STATE BAR SECTION REPORT JUVENILE LAW

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SPECIAL LEGISLATIVE ISSUE

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CHAIR'S MESSAGE
by Scott K. Stevens

I would like to take this opportunity in my first communication to the whole membership of the Juvenile Section to first thank the Honorable Kent Ellis for the fine leadership he exhibited in setting and pursuing high goals for the Juvenile Section. Judge Ellis set goals of expanding membership and moving towards achieving recognition of a specialty in Juvenile Law. We now have the highest membership ever. The last Annual Juvenile Law Conference had the highest attendance of any to date. As of the June State Bar Convention, the Board of Legal Specialization was considering our request for a recognized specialty and I fully expect that by the next time I write for a newsletter we will have at least a preliminary answer.

In keeping with Judge Ellis's example, I wish to set two major goals. The first is to continue the efforts to establish a recognized specialty in Juvenile Law. Each member of the section needs to contact their Juvenile Judge or Judges and ask them to write a letter to the Board of Legal Specialization recommending establishment of a recognized specialty.

The second goal is a thorough update or even a complete revision of our section bylaws. There are changes being contemplated by the State Bar of Texas in the way the State organization relates to Sections and Committees. One of those changes is to allow Sections to hold their annual business meetings at their own convenience rather than at the State Bar Convention. Since the Juvenile Law Section routinely holds its annual conference in February, this would allow the annual business meeting to occur at the conference and to include many more members in the actual running of the section. There are an number of other changes that are housekeeping changes and updating to include mandatory provisions required by the State Bar that are not currently implemented.

As always, we will continue to provide the normal perquisites of membership, including this Legislative Special Issue of the newsletter, and strive to better the practice and practitioners of Juvenile law.

Lastly, I would like to thank Professor Robert Dawson, Howard Baldwin, Jim Bethke, Lisa Capers and Neil Nichols, along with all the others who have contributed to the preparation of this issue of the newsletter, for their faithful and tireless efforts at presenting this issue to us in time for our membership to remain the best informed juvenile practitioners in the State.

EDITOR'S FOREWORD
by Robert O. Dawson

Special Legislative Issue. This is only the second Special Legislative Issue of the Juvenile Law Section Newsletter ever to be published. It contains articles about the 75th legislature, the text of each amendment to juvenile law and commentaries on those amendments. This is a fifth--bonus--issue of the Newsletter for 1997. Our September and December issues will come out as usual.

Recognition of the Juvenile Law Section. The June 23, 1997 issue of *Texas Lawyer* contained a survey of the sections of the State Bar of Texas, ranking them in three categories based on the quantity and quality of their activities. The Juvenile Law Section was one of only nine sections to be ranked in "Tier 1: Setting the Standard." Our Section was praised for its Annual Conference and for this Newsletter. The Council and Section members should feel proud.

Recognition of Toby Goodman. Once again, Representative Toby Goodman, Chairman of the House Juvenile Justice and Family Issues Committee, proved himself to be the man of the session for juvenile justice.

By his tireless and intelligent leadership, Representative Goodman once again focused the Texas legislature on juvenile justice legal and financial issues and once again produced positive results on both scores.

On June 17, the Texas Probation Association honored Representative Goodman with a special reception and award during the Texas Juvenile Probation Commission's Post-Legislative Conference in Austin. The recognition is certainly merited.

At about the same time, *Texas Monthly* magazine named Representative Goodman to be one of the ten best legislators of the session. This is a recognition many of us believed he should have also received for his work in the 74th legislature in 1995; certainly, considering his work during both sessions, it would have been unthinkable if he had not been so recognized.

Recognition of Neil Nichols. On June 1, at the Texas Corrections Association' annual conference in El Paso, Neil Nichols was given the Association's Clarence Stevenson Award. The Award is presented annually to the professional who most exemplifies the traits of fairness, integrity and honor. Neil is General Counsel to the TYC and has long been active in the juvenile field--making substantial contributions to juvenile law and practice. The award is certainly well deserved.

Contributors to this Issue. I was fortunate to have assistance from three excellent lawyers in writing the Special Legislative Issue for 1995. I am pleased that **Howard Baldwin**, Director of Governmental Relations at the Department of Protective and Regulatory Services, **Lisa Capers**, General Counsel to the Texas Juvenile Probation Commission, and **Neil Nichols**, General Counsel and Assistant Executive Director for Professional Services at the Texas Youth Commission have agreed each to do an encore performance. This time, Lisa recruited assistance in her daunting assignment from **Wesley Shackelford**, Staff Attorney for TJPC, **Linda Brooke**, Director of Education Related Services at TJPC, and **Patrick Powers**, Legal Assistant at TJPC. In addition to Howard, Lisa and Neil, I was able to recruit **Jim Bethke**, General Counsel at the Texas Municipal Courts Education Center, to write commentaries that particularly affect municipal and justice courts.

In addition to those who wrote or contributed to writing the section-by-section commentaries, three persons contributed special articles. **Vicki Spriggs-Wright**, Executive Director of the Texas Juvenile Probation Commission, contributed an article on the legislative appropriation process and its impact on the system. **Steve Robinson**, Executive Director of the Texas Youth Commission, contributed a similar article on the legislative appropriation process and its impact on TYC. And **Thomas Chapmond**, Director of Community Initiatives and Program Development in the Texas Department of Protective and Regulatory Services, contributed an article on DPRS funding and programs related to juvenile justice.

LEGISLATIVE APPROPRIATIONS TO THE TEXAS JUVENILE PROBATION COMMISSION AND JUVENILE PROBATION ISSUES IN THE 75TH TEXAS LEGISLATURE

By
Vicki Spriggs-Wright
Executive Director

The Texas juvenile justice system was once again a major focus of lawmakers during the 75th Texas Legislature. This legislative session produced a number of refinements and additions to the juvenile justice system, continuing the overhaul begun the previous session. Juvenile justice alternative education programs (JJAEP) received considerable attention, resulting in additional funding and clarifications in the Education Code. Sunset legislation reauthorized the Texas Juvenile Probation Commission until 2009, and the General Appropriations Bill added approximately twenty-five million dollars in fiscal year 1998 and nearly twenty-nine million dollars in fiscal year 1999 to the TJPC budget.

The cumulative focus of most juvenile justice legislation and appropriations riders was for greater accountability in the state-local partnership in an effort to identify goals and performance measures in programs and services targeted at juvenile offenders. These accountability measures encompass the entire spectrum of juvenile services and include data reporting, juvenile facilities, caseload standards, and program effectiveness.

The following synopsis of the legislative appropriations highlights the continued emphasis on progressive sanctions and its importance to the juvenile justice system in Texas. Table 1 provides a detailed comparison of the current level of funding to TJPC and the corresponding new appropriations.

TJPC Funding Comparison

Fiscal Years 1997, 1998, 1999

	Current Funding	Amount Appropriated	
	FY 97	FY 98	FY 99
State Aid Funding (Current)	$26,323,536	*$25,023,016	*$25,023,016
New Funding:			
185 New Probation Officers		*5,100,000*	*5,100,000*
New Programs		*5,100,000*	*5,100,000*
Total State Aid		**$35,223,016**	**$35,223,016**
Community Corrections Funding (Current)	$33,992,977	$35,321,129	$35,321,179
New Funding:			
Start Up Cost for Bond Facilities		*1,313,737*	
Operation Cost for Bond Facilities		*2,486,909*	*7,070,300*
ISP Officers		*1,181,972*	*1,225,832*
Total Community Corrections		**$40,303,747**	**$43,617,311**
Probation Assistance Funding (Current)	$4,410,688	$4,165,456	$4,165,456
New Funding:			
Additional 8 Full Time Employees		*370,000*	*370,000*
Total Probation Assistance		**$4,535,456**	**$4,535,456**
JJAEP Funding	$0	$10,000,000	$10,000,000
Total JJAEP Funding		**$10,000,000**	**$10,000,000**
Direct and Indirect Administration	$368,224	$524,829	$524,829
Total Direct and Indirect Administrative		**$524,829**	**$524,829**
TOTAL FUNDING	$65,095,425	$90,587,048	$93,900,612

* FY 98 and FY 99 current funding levels do not match FY 97 because funding was between strategies for FY 98 and FY 99.

Appropriations Riders to TJPC Budget

To gain a truly accurate understanding of the current status of the TJPC appropriations, one must carefully review the riders to the TJPC budget wherein the real funding intricacies lie. The following riders to the TJPC Budget provide detailed instructions and mandates on the use of the appropriation dollars for the biennium.

1. *Restriction, State Aid.* None of the funds appropriated above in A.1.1. Strategy: Basic Probation, and allocated to local juvenile probation boards, shall be expended for salaries or expenses of juvenile board members.

2. *Appropriation of Federal Title IV-E Receipts*. The provisions of Title IV-E of the Social Security Act shall be used in order to increase funds available for juvenile justice services. The Juvenile Probation Commission shall certify or transfer state funds to the Department of Protective and Regulatory Services so that federal financial participation can be claimed for Title IV-E services provided by counties. Such federal receipts are appropriated to the Juvenile Probation Commission for the purpose of reimbursing counties for services provided to eligible children. It is the intent of the Legislature that any reimbursement from the Title IV-E Program be used for the placement of children or to increase and enhance services to the counties' Title IV-E Program.

3. *Juvenile Boot Camp Funding.* Out of the funds appropriated above in Strategy A.2.1., Community Corrections, the amount of $1,000,000 annually may be expended only for the purpose of providing a juvenile boot camp in Harris County.

4. *Buffalo Soldier At-Risk Program*. The commission shall fund the Buffalo Soldier At-Risk youth program pursuant to V.T.C.A., Human Resources Code, Section 141.048 at an amount of $500,000 in fiscal year 1998 and U.B., in fiscal year 1999 out of funds appropriated in A.1.1., Strategy, Basic Probation, for delinquency prevention. The administrative cost for the program oversight can not exceed 7 percent. The commission shall award contracts for the program biennially and shall annually evaluate each program funded. The commission may terminate the program in any county if the desired objectives of the program cannot be, or are not being, accomplished.

5. *Sunset Contingency*. Funds appropriated above for fiscal year 1999 for the Texas Juvenile Probation Commission are made contingent on the continuation of the Texas Juvenile Probation Commission by the Legislature. In the event the agency is not continued, the funds appropriated for fiscal year 1998, or as much thereof as may be necessary, are to be used to provide for the phase out of agency operations.

6. *Unexpended Balances - Construction of Local Facilities with General Obligation Bond Proceeds.* Any unexpended and unencumbered balance (estimated to be $1,030,000) of the amount appropriated to the Texas Juvenile Probation Commission by the General Appropriations Bill, House Bill 1, Strategy A.2.3., Acts of the Seventy-fourth Legislature, Regular Session, 1995, remaining at the end of the fiscal year 1997 are hereby appropriated for the same purpose for the fiscal biennium ending August 31, 1999.

7. *Residential Facilities*. Juvenile Boards may use funds appropriated in Strategy A.1.1., Basic Probation, and Strategy A.2.1., Community Corrections, to lease, contract for, or reserve bed space with public and private residential facilities for the purpose of diverting juveniles from commitment to the Texas Youth Commission.

8. *Substance Abuse Funds*. Amounts appropriated under Strategy A.2.1., Community Corrections above, include $2,093,868 to be transferred to the Juvenile Probation Commission via an interagency transfer from the Texas Commission of Alcohol and Drug Abuse each year of the 1998-99 biennium for the purpose of funding substance abuse grants to local juvenile probation departments.

9. *Funding for Progressive Sanctions*. Out of the funds appropriated above in A.1.1., Basic Probation, $10,200,000 in fiscal year 1998 and $10,200,000 in fiscal year 1999 can only be distributed to local probation departments for the funding of juvenile probation services associated with the sanctions levels described by Section 59.003, Subsections (a)(1), (a)(2) and (a)(3) of the Juvenile Justice Code or for the salaries of juvenile probation officers hired after the effective date of this Act. These funds may not be used by local juvenile probation departments for salary increases, employee benefits, or other costs (except salaries) associated with the employment of juvenile probation officers hired after the effective date of this Act.

10. *County Funding Levels*. To receive the full amount of state aid funds for which a juvenile board may be eligible, a juvenile board must

demonstrate to the commission's satisfaction that the amount of local or county funds budgeted for juvenile services is at least equal to the amount spent for those services, excluding construction and capital outlay expenses, in the 1994 county fiscal year. This requirement shall not be waived by the commission unless the juvenile board demonstrates to the satisfaction of the commission that unusual, catastrophic or exceptional circumstances existed during the year in question to adversely affect the level of county fiscal effort. If the required local funding level is not met and no waiver is granted by the commission, the commission shall reduce the allocation of state aid funds to the juvenile board by the amount equal to the amount that the county funding is below the required funding.

11. *Local Post-adjudication Facilities*. Out of the funds appropriated above in A.2.1., Community Corrections, the amount of $2,486,909 in fiscal year 1998 and $7,070,300 in fiscal year 1999 may be used only for the purpose of funding local post-adjudication facilities.

12. *Juvenile Justice Alternative Education Programs*. Out of the funds transferred to JPC pursuant to TEA rider # 48 and appropriated in Item A.2.3., Juvenile Justice Alternative Education Programs above, the Juvenile Probation Commission shall initially allocate $2,000,000 in each fiscal year to be distributed on the basis of juvenile age population among the 22 mandated counties identified under Chapter 37, Education Code, at the beginning of each fiscal year.

An additional $500,000 shall be set aside in a reserve fund for each year of the biennium to allow mandated and non-mandated counties to apply for additional funds on a grant basis.

The remaining funds shall be allocated for distribution to the mandated counties at the rate of $53 per student per day of attendance in the juvenile justice alternative education program for students who are required to be expelled as provided under Section 37.007, Education Code, and are intended to cover the full cost of providing education services to such students. Counties are not eligible to receive these funds until the funds initially allocated above have been expended at the rate of $53 per student per day of attendance.

The Juvenile Probation Commission may solicit proposals from the mandated counties to provide additional services in the juvenile justice alternative education program, including but not limited to summer or extended year programs, extended day programs and other educational programs if any surplus funds become available. Unspent balances in fiscal year 1998 shall be appropriated to fiscal year 1999 for the same purposes in strategy A.2.3.

The allocations made in this rider for the Juvenile Justice Alternative Education Programs are estimated amounts and not intended to be an entitlement and are limited to the amounts transferred from the Foundation School Program pursuant to TEA rider # 48. The amount of $53 per student per day may vary depending on the total number of students actually attending the juvenile justice education programs.

13. *Training*. It is the intent of the Legislature that the Juvenile Probation Commission provide training to local juvenile probation personnel and to local Juvenile Judges to maximize the appropriate placement of juveniles according to the progressive sanction guidelines.

14. *Use of JJAEP Funds*. None of the funds appropriated above for the support of Juvenile Justice Alternative Education Programs shall be used to hire a person or entity to do lobbying.

Narrative Summary of TJPC Fiscal Years 98-99 New Appropriations

As the foregoing information shows, the 75th Texas Legislature appropriated significant and beneficial increases in funding to the Texas Juvenile Probation Commission (TJPC) for the Fiscal Year 1998 - 99 biennium. The increase in funding for FY 98 was $25,491,623 and in FY 99 the increase was $28,805,181 over current annual funding of $65,095,425. These amounts represent increases of 39% and 44% respectively.

In the State Aid strategy, an additional $10.2 million was appropriated each year of the biennium. Of this amount, $5.1 million is for the purpose of hiring 185 additional probation officers each year at a salary of $27,567. If a local department historically starts officers at a salary less than that amount, the difference can be used for fringe and ancillary costs of hiring the officer. Another $5.1 million was appropriated for the purpose of funding new programs. All new State Aid funding must be aimed at levels I, II, and III of progressive sanctions.

In the Community Corrections strategy, additional intensive services probation (ISP) officers were funded in the amount of $1,181,972 in FY 98 and $1,225,832 in FY 99. The amount of $27,240 will be provided for each officer. If a local department historically starts intensive ser-

vices probation officers at a salary less than that amount, the difference can be used for fringe and ancillary costs of hiring an officer. A total of 43 officers will be available in FY 98, and 45 will be available in FY 99.

Additionally, in the Community Corrections strategy, $1,313,737 was appropriated for start up costs of the post-adjudication correctional facilities which are being constructed with State of Texas general obligation bond proceeds distributed by TJPC. The legislature also partially funded operational costs for those facilities in the amount of $2,486,909 in FY 98 and $7,070,300 in FY 99.

In the Probation Assistance strategy, an additional $370,000 was provided each year of the biennium for costs associated with the hiring of eight new personnel on the TJPC staff. The new staff will provide a wide range of services and technical assistance to the juvenile justice field.

Lastly, the legislature created a new strategy called Juvenile Justice Alternative Education Programs (JJAEP). $10,000,000 was appropriated each year of the biennium for this strategy. Of this amount, $2.0 million is to provide start up cost for each of the 22 mandated JJAEPs (i.e., those counties with a population over 125,000). This amount is to be allocated based on the juvenile age population of each county.

An additional $7.5 million will be allocated to the mandated counties at the rate of $53 per student per day of attendance in the JJAEP for students who are required to be expelled as provided under Section 37.007(a), (d), and (e) of the Education Code. This amount is intended to cover the full cost of services to such students. Counties are not eligible to receive this allocation until funds initially allocated have been expended at the rate of $53 per student per day of attendance.

If funds become available, TJPC may solicit proposals from mandated counties to provide additional services in the JJAEP, including, but not limited to summer or extended year programs, extended day programs, or other educational programs.

The remaining $500,000 is to be set aside to allow mandated and non-mandated counties to apply for additional funds on a grant basis.

A Closing Message

Overall, the 75th Texas Legislature was a very productive one for the juvenile justice system. The significant increases in funding to the system will help juvenile justice practitioners and communities combat juvenile crime, rehabilitate and stabilize youth in the system, and intervene earlier in the lives of troubled young people. The offices of the Governor, Lt. Governor, Speaker of the House, and the individual House and Senate members are to be commended for their diligence and commitment in addressing the continuing needs of juvenile justice. Equally important, probation officers, judges, prosecutors and other juvenile justice professionals around the state were instrumental this legislative session in helping lawmakers understand the needs, problems and goals of the system. On behalf of the Texas Juvenile Probation Commission board and staff, I would like to express our sincere thanks to all juvenile justice practitioners and the 75th Texas Legislature for a very successful legislative session. The children, families and communities of Texas will certainly benefit from your efforts.

TEXAS YOUTH COMMISSION
75TH LEGISLATIVE SESSION

By
Steve Robinson
Executive Director

The 75th Legislature continued on the course established during the 74th session when juvenile justice was a primary focus and a balanced approach of prevention, intervention, treatment, rehabilitation, and accountability was initiated. The Texas Youth Commission today is a very different agency than it was in 1993, and from all indications, the Legislature intends for the agency to stay its course.

TYC's biennial budget of $390 million is a 28% increase over the 1996-97 biennium. Forty-seven million of that increase is to fund additional population. By August 1997, Criminal Justice Policy Council population projections show that TYC will need 4,564 beds; by August 1998, 4,915 beds; and by August 1999, 5,340 beds. This funding provides for current service levels and allows TYC to maintain a statutory minimum length of stay of nine months for general offenders, without overcrowding. Being able to keep youth long enough to not only get their attention, but to also require that they complete the objectives specified in the five phases of Resocialization, should make a significant difference in recidivism.

The primary tenets of TYC's Resocialization program are that children are not born delinquent, but that delinquency is learned behavior that is influenced by early family relationships, social environment, biological factors, and subcultural norms and values. TYC's population continues to be comprised of the state's most seriously disturbed and delinquent youth. Resocialization requires accurate assessment, a safe, positive environment, intervention with the delinquent behavior, rehabilitation and accountability and community reintegration. To continue what this agency believes to be the best treatment program available, the 75th Legislature funded additional direct care workers to keep the staff and students safe, an additional apprehension specialist to pick up escapees and absconders, and additional parole officers and support staff to ensure that TYC parolees are involved in constructive activity.

A fundamental change in law has occurred with the passage of HB 1550. Today, clearly 23% of TYC's population have been diagnosed with a mental illness which meets the priority population of Texas Department of Mental Health and Mental Retardation. Although the agency did not have the legal authority to accept those youth once the determination of mental illness was made, because of their delinquent conduct, the agency was reluctant to release them. TYC now has the legal authority to accept youth with mental illness, but it is also required to discharge youth with mental illness or mental retardation who cannot progress in its programs due to their mental impairment. Discharge is mandatory when the youth with mental illness or mental retardation is not a determinate sentenced offender and they have completed the minimum length of stay applicable to their committing offense. Although the agency did not get all of the clinical staff that were requested, it did receive funds to expand Crockett State School by 56 beds to serve the less-severely emotionally disturbed youth.

Twenty-seven million of the increase is to fund construction projects, of which $19.3 million is provided to construct a new 330-bed facility that will become operational during the next biennium, and $2.2 million is to construct a 30-bed administrative detention unit at Brownwood State School. The remaining construction funds are for utility repairs, site work and renovations at existing facilities.

The Legislature had an extremely difficult job in determining how to fund the many competing needs in the State. Once again, they provided a balanced approach to funding the juvenile justice system. It is imperative that the juvenile justice system presents a united front, strategically plans and works together to ensure accountability and positive results. The system must demonstrate that good programs can decrease recidivism and that prevention and early intervention can deter delinquency. We have been lucky these previous two sessions to have been the recipients of the Legislature's good faith and support. Now we must prove that the Legislature and the citizens of Texas are getting something in return.

TEXAS DEPARTMENT OF PROTECTIVE

AND REGULATORY SERVICES
Funding Related to Juvenile Justice

By
Thomas Chapmond
Director, Community Initiatives and Program Development

The Department of Protective and Regulatory Services (DPRS) administers two programs aimed at preventing juvenile delinquency. This article provides the background on such programs and highlights the action taken by 75th Legislature.

Services to At Risk Youth Program

The Services to At Risk Youth (STAR) Program began in 1983 with a focus on providing services to runaway and truant youths and their families. Over the years the program has grown and eligibility has expanded. The 74th Texas Legislature expanded the program to include youths aged 7 - 9 who commit delinquent offenses, and youths aged 10 - 17 who commit misdemeanor or state jail felony offenses. The legislation that made these changes included the option of court intervention with these youths and/or their families if they fail to participate in services. Appropriations for the program were increased from the Fiscal Year 1995 level of $4.1 million to $8.6 million in Fiscal Year 1996, and $13.1 million in Fiscal Year 1997.

The program had contracted services in 57 counties in Fiscal Year 1995. The increased appropriations allowed DPRS to extend services into a total of 137 counties in Fiscal Year 1996, and 180 counties in Fiscal Year 1997.

The 75th Texas Legislature passed legislation to clarify that DPRS is responsible for providing these services only in counties where STAR contracts exist, and limiting eligibility for services to youths who have not been adjudicated. Additional funds were appropriated to expand the services into the remaining 74 unserved counties in Texas, and to enhance services in currently served counties. Funding for Fiscal Year 1998 is $18.7 million and will be increased in Fiscal Year 1999 to $22.1 million. STAR services should be available to youths in every county in the state by the end of Fiscal Year 1999.

Community Youth Development Program

The 74th Texas Legislature implemented the Community Youth Development (CYD) Program. The purpose of the program is to provide funding and technical assistance to facilitate the collaboration of local community groups working to alleviate family and community conditions that lead to juvenile crime. The legislature appropriated $10.5 million for the Fiscal Year 1996/1997 biennium, and directed DPRS to implement the grant program in communities with high rates of juvenile crime in order to promote positive approaches to the challenge of decreasing juvenile crime. The program is overseen by an interagency steering committee. Eleven zip codes were selected based on their numbers of juvenile arrests for violent crimes as well as their juvenile probation referral rates. The CYD Program assisted these communities in developing local steering committees led by residents of the zip code areas. The steering committees each developed a plan of action for their respective communities in order to utilize 18-month grants of $900,000.

The 75th Legislature continued the program and allowed DPRS to carry forward unexpended funds from the Fiscal Year 1996/1997 biennium in order to continue the eleven existing programs in the Fiscal Year 1998/1999 biennium as well as to implement two new grants. The communities chosen to receive these additional grants will be determined by the CYD interagency steering committee.

JUVENILE JUSTICE IN THE 75TH TEXAS LEGISLATURE

By
Robert O. Dawson

The 75th Texas legislature was an unusually productive one as measured by the number of bills considered and passed. In 1995, the 74th legislature considered 4957 bills and passed 1088. In 1997, the 75th legislature considered 5568 bills (a 12% increase) and passed 1487 of them (a 37% increase).

The 75th legislature was also active in juvenile justice. Aside from appropriations measures, it passed almost 40 bills that impacted the juvenile justice system in some fashion.

Of those 40 bills, three will make extensive changes in the system. **House Bill 1550**, by **Toby Goodman**, is the general juvenile cleanup bill. It perfects changes that were made in the system by the 74th legislature in House Bill 327, as well as making other substantive changes in the system. **Senate Bill 35**, by **Royce West**, revises the laws dealing with commission of alcohol offenses by minors, including the creation of the new offense of Driving Under the Influence of Alcohol by a Minor. **Senate Bill 133**, by **Teel Bivins**, is a revision of the safe schools provisions in the Education Code.

We have organized the approximately 40 bills into 9 categories.

(1) Title 3 and Related Provisions. The first category contains every amendment to Title 3 of the Family Code. There is some overlap with the other categories. For example, Senate Bill 35 made most of its changes in the Alcoholic Beverage Code, but made a few changes in Title 3. The Title 3 section contains those changes, but they also appear in the section on Alcohol Violations by Minors. That pattern is followed for other statutes.

The major bill is **HB 1550** (authored by **Toby Goodman**, sponsored by **Chris Harris**) which is the general juvenile cleanup bill. Also included are **HB 1230** (authored by **Allen Place**, sponsored by **Robert Duncan**) which authorizes temporary detention of juveniles in adult facilities in certain counties; **HB 2065** (authored by **Tracy King**, sponsored by **Jeff Wentworth**) which requires all juvenile referrals to pass through juvenile court intake; **SB 170** (authored by **Royce West**, sponsored by **Terri Hodge**) which broadens the definition of victim in juvenile proceedings; and **SB 298** (authored by **Bill Ratliff**, sponsored by **Tom Ramsay**) which gives a 15 working day life to subsequent detention orders in some counties.

(2) Alcohol Violations by Minors. The major bill in this category is **SB 35** (authored by **Royce West**, sponsored by **Allen Place**) which rewrites virtually all the laws relating to alcohol violations by minors and creates the new offense of Driving Under the Influence of Alcohol by a Minor. Also included are **SB 89** (authored by **Royce West**, sponsored by **Allen Hightower**) which revises the laws dealing with false identification; **HB 677** (authored by **Burt Solomons**, sponsored by **Tom Haywood**) which also deals with false identification; and **HB 3441** (authored by **Dan Kubiak**, sponsored by **David Cain**) which revises the law regarding purchase of alcohol by a minor.

(3) Education and Juvenile Justice. The major bill in this category is **SB 133** (authored by **Teel Bivins**, sponsored by **Harold Dutton**) which rewrites the safe schools provisions in the Education Code including those dealing with Juvenile Justice Alternative Education Programs. Also included in this category are **SB 135** (authored by **Teel Bivins**, sponsored by **Patricia Gray**) which provides immunity to juvenile board members for JJAEP functions, **HB 1150** (authored by **Sherri Greenberg**, sponsored by **Florence Shapiro**) which revised school notification procedures, and **SB 247** (authored by **Jane Nelson**, sponsored by **John Culberson**) which raised the compulsory school attendance age to 18. **HB 583** (authored by **Glen Maxey**, sponsored by **Gonzalo Barrientos**) which would have also revised school notification laws, was vetoed by **Governor Bush**.

(4) Sex Offender Legislation. Once again, this was not a good year to be a sex offender in Texas. The major sex offender bill was **SB 1232** (authored by **Florence Shapiro**, sponsored by **Ruth McClendon**) which deals with sex offender treatment. Also included are **SB 875** (authored by **Florence Shapiro**, sponsored by **Debra**

Danburg) which revises and expands the laws dealing with sex offender registration and **HB 1176** (authored by **Ray Allen**, sponsored by **Buster Brown**) which clarifies public access to sex offender registration information.

(5) Prosecution of Juveniles in Municipal and Justice Courts. Included in this category are **SB 81** (authored by **Rodney Ellis**, sponsored by **Scott Hochberg**) which removes failure to stop and render aid from the category of a juvenile traffic offense; **HB 115** (authored by **Dale Tillery**, sponsored by **Florence Shapiro**) which strengthens the requirement of parental presence in municipal and justice court hearings; **HB 1055** (authored by **Dale Tillery**, sponsored by **John Carona**) which provides for suspension of the driver's license of a juvenile who fails to appear for a court hearing; **HB 1291** (authored by **Burt Solomons**, sponsored by **Jeff Wentworth**) which clarifies municipal and justice court jurisdiction over juveniles; **HB 1545** (authored by **Charles Finnell**, sponsored by **Tom Haywood**) which requires the presence of parents in municipal and justice court hearings; and **HB 1606** (authored by **Will Hartnett**, sponsored by **Chris Harris**) which expands venue in truancy cases in municipal and justice courts.

