement authority with whom the person last registered not later than the seventh day after the anticipated move date and provide an explanation to the authority regarding any changes in the anticipated move date and intended residence; and

(2) report to the community supervision and corrections department officer or the parole officer supervising the person not less than weekly during any period in which the person has not moved to an intended residence.

(f) If the person moves to **another** [~~a new~~] municipality or county in this state, the department shall inform the applicable local law enforcement authority in the new area of the person's residence **not later than the third day after the date on which the department receives information under Subsection (a) of this section. Not later than the eighth day after the date on which the local law enforcement authority is informed under Subsection (a) of this section or under this subsection, the authority shall verify the age of the victim and the basis on which the person is subject to registration under this article. If the victim is a child younger than 17 years of age and the basis on which the person is subject to registration is not an adjudication of delinquent conduct or a deferred adjudication and is not a conviction for an offense under Section 25.02, Penal Code, the authority shall immediately publish notice in English and Spanish in at least one newspaper of general circulation in the county in which the person subject to registration intends to reside. The local law enforcement authority shall publish a duplicate notice in the newspaper, with any necessary corrections, during the week immediately following the week of initial publication. If the victim is a child younger than 17 years of age, regardless of the basis on which the person is subject to registration, the authority shall immediately provide notice to the superintendent of public schools of the school district in which the person subject to registration intends to reside by mail to the district office.**

(g) The local law enforcement authority shall include in the notice by publication in a newspaper the following information only:

(1) the person's age and gender;

(2) a brief description of the offense for which the person is subject to registration; and

(3) the municipality, street name, and zip code number where the person intends to reside.

(h) The local law enforcement authority shall include in the notice to the superintendent of public schools any information the authority determines is necessary to protect the public, except:

(1) the person's social security number, driver's license number, or telephone number; and

(2) any information that would identify the victim of the offense for which the person is subject to registration.

(i) If the person moves to another state, the department shall, immediately on receiving information under Subsection (d) of this section:

(1) inform the law

enforcement agency that is designated by the other state to receive registration information, if that state has a registration requirement for sex offenders; and

(2) send to the Federal Bureau of Investigation a copy of the person's registration form, including the record of conviction and a complete set of fingerprints.

Commentary by Robert Dawson

Under (a) the notification of change of address provisions have been changed to require notification of intent to move, rather than post-moving notification. Also, notice must be given to probation or parole officers as well as to local law enforcement officers. Under (b) those officers must notify the appropriate local law enforcement agency of the intended change of address.

Under (d) a local law enforcement agency that receives notice of intent to change residence is required to forward the information to the DPS and to the appropriate local law enforcement agency.

Subsections (f) - (h) require a local law enforcement agency where the person moves to publish information in the newspapers and to notify schools, as in the case of a new registration.

Revised Statutes Art. 6252-13c.1. Sexual Offender Registration Program

Sec. 4A. Remedies Related to Public Notice

A person subject to registration under this article may petition the district court for injunctive relief to restrain a local law enforcement authority from publishing notice in a newspaper as required by Section 3 or Section 4 of this article. The court may issue a temporary restraining order under this section before notice is served and a hearing is held on the matter. After a hearing on the matter, the court may grant any injunctive relief warranted by the facts, including a restraining order or a temporary or permanent injunction, if the person subject to registration under this article proves by a preponderance of the evidence specific facts indicating that newspaper publication under Section 3 or Section 4 of this article would place the person's health and well-being in immediate danger.

Commentary by Robert Dawson

This section authorizes the person to obtain an injunction against the publication of information in the newspaper upon showing that publication would place his or her "health and well-being in immediate danger."

Revised Statutes Art. 6252-13c.1. Sexual Offender Registration Program

Sec. 5. **Central Database; Public** [~~Confidential~~] Information

(a) **The department shall maintain a computerized central database containing only the information required for registration under this article.**

(b) The information contained in the database is public information, with the exception of the person's photograph or any information:

(1) regarding the person's social security number, driver's license number, numeric street address, or telephone number; or

(2) that would identify the

victim of the offense for which the person is subject to registration.

(c) A local law enforcement authority shall release public information described under Subsection (b) of this section to any person who submits to the authority a written request for the information. The authority may charge the person a fee not to exceed the amount reasonably necessary to cover the administrative costs associated with the authority's release of information to the person under this subsection. [~~A person who releases the information required for registration under this article to a person other than a full-time, fully paid, employed law enforcement officer commits an offense.~~]

[~~(b) An offense under this section is a Class B misdemeanor.~~]

Commentary by Robert Dawson

This section requires DPS to maintain a separate computer database of sex offender registration information.

It also changes the nature of that information from confidential to public, with the exceptions specified in (b).

Revised Statutes Art. 6252-13c.1. Sexual Offender Registration Program

Sec. 5A. Immunity for Release of Public Information

(a) The department, a penal institution, or a local law enforcement authority may release to the public information regarding a person required to register if the information is public information under this article.

(b) An individual, agency, entity, or authority is not liable under Chapter 101, Civil Practice and Remedies Code, or any other law for damages arising from conduct authorized by Subsection (a) of this section.

(c) For purposes of determining liability, the release or withholding of information by an appointed or elected officer of an agency, entity, or authority is a discretionary act.

Commentary by Robert Dawson

This section gives a qualified immunity for the release of any public information from sex offender registration files.

Revised Statutes Art. 6252-13c.1. Sexual Offender Registration Program

Sec.8. Exemptions

(a) This article applies only to a reportable conviction or adjudication:

(1) occurring on or after:

(A) September 1, 1991, if the conviction is for or the adjudication is based on an offense listed in Section 1(5)(A) [~~or (C)~~] of this article; [~~or~~]

(B) September 1, 1993, if the conviction is for or the adjudication is based on an offense listed in Section 1(5)(B) of this article; or

(C) September 1, 1995, if the conviction is for an offense described under Section 1(5)(C), (D), (E), (F), (I), or (J) of this article; or

(2) for which an order of deferred adjudication is entered by the court on or after September 1, 1993.

Commentary by Robert Dawson

The newly covered offenses are part of the reporting system if the adjudication, not the offense, occurs on or after September 1, 1995.

Code of Criminal Procedure Art. 42.18. Adult Parole and Mandatory Supervision Law

Sec. 1 through 7 unchanged.

Sec. 8. Eligibility for Release; Conditions on Release

(a) through (q) unchanged.

(r) In addition to other conditions and fees imposed by a parole panel under this article, the parole panel shall require as a condition of parole or release to mandatory supervision that a person required to register as a sex offender under Article 6252-13c.1, Revised Statutes, pay to the person's supervising officer a fee that equals the actual cost to the applicable local law enforcement authority for providing notice for publication to a newspaper as required by Article 6252-13c.1, Revised Statutes. The pardons and paroles division shall remit fees collected under this subsection to the applicable local law enforcement authority to reimburse the authority for the actual cost incurred by the authority, as evidenced by written receipt, for providing notice for publication to a newspaper as required by Article 6252-13c.1, Revised Statutes. In a parole or mandatory supervision revocation hearing under Section 14 of this article at which it is alleged only that the person failed to make a payment under this subsection, the inability of the person to pay as ordered by a parole panel is an affirmative defense to revocation, which the person must prove by a preponderance of the evidence.

Commentary by Robert Dawson

This amendment applies only to offenses committed on or after September 1, 1995. It requires a parolee or mandatory releasee to pay for the newspaper publication required by earlier sections.

Code of Criminal Procedure Art. 42.18. Adult Parole and Mandatory Supervision Law

Sec. 9 through 17 unchanged.

Sec. 18. Confidential Information.

(a) Except as provided by Subsection (b), all [~~All~~] information obtained and maintained in connection with inmates of the institutional division subject to parole, release to mandatory supervision, or executive clemency, or individuals who may be on mandatory supervision or parole and under the supervision of the pardons and paroles division, or persons directly identified in any proposed plan of release for a prisoner, including victim impact statements, lists of inmates eligible for parole, and inmates' arrest records, shall be confidential and privileged information and shall not be subject to public inspection; provided, however, that all such information shall be available to the governor, the members of the board, and the Criminal Justice Policy Council to perform its duties under Section 413.021, Government Code, upon request. It is further provided that statistical and general information respecting the parole and mandatory supervision program and system, including the names of paroled prisoners, prisoners released to mandatory supervision, and data recorded in connection with parole and mandatory supervision services, shall be subject to public inspection at any reasonable time.

(b) This section does not apply to information regarding a sex offender if

the information is authorized for release under Article 6252-13c.1, Revised Statutes.

Commentary by Robert Dawson

This section reinforces the principle that information in the sex offender registry is public information with exceptions specified in earlier sections.

Code of Criminal Procedure Art. 60.051. Information in Computerized Criminal History System

(a) through (e) unchanged.

(f) The department shall maintain in the computerized criminal history system information concerning whether an offender is required to register under Article 6252-13c.1, Revised Statutes.

Commentary by Robert Dawson

The sex offender registry maintained by DPS is separate from the computerized criminal history system. This section requires that the criminal history system specify which offenders are required to be registered as sex offenders.

Revised Statutes Art. 6252-13c.1. Sexual Offender Registration Program

Sec.6 Destruction of Juvenile Delinquency Records

[The department shall destroy the registration information of a person who has a reportable adjudication when the person reaches the age of 21.]

Commentary by Robert Dawson

Presumably, as a result of this deletion, DPS will no longer destroy sex offender registration information when a juvenile becomes 21 years of age. However, such information may become sealable under 58.003.

The DPS is still required to destroy the records of a person who reached the age of 21 before September 1, 1995, the effective date of SB 267.

V. LICENSE SUSPENSION: House Bill 2035

Civil Statutes art. 6687b. Driver's, Chauffeur's, and Commercial Operator's Licenses; Accident Reports

Sec. 22. Authority of Department to Suspend or Revoke a License

(a) unchanged.

(b) Except for the fifth (5th), eleventh (11th), twelfth (12th), fourteenth (14th), fifteenth (15th), [~~and~~] sixteenth (16th)**, and seventeenth (17th)** listed grounds in this subsection, for which the director has authority to revoke a license, the authority to suspend the license of any driver as authorized in this Section is granted the director upon determining that the person:

(1) through (15) unchanged.

(16) has been reported by a court under Section 1c or 2(a), Chapter 302, Acts of the 55th Legislature, Regular Session, 1957 (Article 6701l-4, Vernon's Texas Civil Statutes), for failure to appear or default in payment of a fine unless the court has filed an additional report on final disposition of the case**; or**

(17) has been reported by a justice or municipal court for failure to appear or a default in payment of a fine for a misdemeanor punishable by a fine only, other than an offense covered under Subdivision (16) of this subsection, committed by a person who was under 17 years of age at the time of the alleged offense, unless the court has filed an additional report on final disposition of the case.

(c) through (g) unchanged.

Commentary by Robert Dawson

The addition of (17) authorizes license suspension or denial for failure to appear to default for any offense punishable by fine only, while (16) covered traffic offenses only.

The effective date of House Bill 2035 is September 1, 1995. The Act is *not* restricted to offenses committed on or after that date.

VI. EDUCATION REFORM: House Bill 1687 and Senate Bill 1

A. House Bill 1687

Code of Criminal Procedure Art. 15.27 Notification to Schools Required

(a) A law enforcement agency that arrests or takes into custody as provided by Chapter 52, Family Code, an individual who the agency knows or believes is enrolled as a student in a public primary or secondary school, for an offense listed in Subsection (h) of this article, shall orally notify the superintendent or a person designated by the superintendent in the school district in which the student is

enrolled or believed to be enrolled of that arrest or detention within 24 hours after the arrest or detention, or on the next school day. **The superintendent shall promptly notify all instructional and support personnel who have regular contact with the student. All personnel shall keep the information received in this subsection confidential. The State Board for Educator Certification may revoke or suspend the certification of personnel who intentionally violate this subsection.** Within seven days after the date the oral notice is given, the law enforcement agency shall mail written notification, marked "PERSONAL and CONFIDENTIAL" on the mailing envelope, to the superintendent or the person designated by the superintendent. The written notification must have the following printed on its face in large, bold letters: "WARNING: The information contained in this notice is intended only to inform appropriate school personnel of an arrest or detention of a student believed to be enrolled in this school. An arrest or detention should not be construed as proof that the student is guilty. Guilt is determined in a court of law. THE INFORMATION CONTAINED IN THIS NOTICE IS CONFIDENTIAL!"

(b) through (h) unchanged.

Commentary by Robert Dawson

The amendment requires the recipient of information to forward it to all school personnel who have regular contact with the student to assure that the information is communicated to those who need it.

The effective date of House Bill 1687 is August 28, 1995. The bill states that "[t]he change in law made by this Act applies beginning with the 1995-1996 school year."