(6) Selected TYC Provisions. Included are **HB 2074** (authored by **Allen Hightower**, sponsored by **Buster Brown**) which is the TYC sunset bill; **HB 2075** (authored by **Allen Hightower**, sponsored by **John Whitmire**) which gives TYC access to criminal records in certain circumstances; **HB 2082** (authored by **Allen Hightower**, sponsored by **Royce West**) which provided for the selling or leasing of TYC therapeutic programs; **HB 1756** (authored by **Barry Telford**, sponsored by **Chris Harris**) which provided for legal immunity for TYC volunteers; and **SB 625** (authored by **John Whitmire**, sponsored by **Toby Goodman**) providing for the dissemination of TYC information regarding an escapee.

(7) Selected TJPC Provisions. Included are **HB 1917** (authored by **Toby Goodman**, sponsored by **Royce West**) which deals with various TJPC powers; **HB 1928** (authored by **Ruth McClendon**, sponsored by **Royce West**) which provides for TJPC inspection of secure facilities); **HB 2073** (authored by **Allen Hightower**, sponsored by **Buster Brown**) which is the TJPC sunset bill; **HB 2749** (authored by **Ruth McClendon**, sponsored by **Royce West**) which required registration of secure facilities with TJPC; and **SB 1395** (authored by **John Lindsay**, sponsored by **Mark Stiles**) which deals with local budgeting for juvenile probation.

(8) Selected DPRS Provisions. Included are **HB 1826** (authored by **Toby Goodman**, sponsored by **Chris Harris**) which deals with the identity of a person reporting child abuse; **HB 1929** (authored by **Ruth McClendon**, sponsored by **Judith Zaffirini**) which includes juvenile probation, detention and correctional officers among the professionals required to report child abuse; and **SB 359** (authored by **Buster Brown**, sponsored by **Patricia Gray**) which adds indecency with a child to the list of mandatory report offenses.

(9) Miscellaneous Provisions. Included are **HB 2874** (authored by **Toby Goodman**, sponsored by **John Whitmire**) which deals with juvenile gang databases and **SB 758** (authored by **Eliot Shapleigh**, sponsored by **Gilbert Serna**) which deals with the offense of graffiti writing.

1. Title 3 and Related Provisions

Title 3. Juvenile Justice Code

Chapter 51. General Provisions

§ 51.02. Definitions.
In this title:

(1) through (14) unchanged.

(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) through (D) unchanged.

(E) a violation of standards of student conduct as described by Section **51.03(b)(5)** [~~51.03(b)(6)~~];

(F) through (H) unchanged.

(16) "Traffic offense" means:

(A) a violation of a penal statute cognizable under **Chapter 729, Transportation Code, except for:**

(i) conduct constituting an offense under Section 550.021, Transportation Code;

(ii) conduct constituting an offense punishable as a Class B misdemeanor under Section 550.022, Transportation Code; or

(iii) conduct constituting an offense punishable as a Class B misdemeanor under Section 550.024, Transportation Code [~~Chapter 302, Acts of the 55th Legislature, Regular Session, 1957, as amended (Article 6701l-4, Vernon's Texas Civil Statutes)~~]; or

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

Commentary by Robert Dawson

Source: SB 81
Effective Date: September 1, 1997
Applicability: Offenses committed on or after effective date
Summary of Changes: An offense defined as a traffic offense by this section is not within the juvenile court's jurisdiction, but is handled by municipal and justice courts. Transportation Code Chapter 729 refers to the chapter that deals with operation of a motor vehicle by a minor. Section 729.001 references various offenses as traffic offenses.

The purpose of this amendment is to make the criminal offense of failure to stop and render aid delinquent conduct, rather than a traffic offense, when it is engaged in by a child. Transportation Code § 550.021 makes leaving the scene of an accident in which death or personal injury occurred a felony, carrying up to five years in TDCJ for an adult. Section 550.022 makes it a Class B misdemeanor to leave the scene when property damage to all vehicles is $200 or more. Section 550.024 makes it a Class B to leave the scene of an accident with an unattended vehicle if the damage to all vehicles involved is $200 or more. All three of these offenses are made delinquent conduct by SB 81. Inflicting property damage of less than $200 is a Class C misdemeanor for an adult and a remains a traffic offense for a child.

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

(a) Delinquent conduct is:

(1) through (3) unchanged;

(4) conduct that violates **Section 49.04, 49.05, 49.06, 49.07, or 49.08, Penal Code; or**

(5) conduct that violates Section 106.041, Alcoholic Beverage Code, relating to driving under the influence of alcohol by a minor [~~the laws of this state prohibiting driving while intoxicated or under the influence of intoxicating liquor (third or subsequent offense) or driving while under the influence of any narcotic drug or of any other drug to the degree that renders the child incapable of safely driving a vehicle~~] (third or subsequent offense).

(b) Conduct indicating a need for supervision is:

(1) through (3) unchanged;

(4) [~~conduct which 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 which renders him incapable of safely driving a vehicle (first or second offense);~~]

[~~(5)~~] conduct prohibited by city ordinance or by state law involving the inhalation of the fumes or vapors of paint and other protective

coatings or glue and other adhesives and the volatile chemicals itemized in Section 484.002, Health and Safety Code;

(5) [~~(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 **37.007(c)** [~~21.3011~~], Education Code; or

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

Commentary by Robert Dawson

Source: HB 1550, SB 35
Effective Date: September 1, 1997
Applicability: Offenses committed on or after effective date
Summary of Changes: Both HB 1550 and SB 35 make first offense DWI by a child delinquent conduct. Formerly, the first two were CINS and only the third was delinquent conduct. HB 1550 achieved this by repealing the DWI language in 51.03(a)(5) and 51.03(b)(4). SB 35 does that, but in addition in 51.03(a)(4) references the following offenses from the Penal Code: driving while intoxicated (§ 49.04), flying while intoxicated (§ 49.05), boating while intoxicated (§ 49.06), intoxication assault (§ 49.07) and intoxication manslaughter (§ 49.08). The net effect is identical, only the means of achieving that result are different.

SB 35 adds a new type of delinquent conduct: third offense driving by a minor under the influence of alcohol (Alcoholic Beverage Code § 106.041). It is a Class C misdemeanor for a minor to drive a motor vehicle in a public place with any detectable amount of alcohol in his body. Second offense is also a Class C, but 51.03(a)(5) makes the third offense delinquent conduct. For a full discussion of the changes made in the Alcoholic Beverage Code by SB 35, see Section 2 Alcohol Violations by Minors.

§ 51.031. Habitual Felony Conduct.

(a) 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 **final** adjudications as having engaged in delinquent conduct violating a penal law of the grade of felony; [~~and~~]

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

(3) all appeals relating to the previous adjudications considered under Subdivisions (1) and (2) have been exhausted.

(b) For purposes of this section, an adjudication is final if the child is placed on probation or committed to the Texas Youth Commission.

(c) An adjudication based on conduct that occurred before January 1, 1996, may not be considered in a disposition made under this section.

Commentary by Robert Dawson

Source: HB 1550
Effective Date: September 1, 1997
Applicability: Offenses committed on or after effective date
Summary of Changes: This section was added in 1995. It makes the third felony adjudication eligible for handling under the determinate sentencing act as habitual felony conduct. Amendments made in 1997 define what counts as a prior adjudication under this section. A prior adjudication does not count if the case is still on appeal at the time the adjudication is offered under this section. However, a prior adjudication does count whether the juvenile received a TYC commitment/sentence or received probation in the prior case. Finally, each of the prior adjudications must be based upon conduct that was engaged in by the juvenile on or after January 1, 1996--the effective date of HB 327 which enacted this section into law. The January 1, 1996 requirement is intended to foreclose a claim of attempted retroactive application of this section, which would create significant *ex post facto* and due process issues.

§ 51.0411. Jurisdiction for Transfer or Release Hearing.

The court retains jurisdiction over a person, without regard to the age of the person, who is referred to the court under Section 54.11 for transfer to the Texas Department of Criminal Justice or release under supervision.

Commentary by Neil Nichols

Source: HB 1550
Effective Date: June 19, 1997
Applicability: Persons in or committed to TYC custody on or after effective date.
Summary of Changes: Extension of the juvenile court's jurisdiction over youth sentenced to commitment to TYC is implicit in the 1995 amendments to Sec. 54.11. This new section makes the

extension explicit for the purpose of conducting early parole release and prison transfer hearings on these youth. Under the 1995 amendments, for youth sentenced to commitment to TYC for offenses committed on or after January 1, 1996, the TYC may petition the committing juvenile court for authority to transfer the youth to prison at any time after the youth become 16 years of age. Human Resources Code Sec. 61.079(a). Since the TYC's jurisdiction extends to age 21, the petition may be filed up to three years after the youth's eighteenth birthday, the usual limit of the juvenile court's jurisdiction. The juvenile court has the same extended jurisdiction over sentenced youth to consider approval of their early parole release, Human Resources Code Section 61.081(f).

§ 51.09. Waiver of Rights.

[~~(a)~~] Unless a contrary intent clearly appears elsewhere in this title, any right granted to a child by this title or by the constitution or laws of this state or the United States may be waived in proceedings under this title if:

(1) the waiver is made by the child and the attorney for the child;

(2) the child and the attorney waiving the right are informed of and understand the right and the possible consequences of waiving it;

(3) the waiver is voluntary; and

(4) the waiver is made in writing or in court proceedings that are recorded.

Commentary by Robert Dawson

Source: HB 1550
Effective Date: September 1, 1997
Applicability: Offenses committed on or after effective date
Summary of Changes: This amendment removes 51.09(b) through (d), which deal with custodial interrogation, and creates a new section 51.095 for them. That leaves 51.09 to deal only with waiver of rights outside the context of custodial questioning, which was the way 51.09 was when originally enacted in 1973.

§ 51.095. Admissibility of a Statement of a Child.

(a) [~~(b)~~] Notwithstanding **Section 51.09** [~~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) **the statement is made in writing** 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**:**

(A) the statement shows that the child has at some time **before** [~~prior to~~] the making **of the statement** [~~thereof~~] received from a magistrate a warning that:

(i) [~~(A)~~] the child may remain silent and not make any statement at all and that any statement that the child makes may be used in evidence against the child;

(ii) [~~(B)~~] the child has the right to have an attorney present to advise the child either prior to any questioning or during the questioning;

(iii) [~~(C)~~] if the child is unable to employ an attorney, the child has the right to have an attorney appointed to counsel with the child **before** [~~prior to~~] or during any interviews with peace officers or attorneys representing the state; **and**

(iv) [~~(D)~~] the child has the right to terminate the interview at any time;

[~~(E) if the child is 14 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 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;~~]

[~~(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) deadly conduct defined by Section~~] [~~22.05(b), Penal Code (discharging firearm at persons or certain objects);~~]

[~~(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) criminal attempt to commit any of the offenses listed in Section 3g(a)(1), Article 42.12, Code of Criminal Procedure, which include murder, capital murder, indecency with a child, aggravated kidnapping, aggravated sexual assault, and aggravated robbery; and~~]

(B) and:

(i) [~~(G)~~] the statement must be signed in the presence of a magistrate by the child with no law enforcement officer or prosecuting attorney present, except that a magistrate may require a bailiff or a law enforcement officer if a bailiff is not available to be present if the magistrate determines that the presence of the bailiff or law enforcement officer is necessary for the personal safety of the magistrate or other court personnel, provided that the bailiff or law enforcement officer may not carry a weapon in the presence of the child**; and**

(ii) the [~~. The~~] magistrate must be fully convinced that the child understands the nature and contents of the statement and that the child is signing the same voluntarily**, and if** [~~. If such~~] a statement is taken, the magistrate **must** [~~shall~~] sign a written statement verifying the foregoing requisites have been met**;** [~~.~~]

(C) the [~~The~~] child [~~must~~] knowingly, intelligently, and voluntarily **waives** [~~waive~~] these rights **before** [~~prior to~~] and during the making of the statement and **signs** [~~sign~~] the statement in the presence of a magistrate**; and**

(D) the magistrate certifies [~~who must certify~~] that **the magistrate** [~~he~~] has examined the child independent of any law enforcement officer or prosecuting attorney, except as required to ensure the personal safety of the magistrate or other court personnel, and has determined that the child understands the nature and contents of the statement and has knowingly, intelligently, and voluntarily waived these rights**;** [~~.~~]

(2) **the statement is** [~~it be~~] made orally and the child makes a statement of facts or circumstances that are found to be true, which conduct tends to establish his guilt, such as the finding of secreted or stolen property, or the instrument with which he states the offense was committed**;** [~~.~~]

(3) the statement was res gestae of the delinquent conduct or the conduct indicating a need for supervision or of the arrest**;** [~~.~~]

[~~(c) A warning under Subsection (b)(1)(E) or (b)(1)(F) is required only when applicable to the facts of the case. A failure to warn a child under Subsection (b)(1)(E) does not render a statement made by the child inadmissible unless the child is transferred to a district court under Section 54.02. A failure to warn a child under Subsection (b)(1)(F) 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.~~]

(4) the statement is made [~~(d) This section does not preclude the admission of a statement made by the child if:~~]

[~~(1) the child makes the statement~~]:

(A) in open court at the child's adjudication hearing;

(B) before a grand jury considering a petition, under Section 53.045 [~~of this code~~], that the child engaged in delinquent conduct; or

(C) at a preliminary hearing concerning the child held in compliance with this code, other than at a detention hearing under Section 54.01 [~~of this code~~]; **or**

(5) the statement is made orally when the child is in a detention facility or other place

of confinement or in the custody of an officer and the statement is recorded by an electronic recording device, including a device that records images, and:

(A) before making the statement, the child is given the warning described by Subdivision (1)(A) by a magistrate, the warning is a part of the recording, and the child knowingly, intelligently, and voluntarily waives each right stated in the warning;

(B) the recording device is capable of making an accurate recording, the operator of the device is competent to use the device, the recording is accurate, and the recording has not been altered;

(C) each voice on the recording is identified; and

(D) not later than the 20th day before the date of the proceeding, the attorney representing the child is given a complete and accurate copy of each recording of the child made under this subdivision.

(b) This section and Section 51.09 do not preclude the admission of a statement made by the child if:

(1) [~~(2)~~] the statement does not stem from custodial interrogation; or

(2) [~~(3)~~] without regard to whether the statement stems from custodial interrogation, the statement is voluntary and has a bearing on the credibility of the child as a witness.

(c) An electronic recording of a child's statement made under Subsection (a)(5) shall be preserved until all juvenile or criminal matters relating to any conduct referred to in the statement are final, including the exhaustion of all appeals, or barred from prosecution.

Commentary by Robert Dawson

Source: HB 1550
Effective Date: September 1, 1997
Applicability: Offenses committed on or after effective date
Summary of Changes: This amendment eliminates the requirement that the magistrate admonish the child of possible certification to criminal court and possible prosecution under the determinate sentence act. Those warnings, which are not constitutionally required, have become so lengthy and complicated that they obscure communication of the basic *Miranda v. Arizona* information to the child and, therefore, are counter-productive.

A second change authorizes for the first time in juvenile proceedings admitting an oral statement into evidence because it was tape recorded. That has been authorized for years in criminal cases by Code of Criminal Procedure art. 38.22. It is now authorized for juvenile cases but with one major difference. Under art. 38.22 either a peace officer or a magistrate may give the warnings on tape, but under the juvenile version only a magistrate may do so.

§ 51.12. Place and Conditions of Detention.

(a) **[HB 1230]** Except as provided by Subsection (h), a child may 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)**; or**

(4) secure detention facility as provided by Subsection (i).

(b) unchanged.

(c) **[HB 1928]** In each county, **each** [~~the~~] judge of the juvenile court and the members of the juvenile board shall personally inspect the **juvenile pre-adjudication secure** detention facilities and any public or private **juvenile** 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 Subsections (a), (f), and (g); and

(2) minimum professional standards for the detention of children in pre-adjudication or post-adjudication secure confinement promulgated by the Texas Juvenile Probation Commission or, at the election of the juvenile board, the current standards promulgated by the American Correctional Association.

(d) **[HB 1230] Except as provided by Subsection (i), a** [~~No~~] child **may not** [~~shall~~] be placed in a facility that has not been certified under Subsection (c) [~~of this section~~] as suitable for the detention of children. **Except as provided by Subsection (i), a** [~~A~~] child detained in a facility that has not been certified under Subsection (c) [~~of this section~~] as suitable for the detention of children

shall be entitled to immediate release from custody in that facility.

(d) **[HB 1928]** No child shall be placed in a facility that has not been certified under Subsection (c) of this section as suitable for the detention of children **and registered under Subsection (i) of this section**. A child detained in a facility that has not been certified under Subsection (c) of this section as suitable for the detention of children **or that has not been registered under Subsection (i) of this section** shall be entitled to immediate release from custody in that facility.

(e) and (f) unchanged.

(g) **[HB 1230]** Except for a child detained in a juvenile processing office**,** [~~or~~] a place of nonsecure custody, **or a secure detention facility as provided by Subsection (i),** 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) unchanged.

(i) [HB 1230] After being taken into custody, a child may be detained in a secure detention facility until the child is released under Section 53.01, 53.012, or 53.02 or until a detention hearing is held under Section 54.01(a), regardless of whether the facility has been certified under Subsection (c), if:

(1) a certified juvenile detention facility is not available in the county in which the child is taken into custody;

(2) the detention facility complies with:

(A) the short-term detention standards adopted by the Texas Juvenile Probation Commission; and

(B) the requirements of Subsection (f); and

(3) the detention facility has been designated by the county juvenile board for the county in which the facility is located.

(i) [HB 1928] Except for a facility operated or certified by the Texas Youth Commission, a governmental unit or private entity that operates or contracts for the operation of a juvenile pre-adjudication secure detention facility or a juvenile post-adjudication secure correctional facility in this state shall:

(1) register the facility annually with the Texas Juvenile Probation Commission; and

(2) adhere to all applicable minimum standards for the facility.

(j) [HB 1230] If a child who is detained under Subsection (i) is not released from detention at the conclusion of the detention hearing for a reason stated in Section 54.01(e), the child may be detained after the hearing only in a certified juvenile detention facility.

Commentary by Robert Dawson

Source: HB 1230, HB 1928
Effective Date: September 1, 1997
Applicability: Children taken into custody on or after effective date for HB 1230; None stated for HB 1928
Summary of Changes: HB 1230 permits children to be detained temporarily in adult facilities, such as county or municipal secure detention facilities, but only under very strict standards. It is designed to accommodate very sparsely populated counties whose officials may have to travel many miles to reach the nearest regional certified juvenile detention facility. Subsection (i) permits detention in a secure adult facility but only if four requirements are satisfied: (1) there is no certified juvenile detention facility in the county where the child was taken into custody, (2) the juvenile space in the facility complies with short-term detention standards promulgated by TJPC, (3) the space complies with the sight and sound separation requirements of 51.12(f), and (4) the county juvenile board has designated the space. Implicit in the requirement of compliance with short-term TJPC standards is the power and duty of TJPC to inspect regularly these spaces to assure that they do indeed comply with its standards. If these four requirements are met, a child may be detained in the adult facility until his or her first initial detention hearing. After that, if detained he or she must be placed in a certified juvenile detention facility. Therefore, the maximum detention under the provision would be four nights, assuming the child was taken into custody on Friday and Monday is a legal holiday.

Subsection (g) was amended by HB 1230 to eliminate the state law requirement of separate staff from that serving adult inmates of the facility. However, while using the same staff for juveniles and adults would comply with subsection (g) it would run afoul of federal standards that Texas has committed itself to observe in order to obtain federal funds for juvenile justice. For that reason, federal separate staff requirements are referenced by TJPC's short term standards and must be complied with as provided by 51.12(i)(2)(A) so long as required by federal law despite the permissive statement in subsection (g). It should be observed

that the two circumstances in which overlap of staff was permitted by subsection (g) prior to the 1997 amendment do not run afoul of federal law because in the juvenile processing office the detention cannot exceed six hours and in the place of nonsecure custody the detention is both not secure and cannot exceed six hours.

HB 1928 added subsection (i) to require that all secure facilities (except TYC) that serve Title 3 children--pre and post-adjudication, public and private--must register with TJPC and comply with all applicable minimum standards. Subsection (d) provides for the immediate release of a child detained in a facility that is not registered with TJPC.

§ 51.13. Effect of Adjudication or Disposition.

(a) through (c) unchanged.

(d) An adjudication under Section 54.03 that a child engaged in conduct that **occurred on or after January 1, 1996, and 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

Source: HB 1550
Effective Date: September 1, 1997
Applicability: Offenses committed on or after effective date
Summary of Changes: Subsection (d) was enacted by HB 327 in 1995 to provide that a felony adjudication that results in a commitment to the TYC counts as a prior felony conviction for purpose of the repeat offender provisions of Penal Code § 12.42. HB 1550 restricts the operation of this subsection to juvenile offenses that occurred on or after January 1, 1996, the effective date HB 327.

§ 51.19. Limitation Periods.

(a) The limitation periods and the procedures for applying the limitation periods under Chapter 12, Code of Criminal Procedure, and other statutory law apply to proceedings under this title.

(b) For purposes of computing a limitation period, a petition filed in juvenile court for a transfer or an adjudication hearing is equivalent to an indictment or information and is treated as presented when the petition is filed in the proper court.

(c) The limitation period is two years for an offense or conduct that is not given a specific limitation period under Chapter 12, Code of Criminal Procedure, or other statutory law.

Commentary by Robert Dawson

Source: HB 1550
Effective Date: September 1, 1997
Applicability: Offenses committed on or after effective date
Summary of Changes: Criminal limitations periods measure the maximum time that can elapse between commission of an offense and filing of formal charges. Prior to amendment, the Juvenile Justice Code did not address which statutes of limitation are applicable. Presumably, in the absence of specific direction to the contrary, Section 51.17(a) and the general proposition that juvenile cases are civil in nature would lead to the conclusion that civil statutes of limitation apply. If the issue were raised, probably the four year residual limitations period of Civil Practice and Remedies Code Section 16.051 would apply.

The civil residual four year period would be sufficient for the great majority of juvenile cases. However, with the advent of DNA testing, one should anticipate that more and more older cases will be brought in criminal and juvenile court as new incriminating evidence is supplied by the now-available scientific tests. For some of these cases, such as murder, the civil four year statute would be inadequate.

The criminal limitation periods established by Chapter 12 of the Code of Criminal Procedure are more appropriate for juvenile proceedings. Under Chapter 12, there is no statute of limitation for murder or manslaughter, there is a 10 year limitation period for sexual assault and certain types of theft, and there are seven and five year periods for other types of felonies. The residual felony limitation period is three years and the misdemeanor limitation period is two years. Thus, for some offenses, the period of limitation would be reduced by applying criminal rules. However, for the serious offenses in which limitations are likely to be particularly a problem, the criminal rules provide for more delay in instituting proceedings.

The limitations periods in Chapter 12 of the Code of Criminal Procedure govern unless the statute defining the offense provides otherwise. If no statute speaks to the limitation issue, then this section provides a default period of two years.

Chapter 52. Proceedings Before and Including Referral to Juvenile Court

§ 52.02. Release or Delivery to Court.

(a) **Except as provided by Subsection (c), a** [~~A~~] person taking a child into custody, without unnecessary delay and without first taking the child to any place other than a juvenile processing office designated under Section 52.025 [~~of this code~~], shall do one of the following:

(1) through (3) unchanged;

(4) **bring the child to a secure detention facility as provided by Section 51.12(i);**

(5) bring the child to a medical facility if the child is believed to suffer from a serious physical condition or illness that requires prompt treatment; or

(6) [~~(5)~~] dispose of the case under Section 52.03 [~~of this code~~].

(b) unchanged.

(c) A person who takes a child into custody and who has reasonable grounds to believe that the child has been operating a motor vehicle in a public place while having any detectable amount of alcohol in the child's system may, before complying with Subsection (a):

(1) take the child to a place to obtain a specimen of the child's breath or blood as provided by Chapter 724, Transportation Code; and

(2) perform intoxilyzer processing and videotaping of the child in an adult processing office of a police department.

(d) Notwithstanding Section 51.09(a), a child taken into custody as provided by Subsection (c) may submit to the taking of a breath specimen or refuse to submit to the taking of a breath specimen without the concurrence of an attorney, but only if the request made of the child to give the specimen and the child's response to that request is videotaped. A videotape made under this subsection must be maintained until the disposition of any proceeding against the child relating to the arrest is final and be made available to an attorney representing the child during that period.

Commentary by Robert Dawson

Source: HB 1230, SB 35
Effective Date: September 1, 1997
Applicability: Offenses committed on or after effective date
Summary of Changes: The change in subsection (a) was made by HB 1230. See Commentary to Section 51.12. Subsections (c) and (d) were added by SB 35. Subsection (c) permits police to take a child in custody for driving by a minor under the influence of alcohol to a facility for blood test or an adult intoxilyzer processing office for administration of an intoxilyzer test, videotaping, or both. Once evidence is obtained in those places, police must take the child to a place required by subsection (a)

Subsection (d) permits the child to consent to taking an intoxilyzer or to refusing to take one without the concurrence of an attorney, whose concurrence would otherwise be required by section 51.09. However, the request and the child's response must be videotaped to preserve evidence as to whether the decision was made knowingly and voluntarily. When the purpose of subsection (c) is accomplished, the child must be taken to a place authorized for taking children under subsection (a). The reference in (d) to 51.09(a) should be read, in light of the amendment to that section, to be a reference to 51.09.

§ 52.025. Designation of Juvenile Processing Office.

(a) unchanged.

(b) A child may be detained in a juvenile processing office only for:

(1) the return of the child to the custody of a person under Section 52.02(a) (1) [~~of this code~~];

(2) through (4) unchanged; or

(5) the receipt of a statement by the child under **Section 51.095(a)(1), (2), (3), or (5)** [~~Section 51.09(b) of this code~~].

Commentary by Robert Dawson

Source: HB 1550
Effective Date: September 1, 1997
Applicability: Offenses committed on or after effective date
Summary of Changes: This amendment simply conforms the reference from 51.09(b) to 51.095 to agree with the change making custodial interrogation a separate section.

§ 52.026. Responsibility for Transporting Juvenile Offenders.

(a) It shall be the duty of the law enforcement officer who has taken a child into custody to transport the child to the appropriate [~~juvenile~~] detention facility if the child is not released to the parent, guardian, or custodian of the child.

(b) If the juvenile detention facility is located outside the county in which the child is taken into custody, it shall be the duty of the sheriff of that county to transport the child to the appropriate juvenile detention facility **unless** [~~if~~] the child is**:**

(1) detained in a secure detention facility under Section 51.12(i); or

(2) [~~not~~] released to the parent, guardian, or custodian of the child.

Commentary by Robert Dawson

Source: HB 1230
Effective Date: September 1, 1997
Applicability: Offenses committed on or after effective date
Summary of Changes: This change simply facilities holding a child temporarily in a local adult facility pending the initial detention hearing. See commentary to section 51.12.

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

(a) unchanged.

(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**, or a secure detention facility, as authorized by Sections 51.12(a)(3) and (4), respectively, for the detention of the child as provided by Section 54.011**.

(c) unchanged.

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

(1) unchanged;

(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, **secure detention facility,** municipal court, or justice court;

(3) and (4) unchanged.

(e) through (h) unchanged.

(i) In this section, "child" means a person who**:**

(1) is at least 10 years of age and younger than **17** [~~18~~] years of age and who[~~:~~] [~~(1)~~] is charged with or convicted of a traffic offense**;** or

(2) is at least 10 years of age and younger than 18 years of age and who:

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

(B) [~~(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

(C) [~~(3)~~] is a nonoffender and became a nonoffender before becoming 17 years of age.

Commentary by Jim Bethke

Source: HB 1230, SB 81
Effective Date: September 1, 1997
Applicability: Offenses committed on or after effective date
Summary of Changes: The changes made to subsections (b) and (d) provide that a person brought into custody for truancy or running away may be taken to a secure detention facility as authorized by sections 51.12(a)(3) and (4), respectively, for detention of the child as provided by section 54.011. These revisions conform to the amendment of section 51.12, which provides for the alternative of temporary detention of a juvenile in a secure detention facility when a certified juvenile detention facility is not located in the county.

Subsection (i)'s definition of child has been modified and conforms to the definition of child in section 51.02(2). This section's limitations on custody apply not only to an offender younger than

17 who is charged with or convicted of a traffic offense but also to a 17 year-old who is charged with or convicted of a fine-only offense other than public intoxication committed before age 17, is a status offender and was taken into custody as a status offender for conduct engaged in before age 17, or is a non-offender and became a non-offender before age 17.