B. Senate Bill 1

Senate Bill 1 became effective when it was signed by the Governor on May 30, 1995. It is a complete re-write of the Education Code.

Only those sections of SB 1 that are particularly relevant to juvenile justice are included.

Texas Education Code

CHAPTER 25. ADMISSION, TRANSFER, AND ATTENDANCE

SUBCHAPTER A. ADMISSION AND ENROLLMENT

Sec. 25.001. ADMISSION

(a) A person who is at least five years of age and under 21 years of age on the first day of September of any school year is entitled to the benefits of the available school fund for that year. Any other person enrolled in a prekindergarten class under Section 29.153 is entitled to the benefits of the available school fund.

(b) The board of trustees of a school district or its designee shall admit into the public schools of the district free of tuition a person who is over five and younger than 21 years of age on the first day of September of the school year in which admission is sought if:

(1) the person and either parent of the person reside in the school district;

(2) the person and the person's guardian or other person having lawful control of the person under a court order reside within the

school district;

(3) the person has established a separate residence under Subsection (d);

(4) the person is homeless, as defined by 42 U.S.C. Section 11302, regardless of the residence of the person, of either parent of the person, or of the person's guardian or other person having lawful control of the person;

(5) the person is a foreign exchange student placed with a host family that resides in the school district by a nationally recognized foreign exchange program, unless the school district has applied for and been granted a waiver by the commissioner under Subsection (e); or

(6) the person resides in the school district and is 18 years of age or older or the person's disabilities of minority have been removed.

(c) The board of trustees of a school district or the board's designee may require evidence that a person is eligible to attend the public schools of the district at the time the board or its designee considers an application for admission of the person. The board of trustees or its designee shall establish minimum proof of residency acceptable to the district. The board of trustees or its designee may make reasonable inquiries to verify a person's eligibility for admission.

(d) For a person under the age of 18 years to establish a residence for the purpose of attending the public schools separate and apart from the person's parent, guardian, or other person having lawful control of the person under a court order, it must be established that the person's presence in the school district is not for the primary purpose of participation in extracurricular activities. The board of trustees shall determine whether an applicant for admission is a resident of the school district for purposes of attending the public schools and may adopt reasonable guidelines for making a determination as necessary to protect the best interests of students. The board of trustees is not required to admit a person under this subsection if the person:

(1) has engaged in conduct or misbehavior within the preceding year that has resulted in:

(A) removal to an alternative education program; or

(B) expulsion;

(2) has engaged in delinquent conduct or conduct in need of supervision and is on probation or other conditional release for that conduct; or

(3) has been convicted of a criminal offense and is on probation or other conditional release.

(e) A school district may request that the commissioner waive the requirement that the district admit a foreign exchange student who meets the conditions of Subsection (b)(5). The commissioner shall respond to a district's request not later than the 60th day after the date of receipt of the request. The commissioner shall grant the request and issue a waiver effective for a period not to exceed three years if the commissioner determines that admission of a foreign exchange student would:

(1) create a financial or staffing hardship for the district;

(2) diminish the district's ability to provide high quality educational services for the district's

domestic students; or

(3) require domestic students to compete with foreign exchange students for educational resources.

(f) A child placed in foster care by an agency of the state or by a political subdivision shall be permitted to attend the public schools in the district in which the foster parents reside free of any charge to the foster parents or the agency. A durational residence requirement may not be used to prohibit that child from fully participating in any activity sponsored by the school district.

(g) A student enrolled in high school in grade 9, 10, 11, or 12 who is placed in temporary foster care by the Texas Department of Human Services at a residence outside the attendance area for the school or outside the school district is entitled to complete high school at the school in which the student was enrolled at the time of placement without payment of tuition.

(h) In addition to the penalty provided by Section 37.10, Penal Code, a person who knowingly falsifies information on a form required for enrollment of a student in a school district is liable to the district if the student is not eligible for enrollment in the district but is enrolled on the basis of the false information. The person is liable, for the period during which the ineligible student is enrolled, for the greater of:

(1) the maximum tuition fee the district may charge under Section 25.038; or

(2) the amount the district has budgeted for each student as maintenance and operating expenses.

(i) A school district may include on an enrollment form notice of the penalties provided by Section 37.10, Penal Code, and of the liability provided by Subsection (h) for falsifying information on the form.

(j) For the purposes of this subchapter, the board of trustees of a school district by policy may allow a person showing evidence of legal responsibility for a child other than an order of a court to substitute for a guardian or other person having lawful control of the child under an order of a court.

Commentary by Lisa Capers

Section 25.001 outlines the specific instances where the public school must admit a child and the instances where the school can refuse admittance. This new section is basically a recodification of old Education Code 21.031. Of particular importance is subsection (b)(2) which provides that the school must admit a child if "the person and the person's guardian or other person having lawful control of the person under a court order reside within the school district." Children on probation placed out of their home in either a residential placement facility or with other suitable persons fall under this subsection, and must be educated by the school district where the child resides pursuant to the court order. It is important that all probation court orders accurately reflect who has lawful control over the child. The schools may require this proof to be shown to gain admission.

Subsection (d) is somewhat confusing and some school districts have interpreted this subsection to allow them to refuse admittance to *any* child on probation, regardless of the offense. This interpretation is incorrect. This section describes a very narrow situation wherein

a school can refuse admittance to a child under certain circumstances. If a child, under age 18, attempts to establish a residence *separate and apart* from the child's parent, guardian, or other person having lawful control of the person under a court order, the school may refuse to admit a child who 1) engaged in conduct or misbehavior within the preceding year that resulted in removal to an alternative education program or expulsion; 2) is on CINS or delinquency probation or other conditional release; or 3) has been convicted of a criminal offense and is on adult probation or other conditional release. This situation would rarely, if ever, occur with a child who is on court-ordered probation or conditional release.

Subsection (g) provides that a high school student in grade 9, 10, 11, or 12 who is placed in temporary foster care by the Texas Department of Human Services at a residence outside the regular school district, may complete high school at the regular school, tuition free. Unfortunately, this same provision does not mention children who face a similar situation because of their removal from the home by a juvenile court. Typically, a juvenile placed into a facility or residence outside the regular school district will enroll in the new school district, unless special arrangements are made providing otherwise.

SUBCHAPTER C. OPERATION OF SCHOOLS AND SCHOOL ATTENDANCE

Sec. 25.085. COMPULSORY SCHOOL ATTENDANCE

(a) A child who is required to attend school under this section shall attend school each school day for the entire period the program of instruction is provided.

(b) Unless specifically exempted by Section 25.086, a child who is at least six years of age, or who is younger than six years of age and has previously been enrolled in first grade, and who has not completed the academic year in which the child's 17th birthday occurred shall attend school.

(c) On enrollment in prekindergarten or kindergarten, a child shall attend school.

(d) Unless specifically exempted by Section 25.086, a student enrolled in a school district must attend an extended-year program for which the student is eligible that is provided by the district for students identified as likely not to be promoted to the next grade level or tutorial classes required by the district under Section 29.084.

Commentary by Lisa Capers

Section 25.085 is the new section that replaces old Education Code 21.032 dealing with the compulsory school attendance law. Unless exempted by law, a child must be enrolled in school if the child is at least 6 years old, or younger than 6 if the child has previously been enrolled in first grade. A child must complete the academic year in which he or she turns 17 years of age.

Sec. 25.086. EXEMPTIONS

(a) A child is exempt from the requirements of compulsory school attendance if the child:

(1) attends a private or parochial school that includes in its course a study of good citizenship;

(2) is eligible to participate in a school district's special education

program under Section 29.003 and cannot be appropriately served by the resident district;

(3) has a physical or mental condition of a temporary and remediable nature that makes the child's attendance infeasible and holds a certificate from a qualified physician specifying the temporary condition, indicating the treatment prescribed to remedy the temporary condition, and covering the anticipated period of the child's absence from school for the purpose of receiving and recuperating from that remedial treatment;

(4) is expelled in accordance with the requirements of law;

(5) is at least 17 years of age and:

(A) is attending a course of instruction to prepare for the high school equivalency examination; or

(B) has received a high school diploma or high school equivalency certificate;

(6) is at least 16 years of age and is attending a course of instruction to prepare for the high school equivalency examination, if the child is recommended to take the course of instruction by a public agency that has supervision or custody of the child under a court order;

(7) is enrolled in the Texas Academy of Mathematics and Science;

(8) is enrolled in the Texas Academy of Leadership in the Humanities; or

(9) is specifically exempted under another law.

(b) This section does not relieve a school district in which a child eligible to participate in the district's special education program resides of its fiscal and administrative responsibilities under Subchapter A, Chapter 29, or of its responsibility to provide a free appropriate public education to a child with a disability.

Commentary by Lisa Capers

Section 25.086 replaces old Education Code 21.033 and provides certain exemptions from the compulsory school attendance requirements. It is important to note that although a 17 year old cannot be prosecuted for truancy under the Family Code (unless the truancy occurred prior to becoming 17), the 17 year old can be prosecuted for the offense of Failure to Attend School under the Education Code, unless the exemption in Subsection (a)(5) of this section applies. Subsection (a)(5) provides that a 17 year old is exempt from school attendance if he or she is attending a GED instruction course or has received a high school diploma or GED certificate. A 16 year old is exempt only if attending a GED prep course that was recommended by a public agency that has supervision or custody of the child under a court order.

Family Code 51.03(e) provides that a married, divorced, or widowed child cannot be prosecuted for truancy; however, under the Education Code offense of Failure to Attend School, this is not the case, and a married, divorced, or widowed child can be prosecuted for this Class C misdemeanor offense.

Sec. 25.087. EXCUSED ABSENCES

(a) A child required to attend school may be excused for temporary absence resulting from any cause acceptable to the teacher, principal, or superintendent of the school in which the child is enrolled.

(b) A school district shall excuse a student from attending school for the purpose of observing religious holy days, including traveling for that purpose, if before the absence the parent, guardian, or person having custody or control of the student submits a written request for the excused absence. A school district shall excuse a student for temporary absence resulting from health care professionals if that student commences classes or returns to school on the same day of the appointment. A student whose absence is excused under this subsection may not be penalized for that absence and shall be counted as if the student attended school for purposes of calculating the average daily attendance of students in the school district. A student whose absence is excused under this subsection shall be allowed a reasonable time to make up school work missed on those days. If the student satisfactorily completes the school work, the day of absence shall be counted as a day of compulsory attendance.

Commentary by Lisa Capers

Section 25.087 is a shortened version of old Education Code 21.035 regarding excused absences from school. Basically, a child may be granted an excused absence resulting from any cause acceptable to the teacher, principal, or superintendent of the school in which the child is enrolled. Subsection (b) gives specific examples of mandatory excused absences. A student with an excused absence cannot be penalized for the absence. However, the child is counted in the average daily attendance (ADA) of the school district for the day of the excused absence only for absences for religious holy days and professional health care as defined by Subsection (b). A child with an excused absence shall be allowed a rea

sonable time to make up any school work missed, and if the work is completed, the day of absence must be counted as a day of compulsory attendance for the child.
sonable time to make up any school work missed, and if the work is completed, the day of absence must be counted as a day of compulsory attendance for the child.

Section 51.03(d) of the Family Code provides a similar list of excused absences for the purpose of prosecuting a child for truancy.

Sec. 25.088. SCHOOL ATTENDANCE OFFICER

The school attendance officer may be selected by:

(1) the county school trustees of any county; or

(2) the board of trustees of any school district or the boards of trustees of two or more school districts jointly.

Commentary by Lisa Capers

Section 25.088 replaces the prior Education Code 21.036 and somewhat modifies the selection procedure for a school attendance officer. Previously, the attendance office was elected by either the county school trustees of any county having a scholastic population of more than 3,000 or the board of trustees of any independent school district having a scholastic population of more than 2,000. New Section 25.088 provides that the school attendance officer may be selected by the county school trustees of any county, the board of trustees of any school district, or the boards of trustees of two or more school districts jointly. The population requirements have been removed.

Sec. 25.089. COMPENSATION OF ATTENDANCE OFFICER; DUAL SERVICE

(a) An attendance officer may be compensated from the funds of the county or the independent school district, as applicable.

(b) An attendance officer may be the probation officer or an officer of the juvenile court of the county.

Commentary by Lisa Capers

Section 25.089 is a greatly condensed version of old Education Code 21.037. The new section now provides that the attendance officer may be paid from county funds or school district funds. As with prior law, the attendance officer may be a probation officer or an officer of the juvenile court of the county.

Sec. 25.090. ATTENDANCE OFFICER NOT SELECTED

In those counties and independent school districts where an attendance officer has not been selected, the duties of attendance officer shall be performed by the school superintendents and peace officers of the counties and districts. Additional compensation may not be paid for the services.