This change is confusing because a traffic offense is a fine-only offense and thus part (2) of subsection (i) includes part (1). The intent of this amendment may have been to allow a 17 year-old who committed a traffic offense before age 17 to be taken into custody and detained in a place other than a nonsecure detention facility. Then, it follows that a person charged with a traffic offense before age 17 may be taken into custody as an adult upon reaching 17 years of age and processed accordingly. Note, however, that Chapter 729 of the Transportation Code provides special procedures and penalties for persons younger than 17 who commit traffic offenses and states that "a person may not be committed to jail in default of payment of a fine imposed under this chapter. . ." Thus, a juvenile may not "lay-out" fines.

§ 52.04. Referral to Juvenile Court

(a) and (b) unchanged.

(c) If the office of the prosecuting attorney is designated by the juvenile court to conduct the preliminary investigation under Section 53.01, the referring entity shall first transfer the child's case to the juvenile probation department for statistical reporting purposes only. On the creation of a statistical record or file for the case, the probation department shall within three business days forward the case to the prosecuting attorney for review under Section 53.01.

Commentary by Lisa Capers

Source: HB 2065
Effective Date: September 1, 1997
Applicability: None stated; presumably applies to referrals on or after effective date
Summary of Changes: The addition of Subsection (c) addresses a problem that has occurred in some counties as a result of changes made to Section 53.01 during the 1995 legislative session. Section 53.01 creates a statutory default intake plan that requires certain offenses be sent to the prosecutor for intake, as opposed to the probation department. It also allows for the probation department and the prosecutor to create a customized intake referral plan which sends previously agreed-upon offenses to the prosecutor for intake review. In some counties, law enforcement officials send these offenses directly to the prosecutor, completely bypassing probation, which results in the probation department not creating a statistical record of the case. If the prosecutor disposes of the case without probation's involvement, no statistical record is ever created. This presents a problem for the probation department because the department is mandated to report statistical data to the state.

Subsection (c) was created to resolve this problem. Now, regardless of the intake plan, any offenses that are to be sent to the prosecutor for intake must first be sent to the probation department for the limited purpose of creating the statistical record. The probation department has three business days from when they receive the case to forward it to the prosecutor. This will ensure the state has accurate and complete statistical data on juvenile referrals.

§ 52.041. Referral of Child to Juvenile Court After Expulsion

(a) and (b) unchanged.

(c) Within five working days of receipt of an expulsion notice under this section by the office or official designated by the juvenile court, a preliminary investigation and determination shall be conducted as required by Section 53.01.

(d) The office or official designated by the juvenile court shall within two working days notify the school district that expelled the child if:

(1) a determination was made under Section 53.01 that the person referred to juvenile court was not a child within the meaning of this title;

(2) a determination was made that no probable cause existed to believe the child engaged in delinquent conduct or conduct indicating a need for supervision;

(3) no deferred prosecution or formal court proceedings have been or will be initiated involving the child;

(4) the court or jury finds that the child did not engage in delinquent conduct or conduct indicating a need for supervision and the case has been dismissed with prejudice; or

(5) the child was adjudicated but no disposition was or will be ordered by the court.

(e) In any county where a juvenile justice alternative education program is operated, no student shall be expelled without written notifi-

cation by the board of the school district or its designated agent to the juvenile board's designated representative. The notification shall be made not later than two business days following the board's determination that the student is to be expelled. Failure to timely notify the designated representative of the juvenile board shall result in the child's duty to continue attending the school district's educational program, which shall be provided to that child until such time as the notification to the juvenile board's designated representative is properly made.

Commentary by Lisa Capers

Source: SB 133
Effective Date: Beginning of 1997-1998 school year
Applicability: None stated
Summary of Changes: The changes made to Section 52.041 were a part of the major clean-up of the safe schools provisions in Chapter 37 of the Education Code that were contained in SB 133. Subsection (c) now requires that an intake under Section 53.01 be completed within five working days if the child has been expelled and the juvenile court has received the requisite notice of the expulsion from the school as required under Section 52.041(b).

Subsection (d) provides that the juvenile court must notify the school within two working days if an expelled child's juvenile court referral did not result in an informal or formal disposition of some type. The school must be notified if the child's case was 1) not within juvenile court jurisdiction because of the student's age; 2) dismissed because of a lack of probable cause; 3) not acted upon by the prosecutor or probation and no formal or informal proceedings will be initiated; 4) dismissed with prejudice due to a not guilty finding by the judge or jury; or 5) adjudicated but the case will not result in a disposition. This subsection is intended to give the school notice so that the school officials may revisit their expulsion decision in light of the actions and outcomes of the juvenile court process. The school is under no obligation to reverse the expulsion decision, but may wish to do so in light of the new information received under this subsection.

Subsection (e) applies to any county that operates a juvenile justice alternative education program (JJAEP) under Section 37.011 of the Education Code, which includes both the mandatory and non-mandatory programs. It requires the school to provide notice of an expulsion of a student to the county juvenile board, or its representative, within two business days following the decision to expel. The child cannot be formally expelled without such notice. If the school fails to notify the juvenile board of the expulsion, the school district is obligated to continue to educate the child and the child is obligated to attend school until the required notice is provided to the juvenile board.

Chapter 53. Proceedings Prior to Judicial Proceedings

§ 53.01. Preliminary Investigation and Determinations; Notice to Parents.

(a) through (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 **a** [~~juvenile~~] detention facility.

Commentary by Robert Dawson

Source: HB 1230
Effective Date: September 1, 1997
Applicability: Offenses committed on or after effective date
Summary of Changes: The change in (d)(2) simply reflects the fact that some children will be detained temporarily in adult facilities and includes prior uses of such facilities within the scope of the information that must accompany a juvenile's referral to the juvenile court system. See commentary to section 51.12.

§ 53.013. Progressive Sanctions Program.

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

(b) A juvenile court or probation department that deviates from the guidelines under Section 59.003 shall state in writing the reasons for the deviation and submit the statement to the juvenile board regardless of whether the juvenile board has adopted a progressive sanctions program.

Commentary by Lisa Capers

Source: HB 1550
Effective Date: September 1, 1997
Applicability: Offenses committed on or after effective date
Summary of Changes: This section requires all juvenile courts and probation departments to report deviations from the progressive sanctions guidelines, regardless of whether the juvenile board has formally adopted the progressive sanctions model in their jurisdiction. Though not the intent of the legislature, some juvenile boards interpret the current statute to say that they do not have to submit deviation data because they did not adopt the model formally. However, many of them did not adopt the model because they could not fund it. This is precisely the information that the deviation reporting process is designed to gather. Additionally, under the General Appropriations Act for the 1998-99 biennium (HB 1), a juvenile board must adopt the progressive sanctions model to be eligible to receive any of the additional funds appropriated to the Texas Juvenile Probation Commission (TJPC).

§ 53.02. Release from Detention.

(a) If a child is brought before the court or delivered to a detention facility **as authorized by Sections 51.12(a)(3) and (4)** [~~designated by the court~~], the intake or other authorized officer of the court shall immediately make an investigation and shall release the child unless it appears that his detention is warranted under Subsection (b) [~~of this section~~]. The release may be conditioned upon requirements reasonably necessary to insure the child's appearance at later proceedings, but the conditions of the release must be in writing and filed with the office or official designated by the court and a copy furnished to the child.

(b) through (d) unchanged.

(e) Unless otherwise agreed in the memorandum of understanding under Section 37.011, Education Code, in a county with a population greater than 125,000, if a child being released under this section is expelled under Section 37.007, Education Code, the release shall be conditioned on the child's attending a juvenile justice alternative education program pending a deferred prosecution or formal court disposition of the child's case.

Commentary by Lisa Capers

Source: HB 1230, SB 133
Effective Date: September 1, 1997
Applicability: Offenses committed on or after effective date
Summary of Changes: Subsection (a) was modified by HB 1230, which authorized the creation of hold-over detention facilities. Section 51.12(a)(3) refers to regular detention facilities that are certified by the members of the juvenile board and juvenile court judges. Section 51.12(a)(4) refers to the special hold-over detention facilities which may be designated by the juvenile board in counties that do not have regular pre-adjudication detention facilities. These hold-over detention facilities may be co-located in adult jails if all TJPC standards for hold-over facilities and federal regulations related to co-located facilities are followed. Detention is authorized in these hold-over facilities only until the first detention hearing. If the child is subsequently ordered to be detained at the first detention hearing, the detention must be in a certified detention facility. See, also, the discussion of hold-over detention facilities under Section 51.12 of this commentary.

Subsection (e) is new and was another part of the Chapter 37 Education Code cleanup provisions related to safe schools. This section applies to counties with a population greater than 125,000 (i.e., the mandated JJAEP counties). It mandates that an expelled student who is being released from a detention facility by an intake officer or the court be required to attend the JJAEP pending a disposition of the child's case as a condition of the release. The rationale behind this amendment is to ensure that expelled students are immediately placed into an educational setting so that there is no expulsion "to the street". It is important to recall that the cited section of the Education Code (i.e., 37.007) includes both the mandatory and discretionary expulsion offenses. Those children expelled for the mandatory offenses will be eligible for state funding through TJPC from the day of their expulsion, and should be placed into the JJAEP immediately if they are not in detention and immediately upon release from detention under this section. For those children who are expelled

for the offenses for which the school has discretion to expel, the memorandum of understanding (MOU) required under Section 37.011 of the Education Code must address which educational setting is most appropriate for the child (i.e., a school setting, the JJAEP, a private vendor, etc.) If the MOU does not specifically address the placement of the discretionary expulsion children, upon release from detention under Section 53.02 or 54.01, these children must be placed into the JJAEP. This issue is further discussed under the Education Code provisions of Sections 37.011 and 37.012 of this commentary.

§ 53.03. Deferred Prosecution.

(a) Subject to **Subsections** [~~Subsection~~] (e) **and (g)**, if the preliminary investigation required by Section 53.01 of this code results in a determination that further proceedings in the case are authorized, 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 and rehabilitation of a child if:

(1) through (3) unchanged.

(b) through (f) unchanged.

(g) [SB 758] If the child is alleged to have engaged in delinquent conduct or conduct indicating a need for supervision that violates Section 28.08, Penal Code, deferred prosecution under this section may include:

(1) voluntary attendance in a class with instruction in self-responsibility and empathy for a victim of an offense conducted by a local juvenile probation department, if the class is available; and

(2) voluntary restoration of the property damaged by the child by removing or painting over any markings made by the child, if the owner of the property consents to the restoration.

(g) [SB 35] Prosecution may not be deferred for a child alleged to have engaged in conduct that:

(1) is an offense under Section 49.04, 49.05, 49.06, 49.07, or 49.08, Penal Code; or

(2) is a third or subsequent offense under Section 106.04 or 106.041, Alcoholic Beverage Code.

Commentary by Robert Dawson

Source: SB 758, SB 35
Effective Date: September 1, 1997
Applicability: Offenses committed on or after effective date
Summary of Changes: SB 758 created the new criminal offense of Graffiti in Penal Code § 28.08. See the commentary to SB 758 in Section 9 Miscellaneous Provisions. Subsection (g) of 53.03 simply permits as part of deferred prosecution the use of class work in self-responsibility and victim empathy if such classes are available and permits voluntary restoration of the tagged property with the consent of the property owner.

Subsection (g) as added by SB 35 prohibits the use of deferred prosecution for driving, boating, or flying while intoxicated, intoxication assault, intoxication manslaughter and third offense consumption of alcohol by a minor or driving a motor vehicle by a minor while under the influence of alcohol. Third offense consumption of alcohol by a minor is conduct indicating a need for supervision when transferred (as required by law) to the juvenile court by a justice or municipal court. Third offense driving by a minor under the influence is delinquent conduct.

§ 53.045. Violent or Habitual Offenders.

(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:

(1) through (13) unchanged.

(14) Section 28.02, Penal Code (arson), if bodily injury or death is suffered by any person by reason of the commission of the conduct.

Commentary by Robert Dawson

Source: HB 1550
Effective Date: September 1, 1997
Applicability: Offenses committed on or after effective date
Summary of Changes: This amendment adds arson, but only if it results in death or bodily injury, to the list of offenses covered by the determinate sentence act. For an adult, arson under these circumstances is a first degree felony, so under Section 54.04, for a juvenile it would carry up to 40 years.

Chapter 54. Judicial Proceedings

§ 54.01. Detention Hearing.

(a) through (d) unchanged.

(e) At the conclusion of the hearing, the court shall order the child released from detention unless it finds that:

(1) through (3) unchanged;

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

(5) unchanged.

(f) **Unless otherwise agreed in the memorandum of understanding under Section 37.011, Education Code, a** [~~A~~] release may be conditioned on requirements reasonably necessary to insure the child's appearance at later proceedings, but the conditions of the release must be in writing and a copy furnished to the child. **In a county with a population greater than 125,000, if a child being released under this section is expelled under Section 37.007, Education Code, the release shall be conditioned on the child's attending a juvenile justice alternative education program pending a deferred prosecution or formal court disposition of the child's case.**

(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 detention hearings may be waived in accordance with the requirements of Section 51.09 [~~of this code~~]. Each subsequent detention order shall extend for no more than 10 working days**, except that in a county that does not have a certified juvenile detention facility, as described by Section 51.12(a)(3), each subsequent detention order shall extend for no more than 15 working days**.

Commentary by Robert Dawson

Source: HB 1550, SB 298, SB 133
Effective Date: September 1, 1997 for HB 1550 and SB 298. Beginning of 1997-1998 school year for SB 133.
Applicability: Offenses committed on or after effective date for HB 1550 and SB 298; None stated for SB 133.
Summary of Changes: The change in (e)(4) made by HB 1550 merely conforms the detention criteria in this section with those in Section 53.02 as amended in 1995.

The change in (f) made by SB 133 requires that the release of a child who has been expelled must be on condition of attending a Juvenile Justice Alternative Education Program if the county has one. A similar change was made to section 53.02 which authorizes administrative release.

The change made in (h) by SB 298 lengthens the period of detention authorized by a second or subsequent detention order from 10 to 15 working days, but only for counties that do not have certified juvenile detention facilities. This is intended to ease the burden of travel to and from distant sites where a child may be detained in cases in which subsequent detention hearings are not waived.

§ 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 **a** [~~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.

Commentary by Robert Dawson

Source: HB 1230
Effective Date: September 1, 1997
Applicability: Offenses committed on or after effective date
Summary of Changes: This change was made to make it clear that children who are taken into custody for a status offense may be detained in an adult facility if the requirements of 51.12 are met

but like any other status offender may be detained only for 24 hours excluding weekends and holidays.

§ 54.021. Justice or Municipal Court Truancy.

(a) and (b) unchanged.

(c) On a finding that a person has engaged in conduct described by Section 51.03(b)(2) **or conduct that violates Section 25.094, Education Code**, 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 has engaged in truant conduct **described in Section 51.03(b)(2) or conduct that violates Section 25.094, Education Code** [~~and that the conduct is of a recurrent nature~~], the court has jurisdiction to enter an order that includes one or more of the following provisions requiring that:

(1) unchanged;

(2) the person attend a special program that the court determines to be in the best interests of the person, including**:**

(A) an alcohol and drug abuse program;

(B) rehabilitation;

(C) counseling, including self-improvement counseling;

(D) training in self-esteem and leadership;

(E) work and job skills training;

(F) training in parenting, including parental responsibility;

(G) training in manners;

(H) training in violence avoidance;

(I) sensitivity training; and

(J) training in advocacy and mentoring;

(3) through (7) unchanged.

(e) unchanged.

(f) A school attendance officer may refer a person alleged to have engaged in conduct described in Section 51.03(b)(2) of this code to **a** [~~the~~] justice court in the **county** [~~precinct~~] where the person resides or [~~in the precinct~~] where the person's school is located **or to a municipal court of the municipality where the person resides or where the person'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.

Commentary by Jim Bethke

Source: HB 1606

Effective Date: September 1, 1997

Applicability: Offenses committed on or after effective date

Summary of Changes: This section pertains to truancy proceedings conducted in justice or municipal court after transfer from the juvenile court and has been amended to add failure to attend school prosecutions under section 25.094, Education Code and render them subject to the special procedures authorized by this section.

Subsection (d) also has been amended to eliminate the former requirement that the truant conduct be of "a recurrent nature" (which was not defined and hence unclear) before the specific sanctions of subsection (d) could be imposed. In addition, this section adds nine special programs that a court may order after finding a person violated this section. The new programs are: 1) rehabilitation; 2) counseling, including self-improvement counseling; 3) training in self-esteem and leadership; 4) work and job skills training; 5) training in parenting, including parental responsibility; 6) training in manners; 7) training in violence avoidance; 8) sensitivity training; and 9) training in advocacy and mentoring.

This section was amended in 1995 to permit the transfer of truancy cases to the municipal court in addition to justice courts, but subsection (f) called for the referral of cases only to justice courts. Subsection (f) now gives a school attendance officer the option of referring an alleged truant to either a justice court or a municipal court.

Subsection (f) also provides that venue for the justice court is *in the county* where the person resides or where the person's school is located and is not tied to the precinct of where the court is located or where the person resides. Additionally, venue resides in municipal court of the municipality where the person resides or where the school of alleged truant is located.

§ 54.022. Justice or Municipal Court: Certain Misdemeanors.

(a) through (d) unchanged.

(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. **The summons must include a warning that the failure of the parent, managing conservator, or guardian to appear may be punishable as a Class C misdemeanor.**

(f) unchanged.

(g) **A person commits an offense if the person is a parent, managing conservator, or guardian who fails to attend a hearing under this section after receiving an order under Subsection (e). An offense under this subsection is a Class C misdemeanor.**

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

Commentary by Jim Bethke

Source: HB 115
Effective Date: September 1, 1997
Applicability: Court orders entered on or after effective date
Summary of Changes: The amendments made to this section conform to the new article 45.331, Code of Criminal Procedure, which requires the issuance of a summons to secure the appearance of parent, guardian or managing conservator at proceedings in the justice or municipal court involving a defendant younger than 17 years of age.

Subsection (e) requires the summons to include a warning that the failure of the parent, managing conservator or guardian to appear in response to a summons may be punishable as a Class C misdemeanor.

Subsection (g) makes it a Class C misdemeanor offense for a parent, managing conservator or guardian to not attend a hearing under this section after being summoned pursuant to subsection (e).

§ 54.03. Adjudication Hearing.

(a) through (h) unchanged.

(i) In order to preserve for appellate or collateral review the failure of the court to provide the child the explanation required by Subsection (b), the attorney for the child must comply with Rule 52(a), Texas Rules of Appellate Procedure, before testimony begins or, if the adjudication is uncontested, before the child pleads to the petition or agrees to a stipulation of evidence.

(j) When the state and the child agree to the disposition of the case, in whole or in part, the prosecuting attorney shall inform the court of the agreement between the state and the child. The court shall inform the child that the court is not required to accept the agreement. The court may delay a decision on whether to accept the agreement until after reviewing a report filed under Section 54.04(b). If the court decides not to accept the agreement, the court shall inform the child of the court's decision and give the child an opportunity to withdraw the plea or stipulation of evidence. If the court rejects the agreement, no document, testimony, or other evidence placed before the court that relates to the rejected agreement may be considered by the court in a subsequent hearing in the case. A statement made by the child before the court's rejection of the agreement to a person writing a report to be filed under Section 54.04(b) may not be admitted into evidence in a subsequent hearing in the case. If the court accepts the agreement, the court shall make a disposition in accordance with the terms of the agreement between the state and the child.

Commentary by Robert Dawson

Source: HB 1550
Effective Date: September 1, 1997
Applicability: Offenses committed on or after effective date
Summary of Changes: The change in (i) is intended to change case law that regards a failure properly to admonish under (b) as fundamental error not requiring a contemporaneous objection in the trial court for appellate preservation. The reference to Rule 52 is to the Texas Rule of Appellate Procedure requiring a trial objection to preserve error for appellate review. When the revised Rules go into effect September 1, 1997, the reference to Rule 52 will become a reference to Rule 33.1. No change is intended in the rule applied by most Courts of Appeal that 54.03(b) error is not subject to a harmless error analysis.

The addition of (j) is intended to provide the juvenile respondent with safeguards in the context of plea bargaining. The rule in criminal cases, based on Code of Criminal Procedure art. 26.13, is that if the trial judge refuses to follow the plea bargain, he or she must give the defendant the opportunity to withdraw the plea. Subsection (j) enacts that rule for juvenile cases. The juvenile court judge still retains discretion to refusal to honor a plea bargain, but must permit the juvenile to withdraw his plea or stipulation in that event. That is only fair.

§ 54.04. Disposition Hearing.

(a) through (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) and (B) unchanged; [~~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;

(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 term of:

(A) through (C) unchanged;

(4) unchanged; or

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

(e) through (o) unchanged.

(p) Except as provided by Subsection (i), a court that places a child on probation under Subsection (d)(1) for conduct described by Section 54.0405(b) and punishable as a felony shall specify a minimum probation period of two years.

Commentary by Robert Dawson

Source: HB 1550, SB 1232
Effective Date: September 1, 1997
Applicability: Offenses committed on or after effective date
Summary of Changes: The change made in (d) by HB 1550 strikes the references to TYC boot camp facilities that were enacted in 1995. The legislature failed to appropriate funds for TYC boot camps, so no such camps exist and the statutory reference to them in (d) has proved to be misleading.

The addition of (p) by SB 1232 is part of the sex offender treatment bill. It requires a minimum of two years' probation for a child adjudicated for a sex offense against a child, subject to the overall limit that probation cannot extend beyond the child's 18th birthday.

§ 54.0405. Child Placed on Probation for Conduct Constituting Sexual Offense.

(a) If a court or jury makes a disposition under Section 54.04 in which a child described by Subsection (b) is placed on probation and the court determines that the victim of the offense was a child as defined by Section 22.011(c), Penal Code, the court may require as a condition of probation that the child:

(1) attend psychological counseling sessions for sex offenders as provided by Subsection (e); and

(2) submit to a polygraph examination as provided by Subsection (f) for purposes of evaluating the child's treatment progress.

(b) This section applies to a child placed on probation for conduct constituting an offense:

(1) under Section 21.08, 21.11, 22.011, 22.021, or 25.02, Penal Code;

(2) under Section 20.04(a)(4), Penal Code, if the child engaged in the conduct with the intent to violate or abuse the victim sexually; or

(3) under Section 30.02, Penal Code, punishable under Subsection (d) of that section, if the child engaged in the conduct with the intent to commit a felony listed in Subdivision (1) or (2) of this subsection.

(c) Psychological counseling required as a condition of probation under Subsection (a) must be with an individual or organization that:

(1) provides sex offender treatment or counseling;

(2) is specified by the local juvenile probation department supervising the child; and

(3) meets minimum standards of counseling established by the local juvenile probation department.

(d) A polygraph examination required as a condition of probation under Subsection (a) must be administered by an individual who is:

(1) specified by the local juvenile probation department supervising the child; and

(2) licensed as a polygraph examiner under the Polygraph Examiners Act (Article 4413(29cc), Vernon's Texas Civil Statutes).

(e) A local juvenile probation department that specifies a sex offender treatment provider

under Subsection (c) to provide counseling to a child shall:

(1) establish with the cooperation of the treatment provider the date, time, and place of the first counseling session between the child and the treatment provider;

(2) notify the child and the treatment provider, not later than the 21st day after the date the order making the disposition placing the child on probation under Section 54.04 becomes final, of the date, time, and place of the first counseling session between the child and the treatment provider; and

(3) require the treatment provider to notify the department immediately if the child fails to attend any scheduled counseling session.

(f) A local juvenile probation department that specifies a polygraph examiner under Subsection (d) to administer a polygraph examination to a child shall arrange for a polygraph examination to be administered to the child:

(1) not later than the 60th day after the date the child attends the first counseling session established under Subsection (e); and

(2) after the initial polygraph examination, as required by Subdivision (1), on the request of the treatment provider specified under Subsection (c).

(g) A court that requires as a condition of probation that a child attend psychological counseling under Subsection (a) may order the parent or guardian of the child to:

(1) attend four sessions of instruction with an individual or organization specified by the court relating to:

(A) sexual offenses;

(B) family communication skills;

(C) sex offender treatment;

(D) victims' rights;

(E) parental supervision; and

(F) appropriate sexual behavior; and

(2) during the period the child attends psychological counseling, participate in monthly treatment groups conducted by the child's treatment provider relating to the child's psychological counseling.

(h) A court that orders a parent or guardian of a child to attend instructional sessions and participate in treatment groups under Subsection (g) shall require:

(1) the individual or organization specified by the court under Subsection (g) to notify the court immediately if the parent or guardian fails to attend any scheduled instructional session; and

(2) the child's treatment provider specified under Subsection (c) to notify the court immediately if the parent or guardian fails to attend a session in which the parent or guardian is required to participate in a scheduled treatment group.

(i) A court that requires as a condition of probation that a child attend psychological counseling under Subsection (a) may, before the date the probation period ends, extend the probation for any additional period necessary to complete the required counseling as determined by the treatment provider, except that the probation may not be extended to a date after the date of the child's 18th birthday.

Commentary by Robert Dawson

Source: HB 1232
Effective Date: September 1, 1997
Applicability: Offenses committed on or after effective date
Summary of Changes: Although the features of this sex offender treatment program are specified in this section as through the program were mandatory, it is not mandatory. Subsection (a) provides that "the court may require as a condition of probation...." Since this particular treatment program is not mandatory, it also is not mandatory that a court require all the features of this particular program. In other words, a juvenile court could make up its own sex offender treatment program and impose it, instead of the Section 54.0405 program, as a condition of probation.

The two major features of this particular sex offender treatment program are counseling with an outside counselor and regular polygraph examinations. The offenses covered are indecent exposure, indecency with a child, sexual assault, aggravated sexual assault, prohibited sexual conduct (formerly incest), aggravated kidnapping with intent to violate or abuse the victim sexually, and burglary of a habitation committed with the intent to commit any felony covered by this section. However, these offenses are covered only if the victim is a child, that is, was under the age of 17 at the time of the offense.

There are self-incrimination issues in the use of a polygraph examination in connection with sex offender counseling, but resolution of them will depend entirely upon the factual context in which the matter is presented so they would not benefit from discussion here. There will also be difficult delegation of authority issues for a juvenile court that attempts to use this provision because the court will desire to give broad discretion to the sex

offender counselor so as to avoid micro-involvement by the court in the details of the therapy.

Subsection (g) authorizes the court to order a parent or guardian to attend special counseling sessions and to participate with the child in some of the child's sessions. Although the statute does not so provide, the juvenile court must give a parent or guardian notice and hearing opportunity before placing such a person under an enforceable court order.

Section 54.04(g) was also amended by SB 1232 to mandate a minimum probation term of two years for a child placed on probation for a felony violation of an offense covered under this section. The two year minimum appear to apply whether the particular sex counseling program described by this section is used or not, but it is subject to the requirement that all juvenile court probation orders automatically expire upon the child's 18th birthday.

SB 1232 also amended the TYC statute to authorize, but not require, a similar treatment program for children released on parole from TYC. See Section 6 Selected TYC Provisions.

§ 54.042. License Suspension.

(a) **[SB 35, SB 758]** A juvenile court, in a disposition hearing under Section 54.04 of this code, shall:

(1) 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 if the court finds that the child has engaged in conduct that violates a law of this state enumerated in Section **521.342(a), Transportation Code** [~~24(a-1), Chapter 173, Acts of the 47th Legislature, Regular Session, 1941 (Article 6687b, Vernon's Texas Civil Statutes)~~]; or

(2) notify the Department of Public Safety of the adjudication, if the court finds that the child has engaged in conduct that violates a law of this state enumerated in Section **521.372(a), Transportation Code** [~~24B(b), Chapter 173, Acts of the 47th Legislature, Regular Session, 1941 (Article 6687b, Vernon's Texas Civil Statutes)~~].

(b) **[SB 758] A juvenile court, in a disposition hearing under Section 54.04, 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, if the court finds that the child has engaged in conduct that violates Section 28.08, Penal Code.**

(c) [SB 758] The order under Subsection (a)(1) [~~of this section~~] shall specify a period of suspension or denial that is until the child reaches the age of 19 or for a period of 365 days, whichever is longer.

(d) [SB 758] The order under Subsection (b) shall specify a period of suspension or denial that is:

(1) for a period not to exceed 365 days; or

(2) if the court finds the child has been previously adjudicated as having engaged in conduct violating Section 28.08, Penal Code, until the child reaches the age of 19 or for a period not to exceed 365 days, whichever is longer.

(e) [SB 758] [~~(c)~~] A child whose driver's license or permit has been suspended or denied pursuant to this section may, if the child is otherwise eligible for, and fulfils the requirements for issuance of, a provisional driver's license or permit under Chapter **521, Transportation Code** [~~173, Acts of the 47th Legislature, Regular Session, 1941, as amended (Article 6687b, Vernon's Texas Civil Statutes)~~], apply for and receive an occupational license in accordance with the provisions of **Subchapter L of that chapter** [~~Section 23A, Chapter 173, Acts of the 47th Legislature, Regular Session, 1941, as amended (Article 6687b, Vernon's Texas Civil Statutes)~~].

(f) [~~(d)~~] **[SB 758]** 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 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 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~~].

(f) [SB 35] If a child is adjudicated for conduct that violates Section 49.04, 49.07, or 49.08, Penal Code, and if any conduct on which that adjudication is based is a ground for a driver's license suspension under Chapter 524 or 724, Transportation Code, each of the suspensions shall be imposed. The court imposing a driver's license suspension under this section shall credit a period of suspension imposed under Chapter 524 or 724, Transportation Code, toward the period of suspension required under this section, except that if the child was previously adjudicated for conduct that violates Section 49.04, 49.07, or 49.08, Penal Code, credit may not be given.

(g) [~~(e)~~] **[SB 758]** 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 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

Source: SB 35, SB 758
Effective Date: September 1, 1997
Applicability: Offenses committed on or after effective date
Summary of Changes: The amendments in (a)(1) and (2) merely change the statutory references from Civil Statutes to Transportation Code to reflect the enactment of that Code in 1995. The same is true of the changes to subsection (e).

Subsection (b) as amended by SB 758 authorizes, but does not require, the juvenile court to order the DPS to suspend a license of a child who has been adjudicated for Graffiti under Penal Code § 28.08. [See Section 9 Miscellaneous Provisions for a discussion of that offense.] Subsection (d) specifies the permissible duration of such a suspension. Is the juvenile court required to order DPS to suspend the license for 365 days for the first offense? Subsection (d) suggests not, because it provides that the court shall specify a "period not to exceed 365 days" thereby suggesting that the 365 days is the maximum period of suspension, not the only period of suspension. Of course, since the juvenile court is not required to suspend the license at all for Graffiti, it may under subsection (f) [SB 758] order DPS to suspend the license for a period to be determined by the court but not to exceed 12 months.

Subsection (f) [SB 35] addresses the issue of cumulation of suspensions resulting from overlapping statutory provisions. The Penal Code references are to DWI, Intoxication Assault and Intoxication Manslaughter. The Transportation Code references are to administrative suspension for failure to pass a text for intoxication (Chapter 524) and administrative suspension for refusing to take a text for intoxication under the implied consent law (Chapter 724). This section provides that the periods of suspension imposed administratively by those provisions--60 days and one year respectively--must be credited toward the suspensions imposed upon first adjudication for any of the three Penal Code Offenses in juvenile court.

§ 54.044. Community Service.

(a) through (h) unchanged.

(i) In a disposition hearing under Section 54.04 in which the court finds that a child engaged in conduct violating Section 521.453, Transportation Code, the court, in addition to any other order authorized under this title and if the court is located in a municipality or county that has established a community service program, may order the child to perform eight hours of community service as a condition of probation under Section 54.04(d) unless the child is shown to have previously engaged in conduct violating Section 521.453, Transportation Code, in which case the court may order the child to perform 12 hours of community service.

Commentary by Robert Dawson

Source: HB 677
Effective Date: September 1, 1997
Applicability: Offenses committed on or after effective date
Summary of Changes: Section 521.453 criminalizes the sale, manufacture, distribution or possession of a fictitious license or certificate. This Family Code amendment authorizes, but does not require, the juvenile court to order eight hours of community service for a first adjudication and 12 hours for a subsequent adjudication of this offense. Subsection (a) already mandates community service for virtually every child placed on probation, which may not exceed 500 hours.

§ 54.046. Conditions of Probation for Damaging Property with Graffiti. [SB 758]

(a) If a juvenile court places on probation under Section 54.04(d) a child adjudicated as having engaged in conduct in violation of Section 28.08, Penal Code, in addition to other conditions of probation, the court may, with consent of the owner of the property, order the child as a condition of probation to restore the property by removing or painting over any markings made by the child on the property.

(b) In addition to a condition imposed under Subsection (a), the court may require the child as a condition of probation to attend a class with instruction in self-responsibility and

empathy for a victim of an offense conducted by a local juvenile probation department.

Commentary by Neil Nichols

Source: SB 758
Effective Date: September 1, 1997
Applicability: Offenses committed on or after effective date
Summary of Changes: In addition to the amendment of Sec. 54.042 authorizing the juvenile court to order suspension or denial of issuance of a youth's driver's license when the youth is adjudicated for the new Graffiti offense, Penal Code Sec. 28.08, this section is added authorizing the court to impose additional conditions of probation for the offense. With the consent of the owner of the damaged property, the court may order the child to remove or paint over the graffiti and to receive instruction on self-responsibility and victim empathy conducted by the juvenile probation department. This new section reinforces child-parent restitution programs that are currently authorized in Sec. 54.041(b).

Similar provisions were added to Section 53.03 dealing with Deferred Prosecution. See Section 9 Miscellaneous Provisions for an analysis of the Graffiti statute.

§ 54.046. Alcohol-Related Offense. [SB 35]

If the court or jury finds at an adjudication hearing for a child that the child engaged in conduct indicating a need for supervision or delinquent conduct that violates the alcohol-related offenses in Section 106.02, 106.025, 106.04, 106.05, or 106.07, Alcoholic Beverage Code, or Section 49.02, Penal Code, the court shall, subject to a finding under Section 54.04(c), order, in addition to any other order authorized by this title, that, in the manner provided by Section 106.071(d), Alcoholic Beverage Code:

(1) the child perform community service; and

(2) the child's driver's license or permit be suspended or that the child be denied issuance of a driver's license or permit.

Commentary by Robert Dawson

Source: SB 35
Effective Date: September 1, 1997
Applicability: Offenses committed on or after effective date

Summary of Changes: This new section requires the juvenile court to order community service and suspension or denial of a license or permit upon adjudication for an enumerated alcohol-related offense. The offenses covered are purchase of alcohol by a minor, attempt to purchase alcohol by a minor, consumption of alcohol by a minor, possession of alcohol by a minor, and misrepresentation of age by a minor. The punishment provisions for each of those Alcoholic Beverage Code offenses is set out by Section 106.071 of the Code.

That section provides punishment as a Class C misdemeanor and a case would therefore be filed initially in municipal or justice court. Those courts are permitted to transfer any such case for presentation to the juvenile court as conduct indicating a need for supervision under Family Code § 51.03(b)(1). If the juvenile has two prior justice or municipal court convictions for any Class C misdemeanors, the municipal or justice court must transfer the third offense to the juvenile court as conduct indicating a need for supervision. The reference in this section to "delinquent conduct" is misleading since for a juvenile these offenses can only be conduct indicating a need for supervision.

Alcoholic Beverage Code § 106.071(d), as referenced by this section, requires the juvenile court to impose eight to 12 hours community service for first violation of an offense covered by this section and 20 to 40 hours for a subsequent violation. This is mandatory. Section 106.071(e) requires that all such community service ordered "must be related to education about or prevention of misuse of alcohol." Picking up trash in the park doesn't cut it.

Section 106.071(d) also requires the juvenile court to order DPS to suspend or deny a license or permit for 30 days for the first violation of an offense covered by this section, 60 days for a second violation and 180 days for a third or subsequent violation.

For purpose of counting prior offenses, a juvenile adjudication, a criminal conviction or a criminal deferred adjudication counts. However, a prior juvenile deferred prosecution would not count. Under Family Code § 53.03(g), deferred prosecution is prohibited for third offense consumption of alcohol by a minor.

Note that this section does not deal with the new offense of driving by a minor while under the influence.

See Section 2 Alcohol Violations by Minors for the balance of these provisions.

§ 54.08. Public Access to Court Hearings.

(a) Except as provided by **this section** [~~Subsection (b)~~], the court shall open 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**, or the person's family,** from personally attending a hearing under this title relating to the conduct by the child unless the victim **or member of the victim's family** is to testify in the hearing or any subsequent hearing relating to the conduct and the court determines that the victim's **or family member's** testimony would be materially affected if the victim **or member of the victim's family** hears other testimony at trial.

(c) If a child is under the age of 14 at the time of the hearing, the court shall close the hearing to the public unless the court finds that the interests of the child or the interests of the public would be better served by opening the hearing to the public.

(d) In this section, "family" has the meaning assigned by Section 71.003.

Commentary by Robert Dawson

Source: HB 1550
Effective Date: September 1, 1997
Applicability: Hearings begun on or after effective date
Summary of Changes: This section makes two changes in prior law. First, it expands the scope of people who have a right to be at the hearing from "victim" to include the victim's "family member." "Family" is broadly defined by reference to the Protective Orders Chapter of the Family Code [Section 71.01(b)(3) recodified in 1997 as 71.003] to mean (1) consanguinity (one is a descendant of the other or they share a common ancestor), (2) affinity (they are married to each other or the spouse of one is related by consanguinity to the other), (3) former spouses of each other, (4) individuals who are biological parents of the same child, and (5) a foster child and foster parent.

"Victim" is not defined but, drawing of its definition in Section 57.001 of the Rights of Victims Chapter of Title 3, should be broadly understood to mean a person who as a result of the delinquent conduct or conduct indicating a need for supervision of a child suffers pecuniary loss or personal injury or harm." The definition of "victim" in Section 57.001 is restricted to a victim of delinquent conduct because of the administrative burden placed on the system of dealing with victims under Chapter 57; there is no reason for such a restriction in this section since no comparable burden is imposed on the system by providing a victim access to the hearing, so there should be no artificial restriction to include only delinquent conduct of the natural meaning of the phrase "victim of the conduct of the child."

If the victim or member of the victim's family will be called as a witness in the hearing or in subsequent hearings in the case and that testimony would be "materially affected" if the prospective witness hears other testimony at trial, then the juvenile court is empowered to exclude the victim or family member from the hearing.

The second change was to provide guidance, but not commands, to juvenile courts regarding when the hearing should be closed and when it should be open. If the juvenile respondent is under 14 years of age at the time of the hearing, this section provides that the hearing must be closed unless the juvenile court makes a finding that "the interests of the child or the interests of the public would be better served by opening the hearing to the public." If the juvenile respondent is 14 or older, the hearing is presumptively open to the public unless the juvenile court in its discretion determines that "good cause" exists for closing the hearing. The juvenile court has total discretion in every juvenile case to open or close the hearing. This section states that principle and provides guidance on how the court should exercise that discretion.

§ 54.10. Hearings Before Referee.

(a) unchanged.

(b) At the conclusion of the hearing, the referee shall transmit written findings and recommendations to the juvenile court judge. The juvenile court 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** [~~In the same case of a detention hearing as authorized by Section 54.01 of this code, the failure of the juvenile court to act within 24 hours~~] results in release of the child by operation of law and a recommendation that the child be released operates to secure his immediate release subject to the power of the juvenile court judge to modify or reject that recommendation.

Commentary by Robert Dawson

Source: HB 1550
Effective Date: September 1, 1997

Applicability: Offenses committed on or after effective date

Summary of Changes: This amendment increases the time a judge has to approve or disapprove of the referee's findings and recommendations from 24 hours to the conclusion of the next working day after receipt of the recommendations. The referee is required to transmit those findings and recommendations "at the conclusion of the hearing." Failure to act by the end of the next working day results in automatic release of the child from detention if the child is detained, but does not affect the validity of the referee's findings and recommendations or the ability of the juvenile court judge to approve them albeit belatedly.

Chapter 55. Proceedings Concerning Children With Mental Illness or Mental Retardation

§ 55.03. Child with Mental Retardation.

(a) If a child is 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~~], the court shall order a determination of mental retardation and an interdisciplinary team recommendation 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 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, 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.~~]

(b) through (h) unchanged.

Commentary by Robert Dawson

Source: HB 1550
Effective Date: September 1, 1997
Applicability: Offenses committed on or after effective date

Summary of Changes: The deleted language stated mental retardation commitment standards when mental retardation was a bar to juvenile court proceedings. As such, it stated a standard more onerous than the commitment standards established by the Health and Safety Code. In 1995, mental retardation commitments were scaled back to be available in juvenile courts only following a determination of unfitness to proceed or a determination of not responsible because of mental retardation. Therefore, the special standards no longer have a role to play in the commitment process, are confusing, and should be deleted.

Chapter 56. Appeal

§ 56.01. Right To Appeal.

(a) unchanged.

(b) The requirements governing an appeal are as in civil cases generally. **When an appeal is sought by filing a notice of appeal, security for costs of appeal, or an affidavit of inability to pay the costs of appeal, and the filing is made in a timely fashion after the date the disposition order is signed, the appeal must include the juvenile court adjudication and all rulings contributing to that adjudication. An appeal of the adjudication may be sought notwithstanding that the adjudication order was signed more than 30 days before the date the notice of appeal, security for costs of appeal, or affidavit of inability to pay the costs of appeal was filed. A motion for new trial seeking to vacate an adjudication is timely if the motion is filed not later than the 30th day after the date on which the disposition order is signed.**

Commentary by Robert Dawson

Source: HB 1550
Effective Date: September 1, 1997
Applicability: Offenses committed on or after effective date

Summary of Changes: The amendment to subsection (b) in intended to overrule opinions of Courts of Appeal holding that when a disposition order is signed more than 30 days after an adjudication order is signed, there must be separate steps initiating an appeal--one from the adjudication and one from the disposition--for the appeal to include adjudication issues. This rules requires the juvenile to initiate an appeal following adjudication if there is any chance the disposition will be delayed

for more than 30 days, and this must be done without an essential piece of information--what disposition will be ordered.

This amendment provides that timely initiation of an appeal following disposition also includes adjudication issues.

Assuming Rule 25.1 of the revised Texas Rules of Appellate Procedure goes into effect September 1, 1997 in its proposed form, perfecting an appeal in a civil case, including a juvenile case, will become easier. Under the revised Rules, only a written notice of appeal filed in the trial court, with service on all trial parties and a copy to the Court of Appeals, is required to perfect an appeal in any juvenile case, whether the appeal is being taken in a fiduciary capacity or not.

Chapter 57. Rights of Victims

§ 57.001. Definitions.

In this chapter:

(1) and (2) unchanged.

(3) "Victim" means a person who **as the result of**[~~:~~]

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

[~~(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 Robert Dawson

Source: SB 170

Effective Date: September 1, 1997

Applicability: Proceedings initiated on or after effective date

Summary of Changes: This amendment expands the definition of "victim," and hence the obligations of the system for victim notification and assistance, to include anyone adversely affected by the delinquent conduct of the child. Victims rights are no longer dependent upon commission of an enumerated offense. Note, however, that a "victim" of conduct indicating a need for supervision (such as theft under $50 or offensive or provocative assault) is not covered, only a victim of delinquent conduct.

Compare to the narrower definition of "victim" applicable in criminal prosecutions by virtue of Code of Criminal Procedure art. 56.01(3).

Chapter 58. Records; Juvenile Justice Information System.

Subchapter A. Records

§ 58.001. Collection of Records of Children.

(a) and (b) unchanged.

(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 during the 90 days following successful completion of the program** or **while the child is** on informal disposition under Section 52.03. **Except as provided by Subsection (f), after the date the child completes an informal disposition under Section 52.03 or after the 90th day after** [~~On successful completion by~~] the **date the** child **successfully completes** [~~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.

(d) If information relating to a child is contained in a document that also contains information relating to an adult and a law enforcement agency is required to destroy all information relating to the child under this section, the agency shall alter the document so that the information relating to the child is destroyed and the information relating to the adult is preserved.

(e) The deletion of a computer entry constitutes destruction of the information contained in the entry.

(f) A law enforcement agency may maintain information relating to a child after the 90th day after the date the child successfully completes a first offender program under Section 52.031 only to determine the child's eligibility to participate in a first offender program.

Commentary by Robert Dawson

Source: HB 1550
Effective Date: September 1, 1997
Applicability: Offenses committed on or after effective date
Summary of Changes: The amendment in (c) resolves a conflict in prior law, which required destruction of records following successful completion of a first offender program but which also required a referral of the child to the juvenile court based upon the original conduct should he or she be taken into custody within 90 days of successful completion of the program. Of course a successful referral requires the very information ordered to be destroyed. This amendment delays the destruction requirement until 90 days following successful completion have occurred so as to avoid this conflict.

New subsection (d) provides that when information concerns more than one person, such as a juvenile and an adult, and the law requires destruction of information in the juvenile's case, only the information that identifies the juvenile is to be destroyed so as not to interfere with the proper handling of the information respecting an adult. What was implicit in prior law is now made explicit.

New subsection (e) provides that deleting a computer entry constitutes destruction of information even though a computer expert might be able under some circumstances to retrieve the deleted data.

New subsection (f) permits law enforcement to maintain one record after 90 days following successful completion of a first offender program for the sole purpose of determining future eligibility of the juvenile for a first offender program. The purpose of this provision is to prevent double-dipping into first offender programs.

§ 58.002. Photographs and Fingerprints of Children.

(a) and (b) unchanged.

(c) This section does not prohibit a law enforcement officer from photographing or fingerprinting a child who is not in custody if the child's parent or guardian voluntarily consents in writing to the photographing or fingerprinting of the child.

(d) This section does not apply to fingerprints that are required or authorized to be submitted or obtained for an application for a driver's license or personal identification card.

Commentary by Robert Dawson

Source: HB 1550
Effective Date: September 1, 1997
Applicability: Offenses committed on or after effective date
Summary of Changes: New subsection (c) is intended to speak to the issue when can fingerprints and photographs be taken of a child outside the context of taking the child into custody for a Class B misdemeanor or above. As originally drafted, it would have permitted law enforcement to take photographs or fingerprints of juveniles not in custody with the voluntary consent of the juvenile. As amended by the Senate, written consent of a parent or guardian is required.

New subsection (d) carries forward a 1995 amendment to Family Code § 51.15, which was replaced by this section in 1995. No substantive change in the law is intended.

§ 58.003. Sealing of Records.

(a) through (l) unchanged.

(m) A record created or maintained under Article 6252-13c.1, Revised Statutes, may not be sealed under this section if the person who is the subject of the record has a continuing obligation to register under that article.

Commentary by Robert Dawson

Source: HB 1550
Effective Date: September 1, 1997
Applicability: Offenses committed on or after effective date
Summary of Changes: New subsection (m) is intended to resolve a conflict between the continuing obligation to register under the sex offender registration act and a juvenile's right to sealing of records created as a result of Title 3 proceedings. Under the sex offender registration statute, an adjudicated sex offender must register whenever he moves his residence anytime for a period of at least 10 years following exist from the juvenile

justice system. Yet, he might be eligible to seek sealing of all juvenile records once he becomes 21 years old. If he were permitted then to seal sex offender registration records, his obligation to re-register would still exist for any future residential re-locations. This cycle of sealing and re-registration might continue until the 10-year post-exist period expires, which clearly is silly and wasteful.

The solution to this quandary enacted in subsection (m) is to exempt sex offender registration records from the reach of a sealing order but only for so long as there is a continuing obligation to registration under the sex offender law. All other juvenile-generated records can be sealed when eligibility accrues, and once the obligation to re-register expires, a new sealing order could be issued to reach sex offender registration records.

The reference to Article 6252-13c.1, Revised Statutes is to the sex offender registration law prior to its re-location in 1997 to become Chapter 61 of the Code of Criminal Procedure.

See Section 4 Sex Offender Legislation for a complete discussion of amendments in that law that affect juveniles.

§ 58.004. Compilation of Information Pertaining to a Criminal Combination
[repealed]

Commentary by Robert Dawson

Source: HB 1550
Effective Date: September 1, 1997
Applicability: Offenses committed on or after effective date
Summary of Changes: This section--dealing with so-called "gang books"--never became law, because it was repealed before birth in 1995 by the enactment of HB 644. In 1997, HB 1550 simply repealed this dead language to avoid confusion. HB 644 is codified as Chapter 60 of the Code of Criminal Procedure.

Amendments made this session to Chapter 60 are discussed in Section 9 Miscellaneous Provisions.

§ 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 **or to a record or file relating to a child that is maintained by a municipal or justice court**.

(b) unchanged.

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child **may not be disclosed to the public and** shall **be**:

(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**, except as provided by Subchapter B**.

(d) through (f) unchanged.

(g) For the purpose of offering a record as evidence in the punishment phase of a criminal proceeding, a prosecuting attorney may obtain the record of a defendant's adjudication that is admissible under Section 3(a), Article 37.07, Code of Criminal Procedure, by submitting a request for the record to the juvenile court that made the adjudication. If a court receives a request from a prosecuting attorney under this subsection, the court shall, if the court possesses the requested record of adjudication, certify and provide the prosecuting attorney with a copy of the record.

Commentary by Robert Dawson

Source: HB 1550
Effective Date: September 1, 1997
Applicability: Offenses committed on or after effective date
Summary of Changes: The amendment to (a) restates current law--that records of criminal cases against juveniles in municipal or justice courts are not protected by juvenile confidentiality provisions. Those records are public, criminal records just like all the other criminal records in those courts. Given the volume of cases in many urban municipal courts, it would be extraordinarily difficult for clerks to separate juvenile records from those of adults. Once the criminal case is terminated, juveniles enjoy much more expansive rights of expunction or sealing in municipal or justice court cases than are enjoyed by adults.

The amendment in subsection (c) is intended to repair a 1995 inadvertent failure to provide explicitly in this section, as in prior law, that law enforcement records relating to juveniles are confidential records. The amendment is intended to overrule an opinion of the Texas Attorney General stating this section does not provide for confidentiality of law enforcement juvenile records. See Open Records Decision No. 644 (5/29/96).

New subsection (g) carries forward a provision in prior law that inadvertently was not transferred to this section during the 1995 Juvenile Justice Code revision. It gives a criminal court prosecutor the right to find out whether a criminal defendant has a juvenile adjudication that is admissible in the penalty phase of the criminal case. It obligates the juvenile court to disclose any such adjudication as may exist.

Subchapter B. Juvenile Justice Information System

§ 58.104. Types of Information Collected.

(a) through (e) unchanged.

(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 **the department determines, according to the department's records,** are eligible for sealing under Section 58.003(a).

Commentary by Robert Dawson

Source: HB 1550
Effective Date: September 1, 1997
Applicability: Offenses committed on or after effective date
Summary of Changes: This section obligates the DPS to search its computer records and advise the appropriate juvenile court when a juvenile's record is eligible for sealing. It is the initial step in a process of automatic sealing of juvenile records. The amendment makes clear the obvious--that DPS can make the eligibility determination only on the basis of the records in its possession. There may be facts outside those records that make an apparently-eligible record ineligible for sealing, but DPS is not required to search for such information.

§ 58.106. Confidentiality.

(a) Except as **otherwise** provided by **this section** [~~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) **to** 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.

(c) The department may, if necessary to protect the welfare of the community, disseminate to the public the following information relating to a juvenile offender who has escaped from the custody of the Texas Youth Commission:

(1) the juvenile offender's name, including other names by which the juvenile offender is known;

(2) the juvenile offender's physical description, including sex, weight, height, race, ethnicity, eye color, hair color, scars, marks, and tattoos;

(3) a photograph of the juvenile offender; and

(4) the conduct for which the juvenile offender was committed to the Texas Youth Commission, including the level and degree of the alleged offense.

Commentary by Neil Nichols

Source: SB 625
Effective Date: September 1, 1997
Applicability: Information in the possession of DPS on, before or after effective date
Summary of Changes: In response to legitimate concerns about the increasingly dangerous population of youth who are committed to the TYC, two provisions are added to authorize the release of information to the public when youth escape from the TYC's custody. This amendment authorizes the Department of Public Safety, if necessary for public safety, to release an escaped youth's name, physical description, photograph and committing offense from the juvenile justice information system. Another provision is added, Human Resources Code Sec. 61.093(c), that authorizes the TYC to release the same information plus any other information "that reveals dangerous propensities of the child or expedites the apprehension of the child." See Section 6 Selected TYC Provisions.

Chapter 59. Progressive Sanctions Guidelines

§ 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 **or prosecuting attorney** may**,** or the juvenile court may, in a disposition hearing under Section 54.04 **or a modification hearing under Section 54.05**, 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 **conduct described in Section 51.03(b)(6) or** a Class A or B misdemeanor, the sanction level is one;

(2) for **conduct indicating a need for supervision under Section 51.03(b)(6) or** 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) through (5) unchanged;

(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, **or for a capital 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 **of the first degree involving the use of a deadly weapon or causing serious bodily injury, for an aggravated controlled substance felony, or for a capital felony, if the petition has been approved by a grand jury under Section 53.045, or if a petition to transfer the child to criminal court has been filed under Section 54.02**, the sanction level is seven.

(b) **Subject to Subsection (e), if the child subsequently is found to have engaged in delinquent conduct in an adjudication hearing under Section 54.03 or a hearing to modify a disposition under Section 54.05 on two separate occasions and each involves a violation of a penal law of a classification that is less 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 six.** [~~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**:**

(1) the child's previously assigned sanction level is five and the child has not been adjudicated for delinquent conduct;

(2) the child's previously assigned sanction level is six, unless the subsequent violation is of a provision listed under Section 53.045(a) and the petition has been approved by a grand jury under Section 53.045; or

(3) the child's previously assigned sanction level is seven.

(d) unchanged.

(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 **regardless of whether a progressive sanctions program has been adopted by 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**, in accordance with Section 54.05, request the extension of** [~~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~~].

(g) Before the court assigns the child a sanction level that involves the revocation of the child's probation and the commitment of the child to the Texas Youth Commission, the court shall hold a hearing to modify the disposition as required by Section 54.05.

Commentary by Lisa Capers

Source: HB 1550, SB 133

Effective Date: September 1, 1997 for HB 1550; beginning of 1997-1998 school year for SB 133
Applicability: Offenses committed on or after effective date for HB 1550. None stated for SB 133.
Summary of Changes: Section 59.003(a) authorizes a prosecutor, in addition to the probation department and juvenile court, to place a child on various sanction levels since the prosecutor has the same ability as the probation department to place a child on levels one and two. The subsection also authorizes the juvenile court to assign a sanction level at a modification hearing, in addition to a disposition hearing, since the judge has similar disposition powers in both types of hearings.

The section moves the conduct indicating a need for supervision offense of being expelled from school for violating the standards of student conduct (i.e., a serious or persistent misbehavior expulsion from the school district AEP) from a level one to a level two of progressive sanctions. This permits the juvenile court to take more serious action than a supervisory caution without deviating from the guidelines.

As Section 59.003(a)(6) and (7) were originally written, it is unclear exactly which offenses are level seven offenses, and certification to criminal court is not currently an option within the sanction guidelines. Further, the statute does not make clear that a capital felony is only Level 7 if the proper grand jury approval of the petition under the determinate sentencing act is accomplished. This section provides that either a sanction level six or seven may be assigned for a felony of the first degree involving the use of a deadly weapon or causing serious bodily injury, for an aggravated controlled substance felony, or for a capital felony. For a sanction level seven to be assigned, a petition seeking a determinate sentence must be approved by the grand jury or a petition seeking certification and transfer to criminal court must be filed.

Section 59.003(b) has been problematic for practitioners to implement because it currently gives no guidance as to how this parental notification must occur (i.e., does it have to occur in a formal court proceeding or can the parent simply call or write the judge). Additionally, this section has the potential to skew the data by increasing sanction levels for arguably inappropriate reasons. While Section 59.003(b) is problematic, it is the only way under the current statute to increase a sanction level for a child who commits a less serious offense on one or more occasions. This section deletes Section 59.003(b) as written and adds a provision authorizing a sanction level increase for subsequent offenses of lesser severity if the child commits more than one less serious offense.

Section 59.003(c) is changed to address two primary problems related to the rule that authorizes a sanction level increase for the commission of offenses of the same or greater severity. The first occurs when a child repeatedly commits CINS offenses and reaches level five. As currently written, a CINS offender at level five who commits another CINS offense is supposed to be bumped to Level 6. Legally, this cannot be done because a CINS offender cannot be committed to the Texas Youth Commission under any circumstances. The section is changed to show that a child may not be bumped to level six unless the child has been adjudicated delinquent.

Secondly, a child at level six may be bumped to level seven if a subsequent offense is of greater or equal severity than the previous offense. However, a child cannot legally receive a determinate sentence (level seven) unless the offense committed was one of the authorized offenses in Section 53.045. Thus, there may be frequent situations where the guidelines say to increase the sanction to level seven, but a determinate sentence is not legally possible. The section is now changed to disallow a child's level to be increased to level seven unless it is for an offense listed in Section 53.045, and the determinate sentence petition has been approved by the grand jury. However, implicitly a child at level six may still be bumped to level seven for any subsequent felony offense of equal or greater severity if the child is certified to criminal court.

In conformance with the legislative intent, Section 59.003(e) is changed clearly to require all juvenile courts and probation departments to report deviations from the progressive sanctions guidelines, regardless of whether the juvenile board has formally adopted the progressive sanctions model in their jurisdiction.