Commentary by Lisa Capers

This section replaces old Education Code 21.038. If no attendance officer is selected under Section 25.088, the duties of the attendance officer shall be performed by school superintendents and peace officers of the counties and districts, with no additional compensation for these services.

Sec. 25.091. POWERS AND DUTIES OF ATTENDANCE OFFICER

(a) A school attendance officer has the following powers and duties:

(1) to investigate each case of unexcused absence from school;

(2) to administer oaths and to serve legal process;

(3) to enforce the compulsory school attendance law;

(4) to keep a record of each case of any kind investigated by the officer in the discharge of the officer's duties;

(5) to make any report required by the commissioner concerning the discharge of the officer's duties; and

(6) to refer to a juvenile court or to a justice court if the juvenile court has waived jurisdiction as provided by Section 54.021(a), Family Code, any student who has unexcused voluntary absences for the amount of time specified under Section 51.03(b)(2), Family Code, or to file a complaint against any person standing in parental relation who violates Section 25.093 or to file a complaint against a student who violates Section 25.094.

(b) A school attendance officer may not enter a private residence or any part of a private residence without the permission of the owner or tenant except to serve lawful process on a parent, guardian, or other person standing in parental relation to a child to whom the compulsory school attendance law applies.

(c) A school attendance officer may not forcibly take corporal custody of any child anywhere without permission of the parent, guardian, or other person standing in parental relation to the child except in obedience to a valid process issued by a court of competent jurisdiction.

Commentary by Lisa Capers

This section replaces old Education Code 21.039 with virtually identical language. The duties of school attendance officers include 1) investigating unexcused absences; 2) administering oaths and serving legal process; 3) enforcing compulsory attendance; 4) investigation record keeping; 5) reporting as required by TEA; and 6) making referrals of juveniles to juvenile court or justice court for the offense of truancy, filing complaints against juveniles for the Class C offense of Failure to Attend School, and filing complaints against persons for Thwarting Compulsory Attendance.

Attendance officers must have consent to enter a private residence except when serving process on a person. Additionally, the officer may not take a

child into physical custody without the permission of the parent, guardian or person standing in parental relation to the child, unless the officer has a valid court order.

Sec. 25.093. THWARTING COMPULSORY ATTENDANCE LAW

(a) If any parent of a child required to attend school fails to require the child to attend school as required by law, the school attendance officer shall warn the parent in writing that attendance is immediately required.

(b) If, after a warning under Subsection (a), the parent with criminal negligence fails to require the child to attend school as required by law and the child has unexcused voluntary absences for the amount of time specified under Section 51.03(b)(2), Family Code, the parent commits an offense.

(c) The attendance officer shall file a complaint against the parent in the county court, in the justice court of the parent's resident precinct, or in the municipal court of the municipality in which the parent resides or in any municipality or justice of the peace precinct in which the school district is located. The attendance officer shall file a complaint under this section in the court to which the parent's child has been referred for engaging in conduct described in Section 51.03(b)(2), Family Code, if a referral has been made for the child. If a referral has not been made, the attendance officer shall refer the child to the county juvenile probation department for action as engaging in conduct indicating a need for supervision under that section.

(d) A court in which a complaint is filed under this section shall give preference to a hearing on the complaint over other cases before the court.

(e) An offense under this section is a Class C misdemeanor. Each day the child remains out of school after the warning has been given or the child has been ordered to attend school by the juvenile court may constitute a separate offense. Two or more offenses under this section may be consolidated and prosecuted in a single action. If the court probates the sentence, the court may require the defendant to render personal services to a charitable or educational institution as a condition of probation.

(f) A fine collected under this section shall be deposited as follows:

(1) one-half shall be deposited to the credit of the operating fund of the school district in which the child attends school; and

(2) one-half shall be deposited to the credit of:

(A) the general fund of the county, if the complaint is filed in the county court or justice court; or

(B) the general fund of the municipality, if the complaint is filed in municipal court.

(g) At the trial of any person charged with violating this section, the attendance records of the child may be presented in court by any authorized employee of the school district.

(h) The court in which a conviction for an offense under this section occurs may order the defendant to attend a class for parents of students with unexcused absences that provides instruction designed to assist those parents in identifying problems that contribute to the students' unexcused absences and in developing strategies

for resolving those problems if the school district in which the person resides offers such a class.

(i) In this section, "parent" includes a person standing in parental relation.

Commentary by Lisa Capers

This section replaces old Education Code 4.25 but makes some significant cleanup changes. The new section replaces the old verbiage "person standing in parental relation to a child" by simply including this phrase in the meaning of "parent". Thus, no actual change in the law was made; both parents and persons standing in parental relation to a child may still be prosecuted.

As a prerequisite to prosecuting a parent, the attendance officer must first have warned the parent in writing that the child's attendance was required. If after the warning, the parent with criminal negligence fails to make the child go to school, and the child misses the requisite number of days to be considered truant as defined in the Family Code, the parent commits an offense. Family Code Section 51.03(b)(2) defines truancy as absences on 3 or more days or parts of days within a four week period or 10 or more days or parts of days within a six-month period.

The attendance officer is mandated to file a complaint against the parent in the appropriate county court, justice court, or municipal court. If the child's truancy case has been referred to a particular court, the attendance officer must file the complaint against the parent in the same court. If no referral of the child's conduct has been made to the juvenile court, the attendance officer shall refer the child to the juvenile court as a CINS case. Thwarting compulsory attendance cases are to be given priority over other cases by the court.

Another significant change was made under 25.093 in the amount a parent can be fined if convicted of the offense of thwarting compulsory school attendance. During the 73rd Legislature in 1993, two separate bills (House Bill 681 and Senate Bill 7) amended the punishment provisions of Section 4.25 and created some confusion. Senate Bill 7 amended the penalty ranges to provide the offense was punishable by a fine of $10-$50 for the first offense, $20-$100 for the second offense, and $50-$200 for subsequent offenses. House Bill 681 amended Section 4.25 to make each offense a Class C Misdemeanor that carries a possible fine of up to $500. House Bill 681 was adopted on May 18, 1993 and Senate Bill 7 was adopted on May 28, 1993. In Letter Opinion No. 94-058 to Governor Richards on July 20, 1994, the Attorney General concluded that Senate Bill 7 controlled because it was the latest expression of legislative intent. New 25.093 now changes the offense to a Class C misdemeanor as did House Bill 681. As under old law, each day the child is absent after the warning has been given or the child has been ordered back to school by the juvenile court, constitutes a new, separate offense. Thus, the fine range has greatly been expanded, which should get the attention of persons charged with thwarting.

Two or more offenses under this section can be consolidated and prosecuted under a single action. If the court probates the sentence, community service can be ordered as a condition of the probation. If available, the court may also order the parent to attend a class that assists parents in identifying contributing problems to the child not attending school and also in developing strategies for dealing with

absence issues.

Sec. 25.094. FAILURE TO ATTEND SCHOOL

(a) A child commits an offense if the child:

(1) is required to attend school under Section 25.085; and

(2) fails to attend school for the amount of time specified under Section 51.03(b)(2), Family Code, and is not excused under Section 25.087.

(b) An offense under this section may be prosecuted in the justice court for the precinct in which the child resides or in which the school is located.

(c) On a finding by the justice or municipal court that the child has committed an offense under Subsection (a), the court may enter an order that includes one or more of the requirements listed in Section 54.021(d), Family Code.

(d) If the justice or municipal court finds that a child has violated an order issued under Subsection (c), the court shall transfer the complaint against the child, together with all pleadings and orders, to a juvenile court for the county in which the child resides. The juvenile court shall conduct an adjudication hearing as provided by Section 54.03, Family Code. The adjudication hearing shall be de novo.

(e) Pursuant to an order of the justice or municipal court, a peace officer may take a child into custody if there are reasonable grounds to believe that the child has committed an offense under this section. A peace officer taking a child into custody under this subsection shall:

(1) promptly notify the child's parent, guardian, or custodian of the officer's action and the reason for that action; and

(2) without unnecessary delay:

(A) release the child to the child's parent, guardian, or custodian or to another responsible adult, if the person promises to bring the child to the justice or municipal court as requested by the court; or

(B) bring the child to the justice of the peace of the court having jurisdiction over the child.

(f) An offense under this section is a Class C misdemeanor.

(g) Any person convicted of not more than one violation under this section while a minor, on attaining the age of 18 years, may apply to the court in which the person was convicted to have the conviction expunged.

(h) The application must contain the applicant's sworn statement that the person was not convicted of any violation of this section while a minor other than the one the person seeks to have expunged.

(i) f the court finds that the applicant was not convicted of any other violation of this section while the person was a minor, the court shall order the conviction, together with all complaints, verdicts, sentences, and other documents relating to the offense, to be expunged from the applicant's record. After entry of the order, the applicant shall be released from all disabilities resulting from the conviction, and the conviction may not be shown or made known for any purpose.

Commentary by Lisa Capers

This section replaces and makes additions to old Education Code 4.251. Under this section, a child commits an

offense if the child was required to attend school and missed the requisite number of days as specified in Family Code 51.03(b)(2), without an excused absence. The offense is a Class C Misdemeanor.

Subsection (b) states that prosecution is in the justice court for the precinct where the child resides or where the school is located. This new section adds the phrase "or municipal court" in various places except in Subsection (b). Clearly, municipal courts have jurisdiction to hear these cases even though they were not mentioned in Subsection (b). Municipal courts have concurrent jurisdiction over Class C Misdemeanors under Article 4.14 of the Code of Criminal Procedure, and it appears the intent of this section was for municipal courts to be authorized to hear these cases. Further, it was clearly the legislative intent to authorize municipal courts to hear truancy cases for juvenile courts under Section 52.021 which was amended by House Bill 327. Subsection (b) is not so specific to negate the municipal court's jurisdiction under Art. 4.14; it is only an alternative venue provision for justice courts only, and not intended to limit the jurisdiction over Failure to Attend School exclusively to justice courts.

Subsection (c) is new. On a finding the child committed an offense, it authorizes the court to enter an order that includes one or more of the options found in 54.021(d) of the Family Code which deals with truancy offenses transferred to justice and municipal courts by juvenile courts. This section provides options to the justice and municipal courts that are in addition to the court's ability to assess a fine or place the child on deferred disposition pursuant to Code of Criminal Procedure Art. 45.54.

Subsection (d) is also new and a bit confusing. The statute states that if the child violates the court order, the justice or municipal court is mandated to transfer the complaint against the child to the juvenile court in the county where the child resides. The juvenile court is required to conduct an adjudication hearing "de novo," which means a new hearing. One interpretation of this subsection is that the juvenile court must adjudicate the Class C Misdemeanor complaint of Failure to Attend School as a CINS offense similar to when a criminal complaint is transferred via Family Code 51.08. However, this makes little sense because normally the child has already been convicted or plead guilty to the offense and this is not an appeal requested by the child or the child's attorney for purposes of a de novo review. Hearing this case on the merits again would raise some double jeopardy problems in this context. The more logical approach is for the justice or municipal court to make a referral to juvenile court for the new offense of "contempt of court" as a result of the child's alleged violation of a municipal or justice court order. The juvenile court would then adjudicate for the new contempt offense. House Bill 327 amended the Family Code definition of delinquent conduct in 51.03 to include conduct that violates an order of a justice or municipal court (i.e., contempt of court). This referral could be accomplished by the judge simply preparing an affidavit alleging the child has violated the court order.

Subsection (e) is new and authorizes the justice and municipal court to order a peace officer to take a child into custody if there are reasonable grounds to believe the child has committed the offense of Failure to Attend School. The peace officer must promptly notify the child's parent, guardian or custodian of the action and the

reason for the action, and must promptly release the child to the adult upon the adult's promise to return the child to the appropriate court as requested.

As under the old law, the child has the right to have his or her record of a conviction for Failure to Attend School expunged once the child becomes 18 if there were no subsequent convictions of this offense.

Sec. 25.095. WARNING NOTICE

(a) A school district shall notify a student's parent in writing if, in a six-month period, the student has been absent without an excuse five times for any part of the day. The notice must state that if the student is absent without an excuse for 10 or more days or parts of days in a six-month period:

(1) the student's parent is subject to prosecution under Section 25.093; and

(2) the student is subject to prosecution under Section 25.094.

(b) Notice is not required under this section if the student is a party to a juvenile court proceeding for conduct described by Section 51.03(b)(2), Family Code.

(c) The fact that a parent did not receive a notice under this section does not create a defense to prosecution under Section 25.093 or 25.094.

(d) In this section, "parent" includes a person standing in parental relation.