Section 59.003(f) is problematic because it appears to authorize a modification of probation without a modification hearing under Section 54.05. A modification of probation by the probation department, absent a formal hearing where the child and the child's attorney have the opportunity to challenge the modification, probably will not withstand appellate review. The section is changed to make clear that any modifications must be done through a formal modification hearing or an agreed modification order, and not merely by the probation department's desire for an extension.

Section 59.003(g) is added to make clear that a modification hearing must be held under Section 54.05 before the revocation of the child's proba-

tion and commitment of the child to the Texas Youth Commission.

§ 59.004. Sanction Level One.

(a) For a child at sanction level one, the juvenile court or probation department may:

(1) through (4) unchanged;

(5) require the child or the child's parents or guardians to participate in a program for services under Section 264.302 **if a program under Section 264.302 is available to the child or the child's parents or guardians**;

Commentary by Lisa Capers

Source: HB 1550
Effective Date: September 1, 1997
Applicability: Offenses committed on or after effective date
Summary of Changes: The change in subsection (a)(5) relates to the STAR (Services To At-Risk Youth) program operated by TDPRS. The current wording implies that the probation department or court can indeed require the child and parents to participate in services. This is incorrect because whether the child and family actually receive services and the type of services are decisions made totally by TDPRS' contract STAR providers. Currently, there are insufficient resources available for TDPRS to allow all eligible children to receive services in the STAR program. Because of this, the STAR providers choose those children and families most amenable to services. The section is changed to reflect that the child participates in the STAR program only if one is available.

§ 59.005. Sanction Level Two.

(a) For a child at sanction level two, the juvenile court**, the prosecuting attorney,** or the probation department may**, as provided by Section 53.03**:

(1) place the child on **deferred prosecution or** court-ordered [~~or informal~~] probation for not less than three months or more than six months;

(2) through (4) unchanged.

(5) require the child or the child's parents or guardians to participate in a program for services under Section 264.302**, if a program under Section 264.302 is available to the child or the child's parents or guardians**;

Commentary by Lisa Capers

Source: HB 1550
Effective Date: September 1, 1997
Applicability: Offenses committed on or after effective date
Summary of Changes: Section 59.005 details the sanctions at level two. The section adds the prosecuting attorney to the list of parties that may put a child on deferred prosecution. The section also strikes the reference to "informal probation" and replaces it with "deferred prosecution." Informal probation was another term for intake conference and adjustment, which is now called deferred prosecution, and was deleted to allow the language of the statute to reflect the current terminology.

Section 59.005(a)(5), relating to the STAR program, was changed in line with Section 59.004(a)(5) above.

§ 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 **or more than 12 months**;

Commentary by Lisa Capers

Source: HB 1550
Effective Date: September 1, 1997
Applicability: Offenses committed on or after effective date
Summary of Changes: Section 59.006 adds an upper range of 12 months for a level three court-ordered probation. Previously, the section specified the time frame for court-ordered regular probation as a period of not less than 6 months, but with no upper range specified. Levels four and five specify upper ranges, which help practitioners easily determine compliance with a level. The law allows this time frame to be modified and extended if necessary.

§ 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 **or more than 12 months** in a highly intensive and regimented program that emphasizes discipline, physical fitness, social responsibility, and productive work;

Commentary by Lisa Capers

Source: HB 1550

Effective Date: September 1, 1997
Applicability: Offenses committed on or after effective date
Summary of Changes: Section 59.007 also adds an upper range of 12 months for intensive supervision probation (ISP) to sanction level four. The minimum time remains 3 months for the initial ISP placement, and the 6 to 12 month range of regular probation that follows ISP remains unchanged.

§ 59.008. Sanction Level Five.

(a) For a child at sanction level five, the juvenile court may:

(1) **as a condition of probation, place** [~~require~~] the child [~~to participate as a condition of probation~~] for not less than six months or more than **12** [~~nine~~] months in a **post-adjudication secure correctional facility** [~~highly structured residential program that emphasizes discipline, accountability, physical fitness, and productive work~~];

Commentary by Lisa Capers

Source: HB 1550
Effective Date: September 1, 1997
Applicability: Offenses committed on or after effective date
Summary of Changes: Section 59.008 changes sanction level five from a time range of 6-9 months for a residential placement to 6-12 months since many residential placements are typically for 12 months or more.

The section was also changed to apply to residential placements in secure post-adjudication juvenile correctional facilities only (boot camps, intermediate sanctions units, etc.). Level five no longer encompasses placement in a non-secure residential treatment facility. Residential placements primarily for treatment or a lack of parental support in the home may now be used at all levels without counting them as deviations.

§ 59.009. Sanction Level Six.

(a) For a child at sanction level six, the juvenile court **may** [~~shall~~] commit the child to the custody of the Texas Youth Commission. The commission may:

Commentary by Lisa Capers

Source: HB 1550
Effective Date: September 1, 1997
Applicability: Offenses committed on or after effective date
Summary of Changes: Language in sanction level six is changed from "shall" to "may" to accurately reflect that the assignment of level six sanctions is not mandatory. The change brings the section in line with levels one to five and was needed to lessen confusion.

§ 59.010. Sanction Level Seven.

(a) For a child at sanction level seven, the juvenile court **may certify and transfer the child under Section 54.02 or** [~~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:

Commentary by Lisa Capers

Source: HB 1550
Effective Date: September 1, 1997
Applicability: Offenses committed on or after effective date
Summary of Changes: Sanction level seven is recommended for the three most serious categories of offenses: 1) a first degree felony involving a deadly weapon or causing serious bodily injury; 2) an aggravated controlled substance felony; and 3) a capital felony. The Progressive Sanctions Guidelines do not address certification as an adult in level seven or elsewhere in the model. This oversight has caused each certification to be reported as a deviation. Sanction level seven is now changed to include certification to criminal court, as well as a determinate sentence.

Additionally, level seven changes "shall" to "may" for the same reasons that level six was changed above.

Code of Criminal Procedure Art. 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, **and subject to Subsection (h),** 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.

(b) through (g) unchanged.

(h) Evidence of an adjudication for conduct that is a violation of a penal law of the grade of misdemeanor punishable by confinement in jail is admissible only if the conduct upon which the adjudication is based occurred on or after January 1, 1996.

Commentary by Robert Dawson

Source: HB 1550
Effective Date: September 1, 1997
Applicability: Offenses committed on or after effective date
Summary of Changes: New subsection (h) provides that a misdemeanor juvenile adjudication is admissible only if it is based on conduct that occurred on or after January 1, 1996, the effective date of HB 327 that placed misdemeanor adjudications within the scope of art. 37.07.

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2. Alcohol Violations by Minors

Alcoholic Beverage Code § 106.02. Purchase of Alcohol by a Minor

(a) **[HB 3441]** A minor commits an offense if **the minor** [~~he~~] purchases an alcoholic beverage. **A minor does not commit an offense if the minor purchases an alcoholic beverage under the immediate supervision of a commissioned peace officer engaged in enforcing the provisions of this code.**

(b) **[SB 35] An offense under this section is punishable as provided by Section 106.071** [~~Except as provided in Subsection (c) of this section, a violation of this section is a misdemeanor punishable by a fine of not less than $25 nor more than $200.~~]

[~~(c) If a person has been previously convicted of a violation of this section, or of Section 106.04 or 106.05 of this code, a violation is a misdemeanor punishable by a fine of not less than $250 nor more than $1,000~~].

Commentary by Robert Dawson

Source: HB 3441, SB 35
Effective Date: September 1, 1997
Applicability: Offenses committed on or after effective date
Summary of Changes: The amendment made by HB 3441 in (a) is intended to legalize the practice of using minors to purchase alcohol in enforcement of the liquor laws.

The amendment in (b) by SB 35 reflects the consolidation of punishment provisions for most alcohol violations by minors into Section 106.071.

Alcoholic Beverage Code § 106.025. Attempt to Purchase Alcohol by a Minor

(a) A minor commits an offense if, with specific intent to commit an offense under Section 106.02 of this code, the minor does an act amounting to more than mere preparation that tends but fails to effect the commission of the offense intended.

(b) **An offense under this section is punishable as provided by Section 106.071** [~~Except as provided by Subsection (c) of this section, a violation of this section is a misdemeanor punishable by a fine of not less than $25 nor more than $200.~~]

[~~(c) If a person has previously been convicted of a violation of this section, a violation is a misdemeanor punishable by a fine of not less than $250 nor more than $1,000~~].

Commentary by Robert Dawson

Source: SB 35
Effective Date: September 1, 1997
Applicability: Offenses committed on or after effective date
Summary of Changes: The punishment provisions for most alcohol violations by minors were consolidated and moved to Section 106.071.

Alcoholic Beverage Code § 106.03. Sale to Minors

(a) and (b) unchanged.

(c) **An offense under this section is a Class A misdemeanor.** [~~Except as provided in Subsection (d) of this section, a violation of this section is a misdemeanor punishable by a fine of not less than $100 nor more than $500, by confinement in jail for not more than one year, or by both.~~]

[~~(d) If a person has been previously convicted of a violation of this section or Section 101.63 of this code, a violation is a misdemeanor punishable by a fine of not less than $500 nor more than $1,000, by confinement in jail for not more than one year, or by both~~].

Commentary by Robert Dawson

Source: SB 35
Effective Date: September 1, 1997
Applicability: Offenses committed on or after effective date
Summary of Changes: The amendment in (c) simplifies the penalty structure to provide that any violation of this section is a Class A misdemeanor.

Alcoholic Beverage Code § 106.04. Consumption of Alcohol by a Minor

(a) **A** [~~Except as provided in Subsection (b) of this section, a~~] minor commits an offense if he consumes an alcoholic beverage.

(b) **It is an affirmative defense to prosecution under this section that the alcoholic beverage was consumed** [~~A minor may consume an alcoholic beverage if he is~~] in the visible presence of **the minor's** [~~an~~] adult parent, guardian, or spouse.

(c) **An offense under this section is punishable as provided by Section 106.071.**

(d) A minor who commits an offense under this section and who has been previously convicted twice or more of offenses under this section is not eligible for deferred adjudication. For the purposes of this subsection:

(1) an adjudication under Title 3, Family Code, that the minor engaged in conduct described by this section is considered a conviction of an offense under this section; and

(2) an order of deferred adjudication for an offense alleged under this section is considered a conviction of an offense under this section [~~Except as provided in Subsection (d) of this section, a violation of this section is a misdemeanor punishable by a fine of not less than $25 nor more than $200.~~]

[~~(d) If a person has been previously convicted of a violation of this section, or of Section 106.02 or 106.05 of this code, a violation is a misdemeanor punishable by a fine of not less than $500 nor more than $1,000~~].

Commentary by Robert Dawson

Source: SB 35
Effective Date: September 1, 1997
Applicability: Offenses committed on or after effective date
Summary of Changes: The amendment in (b) clarifies the provision making it lawful for a minor to consume alcohol in the presence of a parent by explicitly making it an affirmative defense to do so. Under Penal Code § 2.04 the burden is upon the defendant to prove by a preponderance of the evidence those facts necessary to sustain an affirmative defense.

The amendment in (c) references to the consolidated punishment section rather than providing for punishment in this section.

Subsection (d) makes a minor with two prior convictions, adjudications or deferred adjudications for consumption of alcohol ineligible for deferred adjudication on the third offense.

Alcoholic Beverage Code § 106.041. Driving Under the Influence of Alcohol by Minor

(a) A minor commits an offense if the minor operates a motor vehicle in a public place while having any detectable amount of alcohol in the minor's system.

(b) Except as provided by Subsection (c), an offense under this section is a Class C misdemeanor.

(c) If it is shown at the trial of the defendant that the defendant is a minor who is not a child and who has been previously convicted at least twice of an offense under this section, the offense is punishable by:

(1) a fine of not less than $500 or more than $2,000;

(2) confinement in jail for a term not to exceed 180 days; or

(3) both the fine and confinement.

(d) In addition to any fine and any order issued under Section 106.115, the court shall order a minor convicted of an offense under this section to perform community service for:

(1) not less than 20 or more than 40 hours, if the minor has not been previously convicted of an offense under this section; or

(2) not less than 40 or more than 60 hours, if the minor has been previously convicted of an offense under this section.

(e) Community service ordered under this section must be related to education about or prevention of misuse of alcohol.

(f) A minor who commits an offense under this section and who has been previously convicted twice or more of offenses under this section is not eligible for deferred adjudication.

(g) An offense under this section is not a lesser included offense under Section 49.04, Penal Code.

(h) For the purpose of determining whether a minor has been previously convicted of an offense under this section:

(1) an adjudication under Title 3, Family Code, that the minor engaged in conduct described by this section is considered a conviction under this section; and

(2) an order of deferred adjudication for an offense alleged under this section is considered a conviction of an offense under this section.

(i) A peace officer who is charging a minor with committing an offense under this section is not required to take the minor into custody but may issue a citation to the minor that contains written notice of the time and place the minor must appear before a magistrate, the name and address of the minor charged, and the offense charged.

(j) In this section:

(1) "Child" has the meaning assigned by Section 51.02, Family Code.

(2) "Motor vehicle" has the meaning assigned by Section 32.34(a), Penal Code.

(3) "Public place" has the meaning assigned by Section 1.07, Penal Code.

Commentary by Robert Dawson

Source: SB 35
Effective Date: September 1, 1997
Applicability: Offenses committed on or after effective date
Summary of Changes: This section creates the new criminal offense of Driving Under the Influence of Alcohol by a Minor. A minor commits this offense if he or she operates a motor vehicle in a public place while having any detectable amount of alcohol in the minor's system. Thus, the elements are identical to driving while intoxicated, except that any detectable amount of alcohol, not necessarily rising to the level of intoxication, suffices to establish culpability.

Subsection (b) states that commission of this offense is a Class C misdemeanor for the first and second convictions. Under (d), for third offense, if the defendant is a minor but not a child (if the offense was committed before the defendant's 21st birthday but on or after the person's 17th birthday) the offense becomes a Class B misdemeanor, except this offense carries a minimum fine of $500. For third offense, if the minor is a child (offense committed on or after 10th birthday but before 17th birthday), then under Family Code § 51.03(a)(5) it is delinquent conduct.

Subsection (d) provides in addition to a fine, attendance at an alcohol awareness court, and driver's license suspension or denial, the municipal, justice or juvenile court must require 20 to 40 hours community service for the first offense and 40 to 60 hours for subsequent offenses.

Subsection (e) requires that community service must be related to education about and prevention of misuse of alcohol.

Subsection (f) provides that a minor with two prior convictions under this section is not eligible for deferred adjudication in criminal court for the Class B misdemeanor.

Subsection (g) provides that driving under the influence of alcohol by a minor is not a lesser included offense of driving while intoxicated. This was done out of concern that the availability of this Class C offense as a verdict option would make it too easy for jurors to avoid the more difficult question of whether guilt has been shown for the more serious offense of driving while intoxicated. For similar reasons, Penal Code § 49.02(d) has provided for several years that public intoxication is not a lesser included offense of driving while intoxicated.

Subsection (h) defines a prior conviction broadly to include a juvenile court adjudication and a criminal court order of deferred adjudication.

Subsection (i) permits a police officer to issue a notice to appear in lieu of taking the minor into custody for this offense. This is the same authority an officer has to issue a warning notice under Family Code § 52.01(c) to juveniles or under Family Code § 52.027(g) to issue a field release citation to a juvenile for any Class C misdemeanor except public intoxication.

Alcoholic Beverage Code § 106.05. Possession of Alcohol by a Minor

(a) Except as provided in Subsection (b) of this section, a minor commits an offense if he possesses an alcoholic beverage.

(b) **[HB 3441]** A minor may possess an alcoholic beverage:

(1) while in the course and scope of **the minor's** [~~his~~] employment if **the minor** [~~he~~] is an employee of a licensee or permittee and the employment is not prohibited by this code; [~~or~~]

(2) if **the minor** [~~he~~] is in the presence of an adult parent, guardian, or spouse, or other adult to whom **the minor** [~~he~~] has been committed by a court**; or**

(3) if the minor is under the immediate supervision of a commissioned peace officer engaged in enforcing the provisions of this code.

(b) **[SB 35]** A minor may possess an alcoholic beverage:

(1) while in the course and scope of his employment if he is an employee of a licensee or permittee and the employment is not prohibited by this code; or

(2) if he is in the **visible** presence of **his** [~~an~~] adult parent, guardian, or spouse, or other adult to whom he has been committed by a court.

(c) **An offense under this section is punishable as provided by Section 106.071** [~~Except as provided in Subsection (d) of this section, a violation of this section is a misdemeanor punishable by a fine of not less than $25 nor more than $200.~~]

[~~(d) If a person has been previously convicted of a violation of this section, or of Section 106.02 or 106.04 of this code, a violation is a misdemeanor punishable by a fine of not less than $500 nor more than $1,000~~].

Commentary by Robert Dawson

Source: HB 3441, SB 35
Effective Date: September 1, 1997
Applicability: Offenses committed on or after effective date

Summary of Changes: The amendment in (b) by HB 3441 is intended to legalize the practice of using minors to purchase alcohol in the enforcement of the liquor laws.

The amendment by SB 35 in (b)(1) requires that a minor in possession of alcohol must be in the visible presence of a parent for the conduct to be lawful. That amendment makes this provision congruent with Section 106.04(b) defining the affirmative defense of parental presence for consumption of alcohol by a minor.

The amendment in (c) moves the penalty provision to the consolidated punishment section.

Alcoholic Beverage Code § 106.06. Purchase of Alcohol for a Minor; Furnishing Alcohol to a Minor

(a) and (b) unchanged.

(c) **An offense under this section is a Class B misdemeanor** [~~A violation of this section is a misdemeanor punishable by a fine of not less than $100 nor more than $500~~].

Commentary by Robert Dawson

Source: SB 35
Effective Date: September 1, 1997
Applicability: Offenses committed on or after effective date
Summary of Changes: This statute can be violated by a minor or an adult. For either the punishment has been increased from a fineable misdemeanor to a Class B misdemeanor.

Alcoholic Beverage Code § 106.07. Misrepresentation of Age by a Minor

(a) unchanged.

(b) **An offense under this section is punishable as provided by Section 106.071** [~~Except as provided in Subsection (c) of this section, a violation of this section is a misdemeanor punishable by a fine of not less than $25 nor more than $200.~~]

[~~(c) If a person has been previously convicted of a violation of this section, a violation is a misdemeanor punishable by a fine of not less than $100 nor more than $500~~].

Commentary by Robert Dawson

Source: SB 35
Effective Date: September 1, 1997
Applicability: Offenses committed on or after effective date
Summary of Changes: The individual punishment provision is repealed in favor of a reference to the consolidated punishment section.

Alcoholic Beverage Code § 106.071. Punishment for Alcohol-Related Offense by Minor

(a) This section applies to an offense under Section 106.02, 106.025, 106.04, 106.05, or 106.07.

(b) Except as provided by Subsection (c), an offense to which this section applies is a Class C misdemeanor.

(c) If it is shown at the trial of the defendant that the defendant is a minor who is not a child and who has been previously convicted at least twice of an offense to which this section applies, the offense is punishable by:

(1) a fine of not less than $250 or more than $2,000;

(2) confinement in jail for a term not to exceed 180 days; or

(3) both the fine and confinement.

(d) In addition to any fine and any order issued under Section 106.115:

(1) the court shall order a minor convicted of an offense to which this section applies to perform community service for:

(A) not less than eight or more than 12 hours, if the minor has not been previously convicted of an offense to which this section applies; or

(B) not less than 20 or more than 40 hours, if the minor has been previously convicted once of an offense to which this section applies; and

(2) the court shall order the Department of Public Safety to suspend the minor's driver's license or permit or, if the minor does not have a driver's license or permit, to deny the issuance of a driver's license or permit for:

(A) 30 days, if the minor has not been previously convicted of an offense to which this section applies;

(B) 60 days, if the minor has been previously convicted once of an offense to which this section applies; or

(C) 180 days, if the minor has been previously convicted twice or more of an offense to which this section applies.

(e) Community service ordered under this section must be related to education about or prevention of misuse of alcohol.

(f) For the purpose of determining whether a minor has been previously convicted of an offense to which this section applies:

(1) an adjudication under Title 3, Family Code, that the minor engaged in conduct described by this section is considered a conviction under this section; and

(2) an order of deferred adjudication for an offense alleged under this section is considered a conviction of an offense under this section.

(g) In this section, "child" has the meaning assigned by Section 51.02, Family Code.

Commentary by Robert Dawson

Source: SB 35
Effective Date: September 1, 1997
Applicability: Offenses committed on or after effective date
Summary of Changes: This consolidated punishment section applies to purchase of alcohol by a minor, attempt to purchase alcohol by a minor, consumption of alcohol by a minor, possession of alcohol by a minor and misrepresentation of age by a minor; however, it does not apply to driving under the influence of alcohol by minor, which carries its own punishment terms.

Subsection (b) makes first or second offense a Class C misdemeanor. Subsection (c) provides that two prior convictions or adjudications of a covered offense jumps the penalty category to a Class B, but with a minimum fine of $250.

Subsection (d) requires the municipal, justice or juvenile court to order eight to 12 hours community service if the minor has no prior covered conviction or adjudication, and 20 to 40 hours if the minor has a prior conviction or adjudication for a covered offense. Subsection (e) requires that the community service must be related to alcohol awareness.

In addition, subsection (d) requires the municipal, justice or juvenile court to order the DPS to suspend or deny a license or permit for 30 days for the first offense, 60 days for the second offense, and 180 days for the third or subsequent offense.

Subsection (f) defines a conviction to include a juvenile adjudication and a criminal court order deferring adjudication.

Alcoholic Beverage Code § 106.115. Attendance at Alcohol Awareness Course; License Suspension

(a) **On** [~~Except as provided by Subsection (b),~~] [~~on~~] conviction of a minor of an offense under Section 106.02, **106.025,** 106.04, **106.041,** [~~or~~] 106.05**, or 106.07**, the court, in addition to assessing a fine as provided by those sections, shall require **a** [~~the~~] defendant **who has not been previously convicted of an offense under one of those sections** to attend an alcohol awareness course approved by the Texas Commission on Alcohol and Drug Abuse. **If the defendant has been previously convicted once or more of an offense under one or more of those sections, the court may require the defendant to attend the alcohol awareness course.** If the defendant is younger than 18 years of age, the court may require the parent or guardian of the defendant to attend the course with the defendant.

(b) [~~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 require the defendant to perform eight to 12 hours of community service instead of participating in an alcohol awareness course.~~]

[~~(c)~~] When requested, an alcohol awareness course may be taught in languages other than English.

(c) [~~(d)~~] 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. **For good cause the court may extend this period by not more than 90 days.** 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.

(d) [~~(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.

(e) [~~(f)~~] The Department of Public Safety shall send notice of the suspension or prohibition order issued under Subsection **(d)** [~~(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

Source: SB 35
Effective Date: September 1, 1997

Applicability: Offenses committed on or after effective date

Summary of Changes: The amendment in subsection (a) adds attempted purchase of alcohol by a minor, driving under the influence of alcohol by a minor, and misrepresentation of age by a minor to purchase of alcohol, consumption of alcohol by a minor, and possession of alcohol by a minor as offenses covered by this section. For first conviction or adjudication of a covered offense, the municipal, justice or juvenile court (upon transfer by municipal or justice court) must require attendance at an alcohol awareness course that has been approved by TCADA. If the juvenile has a prior conviction or adjudication, the court has discretion to require attendance at the alcohol course.

Subsection (b), which required the substitution of 12 hours of community service in rural areas without an alcohol awareness course, is repealed. The Attorney General in Opinion Attorney General No. DM-427 (12/19/96) opined that this requirement violated the Texas Constitution's provisions on due process and equal protection because it authorized a punishment (community service) in only some areas of the state.

The amendment in (c) provides some local flexibility in the deadline for completion of the alcohol awareness course, which is necessary since the course is now required everywhere in the state.

Under (d), if the minor does not complete the alcohol awareness course within the time frame, the municipal, justice or juvenile court is required to order DPS to suspend or deny a driver's license or permit for a period to be set by the court but not to exceed six months.

Alcoholic Beverage Code § 106.116. Reports of Court to Commission

Unless the clerk is otherwise required to include the information in a report submitted under Section 101.09, the clerk of a court, including a justice court, municipal court, or juvenile court, shall furnish to the commission on request a notice of a conviction of an offense under this chapter or an adjudication under Title 3, Family Code, for conduct that constitutes an offense under this chapter. The report must be in the form prescribed by the commission.

Commentary by Robert Dawson

Source: SB 35

Effective Date: September 1, 1997

Applicability: Offenses committed on or after effective date

Summary of Changes: This section requires a municipal, justice or juvenile court to send to the Texas Alcoholic Beverage Commission, at its request, notice of conviction or adjudication for a violation of the Alcoholic Beverage Code by a minor. With respect to the juvenile court, this section overrides any confidentiality and local record maintenance requirements of the Family Code. With respect to municipal and justice courts, this section imposes a new reporting requirement. Section 101.09 requires clerks of district and county courts to furnish the commission with conviction information concerning Alcoholic Beverage Code violations.

Alcoholic Beverage Code § 106.117. Report of Court to Department of Public Safety

(a) Each court, including a justice court, municipal court, or juvenile court, shall furnish to the Department of Public Safety a notice of each:

(1) adjudication under Title 3, Family Code, for conduct that constitutes an offense under this chapter;

(2) conviction of an offense under this chapter;

(3) order of deferred adjudication for an offense alleged under this chapter; and

(4) acquittal of an offense under Section 106.041.

(b) The notice must be in a form prescribed by the Department of Public Safety and must contain the driver's license number of the defendant, if the defendant holds a driver's license.

(c) The Department of Public Safety shall maintain appropriate records of information in the notices and shall provide the information to law enforcement agencies and courts as necessary to enable those agencies and courts to carry out their official duties. The information is admissible in any action in which it is relevant. A person who holds a driver's license having the same number that is contained in a record maintained under this section is presumed to be the person to whom the record relates. The presumption may be rebutted only by evidence presented under oath.

(d) The information maintained under this section is confidential and may not be disclosed except as provided by this section. A provision of Chapter 58, Family Code, or other law limiting collection or reporting of information on a juvenile or other minor or requiring destruction of that information does not apply to information reported and maintained under this section.

Commentary by Robert Dawson

Source: SB 35
Effective Date: September 1, 1997
Applicability: Offenses committed on or after effective date
Summary of Changes: This section imposes new reporting requirements on municipal, justice and juvenile courts and places a new records maintenance responsibility on the DPS. All convictions or deferred adjudications of conviction in municipal and justice court for an offense in Chapter 106 are required to be reported to the DPS. These offenses are Class C misdemeanors, which are not part of the state-wide computerized criminal and juvenile history system maintained by DPS under Chapter 60 of the Code of Criminal Procedure. The same reporting requirement is imposed on juvenile courts regarding Chapter 106 violations.

An acquittal under 106.041 (driving under the influence of alcohol by a minor) is required to be reported because of the effect it has on driver's license suspension. See Transportation Code § 524.015.

It is important to note that there is no legislative authorization to take fingerprints and photographs of *juveniles* who are charged with Chapter 106 offenses in municipal, justice or juvenile courts. By reference to driver's license numbers in (c), the legislature apparently contemplated that this database will be maintained based on names, dates of birth, and driver's license numbers, if any.

It is also important to note that unlike the Juvenile Justice Information System, only convictions (and their equivalent) or, in the case of driving under the influence, acquittals, are to be reported. An arrest or charge is not to be reported unless and until it results in court action that triggers the reporting requirement.

Finally, it is important to note that this is not a public database, but dissemination of information from it is restricted to law enforcement agencies and courts and only to enable them to "carry out their official duties."

Subsection (d) provides that the information collecting and destruction provisions of Chapter 58 do not apply to this database. Of course, information in this database is still subject to sealing provisions of Section 58.003 and to various expunction, sealing and destruction provisions in the Code of Criminal Procedure (e.g. arts. , 45.54, 58.01) and in Alcoholic Beverage Code § 106.12.

Penal Code § 49.02. Public Intoxication

(a) and (b) unchanged.

(c) **Except as provided by Subsection (e), an** [~~An~~] offense under this section is a Class C misdemeanor.

(e) An offense under this section committed by a person younger than 21 years of age is punishable in the same manner as if the minor committed an offense to which Section 106.071, Alcoholic Beverage Code, applies.

Commentary by Robert Dawson

Source: SB 35
Effective Date: September 1, 1997
Applicability: Offenses committed on or after effective date
Summary of Changes: This amendment provides for punishment for public intoxication by a minor under the consolidated alcohol offense punishment provision of 106.071.

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

(a) Delinquent conduct is:

(1) through (3) unchanged.

(4) conduct that violates **Section 49.04, 49.05, 49.06, 49.07, or 49.08, Penal Code; or**

(5) conduct that violates Section 106.041, Alcoholic Beverage Code, relating to driving under the influence of alcohol by a minor [~~the laws of this state prohibiting driving while intoxicated or under the influence of intoxi-~~

~~cating liquor (third or subsequent offense) or driving while under the influence of any narcotic drug or of any other drug to the degree that renders the child incapable of safely driving a vehicle~~] (third or subsequent offense).

(b) Conduct indicating a need for supervision is:

(1) through (3) unchanged.

(4) [~~conduct which 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 which renders him incapable of safely driving a vehicle (first or second offense);~~]

[~~(5)~~] conduct prohibited by city ordinance or by state law involving the inhalation of the fumes or vapors of paint and other protective coatings or glue and other adhesives and the volatile chemicals itemized in Section 484.002, Health and Safety Code;

(5) [~~(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 **37.007(c)** [~~21.3011~~], Education Code; or

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

Commentary by Robert Dawson

Source: SB 35
Effective Date: September 1, 1997
Applicability: Offenses committed on or after effective date
Summary of Changes: Both HB 1550 and SB 35 make first offense DWI by a child delinquent conduct. Formerly, the first two were CINS and only the third was delinquent conduct. HB 1550 achieved this by repealing the DWI language in 51.03(a)(5) and 51.03(b)(4). SB 35 does that, but in addition in 51.03(a)(4) references the following offenses from the Penal Code: driving while intoxicated (§ 49.04), flying while intoxicated (§ 49.05), boating while intoxicated (§ 49.06), intoxication assault (§ 49.07) and intoxication manslaughter (§ 49.08). The net effect is identical, only the means of achieving that result is different.

SB 35 adds a new type of delinquent conduct: third offense driving by a minor under the influence of alcohol (Alcoholic Beverage Code § 106.041). It is a Class C misdemeanor for a minor to drive a motor vehicle in a public place with any detectable amount of alcohol in his body. Second offense is also a Class C, but 51.03(a)(5) makes the third offense delinquent conduct.

Family Code § 52.02. Release or Delivery to Court

(a) **Except as provided by Subsection (c), a** [~~A~~] person taking a child into custody, without unnecessary delay and without first taking the child to any place other than a juvenile processing office designated under Section 52.025 of this code, shall do one of the following:

(1) through (5) unchanged.

(b) unchanged.

(c) A person who takes a child into custody and who has reasonable grounds to believe that the child has been operating a motor vehicle in a public place while having any detectable amount of alcohol in the child's system may, before complying with Subsection (a):

(1) take the child to a place to obtain a specimen of the child's breath or blood as provided by Chapter 724, Transportation Code; and

(2) perform intoxilyzer processing and videotaping of the child in an adult processing office of a police department.

(d) Notwithstanding Section 51.09(a), a child taken into custody as provided by Subsection (c) may submit to the taking of a breath specimen or refuse to submit to the taking of a breath specimen without the concurrence of an attorney, but only if the request made of the child to give the specimen and the child's response to that request is videotaped. A videotape made under this subsection must be maintained until the disposition of any proceeding against the child relating to the arrest is final and be made available to an attorney representing the child during that period.

Commentary by Robert Dawson

Source: SB 35
Effective Date: September 1, 1997
Applicability: Offenses committed on or after effective date
Summary of Changes: New subsection (c) permits police to take a child in custody for driving by a minor under the influence of alcohol to a facility for blood test or an adult intoxilyzer processing office for administration of an intoxilyzer test, videotaping, or both. Once evidence is obtained in those places, police must take the child to a place required by subsection (a)

Subsection (d) permits the child to consent to taking an intoxilyzer or to refuse to take one without the concurrence of an attorney, whose concurrence would otherwise be required by section 51.09. However, the request and the child's response must be videotaped to preserve evidence as to whether the decision was made knowingly and voluntarily. When the purpose of subsection (c) is accomplished, the child must be taken to a place authorized for taking children under subsection (a). The reference in (d) to 51.09(a) should be read, in light of the amendment to that section, to be simply 51.09.

Family Code § 53.03. Deferred Prosecution

(a) Subject to **Subsections** [~~Subsection~~] (e) **and (g)**, if the preliminary investigation required by Section 53.01 of this code results in a determination that further proceedings in the case are authorized, 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 and rehabilitation of a child if:

(1) through (3) unchanged.

(b) through (f) unchanged.

(g) Prosecution may not be deferred for a child alleged to have engaged in conduct that:

(1) is an offense under Section 49.04, 49.05, 49.06, 49.07, or 49.08, Penal Code; or

(2) is a third or subsequent offense under Section 106.04 or 106.041, Alcoholic Beverage Code.

Commentary by Robert Dawson

Source: SB 35
Effective Date: September 1, 1997
Applicability: Offenses committed on or after effective date
Summary of Changes: Subsection (g) prohibits the use of deferred prosecution for driving, boating, or flying while intoxicated, intoxication assault, intoxication manslaughter and third offense consumption of alcohol by a minor or driving a motor vehicle by a minor while under the influence of alcohol. Third offense consumption of alcohol by a minor is conduct indicating a need for supervision when transferred (as required by law) to the juvenile court by a justice or municipal court. Third offense driving by a minor under the influence is delinquent conduct.

Family Code § 54.042. License Suspension

(a) A juvenile court, in a disposition hearing under Section 54.04 of this code, shall:

(1) 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 if the court finds that the child has engaged in conduct that violates a law of this state enumerated in Section **521.342(a), Transportation Code** [~~24(a-1), Chapter 173, Acts of the 47th Legislature, Regular Session, 1941 (Article 6687b, Vernon's Texas Civil Statutes)~~]; or

(2) notify the Department of Public Safety of the adjudication, if the court finds that the child has engaged in conduct that violates a law of this state enumerated in Section **521.372(a), Transportation Code** [~~24B(b), Chapter 173, Acts of the 47th Legislature, Regular Session, 1941 (Article 6687b, Vernon's Texas Civil Statutes)~~].

(b) through (e) unchanged by this bill.

(f) If a child is adjudicated for conduct that violates Section 49.04, 49.07, or 49.08, Penal Code, and if any conduct on which that adjudication is based is a ground for a driver's license suspension under Chapter 524 or 724, Transportation Code, each of the suspensions shall be imposed. The court imposing a driver's license suspension under this section shall credit a period of suspension imposed under Chapter 524 or 724, Transportation Code, toward the period of suspension required under this section, except that if the child was previously adjudicated for conduct that violates Section 49.04, 49.07, or 49.08, Penal Code, credit may not be given.

Commentary by Robert Dawson

Source: SB 35, SB 758
Effective Date: September 1, 1997
Applicability: Offenses committed on or after effective date
Summary of Changes: Subsection (f) addresses the issue of cumulation of suspensions resulting from overlapping statutory provisions. The Penal Code references are to DWI, Intoxication Assault and Intoxication Manslaughter. The Transportation Code references are to administrative suspension for failure to pass a text for intoxication (Chapter 524) and administrative suspension for refusing to take a text for intoxication under the implied consent law (Chapter 724). This section provides that the periods of suspension imposed administratively by those provisions--60 days and one year respectively--must be credited toward the

suspensions imposed upon first adjudication for any of the three Penal Code Offenses in juvenile court.

Family Code § 54.046. Alcohol Related Offense

If the court or jury finds at an adjudication hearing for a child that the child engaged in conduct indicating a need for supervision or delinquent conduct that violates the alcohol-related offenses in Section 106.02, 106.025, 106.04, 106.05, or 106.07, Alcoholic Beverage Code, or Section 49.02, Penal Code, the court shall, subject to a finding under Section 54.04(c), order, in addition to any other order authorized by this title, that, in the manner provided by Section 106.071(d), Alcoholic Beverage Code:

(1) the child perform community service; and

(2) the child's driver's license or permit be suspended or that the child be denied issuance of a driver's license or permit.

Commentary by Robert Dawson

Source: SB 35
Effective Date: September 1, 1997
Applicability: Offenses committed on or after effective date
Summary of Changes: This new section requires the juvenile court to order community service and suspension or denial of a license or permit upon adjudication for an enumerated alcohol-related offense. The offenses covered are purchase of alcohol by a minor, attempt to purchase alcohol by a minor, consumption of alcohol by a minor, possession of alcohol by a minor, and misrepresentation of age by a minor. The punishment provisions, including the lengths of license suspensions, for each of those Alcoholic Beverage Code offenses is set out by Section 106.071 of the Code.

Transportation Code § 521.145. Application by Person Under 18 Years of Age

(a) The application of an applicant under 18 years of age must be signed by:

(1) the parent or guardian who has custody of the applicant; or

(2) if the applicant has no parent or guardian:

(A) the applicant's employer; or

(B) the county judge of the county in which the applicant resides.

(b) The department shall provide the applicant and the cosigner with information concerning state laws relating to driving while intoxicated, driving by a minor with alcohol in the minor's system, and implied consent. The applicant and cosigner must acknowledge receipt of this information.

Commentary by Robert Dawson

Source: SB 35
Effective Date: September 1, 1997
Applicability: Offenses committed on or after effective date
Summary of Changes: This section deals with an application for a driver's license by a minor. The added language requires DPS to notify minors of alcohol-related offenses and provisions.

Transportation Code § 521.342. Person Under 21 Years of Age

(a) The license of a person who was under 21 years of age at the time of the offense, other than an offense classified as a misdemeanor punishable by fine only, is automatically suspended on conviction of:

(1) an offense under Section 49.04 or 49.07, Penal Code, committed as a result of the introduction of alcohol into the body;

(2) an offense under the Alcoholic Beverage Code**, other than an offense to which Section 106.071 of that code applies,** involving the manufacture, delivery, possession, transportation, or use of an alcoholic beverage;

(3) through (5) unchanged.

Commentary by Robert Dawson

Source: SB 35
Effective Date: September 1, 1997
Applicability: Offenses committed on or after effective date
Summary of Changes: This sections specifies under what circumstances conviction of an alcohol-related offense carries with it automatic license suspension when the offender is a minor. The offenses are driving while intoxicated, intoxication assault, or a violation of the Alcoholic Beverage Code other than one punishable under 106.071. Section 106.071 carries its own suspension provisions.

Legislative intent was to include the new offense of driving under the influence of alcohol by a minor within the scope of this automatic suspension provision. However, the phrase "other than

an offense classified as a misdemeanor punishable by fine only," in (a) is troubling in that respect. It could be read to include the driving under the influence offense but if it is read that way, it would defeat manifest legislative intent. Since an conviction for driving under the influence carries with it mandatory community service in addition to a fine (106.041), the troublesome phrase can be read not to encompass it, which makes this section make sense. Intent to include driving under the influence within the scope of this section is manifest by the provision in 524.022(b) specifying the length of suspensions for first and subsequent offenses of driving under the influence.

In summary, the three offenses by a minor carrying an automatic suspension or denial of a license or permit are (1) driving while intoxicated, (2) intoxication assault, and (3) driving under the influence of alcohol by a minor.

Transportation Code § 524.001. Definitions

In this chapter:

(1) **"Adult" means an individual 21 years of age or older.**

(2) "Alcohol concentration" has the meaning assigned by Section 49.01, Penal Code.

(3) [~~(2)~~] "Alcohol-related or drug-related enforcement contact" means a driver's license suspension, disqualification, or prohibition order under the laws of this state or another state resulting from:

(A) a conviction of an offense prohibiting the operation of a motor vehicle while:

(i) intoxicated;

(ii) under the influence of alcohol; or

(iii) under the influence of a controlled substance;

(B) a refusal to submit to the taking of a breath or blood specimen following an arrest for an offense prohibiting the operation of a motor vehicle while:

(i) intoxicated;

(ii) under the influence of alcohol; or

(iii) under the influence of a controlled substance; or

(C) an analysis of a breath or blood specimen showing an alcohol concentration of a level specified by Section 49.01, Penal Code, following an arrest for an offense prohibiting the operation of a motor vehicle while intoxicated.

(4) "Arrest" includes the taking into custody of a child, as defined by Section 51.02, Family Code.

(5) "Conviction" includes an adjudication under Title 3, Family Code.

(6) "Criminal charge" includes a charge that may result in a proceeding under Title 3, Family Code.

(7) "Criminal prosecution" includes a proceeding under Title 3, Family Code.

(8) [~~(3)~~] "Department" means the Department of Public Safety.

(9) [~~(4)~~] "Director" means the public safety director of the department.

(10) [~~(5)~~] "Driver's license" has the meaning assigned by Section 521.001.

(11) "Minor" means an individual under 21 years of age.

(12) [~~(6)~~] "Public place" has the meaning assigned by Section 1.07(a), Penal Code.

Commentary by Robert Dawson

Source: SB 35

Effective Date: September 1, 1997

Applicability: Offenses committed on or after effective date

Summary of Changes: Transportation Code Chapter 524 deals with administrative license suspension for flunking the breath or blood test. Changes in this definitional section provide that juvenile proceedings are to be treated similarly to criminal proceedings for administrative license suspension purposes.

Transportation Code § 524.011. Arresting Officer's Duties for Driver's License Suspension

(a) **An officer arresting a person shall comply with Subsection (b) if:**

(1) the [~~If a~~] person **is** arrested for an offense under Section 49.04, Penal Code, or an offense under Section 49.07 or 49.08 of that code involving the operation of a motor vehicle, submits to the taking of a specimen of breath or blood and an analysis of the specimen shows the person had an alcohol concentration of a level specified by Section 49.01(2)(B), Penal Code**; or**

(2) the person is a minor arrested for an offense under Section 106.041, Alcoholic Beverage Code, or Section 49.04, Penal Code, or an offense under Section 49.07 or 49.08, Penal Code, involving the operation of a motor vehicle and:

(A) the minor is not requested to submit to the taking of a specimen; or

(B) the minor submits to the taking of a specimen and an analysis of the specimen shows that the minor had an alcohol concentration of greater than .00 but less than the level specified by Section 49.01(2)(B), Penal Code.

(b) The[~~, the~~] arresting officer shall:

(1) serve or, if **a specimen is taken and** the analysis of the specimen is not returned to the arresting officer before the person is admitted to bail, released from custody, **delivered as provided by Title 3, Family Code,** or committed to jail, attempt to serve notice of driver's license suspension by personally delivering the notice to the arrested person; and

(2) send to the department not later than the fifth business day after the date of the arrest:

(A) a copy of the driver's license suspension notice; and

(B) a sworn report of information relevant to the arrest.

(c) [~~(b)~~] The report required under Subsection **(b)(2)(B)** [~~(a)(2)(B)~~] must:

(1) identify the arrested person;

(2) state the arresting officer's grounds for believing the person committed the offense;

(3) give the analysis of the specimen **if any**; and

(4) include a copy of the criminal complaint filed in the case**, if any**.

(d) [~~(c)~~] An arresting officer shall make the report on a form approved by the department and in the manner specified by the department.

(**e)** [~~(d)~~] The department shall develop a form for the notice of driver's license suspension that shall be used by all state and local law enforcement agencies.

Commentary by Robert Dawson

Source: SB 35
Effective Date: September 1, 1997
Applicability: Offenses committed on or after effective date
Summary of Changes: This section specifies the circumstances under which a law enforcement officer must report facts to DPS that enable it to move to suspend a driver's license for flunking an alcohol test.

Under (a)(1) a report to DPS must be filed if a person is arrested for driving while intoxicated, intoxication assault or intoxication manslaughter, is given a test for intoxication and scores an alcohol concentration of 0.10 or higher.

New subdivision (a)(2) requires a report to DPS if a minor is arrested for driving under the influence of alcohol, driving while intoxicated, intoxication assault by a motor vehicle or intoxication manslaughter by a motor vehicle and is not requested to take a test or takes the test and scores a detectable amount but less than 0.10.

Transportation Code § 524.012. Department's Determination for Driver's License Suspension

(a) unchanged.

(b) The department shall suspend the person's driver's license if the department determines that**:**

(1) the person had an alcohol concentration of a level specified by Section 49.01(2)(B), Penal Code, while operating a motor vehicle in a public place**; or**

(2) the person is a minor and had any detectable amount of alcohol in the minor's system while operating a motor vehicle in a public place.

(c) The department may not suspend a person's driver's license if**:**

(1) the person is an adult and the analysis of the person's breath or blood specimen determined that the person had an alcohol concentration of a level below that specified by Section 49.01(2)(B), Penal Code, at the time the specimen was taken**; or**

(2) the person is a minor and the department does not determine that the minor had any detectable amount of alcohol in the minor's system when the minor was arrested.

Commentary by Robert Dawson

Source: SB 35
Effective Date: September 1, 1997
Applicability: Offenses committed on or after effective date
Summary of Changes: The amendment to subsection (b) requires the DPS to initiate administrative license suspension proceedings if the person is a minor who had any detectable amount of alcohol in his or her system while operating a motor vehicle in a public place. Under (c) as amended, it is no defense to suspension proceedings that the minor was arrested for driving while intoxicated and scored under 0.10 on the intoxilyzer if there is evidence supporting an inference that the minor had a detectable amount of alcohol in his system.

Transportation Code § 524.015. Effect of Disposition of Criminal Charge on Driver's License Suspension

(a) unchanged.

(b) A suspension may not be imposed under this chapter on a person who is acquitted of a criminal charge under Section 49.04, 49.07, or 49.08, Penal Code, **or Section 106.041, Alcoholic Beverage Code,** arising from the occurrence that was the basis for the suspension. If a suspension was imposed before the acquittal, the department shall rescind the suspension and shall remove any reference to the suspension from the person's computerized driving record.

Commentary by Robert Dawson

Source: SB 35
Effective Date: September 1, 1997
Applicability: Offenses committed on or after effective date
Summary of Changes: The amendment in subsection (b) simply adds the offense of driving under the influence of alcohol by a minor to driving while intoxicated, intoxication assault and intoxication manslaughter as offenses for which a license cannot be administratively suspended if there is an acquittal.

Transportation Code § 524.022. Period of Suspension

(a) A period of suspension under this chapter **for an adult** is:

(1) 60 days if the person's driving record shows no alcohol-related or drug-related enforcement contact during the five years preceding the date of the person's arrest;

(2) 120 days if the person's driving record shows one or more alcohol-related or drug-related enforcement contacts, as defined by Section 524.001(2)(B) or (C), during the five years preceding the date of the person's arrest; or

(3) 180 days if the person's driving record shows one or more alcohol-related or drug-related enforcement contacts, as defined by Section 524.001(2)(A), during the five years preceding the date of the person's arrest.

(b) A period of suspension under this chapter for a minor is:

(1) 60 days if the minor has not been previously convicted of an offense under Section 106.041, Alcoholic Beverage Code, or Section 49.04, Penal Code, or an offense under Section 49.07 or 49.08, Penal Code, involving the operation of a motor vehicle;

(2) 120 days if the minor has been previously convicted once of an offense listed by Subdivision (1); or

(3) 180 days if the minor has been previously convicted twice or more of an offense listed by Subdivision (1).

(c) For the purposes of determining whether a minor has been previously convicted of an offense described by Subsection (b)(1):

(1) an adjudication under Title 3, Family Code, that the minor engaged in conduct described by Subsection (b)(1) is considered a conviction under that provision; and

(2) an order of deferred adjudication for an offense alleged under a provision described by Subsection (b)(1) is considered a conviction of an offense under that provision.

(d) A minor whose driver's license is suspended under this chapter is not eligible for an occupational license under Subchapter L, Chapter 521, for:

(1) the first 30 days of a suspension under Subsection (b)(1);

(2) the first 90 days of a suspension under Subsection (b)(2); or

(3) the entire period of a suspension under Subsection (b)(3).

Commentary by Robert Dawson

Source: SB 35
Effective Date: September 1, 1997
Applicability: Offenses committed on or after effective date
Summary of Changes: New subsection (b) establishes the same suspension periods for minors as adults. Suspension is required for driving under the influence of alcohol by a minor to the same extent as for driving while intoxicated, intoxication assault and intoxication manslaughter.

New subsection (c) provides, for minors only, that the person is not eligible to obtain an occupational license for the first 30 days for first offender, 90 days for second offender, and the entire period for a third or subsequent offender. Prior conviction includes a juvenile adjudication and a deferred adjudication.

Transportation Code § 524.023. Application of Suspension Under Other Laws

(a) If a person is convicted of an offense under **Section 106.041, Alcoholic Beverage Code, or** Section 49.04, 49.07, or 49.08, Penal Code, and if any conduct on which that conviction is based is a ground for a driver's license suspension under this chapter and **Section 106.041, Alcoholic Beverage Code,** Subchapter O, Chapter 521, or Sub-

chapter H, Chapter 522, each of the suspensions shall be imposed.

(b) The court imposing a driver's license suspension under **Section 106.041, Alcoholic Beverage Code, or** Chapter 521 or 522 as required by Subsection (a) shall credit a period of suspension imposed under this chapter toward the period of suspension required under **Section 106.041, Alcoholic Beverage Code, or** Subchapter O, Chapter 521, or Subchapter H, Chapter 522, unless the person was convicted of an offense under Article 6701l-1, Revised Statutes, as that law existed before September 1, 1994, Section 19.05(a)(2), Penal Code, as that law existed before September 1, 1994, [~~or~~] Section 49.04, 49.07, or 49.08, Penal Code, **or Section 106.041, Alcoholic Beverage Code,** before the date of the conviction on which the suspension is based, in which event credit may not be given.

Commentary by Robert Dawson

Source: SB 35
Effective Date: September 1, 1997
Applicability: Offenses committed on or after effective date
Summary of Changes: This section requires under most circumstances that the DPS must credit the period of suspension imposed under administrative license suspension toward a period of suspension imposed as a result of conviction of an alcohol-related offense.

Transportation Code § 524.035. Hearing

(a) The issues that must be proved at a hearing by a preponderance of the evidence are**:**

(1) whether:

(A) [~~(1)~~] the person had an alcohol concentration of a level specified by Section 49.01(2)(B), Penal Code, while operating a motor vehicle in a public place; **or**

(B) the person is a minor and had any detectable amount of alcohol in the minor's system while operating a motor vehicle in a public place; and

(2) **whether** reasonable suspicion to stop or probable cause to arrest the person existed.

(b) and (c) unchanged.

(d) An administrative law judge may not find in the affirmative on the issue in Subsection (a)(1) if**:**

(1) the person is an adult and the analysis of the person's breath or blood determined that the person had an alcohol concentration of a level below that specified by Section 49.01, Penal Code, at the time the specimen was taken**; or**

(2) the person is a minor and the administrative law judge does not find that the minor had any detectable amount of alcohol in the minor's system when the minor was arrested.

Commentary by Robert Dawson

Source: SB 35
Effective Date: September 1, 1997
Applicability: Offenses committed on or after effective date
Summary of Changes: The amendments made to this section simply require the administrative law judge to find that the minor had any detectable amount of alcohol in his or her system while operating a motor vehicle in a public place as a predicate to suspension under Chapter 524.

Transportation Code § 524.042. Stay of Suspension on Appeal

(a) A suspension of a driver's license under this chapter is stayed on the filing of an appeal petition only if:

(1) the person's driver's license has not been suspended as a result of an alcohol-related or drug-related enforcement contact during the five years preceding the date of the person's arrest; and

(2) the person has not been convicted during the 10 years preceding the date of the person's arrest of an offense under:

(A) through (D) unchanged.

(E) Section 106.041, Alcoholic Beverage Code.

Commentary by Robert Dawson

Source: SB 35
Effective Date: September 1, 1997
Applicability: Offenses committed on or after effective date
Summary of Changes: This amendment adds driving under the influence of alcohol by a minor to the list of prior convictions that will preclude a stay of a current suspension pending appeal.

Transportation Code § 524.043. Review; Additional Evidence

(a) through (c) unchanged.

(d) An administrative law judge may change a finding or decision as to whether the person had an alcohol concentration of a level specified in

Section 49.01, Penal Code, **or whether a minor had any detectable amount of alcohol in the minor's system** because of the additional evidence and shall file the additional evidence and any changes, new findings, or decisions with the reviewing court.

Commentary by Robert Dawson

Source: SB 35
Effective Date: September 1, 1997
Applicability: Offenses committed on or after effective date
Summary of Changes: This amendment merely adds the finding of detectable amount of alcohol to the findings that can be changed upon additional evidence.

Transportation Code § 601.340. Evidence of Financial Responsibility or Suspension of Vehicle Registration Following Suspension or Revocation of Driver's License

(a) Except as provided by Subsection (b) **or (c)**, the department shall suspend the registration of each motor vehicle registered in the name of a person if the department:

(1) under any state law, suspends or revokes the person's driver's license on receipt of a record of a conviction or a forfeiture of bail; or

(2) receives a record of a guilty plea of the person entered for an offense for which the department would be required to suspend the driver's license of a person convicted of the offense.

(b) unchanged.

(c) This section does not apply to a suspension of a driver's license for an offense under Chapter 106, Alcoholic Beverage Code, other than an offense that includes confinement as an authorized sanction.

Commentary by Robert Dawson

Source: SB 35
Effective Date: September 1, 1997
Applicability: Offenses committed on or after effective date
Summary of Changes: The exception in (b) precludes suspension of automobile registration (tags) if the person files evidence of financial responsibility. New subsection (c) excepts first or second offense driving under the influence of alcohol by a minor from the penalty of suspension of registration. Presumably, "confinement" would include third offense driving under the influence by a juvenile because it is delinquent conduct which carries with it the potential for confinement in the TYC.

Transportation Code § 724.001. Definitions
In this chapter:

(1) "Alcohol concentration" has the meaning assigned by Section 49.01, Penal Code.

(2) **"Arrest" includes the taking into custody of a child, as defined by Section 51.02, Family Code.**

(3) "Controlled substance" has the meaning assigned by Section 481.002, Health and Safety Code.

(4) "Criminal charge" includes a charge that may result in a proceeding under Title 3, Family Code.

(5) "Criminal proceeding" includes a proceeding under Title 3, Family Code.

(6) [~~(3)~~] "Dangerous drug" has the meaning assigned by Section 483.001, Health and Safety Code.

(7) [~~(4)~~] "Department" means the Department of Public Safety.

(8) [~~(5)~~] "Drug" has the meaning assigned by Section 481.002, Health and Safety Code.

(9) [~~(6)~~] "Intoxicated" has the meaning assigned by Section 49.01, Penal Code.

(10) [~~(7)~~] "License" has the meaning assigned by Section 521.001.

(11) [~~(8)~~] "Operate" means to drive or be in actual control of a motor vehicle or watercraft.

(12) [~~(9)~~] "Public place" has the meaning assigned by Section 1.07, Penal Code.

Commentary by Robert Dawson

Source: SB 35
Effective Date: September 1, 1997
Applicability: Offenses committed on or after effective date
Summary of Changes: These changes merely incorporate juvenile proceedings into the implied consent system.

Transportation Code § 724.011. Consent to Taking of Specimen

(a) If a person is arrested for an offense arising out of acts alleged to have been committed while the person was operating a motor vehicle in a public place, or a watercraft, while intoxicated, **or an offense under Section 106.041, Alcoholic Beverage Code,** the person is deemed to have consented, subject to this chapter, to submit to the taking of one or more specimens of the person's

breath or blood for analysis to determine the alcohol concentration or the presence in the person's body of a controlled substance, drug, dangerous drug, or other substance.

Commentary by Robert Dawson

Source: SB 35
Effective Date: September 1, 1997
Applicability: Offenses committed on or after effective date
Summary of Changes: This amendment adds driving under the influence of alcohol by a minor to the implied consent scheme.

Transportation Code § 724.012. Taking of Specimen

(a) One or more specimens of a person's breath or blood may be taken if the person is arrested and at the request of a peace officer having reasonable grounds to believe the person**:**

(1) while intoxicated was operating a motor vehicle in a public place, or a watercraft**; or**

(2) was in violation of Section 106.041, Alcoholic Beverage Code.

Commentary by Robert Dawson

Source: SB 35
Effective Date: September 1, 1997
Applicability: Offenses committed on or after effective date
Summary of Changes: Driving under the influence of alcohol by a minor is added to the implied consent scheme.