Commentary by Lisa Capers

This section requires a school district to notify a student's parent in writing if, in a six-month period, the student has been absent without an excuse five times for any part of the day. The notice must tell the parent that if the child is absent for 10 or more days or parts of days in a six-month period, the parents may face prosecution for Thwarting Compulsory Attendance and the child may be prosecuted for Failure to Attend School. If the child is being prosecuted for truancy under the Family Code, this notice is not required. It is not a defense that the parent did not receive the notice. The definition of parent includes persons standing in parental relation to the child.

Although this section mandates the school to warn parents about possible prosecution if the child is absent for 10 or more days or parts of days in a six-month period, it would seem to be a practical idea to warn the parents and child that both face possible prosecution if the child misses 3 or more days or parts of days in a four-week period.

Sec. 25.096. ADDITIONAL AUTHORIZATION TO ENFORCE COMPULSORY ATTENDANCE LAW

In addition to enforcement by a school attendance officer, the compulsory attendance provisions of this subchapter may be enforced by any peace officer, as defined by Article 2.12, Code of Criminal Procedure.

Commentary by Lisa Capers

This is another new section that authorizes the compulsory attendance provisions to be enforced by any peace officers, as defined by Article 2.12, Code of Criminal Procedure. Probation officers are not considered peace officers as that term is defined in Article 2.12.

SUBTITLE G. SAFE SCHOOLS

CHAPTER 37. DISCIPLINE; LAW AND ORDER

SUBCHAPTER A. ALTERNATIVE SETTINGS FOR BEHAVIOR MANAGEMENT

Sec. 37.001. STUDENT CODE OF CONDUCT

(a) Each school district shall, with the advice of its district-level committee established under Section 11.251, and jointly, as appropriate, with the juvenile board of each county in which the district is located, adopt a student code of conduct for the district. In addition to establishing standards for student conduct, the student code of conduct must:

(1) specify the circumstances, in accordance with this subchapter, under which a student may be removed from a classroom, campus, or alternative education program;

(2) outline the responsibilities of each juvenile board concerning the establishment and operation of a juvenile justice alternative education program under Section 37.011;

(3) define the conditions on payments from the district to each juvenile board;

(4) specify conditions that authorize or require a principal or other appropriate administrator to transfer a student to an alternative education program; and

(5) outline conditions under which a student may be suspended as provided by Section 37.005 or expelled as provided by Section 37.007.

(b) A teacher with knowledge that a student has violated the student code of conduct shall file with the school principal or the other appropriate administrator a written report, not to exceed one page, documenting the violation. The principal or the other appropriate administrator shall, not later than 24 hours after receipt of a report from a teacher, send a copy of the report to the student's parents or guardians.

(c) Each school district shall adopt a student code of conduct as required by this section not later than September 1, 1996. This subsection expires September 1, 1997.

Commentary by Lisa Capers

This is a new section in the Education Code that mandates each school district, with the advice of its district-level committee, and jointly, as appropriate, with the local juvenile board of each county in which the district is located to adopt a student code of conduct for the district. The code must 1) specify when a child can be removed from a classroom, campus, or alternative education program ; 2) define the juvenile board's responsibilities concerning juvenile justice alternative education programs; 3) specify the mechanism whereby juvenile boards receive payments for those children in juvenile justice schools; 4) specify when the school can transfer a child to an alternative education program; and 5) outline when a child may be suspended or expelled. The "as appropriate" language raises the question of whether all juvenile boards must participate in the development of the student code of conduct, especially those who do not operate a juvenile justice alternative education program (JJAEP). However, since all juvenile boards should develop the memorandum of understanding (MOU) discussed in 37.010, it makes good sense and is strongly

advised that all juvenile boards be involved in creating the code of conduct, regardless of whether they will operate a JJAEP.

A teacher is mandated to file a written report of violations of the student code of conduct with the principal or appropriate administrator. The school must then notify the student's parents or guardians within 24 hours of the receipt of the report. The code of conduct must be adopted by September 1, 1996.

Sec. 37.002. REMOVAL BY TEACHER

(a) A teacher may send a student to the principal's office to maintain effective discipline in the classroom. The principal shall respond by employing appropriate discipline management techniques consistent with the student code of conduct adopted under Section 37.001.

(b) A teacher may remove from class a student:

(1) who has been documented by the teacher to repeatedly interfere with the teacher's ability to communicate effectively with the students in the class or with the ability of the student's classmates to learn; or

(2) whose behavior the teacher determines is so unruly, disruptive, or abusive that it seriously interferes with the teacher's ability to communicate effectively with the students in the class or with the ability of the student's classmates to learn.

(c) If a teacher removes a student from class under Subsection (b), the principal may place the student into another appropriate classroom, into in-school suspension, or into an alternative education program as provided by Section 37.008. The principal may not return the student to that teacher's class without the teacher's consent unless the committee established under Section 37.003 determines that such placement is the best or only alternative available. The terms of the removal may prohibit the student from attending or participating in school-sponsored or school-related activity.

(d) A teacher shall remove from class and send to the principal for placement in an alternative education program or for expulsion, as appropriate, a student who engages in conduct described under Section 37.006 or 37.007. The student may not be returned to that teacher's class without the teacher's consent unless the committee established under Section 37.003 determines that such placement is the best or only alternative available.

Commentary by Lisa Capers

This new section replaces various portions of the old Education Code 21.301. Under this new section, a teacher may send a student to the principal's office to maintain control of the classroom. The principal shall take an action consistent with the student code of conduct.

A teacher may remove a student from class who has been previously documented to repeatedly interfere with the teacher's ability to teach and other student's ability to learn or whose behavior is so unruly, disruptive, or abusive that it interferes with the teacher's ability to teach and students' ability to learn. Once a child is removed, the principal may put the student in another classroom, into in-school suspension, or into a school alternative education program (AEP). Teachers are mandated to remove from

class those students who engage in conduct for which they may be expelled or removed to an alternative education program. The child cannot be returned to the teacher's classroom without the teacher's consent unless a review committee decides that placement in that particular classroom is the most appropriate action. A child may be prohibited from attending or participating in school-sponsored or school-related activities.

Sec. 37.003. PLACEMENT REVIEW COMMITTEE

(a) Each school shall establish a three-member committee to determine placement of a student when a teacher refuses the return of a student to the teacher's class and make recommendations to the district regarding readmission of expelled students. Members shall be appointed as follows:

(1) the campus faculty shall choose two teachers to serve as members and one teacher to serve as an alternate member; and

(2) the principal shall choose one member from the professional staff of a campus.

(b) The teacher refusing to readmit the student may not serve on the committee.

Commentary by Lisa Capers

This new section mandates every school to establish a three-member committee to review and make recommendations regarding a student's placement when a teacher refuses to allow a child to return to his or her classroom. The committee shall be composed of two teachers chosen by the campus faculty (and one alternate) and one professional staff member chosen by the principal. The teacher refusing to admit the child cannot serve on the committee.

Sec. 37.005. SUSPENSION

(a) The principal or other appropriate administrator may suspend a student who engages in conduct for which the student may be placed in an alternative education program under this subchapter.

(b) A suspension under this section may not exceed three school days.

Commentary by Lisa Capers

Section 21.301 of the old Education Code addressed when a student could be suspended. Section 37.005 provides a student can be suspended for up to 3 days if the student engages in conduct for which he or she can be removed to an alternative education program.

Sec. 37.006. REMOVAL FOR CERTAIN CONDUCT

(a) Except as provided by Section 37.007(a)(3), a student shall be removed from class and placed in an alternative education program as provided by Section 37.008 if the student engages in conduct punishable as a felony, or commits the following on school property or while attending a school-sponsored or school-related activity on or off of school property:

(1) engages in conduct that contains the elements of the offense of assault under Section 22.01(a)(1), Penal Code, or terroristic threat under Section 22.07, Penal Code;

(2) sells, gives, or delivers to another person or possesses or uses

or is under the influence of:

(A) marihuana or a controlled substance, as defined by Chapter 481, Health and Safety Code, or by 21 U.S.C. Section 801 et seq.; or

(B) a dangerous drug, as defined by Chapter 483, Health and Safety Code;

(3) sells, gives, or delivers to another person an alcoholic beverage, as defined by Section 1.04, Alcoholic Beverage Code, commits a serious act or offense while under the influence of alcohol, or possesses, uses, or is under the influence of an alcoholic beverage;

(4) engages in conduct that contains the elements of an offense relating to abusable glue or aerosol paint under Sections 485.031 through 485.035, Health and Safety Code, or relating to volatile chemicals under Chapter 484, Health and Safety Code; or

(5) engages in conduct that contains the elements of the offense of public lewdness under Section 21.07, Penal Code, or indecent exposure under Section 21.08, Penal Code.

(b) Except as provided by Section 37.007(c), a student shall be removed from class and placed in an alternative education program under Section 37.008 if the student engages in conduct that contains the elements of the offense of retaliation under Section 36.06, Penal Code, against any school employee.

(c) The terms of a placement under this section must prohibit the student from attending or participating in a school-sponsored or school-related activity.

Commentary by Lisa Capers

Commentary by Lisa Capers

Section 37.006 replaces parts of the old Education Code 21.3011. This new section lists the criminal offenses for which a student may be removed from the regular classroom and placed in a school's alternative education program. A student who commits any felony offense, regardless of whether the offense occurred on school property or at a school function, must be removed to the school's AEP. In addition, any child who commits one of the list of offenses in 37.006 on school property or at a school function must also be placed in the AEP. As a result of placement in the AEP, the student must be prohibited from attending or participating in school-sponsored or school-related activities.

Sec. 37.007. EXPULSION FOR SERIOUS OFFENSES

(a) A student shall be expelled from a school if the student, on school property or while attending a school-sponsored or school-related activity on or off of school property:

(1) uses, exhibits, or possesses:

(A) a firearm as defined by Section 46.01(3), Penal Code;

(B) an illegal knife as defined by Section 46.01(6), Penal Code, or by local policy;

(C) a club as defined by Section 46.01(1), Penal Code; or

(D) a weapon listed as a prohibited weapon under Section 46.05, Penal Code;

(2) engages in conduct that contains the elements of the offense of:

(A) aggravated assault under Section 22.02, Penal Code, sexual

assault under Section 22.011, Penal Code, or aggravated sexual assault under Section 22.021, Penal Code;

(B) arson under Section 28.02, Penal Code;

(C) murder under Section 19.02, Penal Code, capital murder under Section 19.03, Penal Code, or criminal attempt, under Section 15.01, Penal Code, to commit murder or capital murder;

(D) indecency with a child under Section 21.11, Penal Code; or

(E) aggravated kidnapping under Section 20.04, Penal Code; or

(3) engages in conduct specified by Section 37.006(a)(2) or (3), if the conduct is punishable as a felony.

(b) A student may be expelled if the student, after being placed in an alternative education program for disciplinary reasons, continues to engage in serious or persistent misbehavior that violates the district's student code of conduct.

(c) A student shall be expelled if the student engages in conduct that contains the elements of any offense listed in Subsection (a) against any employee in retaliation for or as a result of the employee's employment with a school district.

(d) In accordance with federal law, a local educational agency, including a school district, home-rule school district, or open-enrollment charter school, shall expel a student who brings a firearm, as defined by 18 U.S.C. Section 921, to school. The student must be expelled from the student's regular campus for a period of at least one year, except that:

(1) the superintendent or other chief administrative officer of the school district or of the other local educational agency, as defined by 20 U.S.C. Section 2891, may modify the length of the expulsion in the case of an individual student; and

(2) the district or other local educational agency may provide educational services to the expelled student in an alternative education program as provided by Section 37.008.

(e) Each school district shall report to the agency the number of students expelled under Subsection (d) each year, the names of the schools from which the students are expelled, and the types of weapons involved.

(f) A student who engages in conduct that contains the elements of the offense of criminal mischief under Section 28.03, Penal Code, may be expelled at the district's discretion if the conduct is punishable as a felony under that section. The student shall be referred to the authorized officer of the juvenile court regardless of whether the student is expelled.

(g) A school district shall inform each teacher of the conduct of a student who has engaged in any violation listed in this section. A teacher shall keep the information received in this subsection confidential. The State Board for Educator Certification may revoke or suspend the certification of a teacher who intentionally violates this subsection.

Commentary by Lisa Capers

This new section revises the remainder of old Education Code 21.3011 and specifies the offenses for which a student may be expelled. These offenses are more serious offenses than those listed under 37.006. For a student to be

expelled, the offense must occur on school property or while attending a school function either on or off school property.

Subsection (a) details the particular offenses, which are all criminal code violations. Subsection (b) provides that the student who has already been placed in the AEP for disciplinary reasons can be expelled subsequently if the student continues to engage in serious or persistent misbehavior as defined in the student code of conduct. Schools and juvenile boards across the state should attempt to develop a consistent and standard definition of "serious and persistent misbehavior".

Under federal law, any student who brings a firearm to school must be expelled from the regular campus for at least one year; however, the school has the option to modify this in individual cases and may place the child in the AEP. Schools are required to report annually the number of students expelled because of firearms, the school name and the types of weapons involved.

Although criminal mischief is not among the list of expellable offenses, Subsection (f) authorizes the school to expel a child if the child commits felony criminal mischief. The student must be referred to the juvenile court regardless of whether he or she is expelled.

Schools must inform the teachers when students commit these offenses. The teachers must keep the information confidential or risk revocation or suspension of their teaching certificates for intentional violations of this confidentiality provision. This provision is similar to the new amendment to Code of Criminal Procedure Art. 15.27 that was made by House Bill 1687. As discussed earlier, House Bill 1687 requires the superintendent to notify all instructional and support personnel who have regular contact with the student if the student is arrested or detained by law enforcement for offenses listed in Subsection (h) of Article 15.27. Many of the offenses listed in Subsection (h) are expellable offenses.

Sec. 37.008. ALTERNATIVE EDUCATION PROGRAMS

(a) Each school district shall provide an alternative education program that:

(1) is provided in a setting other than a student's regular classroom;

(2) is located on or off of a regular school campus;

(3) provides for the students who are assigned to the alternative education program to be separated from students who are not assigned to the program;

(4) focuses on English language arts, mathematics, science, history, and self-discipline;

(5) provides for students' educational and behavioral needs; and

(6) provides supervision and counseling.

(b) An alternative education program may provide for a student's transfer to:

(1) a different campus;

(2) a school-community guidance center; or

(3) a community-based alternative school.

(c) An off-campus alternative education program is not subject to a requirement imposed by this title, other than a limitation on liability, a reporting requirement, or a requirement imposed by this chapter or by Chapter 39.

(d) A school district may provide an alternative education program

jointly with one or more other districts.

(e) Each school district shall cooperate with government agencies and community organizations that provide services in the district to students placed in an alternative education program.

(f) A student removed to an alternative education program is counted in computing the average daily attendance of students in the district for the student's time in actual attendance in the program.

(g) A school district shall allocate to an alternative education program the same expenditure per student attending the alternative education program, including federal, state, and local funds, that would be allocated to the student's school if the student were attending the student's regularly assigned education program, including a special education program.

(h) A school district may not place a student, other than a student suspended as provided under Section 37.005 or expelled as provided under Section 37.007, in an unsupervised setting as a result of conduct for which a student may be placed in an alternative education program.

(i) On request of a school district, a regional education service center may provide to the district information on developing an alternative education program that takes into consideration the district's size, wealth, and existing facilities in determining the program best suited to the district.

(j) If a student placed in an alternative education program enrolls in another school district before the expiration of the period of placement, the board of trustees of the district requiring the placement shall provide to the district in which the student enrolls, at the same time other records of the student are provided, a copy of the placement order. The district in which the student enrolls may continue the alternative education program placement under the terms of the order or may allow the student to attend regular classes without completing the period of placement.

(k) A program of educational and support services may be provided to a student and the student's parents when the offense involves drugs or alcohol as specified under Section 37.006 or 37.007.

Commentary by Lisa Capers

This new section mandates each school district to establish and provide an alternative education program (AEP) outside the regular classroom. The AEP can be on or off the regular school campus. If it is off-campus, it is not subject to the majority of the Education Code requirements other than a limitation on liability, TEA reporting requirements, Chapter 37 requirements (safe schools) and Chapter 39 requirements (statewide TAAS testing). School districts can jointly provide an AEP with other districts, and each district must cooperate with government agencies and community organizations who provide services to the students in the AEP.

The per student financial allotment from a regular classroom setting will be allocated to the AEP to fund the program. These funds include federal, state, and local funds.

Sec. 37.009. HEARING; REVIEW

(a) Not later than the third class

day after the day on which a student is removed from class under Section 37.002(b) or (d), the school principal shall schedule a hearing among the principal or the principal's designee, a parent or guardian of the student, the teacher removing the student from class, and the student. The student may not be returned to the regular classroom pending the hearing. Following the hearing, and whether or not each requested person is in attendance after valid attempts to require the person's attendance, the principal shall order the placement of the student as provided by Section 37.002 for a period consistent with the student code of conduct.

(b) If a student's placement in an alternative education program is to extend beyond the end of the next grading period, a student's parent or guardian is entitled to notice of and an opportunity to participate in a proceeding before the board of trustees of the school district or the board's designee, as provided by policy of the board of trustees of the district. Any decision of the board or the board's designee under this subsection is final and may not be appealed.

(c) Before it may place a student in an alternative education program for a period that extends beyond the end of the school year, the board or the board's designee must determine that:

(1) the student's presence in the regular classroom program or at the student's regular campus presents a danger of physical harm to the student or to another individual; or

(2) the student has engaged in serious or persistent misbehavior that violates the district's student code of conduct.

(d) The board or the board's designee shall set a term for a student's placement in an alternative education program under Section 37.002 or 37.006.

(e) A student placed in an alternative education program under Section 37.002 or 37.006 shall be provided a review of the student's status by the board's designee at intervals not to exceed 120 days. At the review, the student or the student's parent or guardian must be given the opportunity to present arguments for the student's return to the regular classroom or campus. The student may not be returned to the classroom of the teacher who removed the student without that teacher's consent. The teacher may not be coerced to consent.

(f) Before a student may be expelled under Section 37.007, the board or the board's designee must provide the student a hearing at which the student is afforded appropriate due process as required by the federal constitution and which the student's parent or guardian is invited, in writing, to attend. At the hearing, the student must be represented by the student's parent or guardian or another adult who can provide guidance to the student and who is not an employee of the school district. If the decision to expel a student is made by the board's designee, the decision may be appealed to the board. The decision of the board may be appealed by trial de novo to a district court of the county in which the school district's central administrative office is located.

(g) The board or the board's designee shall deliver to the student and the student's parent or guardian a copy of the order placing the student in an alternative education program under

Section 37.002 or 37.006 or expelling the student under Section 37.007.

(h) After a school district notifies the parents or guardians of a student that the student has been expelled, the parent or guardian shall provide adequate supervision of the student during the period of expulsion.

Commentary by Lisa Capers

This section describes the hearing and review process for students who have been removed from the regular classroom, placed in an AEP, or expelled. The hearing must be held not later than the third day after the removal and include the principal or designee, parent or guardian of the student, the teacher and the student. Following the hearing, the principal must order a placement consistent with the student code of conduct.

If the placement in the AEP goes beyond the next grading period, the student is entitled to a review by the board of trustees or their designee, whose decision is final and not appealable. The student is further entitled to a review of his or her case at regular intervals not to exceed 120 days, where the student and the parent may argue for the student's return to the regular classroom. The teacher must ultimately consent to the return and cannot be coerced to consent.

Before a child can be expelled, the board or its designee must provide the student with a due process hearing. The parent or guardian must be invited, in writing, to attend and represent the child. The board decision can be appealed by trial de novo to a district court of the county where the school's central administrative office is located. The student and parent must receive a copy of the expulsion order. After receipt of the order, the parent or guardian is responsible for providing adequate supervision of the student during the expulsion period.

Sec. 37.010. COURT INVOLVEMENT

(a) Not later than the second business day after the date a hearing is held under Section 37.009, the board of trustees of a school district or the board's designee shall deliver a copy of the order placing a student in an alternative education program under Section 37.006 or expelling a student under Section 37.007 and any information required under Section 52.04, Family Code, to the authorized officer of the juvenile court in the county in which the student resides. Except as provided by Subsection (b), the officer may determine whether:

(1) a petition should be filed alleging that the student is in need of supervision or has engaged in delinquent conduct; or

(2) the student should be referred to an appropriate state agency.

(b) If a student is expelled under Section 37.007(b), the board or its designee shall refer the student to the authorized officer of the juvenile court for appropriate proceedings under Title 3, Family Code.

(c) Unless the juvenile board for the county in which the district's central administrative office is located has entered into a memorandum of understanding with the district's board of trustees concerning the juvenile probation department's role in supervising and providing other support services for students in alternative education programs, a court may not order a student expelled under Section 37.007 to attend a regular classroom, a regular campus, or a school district

alternative education program as a condition of probation.

(d) Unless the juvenile board for the county in which the district's central administrative office is located has entered into a memorandum of understanding as described by Subsection (c), if a court orders a student to attend an alternative education program as a condition of probation once during a school year and the student is referred to juvenile court again during that school year, the juvenile court may not order the student to attend an alternative education program in a district without the district's consent until the student has successfully completed any sentencing requirements the court imposes.

(e) Any placement in an alternative education program by a court under this section must prohibit the student from attending or participating in school-sponsored or school-related activities.

(f) If a student is expelled under Section 37.007, on the recommendation of the committee established under Section 37.003 or on its own initiative, a district may readmit the student while the student is completing any court disposition requirements the court imposes. After the student has successfully completed any court disposition requirements the court imposes, if the student meets the requirements for admission into the public schools established by this title, a district may not refuse to admit the student, but the district may place the student in the alternative education program. Notwithstanding Section 37.002(d), the student may not be returned to the classroom of the teacher under whose supervision the offense occurred without that teacher's consent. The teacher may not be coerced to consent.

(g) If an expelled student enrolls in another school district, the board of trustees of the district that expelled the student shall provide to the district in which the student enrolls, at the same time other records of the student are provided, a copy of the expulsion order and the referral to the authorized officer of the juvenile court.

(h) A person is not liable in civil damages for a referral to juvenile court as required by this section.

Commentary by Lisa Capers

This new section contains remnants of old Education Code 21.3011 regarding the juvenile court's involvement. By the second business day after the hearing under 37.009, the board of trustees must provide a copy of the removal or expulsion order to the juvenile court in the county where the student resides. According to the statute, except for subsection (b), the intake officer may determine whether a petition should be filed or whether the student should be referred to any appropriate state agencies for services (i.e., MHMR, TDPRS). Subsection (b) deals with a student expelled from an AEP for serious or persistent misbehavior and requires the board to refer the student to the juvenile court for "appropriate proceedings under Title 3, Family Code". It is unclear why this distinction was made, but the logical procedure appears to be that juvenile court intake officials should determine whether a CINS petition is the appropriate action just as they normally would do. Pursuant to House Bill 327, expulsion for this conduct is now a CINS offense under the amendment to 51.03, Family Code.

Under the old Education Code 21.3011(j), a juvenile court could order an expelled child to attend school as a condition of probation, and the school had to readmit the student, although the student was not immune from suspension, removal to an AEP, or subsequent expulsion. The school also maintained the right to place the child in the appropriate educational setting. Section 37.010 changes this procedure. Subsection (c) provides that a juvenile court may not order an expelled student to attend a regular classroom, a regular campus, or a school AEP as a condition of probation *unless* the juvenile board has entered into a memorandum of understanding (MOU) with the school district concerning the juvenile probation department's role in supervising and providing other support services for students in AEPs. Subsection (d) further provides that unless this MOU exists, if a court orders a student to attend the AEP as a condition of probation once during the school year, and the student is referred to juvenile court again during that school year, the court may not order the student into the AEP without the district's consent until the student completes any of the court's sentencing requirements (i.e., conditions of probation). Thus, the MOU between juvenile boards and school districts is a vitally important document that must specifically address many issues related to juvenile offenders. Without it, many expelled children will not be educated at all, particularly in those counties that have no mandatory juvenile justice alternative education program (see below). Any placement in an AEP by a juvenile court must prohibit the child from attending or participating in school-sponsored or school-related activities.

There is a mechanism whereby an expelled student may gain readmittance. Subsection (f) authorizes the school, on the recommendation of the placement review committee or on its own initiative, to readmit the student during the time the student is on court-ordered probation. Once the student completes any court disposition requirements, the student must be readmitted to school, if otherwise eligible for admission. However, the school may then place the student in the AEP. The student ultimately cannot be returned to the teacher's classroom without that teacher's consent, which cannot be coerced.

If an expelled student enrolls in another school, the school must provide the new school a copy of the expulsion order and the referral sent to juvenile court.

Lastly, the section provides that a person who makes a referral to juvenile court as required by this section is not liable civilly.

Sec. 37.011. JUVENILE JUSTICE ALTERNATIVE EDUCATION PROGRAM

(a) The juvenile board of a county with a population greater than 125,000 shall develop a juvenile justice alternative education program, subject to the approval of the Texas Juvenile Probation Commission. The juvenile board of a county with a population of 125,000 or less may develop a juvenile justice alternative education program. A juvenile justice alternative education program in a county with a population of 125,000 or less:

(1) is not required to be approved by the Texas Juvenile Probation Commission; and

(2) is not subject to Subsection (c), (d), (f), or (g).