Transportation Code § 724.015. Information Provided by Officer Before Requesting Specimen

Before requesting a person to submit to the taking of a specimen, the officer shall inform the person orally and in writing that:

(1) if the person refuses to submit to the taking of the specimen, that refusal may be admissible in a subsequent prosecution;

(2) if the person refuses to submit to the taking of the specimen, the person's license to operate a motor vehicle will be automatically suspended, whether or not the person is subsequently prosecuted as a result of the arrest, for:

(A) not less than 90 days if the person is 21 years of age or older; or

(B) **not less than 120 days** [~~one year~~] if the person is younger than 21 years of age;

(3) if the person **is 21 years of age or older and** submits to the taking of a specimen designated by the officer and an analysis of the specimen shows the person had an alcohol concentration of a level specified by Chapter 49, Penal Code, the person's license to operate a motor vehicle will be automatically suspended for not less than 60 days, whether or not the person is subsequently prosecuted as a result of the arrest;

(4) **if the person is younger than 21 years of age and has any detectable amount of alcohol in the person's system, the person's license to operate a motor vehicle will be automatically suspended for not less than 60 days even if the person submits to the taking of the specimen, but that if the person submits to the taking of the specimen and an analysis of the specimen shows that the person had an alcohol concentration less than the level specified by Chapter 49, Penal Code, the person may be subject to criminal penalties less severe than those provided under that chapter;**

(5) if the officer determines that the person is a resident without a license to operate a motor vehicle in this state, the department will deny to the person the issuance of a license, whether or not the person is subsequently prosecuted as a result of

the arrest, **under the same conditions and for the same periods that would have applied to a revocation of the person's driver's license if the person had held a driver's license issued by this state** [~~if:~~]

[~~(A) the person refuses to submit to the taking of a specimen, in which case the denial is for:~~]

[~~(i) not less than 90 days if the person is 21 years of age or older; or~~]

[~~(ii) one year if the person is younger than 21 years of age; or~~]

[~~(B) a specimen designated by the officer is taken and an analysis of the specimen shows the person had an alcohol concentration of a level specified by Section 49.01(2)(B), Penal Code, in which case the denial is for not less than 60 days~~]; and

(6) [~~(5)~~] the person has a right to a hearing on the suspension or denial if, not later than the 15th day after the date on which the person receives the notice of suspension or denial or on which the person is considered to have received the notice by mail as provided by law, the department receives, at its headquarters in Austin, a written demand, including a facsimile transmission, or a request in another form prescribed by the department for the hearing.

Commentary by Robert Dawson

Source: SB 35
Effective Date: September 1, 1997
Applicability: Offenses committed on or after effective date
Summary of Changes: The change made in (2)(B) reflects the change in Transportation Code § 740.035 that reduced the suspension period for refusing to give a breath specimen for minors from one year to 120 days. The addition of (4) reflects the provisions in Transportation Code § 524.022(b) regarding suspension of the license of a minor who has any detectable amount of alcohol in his or her system. The amendment in (5) makes the period of license denial for one without a license the same as the period of license suspension.

Transportation Code § 724.035. Suspension or Denial of License

(a) If a person refuses the request of a peace officer to submit to the taking of a specimen, the department shall:

(1) suspend the person's license to operate a motor vehicle on a public highway for 90 days if the person is 21 years of age or older or **120 days** [~~one year~~] if the person is younger than 21 years of age; or

(2) if the person is a resident without a license, issue an order denying the issuance of a license to the person for 90 days if the person is 21 years of age or older or **120 days** [~~one year~~] if the person is younger than 21 years of age.

(b) The period of suspension or denial is 180 days if **the person is 21 years of age or older or 240 days if the person is younger than 21 years of age and** the person's driving record shows one or more alcohol-related or drug-related enforcement contacts, as defined by Section **524.001(3)(B) or (C)** [~~524.001~~], during the five years preceding the date of the person's arrest.

(c) The period of suspension or denial is one year if the person's driving record shows one or more alcohol-related or drug-related enforcement contacts, as defined by Section **524.001(3)(A)** [~~524.001~~], during the five years preceding the date of the person's arrest.

Commentary by Robert Dawson

Source: SB 35
Effective Date: September 1, 1997
Applicability: Offenses committed on or after effective date
Summary of Changes: The amendment in (a)(1) reduces the suspension or denial period for a minor refusing a breath test from one year to 120 days. Under (b) that period doubles if the person has one or more alcohol-related or drug-related enforcement contacts (breath test refusal or breath test score of 0.10 or more) within the past five years. The suspension period rises to one year if the person within the past five years has been convicted or adjudicated for driving while intoxicated, under the influence of alcohol or under the influence of a controlled substance.

Transportation Code § 724.048. Relationship of Administrative Proceeding to Criminal Proceeding

(a) and (b) unchanged.

(c) If a criminal charge **arising from the same arrest as a suspension under this chapter** [~~under Chapter 49, Penal Code,~~] results in an acquittal, **the** [~~a~~] suspension under this chapter may not be imposed. If a suspension under this chapter has already been imposed, the department shall rescind the suspension and remove references to the suspension from the computerized driving record of the individual.

Commentary by Robert Dawson

Source: SB 35
Effective Date: September 1, 1997
Applicability: Offenses committed on or after effective date
Summary of Changes: The amendment in (c) makes it clear that the acquittal must be of criminal charges that arose from the same course of conduct as gave rise to the suspension for the acquittal to preclude the suspension.

Transportation Code § 724.064. Admissibility in Criminal Proceedings of Specimen Analysis

On the trial of a criminal proceeding arising out of an offense under Chapter 49, Penal Code, involving the operation of a motor vehicle or a watercraft, **or an offense under Section 106.041, Alcoholic Beverage Code,** evidence of the alcohol concentration or presence of a controlled substance, drug, dangerous drug, or other substance as shown by analysis of a specimen of the person's blood, breath, or urine or any other bodily substance taken at the request or order of a peace officer is admissible.

Commentary by Robert Dawson

Source: SB 35
Effective Date: September 1, 1997
Applicability: Offenses committed on or after effective date
Summary of Changes: The amendment places the new offense of driving under the influence of alcohol by a minor in the same evidentiary context as driving while intoxicated.

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**; or**

(2) arising under Chapter 106, Alcoholic Beverage Code, that do not include confinement as an authorized sanction.

Commentary by Robert Dawson

Source: SB 35
Effective Date: September 1, 1997
Applicability: Offenses committed on or after effective date
Summary of Changes: This amendment makes it clear that justice courts have jurisdiction over non-confinement alcohol offenses by minors despite their authority to impose punishments in addition to fines.

Code of Criminal Procedure art. Article 4.14. Jurisdiction of Municipal Court

(a) unchanged.

(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**; or**

(2) arise under Chapter 106, Alcoholic Beverage Code, and do not include confinement as an authorized sanction.

Commentary by Robert Dawson

Source: SB 35
Effective Date: September 1, 1997
Applicability: Offenses committed on or after effective date
Summary of Changes: This amendment makes it clear that municipal courts have jurisdiction over non-confinement alcohol offenses by minors despite their authority to impose punishments in addition to fines.

Government Code § 29.003. Jurisdiction

(a) unchanged.

(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**; or**

(2) arise under Chapter 106, Alcoholic Beverage Code, and do not include confinement as an authorized sanction.

Commentary by Robert Dawson

Source: SB 35
Effective Date: September 1, 1997

Applicability: Offenses committed on or after effective date
Summary of Changes: This amendment makes it clear that municipal courts have jurisdiction over non-confinement alcohol offenses by minors despite their authority to impose punishments in addition to fines.

Transportation Code § 521.298. Suspension of License of Individual Under 21 Years of Age

[Repealed]

Commentary by Robert Dawson

Source: SB 35
Effective Date: September 1, 1997
Applicability: Offenses committed on or after effective date
Summary of Changes: This repealed section provided that a minor who scored 0.07 but less than 0.10 on the intoxilyzer could have his or her license or permit suspended or denied for one year. This provision has been superseded by the new offense of driving under the influence of alcohol by a minor.

Transportation Code § 521.453. Fictitious License or Certificate

(a) **[SB 89]** Except as provided by Subsection (f), a person **under the age of 21 years** commits an offense if the person [~~sells, manufactures, distributes, or~~] possesses**, with the intent to represent that the person is 21 years of age or older,** a document that is deceptively similar to a driver's license or a personal identification certificate [~~is issued by the department~~] unless the document displays the statement "NOT A GOVERNMENT DOCUMENT" diagonally printed clearly and indelibly on both the front and back of the document in solid red capital letters at least one-fourth inch in height.

(b) **[SB 89]** For purposes of this section, a document is deceptively similar to a driver's license or personal identification certificate if a reasonable person would assume that it was issued by the department**, another agency of this state, another state, or the United States**.

(c) unchanged.

(d) **[SB 89] For purposes of this section, an** [~~An~~] offense under Subsection (a) is a Class C misdemeanor[~~, except that if it is shown at the trial of an offense under Subsection (a) relating to the sale, manufacture, or distribution of a document that the person has been previously convicted of any offense under that subsection, the offense is a Class B misdemeanor~~].

(e) and (f) unchanged.

(g) [SB 89] In this section:

(1) "Driver's license" includes a driver's license issued by another state or by the United States.

(2) "Personal identification certificate" means a personal identification certificate issued by the department, by another agency of this state, by another state, or by the United States.

(h) [HB 677] In addition to the punishment provided by Subsection (d), a court, if the court is located in a municipality or county that has established a community service program, may order a person younger than 21 years of age who commits an offense under this section to perform eight hours of community service unless the person is shown to have previously committed an offense under this section, in which case the court may order the person to perform 12 hours of community service.

(i) [HB 677] If the person ordered to perform community service under Subsection (h) is younger than 17 years of age, the community service shall be performed as if ordered by a juvenile court under Section 54.044(a), Family Code, as a condition of probation under Section 54.04(d), Family Code.

Commentary by Robert Dawson

Source: SB 89, HB 677
Effective Date: September 1, 1997
Applicability: Offenses committed on or after effective date
Summary of Changes: The changes in (a) made by SB 89 redefine the offense in this section to be possession of a fake driver's license or identification card by one under 21 with intent to represent that the person is 21 or older. The change made in (b) provides that the fake document, in addition to a fake DPS document, includes state agencies other than the DPS, other states and the United States. The change made in (d) makes the offense of possession with intent to use a fake document a Class C misdemeanor. Subsection (g) was added by SB 89 to define driver's license and personal identification card to include other states and the United States.

Subsections (h) and (i) were added by HB 677. Subsection (h) permits, but does not require, a court to order eight hours of community service or for a repeat offender 12 hours in addition to other punishment. Subsection (i) requires adherence to the procedures and standards set out in

Family Code § 54.044(a) when imposing community service on a minor under 17 years of age. SB 677 also adds 54.044(i) to the Family Code. See the discussion later in this section.

Transportation Code § 521.456. Delivery or Manufacture of Counterfeit Instrument

(a) **A person commits an offense if the person possesses with the intent to sell, distribute, or deliver a forged or counterfeit instrument that is not printed, manufactured, or made by or under the direction of, or issued, sold, or circulated by or under the direction of, a person, board, agency, or authority authorized to do so under this chapter or under the laws of the United States, another state, or a Canadian province. An offense under this subsection is a Class A misdemeanor.**

(b) A person commits an offense if the person **manufactures or produces with the intent to sell, distribute, or deliver** [~~prints, engraves, copies, photographs, makes, issues, sells, circulates, or passes~~] a forged or counterfeit instrument that **the person knows** is not printed, manufactured, or made by or under the direction of, or issued, sold, or circulated by or under the direction of, a person, board, agency, or authority authorized to do so under this chapter or under the laws of the United States, another state, or a Canadian province. **An offense under this subsection is a felony of the third degree.**

(c) [~~(b)~~] A person commits an offense if the person possesses with the intent to use, [~~sell,~~] circulate, or pass a forged or counterfeit instrument that is not printed, manufactured, or made by or under the direction of, or issued, sold, or circulated by or under the direction of, a person, board, agency, or authority authorized to do so under this chapter or under the laws of the United States, another state, or a Canadian province. **An offense under this subsection is a Class C misdemeanor.**

(d) [~~(c) A person commits an offense if the person possesses all or part of a stamp, dye, plate, negative, machine, or other device that is used or designed for use in forging or counterfeiting an instrument.~~]

[~~(d) An offense under this section is a felony punishable by imprisonment in the institutional division of the State Department of Criminal Justice for not less than two years or more than five years.~~]

[~~(e) A court that has jurisdiction over an offense under this section, or a district or county attorney, may subpoena any person and compel the person's attendance as a witness to testify regarding an offense under this section. A person who is summoned and examined may not be prosecuted for the offense about which the person testifies.~~]

[~~(f)~~] For purposes of this section, "instrument" means a driver's license, driver's license form, personal identification certificate, stamp, permit, license, official signature, certificate, evidence of fee payment, or any other instrument.

Commentary by Robert Dawson

Source: SB 89
Effective Date: September 1, 1997
Applicability: Offenses committed on or after effective date
Summary of Changes: This section defines various offenses dealing with manufacturing or selling counterfeit documents and provides punishments.

Penal Code § 37.01. Definitions

In this chapter:

(1) "Governmental record" means:

(A) anything belonging to, received by, or kept by government for information;

(B) anything required by law to be kept by others for information of government; or

(C) a license, certificate, permit, seal, title, or similar document issued by government**, by another state, or by the United States**.

Commentary by Robert Dawson

Source: SB 89
Effective Date: September 1, 1997
Applicability: Offenses committed on or after effective date
Summary of Changes: This change broadens the definition of a governmental record to include a document issued by another state or by the United States. Thus, those documents would be included within the scope of the offense of Tampering with a Governmental Record under Penal Code § 37.10. This is intended to cover situations in which a genuine governmental identification document is altered to make the person appear to be 21 or older.

Penal Code § 37.10. Tampering with Governmental Record

(a) through (c) unchanged.

(d) An offense under this section is a felony of the third degree if it is shown on the trial of the

offense that the governmental record was a license, certificate, permit, seal,
title, or similar document issued by government, **by another state, or by the United States,** unless the actor's intent is to defraud or harm another, in which event the offense is a felony of the second degree.

Commentary by Robert Dawson

Source: SB 89
Effective Date: September 1, 1997
Applicability: Offenses committed on or after effective date
Summary of Changes: This makes the same change in the tampering statute as was made in the definitional section.

Family Code § 54.044. Community Service

(a) through (h) unchanged.

(i) In a disposition hearing under Section 54.04 in which the court finds that a child engaged in conduct violating Section 521.453, Transportation Code, the court, in addition to any other order authorized under this title and if the court is located in a municipality or county that has established a community service program, may order the child to perform eight hours of community service as a condition of probation under Section 54.04(d) unless the child is shown to have previously engaged in conduct violating Section 521.453, Transportation Code, in which case the court may order the child to perform 12 hours of community service.

Commentary by Robert Dawson

Source: HB 677
Effective Date: September 1, 1997
Applicability: Offenses committed on or after effective date
Summary of Changes: Section 521.453 criminalizes the sale, manufacture, distribution or possession of a fictitious license or certificate. This Family Code amendment authorizes, but does not require, the juvenile court to order eight hours of community service for a first adjudication and 12 hours for a subsequent adjudication of this offense. Subsection (a) already mandates community service for virtually every child placed on probation, which may not exceed 500 hours.

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3. Education and Juvenile Justice

Education Code § 25.085 Compulsory School Attendance

(a) unchanged.

(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 **yet reached** [~~completed the academic year in which~~] the child's **18th** [~~17th~~] birthday [~~occurred~~] shall attend school.

Commentary by Lisa Capers

Source: SB 247
Effective Date: Beginning of 1997-1998 school year
Applicability: None stated
Summary of Changes: Prior law requires compulsory school attendance for a child who has not completed the academic year in which the child's 17th birthday occurred. This new amendment to Section 25.085 of the Education Code raises the compulsory school attendance requirement to now require attendance of a child up until the child's 18th birthday.

Education Code § 25.086. Exemptions

(a) A child is exempt from the requirements of compulsory school attendance if the child:

(1) through (3) unchanged.

(4) is expelled in accordance with the requirements of law **in a school district that does not participate in a mandatory juvenile justice alternative education program under Section 37.011**;

(5) through (9) unchanged.

Commentary by Lisa Capers

Source: SB 133
Effective Date: Beginning of 1997-1998 school year
Applicability: None stated
Summary of Changes: Prior to the amendment of Section 25.086, the law did not require compulsory attendance for a student who has been expelled from school. Counties that operated juvenile justice alternative education programs (JJAEP) and chose to serve non-mandated youth in the program had no authority to require these students to attend. The amendment requires compulsory attendance for all students expelled from a school district located in a county required to operate a juvenile justice alternative education program. The requirement to attend school applies not only to students expelled for the mandatory expulsion offenses under Section 37.007(a), (d), and (e), but also to students expelled for the discretionary expulsion offenses under Section 37.007(b), (c), and (f), regardless of whether the student is placed by the school into the JJAEP or in a private vendor program.

Education Code § 37.001. Student Code of Conduct

(a) **The board of trustees of an independent** [~~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. **The student code of conduct must be posted and prominently displayed at each school campus.** In addition to establishing standards for student conduct, the student code of conduct must:

(1) unchanged;

(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

(3) [~~(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) unchanged.

(c) **Once the student code of conduct is promulgated, any change or amendment must be approved by the board of trustees.** [~~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

Source: SB 133
Effective Date: Beginning of 1997-1998 school year
Applicability: None stated
Summary of Changes: Section 37.001(a) was amended to remove the provision requiring the juvenile board to jointly develop the local school district's student code of conduct. Further, the amendment eliminates the requirement of outlining the responsibilities of the juvenile board concerning the JJAEP and the definition for the condition of payment from the school district to the juvenile board within the student code of conduct. The changes made through this amendment were intended to simplify the process and to put all necessary items of agreement between the juvenile board and the school districts in the memorandum of understanding under Section 37.011. Subsection (a) now requires the student code of conduct be posted and prominently displayed at each school campus.

Subsection (c) requires the school district board of trustees to approve any change or amendment to the student code of conduct made after the code is initially promulgated.

Education Code § 37.006. Removal for Certain Conduct

(a) Except as provided by Section 37.007(a)(3) **or (b)**, 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 **or within 300 feet of** school property**, as measured from any point on the school's real property boundary line,** or while attending a school-sponsored or school-related activity on or off of school property:

(1) **engages in conduct punishable as a felony;**

(2) 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;

(3) [~~(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;

(4) [~~(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;

(5) [~~(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

(6) [~~(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(d)** [~~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) **In addition to Subsection (a), a student shall be removed from class and placed in an alternative education program under Section 37.008 based on conduct occurring off campus and while the student is not in attendance at a school-sponsored or school-related activity if:**

(1) the student receives deferred prosecution under Section 53.03, Family Code, for conduct defined as a felony offense in Title 5, Penal Code;

(2) a court or jury finds that the student has engaged in delinquent conduct under Section 54.03, Family Code, for conduct defined as a felony offense in Title 5, Penal Code; or

(3) the superintendent or the superintendent's designee has a reasonable belief that the student has engaged in a conduct defined as a felony offense in Title 5, Penal Code.

(d) In addition to Subsection (a), a student may be removed from class and placed in an alternative education program under Section 37.008 based on conduct occurring off campus and while the student is not in attendance at a school-sponsored or school-related activity if:

(1) the superintendent or the superintendent's designee has a reasonable belief that the student has engaged in conduct defined as a felony offense other than those defined in Title 5, Penal Code; and

(2) the continued presence of the student in the regular classroom threatens the safety of other students or teachers or will be detrimental to the educational process.

(e) In determining whether there is a reasonable belief that a student has engaged in conduct defined as a felony offense by the Penal Code, the superintendent or the superintendent's designee may consider all available information, including the information furnished under Article 15.27, Code of Criminal Procedure.

(f) Subject to Section 37.007(e), a student who is younger than 10 years of age shall be removed from class and placed in an alternative education program under Section 37.008 if the student engages in conduct described by Section 37.007.

(g) The terms of a placement under this section must prohibit the student from attending or participating in a school-sponsored or school-related activity.

(h) On receipt of notice under Article 15.27(g), Code of Criminal Procedure, the superintendent or the superintendent's designee shall review the student's placement in the alternative education program. The student may not be returned to the regular classroom pending the review. The superintendent or the superintendent's designee shall schedule a review of the student's placement with the student's parent or guardian not later than the third class day after the superintendent or superin-

tendent's designee receives notice from the office or official designated by the court. After reviewing the notice and receiving information from the student's parent or guardian, the superintendent or the superintendent's designee may continue the student's placement in the alternative education program if there is reason to believe that the presence of the student in the regular classroom threatens the safety of other students or teachers.

(i) The student or the student's parent or guardian may appeal the superintendent's decision under Subsection (h) to the board of trustees. The student may not be returned to the regular classroom pending the appeal. The board shall, at the next scheduled meeting, review the notice provided under Article 15.27(g), Code of Criminal Procedure, and receive information from the student, the student's parent or guardian, and the superintendent or superintendent's designee and confirm or reverse the decision under Subsection (h). The board shall make a record of the proceedings. If the board confirms the decision of the superintendent or superintendent's designee, the board shall inform the student and the student's parent or guardian of the right to appeal to the commissioner under Subsection (j).

(j) Notwithstanding Section 7.057(e), the decision of the board of trustees under Subsection (i) may be appealed to the commissioner as provided by Sections 7.057(b), (c), (d), and (f). The student may not be returned to the regular classroom pending the appeal.

(k) Subsections (h), (i), and (j) do not apply to placements made in accordance with Subsection (a).

Commentary by Lisa Capers

Source: SB 133
Effective Date: Beginning of 1997-1998 school year
Applicability: None stated
Summary of Changes: SB 133 made some significant changes to Section 37.006 of the Education Code that address the situations in which a student may or must be removed from the regular education classroom and placed in an alternative education program (AEP).

Subsection (a) was altered in several ways. The law prior to this amendment mandated the school to remove a student who committed any felony anywhere (i.e., on or off school property including non-school related conduct) to the AEP. This concept was modified by the addition of a new subsection (c) discussed below. The amended subsection (a) requires a school to place a student in a disciplinary AEP if the student commits certain offenses on or within 300 feet of school property, or while attending a school-sponsored or school-related event either on or off school property. The 300 feet is measured from any point on the school's real property line and was designed to target the conduct that frequently occurs across the street from the school at the corner convenience store or other locations. The offenses/conducts included are: 1) any felony; 2) assault with bodily injury, terroristic threat; 3) sells, gives, delivers, possesses, uses, or is under the influence of marihuana, a controlled substance, or a dangerous drug; 4) sells, gives, delivers, possesses, uses or is under the influence of an alcoholic beverage or commits a serious act or offense while under the influence of alcohol; 5) engages in illegal conduct related to inhalant abuse or volatile chemicals; and 6) public lewdness or indecent exposure. The reference to Section 37.007(a)(3) at the beginning of the section refers to mandatory expulsions if a student sells, gives, delivers, possesses, uses or is under the influence of marihuana, a controlled substance, or a dangerous drug. Section 37.007(b) refers to the discretionary expulsions for offenses committed on school property or at school events that include misdemeanor and felony level drug, alcohol, inhalant and volatile chemical offenses.

Under Subsection (b), a student shall be placed in the AEP for committing the offense of retaliation against any school employee. The act of retaliation for which this section applies includes misdemeanor offenses committed either on school property or at a school related activity, on or off school property, and misdemeanor and felony conduct committed off school property and while not at a school-related activity. For example, if a student retaliated against a teacher by committing a misdemeanor or felony assault against the teacher in retaliation at the teacher's home, a mandatory removal to the AEP would result under Subsection (b) and also under Subsection (c), discussed below. The language "except as provided by Section 37.007(d)" refers to retaliation offenses for which the student shall be expelled. These offenses include the Section 37.0007(a) offenses.

Subsection (c) requires the school to remove a student to the AEP for non-school related conduct occurring off campus if the student receives deferred prosecution or is adjudicated for a Penal Code Title 5 offense (i.e., offenses against the person) or if the school superintendent has a reasona-

ble belief the student engaged in conduct that is a Title 5 felony offense.

Subsection (d) gives the school the discretion to place a child in the AEP for off-campus, non-school related conduct if the superintendent has a reasonable belief that the student committed a felony offense other than one in Title 5, and the continued presence of the student in the regular classroom threatens the safety of other students or teachers or will be detrimental to the educational process.

Subsection (e) authorizes the superintendent to base the reasonable belief required in Subsection (d) upon all available information, including information received under Article 15.27, Code of Criminal Procedure. Article 15.27 requires law enforcement, prosecutors, probation and parole personnel to notify school officials when students are taken into custody, referred and adjudicated for certain offenses specified in the article. Article 15.27 was amended by two bills during the 75th Texas Legislature and is discussed in depth later in this commentary.

Subsection (f) requires that a student who is younger than 10 years of age and who has committed an expellable offense under Section 37.007, other than bringing a firearm to school, must be removed from the regular classroom and placed in the AEP. A child younger than 10 cannot be expelled, except as provided by 37.007(e). Section 37.007(e) simply states that if a child younger than 10 brings a firearm to school, they have to be expelled under federal law, but the school shall educate them in the AEP as opposed to expelling them to the street.

Subsection (h) details a new procedure related to reviewing a student's placement in the AEP upon the occurrence of certain events. Article 15.27(g) requires the prosecuting attorney or the juvenile court to notify a school that removed a student to the AEP on the basis of a criminal offense if: 1) the case will not be prosecuted (i.e., lack of jurisdiction, insufficient evidence, etc.) and no formal proceedings, deferred adjudication, or deferred prosecution will be initiated; or 2) a court or jury found the student not guilty or made a find the child did not engage in delinquent conduct or CINS and the case was dismissed with prejudice. This notice requirement applies to adult students (i.e., 17 or older) and juveniles (10-16) and must be sent within two working days of when the decision not to prosecute occurred or when the case was dismissed. Upon receipt of this notice, the school superintendent or a designee shall review the student's placement in the AEP. The student cannot be returned to regular classes while the review is pending. By the third class day after the notice is received, the superintendent must schedule a placement review meeting with the student's parent or guardian. After the review meeting, the superintendent may continue the AEP placement if there is reason to believe the student's presence in the regular classroom threatens the safety of students or teachers.

Subsection (i) allows the student or the student's parent or guardian to appeal the school's decision under subsection (h) to the board of trustees. The student cannot be returned to the regular classroom pending this appeal. At the next scheduled board meeting, the board must review the Article 15.27(g) notice, receive information from the student, the student's parent or guardian and the school, and either confirm or reverse the school's decision regarding the continued placement in the AEP. If the board confirms the school's decision, they must inform the student and the student's parent or guardian of the right to appeal to the commissioner of education under Subsection (j), discussed below.

Subsection (j) allows the decision of the school district board of trustees regarding the continued AEP placement of a student to be appealed to the commissioner of education in accordance with Sections 7.057(b), (c), (d), and (f) of the Education Code. The cited subsections of 7.057 detail the procedural requirements and notice for such an appeal and authorize appeal of the commissioner's decision to a district court in Travis County. The student cannot be returned to the regular classroom pending this appeal.

Subsection (k) makes it clear that the AEP placement review and appeals process detailed in Subsections (h), (i), and (j) does not apply to a mandatory removal to an AEP under Subsection (a) of Section 37.006. However, for any AEP removal under Subsections (b), (c), and (d), the student is entitled to the placement review and all appellate remedies.

Education Code § 37.0061. Funding for Alternative Education Services in Juvenile Residential Facilities

A school district that provides education services to pre-adjudicated and post-adjudicated students who are confined by court order in a juvenile residential facility operated by a juvenile board is entitled to count such students in the district's average daily attendance for purposes of receipt of state funds under the Foundation School Program. If the district has a wealth per student greater than

the guaranteed wealth level but less than the equalized wealth level, the district in which the student is enrolled on the date a court orders the student to be confined to a juvenile residential facility shall transfer to the district providing education services an amount equal to the difference between the average Foundation School Program costs per student of the district providing education services and the sum of the state aid and the money from the available school fund received by the district that is attributable to the student for the portion of the school year for which the district provides education services to the student.

Commentary by Lisa Capers

Source: SB 133
Effective Date: Beginning of 1997-1998 school year
Applicability: None stated
Summary of Changes: Section 37.0061 is a new section that was added to clarify the funding for alternative education services provided in juvenile residential facilities. A school district that provides education services to detained juveniles in either pre-adjudication or post-adjudication juvenile detention facilities may count these students in the district's average daily attendance for purposes of receiving Foundation School Program funds from the state. Districts that receive state financial aid for only part of their tax rate ("Tier I" districts) will receive additional funds from the student's home district to cover the full average cost of educating an additional student.

Education Code § 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) and (2) unchanged.

(3) engages in conduct specified by Section **37.006(a)(3)** [~~37.006(a)(2)~~] or **(4)** [~~(3)~~], if the conduct is punishable as a felony.

(b) **A student may be expelled if the student, while on school property or while attending a school-sponsored or school-related activity on or off of school property:**

(1) sells, gives, or delivers to another person or possesses, uses, or is under the influence of any amount 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.;

(B) a dangerous drug, as defined by Chapter 483, Health and Safety Code; or

(C) an alcoholic beverage, as defined by Section 1.04, Alcoholic Beverage Code; or

(2) 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.

(c) A student may be expelled if the student, **while** [~~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.

(d) [~~(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.

(e) [~~(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 **shall** [~~may~~] provide educational services to **an** [~~the~~] expelled student in an alternative education program as provided by Section 37.008 **if the student is younger than 10 years of age on the date of expulsion; and**

(3) the district or other local educational agency may provide educational services to an expelled student who is older than 10 years of age in an alternative education program as provided in 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) and (g) unchanged.

(h) Subject to Subsection (e), notwithstanding any other provision of this section, a student who is younger than 10 years of age may not be expelled for engaging in conduct described by this section.