(b) If a student is found to have engaged in conduct described by Section 37.007 and the student is found by a juvenile court to have engaged in delinquent conduct under Title 3, Family Code, the juvenile court shall:

(1) require the juvenile justice alternative education program in the county in which the conduct occurred to provide educational services to the student; and

(2) order the student to attend the program from the date of adjudication.

(c) A juvenile justice alternative education program shall adopt a student code of conduct in accordance with Section 37.001.

(d) A juvenile justice alternative education program must focus on English language arts, mathematics, science, history, and self-discipline. Each program shall administer assessment instruments under Subchapter B, Chapter 39, and shall offer a high school equivalency program.

(e) A juvenile justice alternative education program may be provided in a facility owned by a school district. A school district may provide personnel and services for a juvenile justice alternative education program under a contract with the juvenile board.

(f) A juvenile justice alternative education program must operate at least:

(1) seven hours per day; and

(2) 180 days per year.

(g) A juvenile justice alternative education program shall be subject to a written operating policy developed by the local juvenile justice board and submitted to the Texas Juvenile Probation Commission for review and comment. A juvenile justice alternative education program is not subject to a requirement imposed by this title, other than a reporting requirement or a requirement imposed by this chapter or by Chapter 39.

(h) For purposes of accountability under Chapter 39 and the Foundation School Program, a student enrolled in a juvenile justice alternative education program is reported as if the student were enrolled at the student's assigned campus in the student's regularly assigned education program, including a special education program.

(i) A student transferred to a juvenile justice alternative education program must participate in the program for the full period ordered by the juvenile court unless the student's school district agrees to accept the student before the date ordered by the juvenile court. The juvenile court may not order a period of transfer under this section that exceeds the term of any probation ordered by the juvenile court.

(j) A juvenile board in a county with a population greater than 125,000 shall establish a juvenile justice alternative education program not later than September 1, 1996. A student who engages in conduct described by Section 37.007 before the date on which a juvenile justice alternative education program for the county in which the student resides begins operation shall be expelled for a period not to exceed one year. This subsection expires September 1, 1997.

Commentary by Lisa Capers

One of the most dramatic changes made by the new Education Code is the creation of Juvenile Justice Alternative

Education Programs (JJAEP). Section 37.011 is a new section that mandates the juvenile board of any county with a total population greater than 125,000 to develop and operate a juvenile justice alternative education program (JJAEP), subject to the approval of TJPC. Juvenile boards in counties with less than 125,000 population have the option to develop a program if they choose, but the program does not have to be approved by TJPC and is not subject to most of the guidelines set out in 37.012 applicable to the mandatory JJAEPs.

There are two prerequisites that must exist before a juvenile court must place a child into the JJAEP. First, the student has to be found by the school to have engaged in expellable conduct as described in 37.007. Second, the student must be found by a juvenile court to have engaged in delinquent conduct via an adjudication hearing. Thus, if the child committed an expellable offense (which must have occurred on school property or at a school sponsored or school-related activity on or off school property) *and* was actually expelled by the school, *and* the juvenile court adjudicated the child for the expellable offense, the juvenile court must order the child to attend the JJAEP from the date of the adjudication. A child that has been expelled under 37.007(b) for serious or persistent misbehavior can be adjudicated only for conduct indicating a need for supervision (CINS); thus this student cannot be placed in the JJAEP because there is no adjudication for "delinquent conduct". Recall that House Bill 327 amended the definition of CINS to include an act that violates a school district's previously communicated written standards of student conduct for which the child has been expelled under 21.3011, Education Code [now 37.007].

The statute states that the juvenile court shall require the JJAEP in the county in which the conduct occurred to provide education services to the student. A problematic scenario that may frequently occur is when a student commits an expellable offense at an out-of-town football game for example, which is a school sponsored or related event. The literal language of the statue would require the county where the offense occurred to provide the JJAEP services. If the child resides a great distance away, this is an illogical result. Further, the county where the offense occurs may or may not have a JJAEP. This and related issues should probably be discussed by the juvenile board and the school district when the two entities draft the MOU and student code of conduct. Juvenile boards and juvenile courts will have to communicate and resolve this dilemma among themselves when faced with this situation. The most logical and perhaps only realistic result would be for the JJAEP where the child will reside on probation to educate the child.

Each mandatory JJAEP must adopt a student code of conduct and the courses taught at the school must focus on a specified core curriculum of English, language arts, math, science, history, and self discipline. The JJAEP must offer a GED program. Each JJAEP must administer all the various assessment tests under Chapter 39 of the Education Code known as the Texas Assessment of Academic Skills (TAAS) tests. The JJAEP may contract with the school district to administer the TAAS tests for the JJAEP. TAAS test scores of students in the JJAEP are counted under the accountability ratings of the school campus from which the student was expelled. Thus, schools have a vested

interest in ensuring that the JJAEP provides quality educational services. A school may lose accreditation from the Texas Education Agency (TEA) if they consistently have low TAAS test scores.

The JJAEP may be located in a school owned or provided location. Juvenile boards may contract with the school to provide personnel and services for the JJAEP. Mandatory JJAEPs must operate seven hours per day and 180 days per year and are subject to a written operating policy developed by the juvenile board and reviewed by TJPC. The JJAEP is not subject to the requirements of the Education Code, except for TEA reporting requirements and Chapter 39 assessment testing requirements.

A student placed in the JJAEP by the court must remain there for the full period ordered by the court unless the school agrees to accept the student back before the date ordered by the court. The period the court may place the child in the JJAEP cannot exceed the term of court-ordered probation.

The mandatory JJAEPs must be operational not later than September 1, 1996. A student who engages in expellable conduct before the JJAEP is operational must be expelled for a period not to exceed one year.

There are no mandatory population figures that will be used to determine which counties must implement the JJAEP; however, the most current and accurate population projections are available through the Texas Comptroller of Public Accounts. It is suggested that these figures be consulted to determine whether a county is mandated to establish the JJAEP. Each county whose population subsequently exceeds the 125,000 becomes subject to the requirements of this section and must implement a JJAEP.

Sec. 37.012. FUNDING OF JUVENILE JUSTICE ALTERNATIVE EDUCATION PROGRAMS

(a) The school district in which a student is enrolled on the date a juvenile court orders the student to attend a juvenile justice alternative education program shall transfer to the juvenile board in charge of the juvenile justice alternative education program for the portion of the school year for which the juvenile justice alternative education program provides educational services funds equal to the district's average per student expenditure in alternative education programs under Section 37.008.

(b) Funds received under this section must be expended on juvenile justice alternative education programs.

(c) The Office of State-Federal Relations shall assist a local juvenile probation department in identifying additional state or federal funds to assist local juvenile probation departments conducting educational or job training programs within juvenile justice alternative education programs.

Commentary by Lisa Capers

The actual funding of a JJAEP is probably the greatest issue of concern to most local juvenile boards and county officials. This section provides that the school in which the student is enrolled at the time a juvenile court orders the student into the JJAEP shall transfer to the juvenile board funds equal to the district's average per student expenditure for a child in the school's AEP under 37.008. These funds are prorated for the portion of the year for which the JJAEP provides the educational services to the child. An exact

calculation of this funding is difficult to ascertain, and the Texas Education Agency (TEA) is currently working on defining this calculation formula.

The funds received by the juvenile board must be expended on the JJAEP. The Office of State-Federal Relations (OSFR) is mandated to assist juvenile probation departments in identifying additional state or federal funds to help fund programs within the JJAEP.

The actual amount of funding, the calculation methods, and the actual funds transfer process are issues the juvenile board and the school must discuss and resolve early in the planning process for the JJAEP.

Sec. 37.013. COORDINATION BETWEEN SCHOOL DISTRICTS AND JUVENILE BOARDS

The board of trustees of the school district or the board's designee shall at the call of the president of the board of trustees regularly meet with the juvenile board for the county in which the district's central administrative office is located or the juvenile board's designee concerning supervision and rehabilitative services appropriate for expelled students and students assigned to alternative education programs. Matters for discussion shall include service by probation officers at the alternative education program site, recruitment of volunteers to serve as mentors and provide tutoring services, and coordination with other social service agencies.

Commentary by Lisa Capers

Because of all the new responsibilities and joint collaborative efforts of schools and the juvenile justice system, communication and coordination is essential. This section mandates that the school district board of trustees or its designee must meet regularly with the juvenile board (or its designee) for the county where the district's central administrative office is located. Issues to be discussed include the supervision and rehabilitative services for expelled students and students in the school's AEP. Further areas of discussion include service by probation officers at the AEP sites, use of volunteers, and coordination with other social service agencies.

Sec. 37.014. COURT-RELATED CHILDREN--LIAISON OFFICERS

Each school district shall appoint at least one educator to act as liaison officer for court-related children who are enrolled in the district. The liaison officer shall provide counselling and services for each court-related child and the child's parents to establish or reestablish normal attendance and progress of the child in the school.

Commentary by Lisa Capers

This section replaces and condenses old Education Code 21.908. The section requires each school district to appoint at least one educator to act as a liaison officer for court-related children enrolled in the district. The officer's duties include counseling and services for the student and the student's parents to deal with attendance issues and the child's progress in school.

Sec. 37.015. REPORTS TO LOCAL LAW ENFORCEMENT; LIABILITY

(a) The principal of a public or private primary or secondary school, or

a person designated by the principal under Subsection (d), shall notify any school district police department and the police department of the municipality in which the school is located or, if the school is not in a municipality, the sheriff of the county in which the school is located if the principal has reasonable grounds to believe that any of the following activities occur in school, on school property, or at a school-sponsored or school-related activity on or off school property, whether or not the activity is investigated by school security officers:

(1) conduct that may constitute an offense listed under Section 8(c), Article 42.18, Code of Criminal Procedure;

(2) deadly conduct under Section 22.05, Penal Code;

(3) a terroristic threat under Section 22.07, Penal Code;

(4) the use, sale, or possession of a controlled substance, drug paraphernalia, or marihuana under Chapter 481, Health and Safety Code;

(5) the possession of any of the weapons or devices listed under Sections 46.01(1)-(14) or Section 46.01(16), Penal Code; or

(6) conduct that may constitute a criminal offense under Section 71.02, Penal Code.

(b) A person who makes a notification under this section shall include the name and address of each student the person believes may have participated in the activity.

(c) A notification is not required under Subsection (a) if the person reasonably believes that the activity does not constitute a criminal offense.

(d) The principal of a public or private primary or secondary school may designate a school employee who is under the supervision of the principal to make the reports required by this section.

(e) The person who makes the notification required under Subsection (a) shall also notify each instructional or support employee of the school who has regular contact with a student whose conduct is the subject of the notice.

(f) A person is not liable in civil damages for reporting in good faith as required by this section.

Commentary by Lisa Capers

This section basically recodifies old Education Code 21.303 with a few minor technical changes. Section 37.015 is the corollary section to Article 15.27 of the Code of Criminal Procedure that requires law enforcement personnel, prosecutors, probation and parole officials to notify schools when juveniles are arrested and adjudicated for certain offenses. This section is the other half of the two-way communication between schools and law enforcement that was originally found in House Bill 23, 73rd Legislature, Regular Session 1993. Under 37.015, the principal (or a designee) of a public or private school must notify the school district police and the local municipal police or county sheriff if a student commits one of the specified list of offense either in school, on school property, or at a school activity.

Sec. 37.016. REPORT OF DRUG OFFENSES; LIABILITY

A teacher, school administrator, or school employee is not liable in civil damages for reporting to a school administrator or governmental

authority, in the exercise of professional judgment within the scope of the teacher's, administrator's, or employee's duties, a student whom the teacher suspects of using, passing, or selling, on school property:

(1) marihuana or a controlled substance, as defined by Chapter 481, Health and Safety Code;

(2) a dangerous drug, as defined by Chapter 483, Health and Safety Code;

(3) an abusable glue or aerosol paint, as defined by Chapter 485, Health and Safety Code, or a volatile chemical, as listed in Chapter 484, Health and Safety Code, if the substance is used or sold for the purpose of inhaling its fumes or vapors; or

(4) an alcoholic beverage, as defined by Section 1.04, Alcoholic Beverage Code.

Commentary by Lisa Capers

This section recodifies old Education Code 21.302 in its entirety. The section provides that a teacher, school administrator or school employee is not liable in civil damages for reporting to the school or a governmental authority a student suspected of using, passing, or selling drugs, inhalants, or alcohol on school property. Presumably, this section encourages persons with knowledge of suspected illegal activity on school grounds to report the activity to the proper authorities.

Sec. 37.017. DESTRUCTION OF CERTAIN RECORDS

Information received by a school district under Article 15.27, Code of Criminal Procedure, may not be attached to the permanent academic file of the student who is the subject of the report. The school district shall destroy the information at the end of the school year in which the report was filed.

Commentary by Lisa Capers

This section recodifies old Education Code 21.3031 in its entirety. This section was originally added by the 73rd Legislature in 1993 as a part of House Bill 23, which mandated two-way communication between the schools and the juvenile justice system. It provides that information received by the school under Article 15.27, Code of Criminal Procedure, cannot be attached to the permanent academic file of the student. The school must destroy all information received at the end of the school year in which the report was received.

Sec. 37.018. INFORMATION FOR EDUCATORS

Each school district shall provide each teacher and administrator with a copy of this subchapter and with a copy of the local policy relating to this subchapter.

Commentary by Lisa Capers

This is a new section requiring the school to give each teacher and administrator a copy of Subchapter A of Chapter 37 of the Education Code related to alternative settings for behavior management. The school must also provide a copy of the local policies related to this subchapter.

Sec. 37.019. EMERGENCY PLACEMENT OR EXPULSION

(a) This subchapter does not prevent the principal or the principal's

designee from ordering the immediate placement of a student in the alternative program if the principal or the principal's designee reasonably believes the student's behavior is so unruly, disruptive, or abusive that it seriously interferes with a teacher's ability to communicate effectively with the students in a class, with the ability of the student's classmates to learn, or with the operation of school or a school-sponsored activity.

(b) This subchapter does not prevent the principal or the principal's designee from ordering the immediate expulsion of a student if the principal or the principal's designee reasonably believes that action is necessary to protect persons or property from imminent harm.

(c) At the time of an emergency placement or expulsion, the student shall be given oral notice of the reason for the action. Within a reasonable time after the emergency placement or expulsion, the student shall be accorded the appropriate due process as required under Section 37.009. If the student subject to the emergency placement or expulsion is a student with disabilities who receives special education services, the term of the student's emergency placement or expulsion is subject to the requirements of 20 U.S.C. Section 1415(e)(3) and 34 CFR 300.513.

(d) A principal or principal's designee is not liable in civil damages for an emergency placement under this section.

Commentary by Lisa Capers

Commentary by Lisa Capers

This is a new section that allows the principal to order the immediate removal of a child to the AEP if the student's behavior is so unruly, disruptive or abusive that it seriously interferes with the teacher's ability to teach, the ability of students to learn, or with the operation of a school activity, thus creating an emergency. Immediate expulsion is also authorized if the school reasonably believes expulsion is necessary to protect persons or property from imminent harm.

The student must be given oral notice for the reason for the emergency placement or expulsion at the time it happens. Within a reasonable time afterwards, the student must be given the hearing rights of 37.009. If the student is a special education student, the term of the placement or expulsion must conform to the federal requirements of 20 U.S.C. Section 1415(e)(3) and 34 CFR 300.513. A principal or principal's designee does not face civil damages for an action under this section.

SUBCHAPTER B. SCHOOL-COMMUNITY GUIDANCE CENTERS

Sec. 37.051. ESTABLISHMENT

Each school district may establish a school-community guidance center designed to locate and assist children with problems that interfere with education, including juvenile offenders and children with severe behavioral problems or character disorders. Each center shall coordinate the efforts of school district personnel, local police departments, school attendance officers, and probation officers in working with students, dropouts, and parents in

identifying and correcting factors that adversely affect the education of the children.

Commentary by Lisa Capers

Section 37.051 replaces old Education Code 21.601 with a few non-substantive changes. This section allows school districts to establish school-community guidance centers designed to help children who have problems that interfere with their education. This includes juvenile offenders and children with behavioral problems or character disorders. The centers function as coordination points for school personnel, law enforcement, probation and parents of at-risk children.

Currently, there are about five school-community guidance centers in operation across the state. Scarce financial resources may be the reason for the small number.

Sec. 37.052. COOPERATIVE PROGRAMS

The board of trustees of a school district may develop cooperative programs with state youth agencies for children found to have engaged in delinquent conduct.

Commentary by Lisa Capers

This section replaces old Education Code 21.602 in its entirety. Under this section, schools are authorized to develop cooperative programs with state agencies for juvenile offenders.

Sec. 37.053. COOPERATION OF GOVERNMENTAL AGENCIES

(a) Each governmental agency that is concerned with children and that has jurisdiction in the school district shall cooperate with the school-community guidance centers on the request of the superintendent of the district and shall designate a liaison to work with the centers in identifying and correcting problems affecting school-age children in the district.

(b) The governmental agency may establish or finance a school-community guidance center jointly with the school district according to terms approved by the governing body of each entity participating in the joint establishment or financing of the center.

Commentary by Lisa Capers

Section 37.053 replaces old Education Code 21.603 and makes some changes. Subsection (a) remains substantively the same and mandates that each governmental agency concerned with children and having jurisdiction in the district shall cooperate with the school-community guidance centers if requested and shall designate a liaison to work with the center.

Subsection (b) of the old statute was amended by the 73rd Legislature in 1993 by Senate Bill 807 to explicitly authorize counties, juvenile boards and other governmental entities to jointly develop and finance school-community guidance centers with the school districts . New Subsection (b) deletes the explicit reference to counties and juvenile boards and simply authorizes governmental agencies to establish or finance the centers jointly with the school district. The intent was most certainly to still allow counties and juvenile boards to engage in these joint efforts; however, it is unclear if a juvenile board is legally a "governmental agency."

Sec. 37.054. PARENTAL NOTICE,

CONSENT, AND ACCESS TO INFORMATION

(a) Before a student is admitted to a school-community guidance center, the administrator of the center must notify the student's parent or guardian that the student has been assigned to attend the center.

(b) The notification must include:

(1) the reason that the student has been assigned to the center;

(2) a statement that on request the parent or guardian is entitled to be fully informed in writing of any treatment method or testing program involving the student; and

(3) a statement that the parent or guardian may request to be advised and to give written, signed consent for any psychological testing or treatment involving the student.

(c) If, after notification, a parent refuses to consent to testing or treatment of the student, the center may not provide any further psychological treatment or testing.

(d) A parent or guardian of a student attending a center is entitled to inspect:

(1) any instructional or guidance material to be used by the student, including teachers' manuals, tapes, and films; and

(2) the results of any treatment, testing, or guidance method involving the student.

(e) The administrator of the center may set a schedule for inspection of materials that allows reasonable access but does not interfere with the conduct of classes or business activities of the school.

Commentary by Lisa Capers

This section replaces old Education Code 21.604 with minor, non-substantive changes. It provides that a student's parent or guardian must be notified before a student is admitted to a school-community guidance center. The notice must contain certain fundamental information detailed in the statute.

If a parent or guardian refuses to consent to testing or treatment of the student, the center may not provide these services. A parent or guardian is entitled to inspect all guidance and instructional material utilized and the results of any services provided to the student.

Sec. 37.055. PARENTAL INVOLVEMENT

(a) On admitting a student to a school-community guidance center, a representative of the school district, the student, and the student's parent shall develop an agreement that specifies the responsibilities of the parent and the student. The agreement must include:

(1) a statement of the student's behavioral and learning objectives;

(2) a requirement that the parent attend specified meetings and conferences for teacher review of the student's progress; and

(3) the parent's acknowledgement that the parent understands and accepts the responsibilities imposed by the agreement regarding attendance at meetings and conferences and assistance in meeting other objectives, defined by the district, to aid student remediation.

(b) The superintendent of the school district may obtain a court order from a district court in the school district requiring a parent to comply

with an agreement made under this section. A parent who violates a court order issued under this subsection may be punished for contempt of court.

(c) In this section, "parent" includes a legal guardian.

Commentary by Lisa Capers

This section replaces old Education Code 21.606 in its entirety. When a child is admitted to the center, the center's representative, the student and the parent (or legal guardian) must develop an agreement specifying the responsibilities of the parent and child, including behavioral and learning objectives, and attendance requirements for the parent and child. If a parent fails to comply with the agreement, the school district superintendent may get a district court order requiring the parent to comply. Violation of the order is punishable by contempt of court.

Sec. 37.056. COURT SUPERVISION

(a) In this section, "court" means a juvenile court or alternate juvenile court designated under Chapter 51, Family Code. The court may delegate responsibility under this section to a referee appointed under Section 51.04, Family Code.

(b) If a representative of the school district, the student, and the parent or guardian for any reason fail to reach an agreement under Section 37.055, the court may, on the request of any party and after a hearing, enter an order establishing the responsibilities and duties of each of the parties as the court considers appropriate.

(c) The court may compel attendance at any hearing held under this section through any legal process, including subpoena and habeas corpus.

(d) If the parties reach an agreement under Section 37.055, and if the written agreement so provides, the court may enter an order that incorporates the terms of the agreement.

(e) Any party who violates an order issued under this section may be punished for contempt of court.

(f) A school district may enter into an agreement to share the costs incurred by a county under this section.

Commentary by Lisa Capers

Section 37.056 replaces old Education Code 21.607 making a few non-substantive changes. If the school, student and parent or guardian cannot reach an agreement under 37.055, on the request of any party, the juvenile court (or alternate juvenile court or referee) may hold a hearing and enter an order establishing the responsibilities and duties of each party. Any party who violates the order may be punished by contempt of court.

The school district is authorized to enter into an agreement to share the costs associated with this section that are incurred by the county.

SUBCHAPTER C. LAW AND ORDER

Sec. 37.081. SCHOOL DISTRICT PEACE OFFICERS AND SECURITY PERSONNEL

(a) The board of trustees of any school district may employ security personnel and may commission peace officers to carry out this subchapter. If a board of trustees authorizes a person employed as security personnel to carry a weapon, the person must be a commissioned peace officer. The

jurisdiction of a peace officer or security personnel under this section shall be determined by the board of trustees and may include all territory in the boundaries of the school district and all property outside the boundaries of the district that is owned, leased, or rented by or otherwise under the control of the school district and the board of trustees that employ the peace officer or security personnel.

(b) In a peace officer's jurisdiction, a peace officer commissioned under this section:

(1) has the powers, privileges, and immunities of peace officers;

(2) may enforce all laws, including municipal ordinances, county ordinances, and state laws; and

(3) may, in accordance with Chapter 52, Family Code, take a juvenile into custody.

(c) A school district peace officer may provide assistance to another law enforcement agency. A school district may contract with a political subdivision for the jurisdiction of a school district peace officer to include all territory in the jurisdiction of the political subdivision.

(d) A school district peace officer shall perform administrative and law enforcement duties for the school district as determined by the board of trustees of the school district. Those duties must include protecting:

(1) the safety and welfare of any person in the jurisdiction of the peace officer; and

(2) the property of the school district.

(e) The board of trustees of the district shall determine the scope of the on-duty and off-duty law enforcement activities of school district peace officers. A school district must authorize in writing any off-duty law enforcement activities performed by a school district peace officer.

(f) The chief of police of the school district police department shall be accountable to the superintendent and shall report to the superintendent or the superintendent's designee. School district police officers shall be supervised by the chief of police of the school district or the chief of police's designee and shall be licensed by the Commission on Law Enforcement Officer Standards and Education.

(g) A school district police department and the law enforcement agencies with which it has overlapping jurisdiction shall enter into a memorandum of understanding that outlines reasonable communication and coordination efforts between the department and the agencies.

(h) A peace officer assigned to duty and commissioned under this section shall take and file the oath required of peace officers and shall execute and file a bond in the sum of $1,000, payable to the board of trustees, with two or more sureties, conditioned that the peace officer will fairly, impartially, and faithfully perform all the duties that may be required of the peace officer by law. The bond may be sued on in the name of any person injured until the whole amount of the bond is recovered. Any peace officer commissioned under this section must meet all minimum standards for peace officers established by the Commission on Law Enforcement Officer Standards and Education.

Commentary by Lisa Capers

This section includes and expands old Education Code 21.308 related to security personnel. Subsection (a) provides that any school may employ security personnel and may commission peace officers. Only peace officers may carry weapons. New amendments to this section authorize the school district to determine the territorial jurisdiction of the officer which may include any school owned or controlled property. The commissioned peace officers have all the powers of peace officers in their jurisdiction and may enforce all laws and ordinances. They may take a child into custody pursuant to Chapter 52, Family Code. The peace officer must meet all minimum standards of the Texas Commission on Law Enforcement Officer Standards and Education (TCLOSE) and must be bonded in the amount of $1,000.

A school district peace officer may assist other law enforcement agencies and the school may contract with political subdivisions to expand the peace officer's jurisdiction to include all territory in the political subdivision. The school district police department and local law enforcement agencies with overlapping jurisdiction are required to enter into a memorandum of understanding that outlines communication and coordination efforts between the two. Any off-duty law enforcement activities of the school district peace officer must be approved in writing by the school district.

The old 21.308 contained a provision that stated all costs for security personnel would be borne by the school district. Section 37.081 deletes this provision, and presumably the school and local law enforcement agencies may share costs under a contractual agreement if the peace officer's jurisdiction is expanded as discussed above.

SUBCHAPTER D. PROTECTION OF BUILDINGS AND GROUNDS

Sec. 37.101. APPLICABILITY OF CRIMINAL LAWS

The criminal laws of the state apply in the areas under the control and jurisdiction of the board of trustees of any school district in this state.

Commentary by Lisa Capers

Commentary by Lisa Capers

This new section provides that the criminal laws of Texas apply in all areas under the control and jurisdiction of the school district board of trustees.

Sec. 37.102. RULES; PENALTY

(a) The board of trustees of a school district may adopt rules for the safety and welfare of students, employees, and property and other rules it considers necessary to carry out this subchapter and the governance of the district, including rules providing for the operation and parking of vehicles on school property. The board may adopt and charge a reasonable fee for parking and for providing traffic control.

(b) A law or ordinance regulating traffic on a public highway or street applies to the operation of a vehicle on school property, except as modified by this subchapter.

(c) A person who violates this subchapter or any rule adopted under this subchapter commits an offense. An offense under this section is a Class C misdemeanor.

Commentary by Lisa Capers

This is a new section that allows the board of trustees of the school district to adopt rules to protect students, employees and school property, including rules related to motor vehicles on school property. The board may charge a reasonable fee for parking and traffic control. Unless stated otherwise, state traffic laws apply on school property.

This section creates a Class C Misdemeanor offense if a person violates any rule adopted by the school under this section dealing with protection of buildings and grounds.

Sec. 37.103. ENFORCEMENT OF RULES

Notwithstanding any other provision of this subchapter, the board of trustees of a school district may authorize any officer commissioned by the board to enforce rules adopted by the board. This subchapter is not intended to restrict the authority of each district to adopt and enforce appropriate rules for the orderly conduct of the district in carrying out its purposes and objectives or the right of separate jurisdiction relating to the conduct of its students and personnel.

Commentary by Lisa Capers

This is another new section that allows the board of trustees to authorize any commissioned peace officer to enforce any rules adopted by the board.

Sec. 37.104. COURTS HAVING JURISDICTION

The judge of a municipal court of a municipality in which, or any justice of the peace of a county in which, property under the control and jurisdiction of a school district is located may hear and determine criminal cases involving violations of this subchapter or rules adopted under this subchapter.

Commentary by Lisa Capers

This new section designates the appropriate courts that may hear criminal cases involving violations of board rules or offenses under this section. Despite the use of the word "jurisdiction." it is really a venue provision.

Sec. 37.105. UNAUTHORIZED PERSONS: REFUSAL OF ENTRY, EJECTION, IDENTIFICATION

The board of trustees of a school district or its authorized representative may refuse to allow a person without legitimate business to enter on property under the board's control and may eject any undesirable person from the property on the person's refusal to leave peaceably on request. Identification may be required of any person on the property.

Commentary by Lisa Capers

This new section allows schools to prohibit persons without legitimate business to enter property under the school board of trustees control. The school may eject any undesirable person from the property if they refuse to leave peaceably, and identification of any person on school property may be required.

Sec. 37.106. VEHICLE IDENTIFICATION INSIGNIA

The board of trustees of a school district may provide for the issuance and use of suitable vehicle identification insignia. The board may bar or suspend a person from driving or parking a vehicle on any school property as a result of the person's violation of any rule adopted by the board or of this subchapter. Reinstatement of the privileges may be permitted and a reasonable fee assessed.

Commentary by Lisa Capers

Section 37.106 is also new and allows the school to use suitable vehicle identification insignia on their vehicles. Any persons who violate any rule of the school adopted under this subchapter can be barred or suspended from driving or parking a vehicle on school property. A reasonable fee can be assessed for reinstatement of parking privileges.

Sec. 37.107. TRESPASS ON SCHOOL GROUNDS

An unauthorized person who trespasses on the grounds of any school district of this state commits an offense. An offense under this section is a Class C misdemeanor.

Commentary by Lisa Capers

This new section makes it a Class C misdemeanor for any unauthorized person to trespass on school property. Presumably, this section controls over the more general provision of 30.05, Penal Code, which makes criminal trespass a Class B misdemeanor.

Sec. 37.121. FRATERNITIES, SORORITIES, SECRET SOCIETIES, AND GANGS

(a) A person commits an offense if the person:

(1) is a member of, pledges to become a member of, joins, or solicits another person to join or pledge to become a member of a public school fraternity, sorority, secret society, or gang; or

(2) is not enrolled in a public school and solicits another person to attend a meeting of a public school fraternity, sorority, secret society, or gang or a meeting at which membership in one of those groups is encouraged.

(b) A school district board of trustees or an educator shall

recommend placing in an alternative education program any student under the person's control who violates Subsection (a).

(c) An offense under this section is a Class C misdemeanor.

(d) In this section, "public school fraternity, sorority, secret society, or gang" means an organization composed wholly or in part of students of public primary or secondary schools that seeks to perpetuate itself by taking in additional members from the students enrolled in school on the basis of the decision of its membership rather than on the free choice of a student in the school who is qualified by the rules of the school to fill the special aims of the organization. The term does not include an agency for public welfare, including Boy Scouts, Hi-Y, Girl Reserves, DeMolay, Rainbow Girls, Pan-American Clubs, scholarship societies, or other similar educational organizations sponsored by state or national education authorities.

Commentary by Lisa Capers

Section 37.121 replaces old Education Code 4.20 and makes several changes and additions. Parts of old Education Code 5.21 are also included in the new section. The purpose of this section is to prohibit fraternities, sororities, secret societies and gangs from being established in public schools below the rank of colleges. The new section adds "gangs" which were not referenced in the old statute. The new statute creates an offense if a person is a member of, pledges to join, joins, or solicits others to join or pledge to be a member of a public school fraternity, sorority, secret society, or gang. The term "public school fraternity, sorority, secret society, or gang" does not include the Boy Scouts, Hi-Y, Girl Reserves, DeMolay, Rainbow Girls, Pan-American Clubs, scholarship societies or similar educational organizations.

The statute requires the school to recommend placing any student who violates this section into an alternative education program.

Previous law made a violation of this section a misdemeanor punishable by a fine of not less than $25 nor more than $200 for each offense. Now, a violation is a Class C misdemeanor which is punishable by a fine not to exceed $500.

Sec. 37.122. POSSESSION OF INTOXICANTS ON PUBLIC SCHOOL GROUNDS

(a) A person commits an offense if the person possesses an intoxicating beverage for consumption, sale, or distribution while:

(1) on the grounds or in a building of a public school; or

(2) entering or inside any enclosure, field, or stadium where an athletic event sponsored or participated in by a public school of this state is being held.

(b) An officer of this state who sees a person violating this section shall immediately seize the intoxicating beverage and, within a reasonable time, deliver it to the county or district attorney to be held as evidence until the trial of the accused possessor.

(c) An offense under this section is a Class C misdemeanor.

Commentary by Lisa Capers

This section replaces 4.22 of the old Education Code making non-substantive changes. It creates an Class C misdemeanor offense if a person possesses

an intoxicating beverage for consumption, sale, or distribution while on school grounds or at any athletic event sponsored or participated in by the school. Any law enforcement officer who sees a person violating this section is required to seize the intoxicant and deliver it to the prosecutor's office as evidence in the case.

Sec. 37.123. DISRUPTIVE ACTIVITIES

(a) A person commits an offense if the person, alone or in concert with others, intentionally engages in disruptive activity on the campus or property of any private or public school.

(b) For purposes of this section, disruptive activity is:

(1) obstructing or restraining the passage of persons in an exit, entrance, or hallway of a building without the authorization of the administration of the school;

(2) seizing control of a building or portion of a building to interfere with an administrative, educational, research, or other authorized activity;

(3) preventing or attempting to prevent by force or violence or the threat of force or violence a lawful assembly authorized by the school administration so that a person attempting to participate in the assembly is unable to participate due to the use of force or violence or due to a reasonable fear that force or violence is likely to occur;

(4) disrupting by force or violence or the threat of force or violence a lawful assembly in progress; or

(5) obstructing or restraining the passage of a person at an exit or entrance to the campus or property or preventing or attempting to prevent by force or violence or by threats of force or violence the ingress or egress of a person to or from the property or campus without the authorization of the administration of the school.

(c) An offense under this section is a Class B misdemeanor.

(d) Any person who is convicted the third time of violating this section is ineligible to attend any institution of higher education receiving funds from this state before the second anniversary of the third conviction.

(e) This section may not be construed to infringe on any right of free speech or expression guaranteed by the constitution of the United States or of this state.

Commentary by Lisa Capers

This section replaces 4.30 of the old Education Code in a similar form, with only a few substantive changes . Under the old law, a person who violated the prohibition against disruptive activities could be found guilty of a misdemeanor punishable by a fine not to exceed $200 or by confinement in jail for not less than 10 days nor more than 6 months, or both.

Under the new Education Code, a conviction of an offense under this section is a Class B misdemeanor punishable by a fine not to exceed $2,000 and a jail term of 180 days, or both.

A person commits an offense if the person, alone or in concert with others, intentionally engages in disruptive activity on school property. Disruptive activity includes obstructing passage into buildings, seizing control of buildings, and preventing or disrupting assemblies by force or threat.

Any person convicted three times of violating this section may not attend a state university before the second anniversary of the third conviction. This section is not to be construed to violate any first amendment rights of free speech.

Sec. 37.124. DISRUPTION OF CLASSES

(a) A person commits an offense if the person, on school property or on public property within 500 feet of school property, alone or in concert with others, intentionally disrupts the conduct of classes or other school activities.

(b) An offense under this section is a Class C misdemeanor.

(c) In this section:

(1) "Disrupting the conduct of classes or other school activities" includes:

(A) emitting noise of an intensity that prevents or hinders classroom instruction;

(B) enticing or attempting to entice a student away from a class or other school activity that the student is required to attend;

(C) preventing or attempting to prevent a student from attending a class or other school activity that the student is required to attend; and

(D) entering a classroom without the consent of either the principal or the teacher and, through either acts of misconduct or the use of loud or profane language, disrupting class activities.

(2) "Public property" includes a street, highway, alley, public park, or sidewalk.

(3) "School property" includes a public school campus or school grounds on which a public school is located and any grounds or buildings used by a school for an assembly or other school-sponsored activity.

Commentary by Lisa Capers

This section replaces old Education Code 4.33 and makes several changes. A person commits an offense if, on school property or public property within 500 feet of the school, a person acting alone or in concert with others, disrupts classes or school activities. Under the old Education Code, this offense was a misdemeanor punishable by a fine not to exceed $200. Under 37.124, the offense is now a Class C misdemeanor punishable by a fine not to exceed $500.

Disruptive activities include emitting loud noises, preventing or attempting to prevent a student from attending a class or activity, and unauthorized entrance into classrooms through misconduct or use of loud or profane language.

Sec. 37.125. EXHIBITION OF FIREARMS

(a) A person commits an offense if the person, by exhibiting, using, or threatening to exhibit or use a firearm, interferes with the normal use of a building or portion of a campus or of a school bus being used to transport children to or from school-sponsored activities of a private or public school.

(b) An offense under this section is a third degree felony.

Commentary by Lisa Capers

This section replaces old Education Code 4.31 and makes changes to the penalty range. The new Education Code makes it a Third Degree Felony if a

person, by exhibiting, using, or threatening to exhibit or use a firearm, interferes with the normal use of a school building or school bus. This offense now carries a punishment of 2-10 years in prison and a fine not to exceed $10,000. Under old law, a person convicted of this offense was guilty of a felony and faced a punishment by a fine of up to $1,000 or six months in jail, or both a fine and imprisonment, or imprisonment in the state penitentiary not to exceed five years.

Sec. 37.126. DISRUPTION OF TRANSPORTATION

(a) Except as provided by Section 37.125, a person commits an offense if the person intentionally disrupts, prevents, or interferes with the lawful transportation of children to or from school or an activity sponsored by a school on a vehicle owned or operated by a county or independent school district.

(b) An offense under this section is a Class C misdemeanor.

Commentary by Lisa Capers

Commentary by Lisa Capers

Section 37.162 replaces old Education Code 4.34 and increases the penalty range for this offense. A person commits an offense if he or she intentionally disrupts, prevents, or interferes with the transportation of children to and from school or a school activity in a school vehicle. This offense is now a Class C Misdemeanor punishable by a fine not to exceed $500. Under previous law, this offense was a misdemeanor punishable by a fine not to exceed $200.

_____

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Mail to: Mr. Gary Arey, Assistant District Attorney

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