Commentary by Lisa Capers

Source: SB 133
Effective Date: Beginning of 1997-1998 school year
Applicability: None stated
Summary of Changes: The offenses for which a school district is required to expel a student were not expanded, and the only change to Subsection (a) was a conforming renumbering of sections.

Section 37.007(b) was amended to expand the behaviors for which a school district has discretion to expel. The conduct added for which a school "may" expel includes conduct while on school property or attending a school event on or off school property, in which the student either (1) sells, gives, delivers, possesses, uses, or is under the influence of marijuana, any controlled substance, dangerous drug, or an alcoholic beverage; or (2) engages in conduct containing elements of an offense relating to abusable glue, aerosol paint, or volatile chemicals.

Subsection (c) was amended to clarify that a expulsion for "serious or persistent misbehavior" may only occur while a student is placed in an alternative education program for disciplinary reasons. The old law stated that the student could be expelled "after being placed" in the AEP. Some school districts interpreted this to say if a child had ever been placed in the AEP in the past, they could be expelled for engaging in serious or persistent misbehavior in the regular classroom. This was not the intent, and thus the reason for this change.

Under current law children below the age of 10 can, and in some instances must, be expelled. Section 37.007(h) was added to exempt the application of this section to children below the age of 10 except in cases involving a firearm. Federal law requires a student to be expelled for bringing a firearm to school but allows a student to be placed in an alternative education program. Section 37.007(e) was added to require a school district to place children below the age of 10, who are expelled for bringing a firearm to school, in an alternative education program.

It should be noted that the definition of "on campus" conduct is not expanded to mean on or within 300 feet of the school property line as was done in an amendment to Section 37.006.

Education Code § 37.008. Alternative Education Programs

(a) through (k) unchanged.

(l) A school district is not required to provide in the district's alternative education program a course necessary to fulfill a student's high school graduation requirements other than a course specified by Subsection (a).

(m) The commissioner shall adopt rules necessary to administer the provisions of Chapter 39 for alternative education programs. Academically, the mission of alternative education programs shall be to enable students to perform at grade level. Annually, the commissioner shall define for alternative education programs acceptable performance and performance indicating a need for peer review, based principally on standards defined by the commissioner that measure academic progress of students toward grade level while attending an alternative education program.

Commentary by Lisa Capers

Source: SB 133
Effective Date: Beginning of 1997-1998 school year
Applicability: None stated
Summary of Changes: This amendment was added to clarify that a school district is not required to provide courses in the alternative education program necessary to fulfill a student's high school graduation requirements, other than the courses specified under subsection (a) (i.e., English, mathematics, science, history, and self-discipline).

Subsection (m) was added to establish the mission of the alternative education program which is to enable students to perform at grade level. The commissioner of education shall adopt necessary rules to administer the provisions of accountability under Chapter 39. Additionally, the commissioner shall define acceptable performance indicating a need for review, measured by the goal of enabling all students to perform at grade level while in an alternative education program.

Education Code § 37.009. Conference; Hearing; Review

(a) Not later than the third class day after the day on which a student is removed from class **by the teacher** under Section 37.002(b) or (d) **or by the school principal or other appropriate administrator under Section 37.006**, the [~~school~~] principal **or other appropriate administrator**

shall schedule a **conference** [~~hearing~~] among the principal or **other appropriate administrator** [~~the principal's designee~~], a parent or guardian of the student, the teacher removing the student from class, **if any,** and the student. **At the conference, the student is entitled to written or oral notice of the reasons for the removal, an explanation of the basis for the removal, and an opportunity to respond to the reasons for the removal.** The student may not be returned to the regular classroom pending the **conference** [~~hearing~~]. Following the **conference** [~~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 **or 37.006, as applicable,** for a period consistent with the student code of conduct.

(b) through (d) unchanged.

(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**, including a review of the student's academic status,** by the board's designee at intervals not to exceed 120 days. **In the case of a high school student, the board's designee, with the student's parent or guardian, shall review the student's progress towards meeting high school graduation requirements and shall establish a specific graduation plan for the student. The district is not required under this subsection to provide in the district's alternative education program a course not specified under Section 37.008(a).** 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 **is entitled to** [~~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 school district makes a good-faith effort to inform the student and the student's parent or guardian of the time and place of the hearing, the district may hold the hearing regardless of whether the student, the student's parent or guardian, or another adult representing the student attends.** 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.

Commentary by Lisa Capers

Source: SB 133
Effective Date: Beginning of 1997-1998 school year
Applicability: None stated
Summary of Changes: Section 37.009 (a) was amended to clarify that any appropriate school administrator may remove a student from class. This amendment changed the previous term from "hearing" to "conference." A conference shall be conducted between the appropriate administrator, student, student's parent(s) and the teacher removing the student. Students are now entitled to written or oral notice of the removal, an explanation of the basis for the removal and an opportunity to respond to the reason for the removal.

Current law requires a student's placement in an alternative education program to be reviewed every 120 days. Subsection (e) was amended to require that this review of a student placement at the 120-day mark include a review of the student's academic progress. In the case of a high school student, the student's progress towards meeting high school graduation requirements and a specific plan of graduation shall be established and shall be conducted with the student's parent.

Subsection (f) requires that a hearing which affords appropriate due process to a student be held before a student may be expelled. This subsection was also amended to clarify that if the school district has made a good-faith effort to notify a student and his parent or guardian of the time and place of an expulsion hearing, the district may hold the hearing regardless of whether the student or parent or guardian attends.

Education Code § 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. **In a county that operates a program under Section 37.011, an expelled student shall to the extent provided by law or by the memorandum of understanding immediately attend the educational program from the date of expulsion; provided, however, that in a county with a population greater than 125,000 every expelled student who is not detained or receiving treatment under an order of the juvenile court must be enrolled in an educational program.** [~~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(c)** [~~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) through (e) unchanged.

(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, **including conditions of a deferred prosecution ordered by the court, or such conditions required by the prosecutor or probation department,** 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. **The district in which the student enrolls may continue the expulsion under the terms of the order, may place the student in an alternative education program for the period specified by the expulsion order, or may allow the student to attend regular classes without completing the period of expulsion.**

Commentary by Lisa Capers

Source: SB 133
Effective Date: Beginning of 1997-1998 school year
Applicability: None stated
Summary of Changes: Subsection (a) was amended to emphasize the key concept in this year's Chapter 37 reforms, which is "no kids expelled to the street," at least in the counties with a population over 125,000. The amendment to this section provides that an expelled student shall attend an educational program from the date of expulsion. The particular educational placement will vary depending on several factors. If the expulsion was mandatory [i.e., Section 37.007 (a), (d), or (e)] and the county has a population over 125,000, the student will attend the JJAEP unless the child is detained or receiving treatment under an order of the juvenile court. If the expulsion was discretionary [i.e., Section 37.007 (b), (c), or (f)], the memorandum of understanding (MOU) between the school and the juvenile board will address which educational placement is the appropriate one for the student. The last sentence of the current subsection (a) related to the juvenile authorities' right to determine how to proceed in a juvenile case was deleted because its placement in the Education Code makes little sense, and it is clearly addressed in the Family Code.

Subsection (b) contains a technical amendment only. The citation to Section 37.007(b) in the prior law is changed to the newly renumbered Section 37.007(c). This section refers to the "serious or persistent misbehavior" expulsion. Subsection (b) simply requires the school to make a referral to juvenile court when the student is expelled based upon this conduct, which is a CINS offense under Section 51.03(b)(5).

Subsection (f) was amended to make it clear that once an expelled juvenile completes the requirements and conditions of a deferred prosecution ordered by probation, the prosecutor or the court, the school may not refuse to admit the student back into classes. The school may still choose to place the student in their AEP instead of regular classes, but they cannot refuse admission altogether.

Subsection (g) addresses what the school may do with a student that enters the district after having been expelled by another school district. The new school district has three basic choices: 1) continue the expulsion under the terms of the old

school's order; 2) place the student in the new school district's AEP for the period of the expulsion order; or 3) allow the student to attend the new school's regular classes without completing the period of expulsion. Refer also to the discussion under Section 37.011(n) regarding an expelled student who has been ordered to attend the JJAEP who moves from one county to another.

Education Code § 37.011. Juvenile Justice Alternative Education Program [SB 133]

(a) unchanged.

(b) If a student is **expelled from school under** [~~found to have engaged in conduct described by~~] Section 37.007**(a), (d), or (e)** [~~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) **if the student is placed on probation under Section 54.04, Family Code, order the student to attend** [~~require~~] the juvenile justice alternative education program in the county in which the **student resides from the date of disposition as a condition of probation, unless the child is placed in a post-adjudication treatment facility** [~~conduct occurred to provide educational services to the student~~]; [~~and~~]

(2) **if the student is placed on deferred prosecution under Section 53.03, Family Code, by the court, prosecutor, or probation department, require** [~~order~~] the student to **immediately** attend the **juvenile justice alternative education** program **in the county in which the student resides for a period not to exceed six months as a condition of the deferred prosecution; and**

(3) in determining the conditions of the deferred prosecution or court-ordered probation, consider the length of the school district's expulsion order for the student [~~from the date of adjudication~~].

(c) unchanged.

(d) A juvenile justice alternative education program must focus on English language arts, mathematics, science, **social studies** [~~history~~], and self-discipline. **Each school district shall consider course credit earned by a student while in a juvenile justice alternative education program as credit earned in a district school.** Each program shall administer assessment instruments under Subchapter B, Chapter 39, and shall offer a high school equivalency program. **The juvenile board or the board's designee, with the parent or guardian of each student, shall regularly review the student's academic progress. In the case of a high school student, the board or the board's designee, with the student's parent or guardian, shall review the student's progress towards meeting high school graduation requirements and shall establish a specific graduation plan for the student. The program is not required to provide a course necessary to fulfill a student's high school graduation requirements other than a course specified by this subsection.**

(e) through (g) unchanged.

(h) **Academically, the mission of juvenile justice alternative education programs shall be to enable students to perform at grade level.** 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. **Annually the Texas Juvenile Probation Commission, with the agreement of the commissioner, shall develop and implement a system of accountability consistent with Chapter 39, where appropriate, to assure that students make progress toward grade level while attending a juvenile justice alternative education program. The Texas Juvenile Probation Commission shall adopt rules for the distribution of funds appropriated under this section to juvenile boards in counties required to establish juvenile justice alternative education programs. A student served by a juvenile justice alternative education program on the basis of an expulsion under Section 37.007(a), (d), or (e) is not eligible for Foundation School Program funding under Chapter 42 or 31.**

(i) and (j) unchanged.

(k) Each school district in a county with a population greater than 125,000 and the county juvenile board shall annually enter into a joint memorandum of understanding that:

(1) outlines the responsibilities of the juvenile board concerning the establishment and operation of a juvenile justice alternative education program under this section;

(2) defines the amount and conditions on payments from the school district to the juvenile board for students of the school district served in the juvenile justice alternative education program whose placement was not made on the basis of an expulsion under Section 37.007(a), (d), or (e);

(3) identifies those categories of conduct that the school district has defined in its student code of conduct as constituting serious or persistent misbehavior for which a student

may be placed in the juvenile justice alternative education program;

(4) identifies and requires a timely placement and specifies a term of placement for expelled students for whom the school district has received a notice under Section 52.041(d), Family Code;

(5) establishes services for the transitioning of expelled students to the school district prior to the completion of the student's placement in the juvenile justice alternative education program;

(6) establishes a plan that provides transportation services for students placed in the juvenile justice alternative education program;

(7) establishes the circumstances and conditions under which a juvenile may be allowed to remain in the juvenile justice alternative education program setting once the juvenile is no longer under juvenile court jurisdiction; and

(8) establishes a plan to address special education services required by law.

(l) The school district shall be responsible for providing an immediate educational program to students who engage in behavior resulting in expulsion under Section 37.007(b), (c), and (f) but who are not eligible for admission into the juvenile justice alternative education program in accordance with the memorandum of understanding required under this section. The school district may provide the program or the school district may contract with a county juvenile board, a private provider, or one or more other school districts to provide the program. The memorandum of understanding shall address the circumstances under which such students who continue to engage in serious or persistent misbehavior shall be admitted into the juvenile justice alternative education program.

(m) Each school district in a county with a population greater than 125,000 and the county juvenile board shall adopt a joint memorandum of understanding as required by this section not later than September 1 of each school year.

(n) If a student who is ordered to attend a juvenile justice alternative education program moves from one county to another, the juvenile court may request the juvenile justice alternative education program in the county to which the student moves to provide educational services to the student in accordance with the local memorandum of understanding between the school district and juvenile board in the receiving county.

(o) In relation to the development and operation of a juvenile justice alternative education program, a juvenile board and a county and a commissioners court are immune from liability to the same extent as a school district, and the juvenile board's or county's employees and volunteers are immune from liability to the same extent as a school district's employees and volunteers.

(p) If a district elects to contract with the juvenile board for placement in the juvenile justice alternative education program of students expelled under Section 37.007(b), (c), and (f) and the juvenile board and district are unable to reach an agreement in the memorandum of understanding, either party may request that the issues of dispute be referred to a binding arbitration process that uses a qualified alternative dispute resolution arbitrator in which each party will pay its pro rata share of the arbitration costs. Each party must submit its final proposal to the arbitrator. If the parties cannot agree on an arbitrator, the juvenile board shall select an arbitrator, the school districts shall select an arbitrator, and those two arbitrators shall select an arbitrator who will decide the issues in dispute. An arbitration decision issued under this subsection is enforceable in a court in the county in which the juvenile justice alternative education program is located. Any decision by an arbitrator concerning the amount of the funding for a student who is expelled and attending a juvenile justice alternative education program must provide an amount sufficient based on operation of the juvenile justice alternative education program in accordance with this chapter. In determining the amount to be paid by a school district for an expelled student enrolled in a juvenile justice alternative education program, the arbitrator shall consider the relevant factors, including evidence of:

(1) the actual average total per student expenditure in the district's alternative education setting;

(2) the expected per student cost in the juvenile justice alternative education program as described and agreed on in the memorandum of understanding and in compliance with this chapter; and

(3) the costs necessary to achieve the accountability goals under this chapter.

(q) In accordance with rules adopted by the board of trustees for the Teacher Retirement System of Texas, a certified educator employed by a juvenile board in a juvenile justice alternative education program shall be eligible

for membership and participation in the system to the same extent that an employee of a public school district is eligible. The juvenile board shall make any contribution that otherwise would be the responsibility of the school district if the person were employed by the school district, and the state shall make any contribution to the same extent as if the person were employed by a school district.

Commentary by Lisa Capers

Source: SB 133
Effective Date: Beginning of 1997-1998 school year
Applicability: None stated
Summary of Changes: Section 37.011 of the Education Code discusses the statutory requirements for JJAEPs. This section was extensively amended by SB 133 in particular, and also by SB 135 discussed below. The predecessor bills and drafts to what ultimately became the conference committee report for SB 133 were numerous, and if you followed the various versions, you will see some familiar parts that actually made it into SB 133, and some that did not.

In summary, the basic change to the JJAEP process was a change in the funding mechanism. Under the prior law, the JJAEP students were funded from school district funds that were paid directly by the schools to the juvenile boards for all students placed in the JJAEP. The new law changes this process in a distinct way. For those students who are expelled under the mandatory provisions of Section 37.007 (a), (d), and (e), and who are required to be served by the county JJAEP, the funding will be allocated directly from the state via the TJPC to the juvenile board (see discussion under Section 37.012 below). For those students who are expelled under the discretionary provisions of Section 37.007(b), (c), and (f), the school district is responsible for paying the costs of educating these students in some educational placement. This placement may be the JJAEP, a private provider, or provided by the school district itself alone or with one or more other school districts (i.e., a regional program), depending on the school district's choice. The individual subsections of Section 37.011 that were amended to elaborate on this new process will be discussed individually below.

Subsection (b) applies to students of juvenile age jurisdiction that are expelled for the mandatory expellable offenses under Section 37.007(a), (d), or (e). This section requires placement in the JJAEP as a condition of deferred prosecution or court ordered probation. In choosing the time frame of the deferred prosecution or probation, the court must consider the length of the expulsion order. Obviously, the deferred prosecution placement could not legally exceed six months, but court-ordered probation could more closely reflect the expulsion term if the court so chooses.

Subsection (d) details the particular academic core subjects on which the JJAEP must focus. The old statute reference to "history" has been changed to "social studies", but the other core subjects have remained the same. The school district is mandated to give course credit to any work the student does in the JJAEP. The last change made in this subsection creates an academic review process for students in the JJAEP. Basically, the juvenile board or its designee must regularly review each student's academic process with the student's parent or guardian. For high school students, the juvenile board or its designee must review the student's progress toward meeting graduation requirements. Also, a specific graduation plan must be established for each high school student to ensure adequate progress is made toward graduation while the student is in the JJAEP.

Subsection (h) reflects the legislature's desire for academic accountability in JJAEPs. This subsection states the mission of the JJAEPs, which is to enable students to perform at grade level. Further, TJPC must annually, with the agreement of the commissioner of education at TEA, develop and implement a system of accountability to assure that JJAEP students make appropriate progress toward grade level. TJPC is also given rulemaking authority under this subsection for the distribution of funds appropriated for the JJAEPs. The last part of subsection (h) makes it clear a student who is expelled under the mandatory expulsion sections of Section 37.007(a), (d), or (e) is not eligible for Foundation School Program funding under the Education Code (i.e., the ADA moneys that follow a student). These students are funded directly by the state through TJPC as discussed in Section 37.012 below.

Subsection (k) requires a MOU between each school district and the juvenile board in counties with a population over 125,000 (i.e., the mandatory JJAEP counties). There are various ways to construct this MOU. In some counties, the juvenile board has one MOU that is signed by all school districts in the county. In other counties, the juvenile board has multiple MOUs (i.e., one with each school district individually). The statute does not specify a particular method, but leaves this decision to the parties. From many juvenile boards' perspectives, one single MOU is prefera-

ble, but many school districts prefer individual MOUs that address their unique needs or wants. In any event, the possibility of arbitration of MOU disputes (discussed below) and its associated costs in light of multiple MOUs is something the parties need to discuss in advance. The MOU will address various issues related to the mandatory expulsion students in the JJAEP, and if the JJAEP is serving the discretionary expulsion students, the MOU will discuss these children as well. The MOU must address the responsibilities of the juvenile board regarding operation of the JJAEP (for mandatory expulsions, and discretionary expulsions if served in the JJAEP); define the amount and conditions of payments for non-mandatory expulsions under Section 37.007(b), (d), and (f) if the JJAEP will serve those students; identify which, if any, expulsions for serious or persistent misbehavior that will be served in the JJAEP (non-mandatory expulsions); identify the educational placement and term for students for whom a notice was received under Section 52.041(d) of the Family Code (i.e., no jurisdiction cases, not guilty findings, etc. for non-mandatory expulsions if those children are being served by the JJAEP); establish a workable plan for transition services for expelled students back to the regular school district prior to completion of their JJAEP assignment (for mandatory expulsions, and discretionary expulsions if served in the JJAEP); establish a plan for transportation services for students in the JJAEP (for mandatory expulsions, and discretionary expulsions if served in the JJAEP); establish when a juvenile may be allowed to remain in the JJAEP after the juvenile court loses its jurisdiction over the child (for mandatory expulsions, and discretionary expulsions if served by the JJAEP; however, a mandatory expulsion will not receive funding from TJPC after completion of juvenile court requirements); and establish a plan to address special education services required by law (for mandatory expulsions, and discretionary expulsions if served by the JJAEP).

Subsection (l) implements the new funding concept by making clear that the school district is responsible for providing an immediate educational placement for students who have been expelled under the discretionary expulsion sections of 37.007(b), (c), and (f). The school district has several choices in terms of an educational placement: 1) placement into the JJAEP if so agreed in the MOU discussed above; 2) a contract with a private provider for services; 3) the school itself can provide the educational placement in a third-tier AEP; or 4) the school can contract with one or more school districts to develop a program. The MOU between the school and the juvenile board is required to address the circumstances under which students who continue to engage in serious or persistent misbehavior will be admitted into the JJAEP. The obvious question that arises is, "If the juvenile board does not want serve the discretionary expulsion students in the JJAEP, can the school district force the juvenile board to serve these students?" Technically, the school district can probably force the issue of the juvenile board taking the non-mandatory expulsions to arbitration under subsection (p) discussed below. However, realistically speaking, it is unlikely that the school district will take this approach and try to force the JJAEP to serve the non-mandatory expulsion students if the juvenile board is strongly opposed to taking the students. There is an abundance of private vendors in the state who will be aggressively seeking the school's business for these students. Many of the private vendors offer competitive prices and provide quality educational services. Thus, the school districts are very much in a buyer's market for educational services, and the JJAEP will be but one of the alternatives available for the non-mandatory expulsions.

Subsection (m) requires that the MOU under subsection (k) be adopted by September 1 of each school year.

Subsection (n) discusses what happens when a student who has been ordered to attend a JJAEP moves from one county to another. Basically, the juvenile court may request the JJAEP in the new county to provide services to the student, if the MOU between the school district and the juvenile board in the new, receiving county authorizes the placement in the receiving county's JJAEP.

Subsection (o) grants a juvenile board, a county, and a commissioner's court immunity from liability in relation to the development and operation of the JJAEP to the same extent as the immunity enjoyed by school districts under the Education Code. Subsection (o) is virtually identical to SB 135 discussed later in this commentary.

Subsection (p) elaborates on the process of arbitration which may be used if juvenile boards and school districts disagree during the MOU process. If the school has elected to contract with the juvenile board for JJAEP services to the non-mandatory expulsion students under Section 37.007(b), (c), and (f), this arbitration process may be used for any disputes that may arise in the MOU process. Either the school or the juvenile board may request that particular issues be submitted to the binding arbitration process. Each party must pay its pro rata share of the arbitration costs. Each party will submit to the arbitrator their final

proposal for resolution of the disputed issues, and the arbitrator will make a decision. If there is disagreement on who will be the arbitrator, each party will pick one arbitrator and the two arbitrators will select the third, final arbitrator to decide the issues. The arbitration decision is enforceable in any court in the JJAEP county. If the issue of dispute is funding, the arbitrator's decision must provide an amount sufficient based upon the operation of the JJAEP in accordance with all legal requirements of Chapter 37. The arbitrator is mandated to consider certain evidence including:

1) the actual average total per student expenditure in the school district's AEP;

2) the expected per student cost in the JJAEP as described and agreed in the MOU and in compliance with Chapter 37;

3) the costs necessary to achieve the accountability goals under this Chapter 37.

This section makes clear that the funding to the JJAEP must be in an amount sufficient to allow the program to meet the minimum legal and programmatic standards established in Chapter 37, and the funding must be adequate to fund the type JJAEP program the parties have developed in the MOU.

Subsection (q) makes a certified educator employed by a juvenile board in a JJAEP eligible for membership and participation in the Teacher Retirement System of Texas to the same extent a teacher in the public school is eligible. The juvenile board will pay any contribution that would otherwise be the responsibility of the school district, and the state will pay the contribution that would otherwise be a state responsibility if the person were a school district employee. This new benefit will make it much easier for juvenile boards to attract well-qualified teachers to the JJAEPs.

Education Code § 37.011. Juvenile Justice Alternative Education Program [SB 135]

(a) through (i) unchanged.

(j) In relation to the development and operation of a juvenile justice alternative education program, a juvenile board and a county and a commissioners court are immune from liability to the same extent as a school district, and the juvenile board's or county's professional employees and volunteers are immune from liability to the same extent as a school district's professional employees and volunteers.

Commentary by Lisa Capers

Source: SB 135
Effective Date: September 1, 1997
Applicability: Cause of action accruing on or after effective date
Summary of Changes: The amendment of subsection (j) to Section 37.011 in SB 135 creates an unusual situation wherein one section of the statute has two subsections that say virtually the same thing. SB 135 was a stand alone bill that dealt solely with granting juvenile boards, counties, and commissioner's courts immunity from liability in relation to the operation of JJAEPs. Because it was unclear whether SB 135 would pass independently, a very similar provision was added to SB 133 discussed above that gave the same immunity. Because this is a very important concept, the legislature wanted to be sure this legislation passed somehow. Therefore, subsection (j) and subsection (o) are basically identical. The only difference is that subsection (j) uses the word "professional" to describe the employees of the school district and the county. The immunity provisions of the Education Code use this term also to describe the employees who enjoy this immunity. The immunity provided by this section is the same immunity school districts enjoy under Subchapter B of Chapter 22 of the Education Code related to civil immunity.

The immunity granted by this new subsection applies only to incidents arising from or as a result of the development and operation of the JJAEP, so the immunity is somewhat narrow. However, this provision is extremely important to those JJAEPs that may be serving children who are not under the jurisdiction of the juvenile court or under a juvenile court order to attend.

Education Code § 37.012. Funding of Juvenile Justice Alternative Education Programs.

(a) **Subject to Section 37.011(n), the** [~~The~~] school district in which a student is enrolled on the date [~~a juvenile court orders~~] the student **is expelled on a basis other than Section 37.007(a), (d), or (e) shall, if the student is served by the juvenile justice alternative education program, provide funding to the juvenile board** [~~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 **in an amount determined by the memorandum of understanding under Section 37.011(k)(2)** [~~funds equal to the district's~~

~~average per student expenditure in alternative education programs under Section 37.008~~].

Commentary by Lisa Capers

Source: SB 133
Effective Date: Beginning of 1997-1998 school year
Applicability: None stated
Summary of Changes: The amendments to subsection (a) address the funding of students whose expulsion from school was discretionary on the part of the school district. In these cases, if the student is placed in the JJAEP, the school district in which the student was enrolled on the date of the expulsion shall provide funding to the juvenile board in amount determined in the MOU required under Section 37.011(k)(2).

This section will apply to both the mandatory and non-mandatory JJAEPs created under Section 37.011. In terms of the mandatory JJAEPs in counties with a population over 125,000, if the school has elected to have the JJAEP serve their discretionarily expelled students, the juvenile board and school will negotiate the price for this service in the MOU. Similarly, in a non-mandatory JJAEP in counties with a population of 125,000 or below, the school district and the juvenile board will decide the acceptable price for services in the JJAEP, if that program exists.

Students served in mandatory JJAEPs who have been expelled based upon the mandatory expulsion offenses [i.e., Section 37.007(a), (d), and (e)] will be funded through a direct appropriation to TJPC via a rider to the TJPC bill pattern in the General Appropriations Act. The rider, which details the particulars of the funding allocation, states:

> **Juvenile Justice Alternative Education Programs.** Out of the funds transferred to JPC pursuant to TEA rider # 48 and appropriated in Item A.2.3., Juvenile Justice Alternative Education Programs above, the Juvenile Probation Commission shall initially allocate $2,000,000 in each fiscal year to be distributed on the basis of juvenile age population among the 22 mandated counties identified under Chapter 37, Education Code, at the beginning of each fiscal year.
>
> An additional $500,000 shall be set aside in a reserve fund for each year of the biennium to allow mandated and non-mandated counties to apply for additional funds on a grant basis.
>
> The remaining funds shall be allocated for distribution to the mandated counties at the rate of $53 per student per day of attendance in the juvenile justice alternative education program for students who are required to be expelled as provided under Section 37.007, Education Code, and are intended to cover the full cost of providing education services to such students. Counties are not eligible to receive these funds until the funds initially allocated above have been expended at the rate of $53 per student per day of attendance.
>
> The Juvenile Probation Commission may solicit proposals from the mandated counties to provide additional services in the juvenile justice alternative education program, including but not limited to summer or extended year programs, extended day programs and other educational programs if any surplus funds become available. Unspent balances in fiscal year 1998 shall be appropriated to fiscal year 1999 for the same purposes in strategy A.2.3.
>
> The allocations made in this rider for the Juvenile Justice Alternative Education Programs are estimated amounts and not intended to be an entitlement and are limited to the amounts transferred from the Foundation School Program pursuant to TEA rider # 48. The amount of $53 per student per day may vary depending on the total number of students actually attending the juvenile justice education programs.

The $500,000 each year of the biennium will be distributed by TJPC in early September 1997 to successful grant applicants who applied during the Request For Proposal (RFP) process held in August. The up-front, initial payment to the mandatory JJAEPs should also be distributed in early September 1997 and subsequent payments will be distributed as the JJAEP attendance so merits. The contract between TJPC and the juvenile boards in the mandatory JJAEP counties will define the exact details on the payment process and any applicable rules. This contract will be sent to the counties during the month of August 1997 for execution.

Education Code § 37.020. Reports Relating to Expulsions and Alternative Education Program Placements.

In the manner required by the commissioner, each school district shall annually report to the commissioner:

(1) for each placement in an alternative education program established under Section 37.008:

(A) information identifying the student, including the student's race, sex, and date of birth, that will enable the agency to compare placement data with information collected through other reports;

(B) information indicating whether the placement was based on:

(i) conduct violating the student code of conduct adopted under Section 37.001;

(ii) conduct for which a student may be removed from class under Section 37.002(b);

(iii) conduct for which placement in an alternative education program is required by Section 37.006; or

(iv) conduct occurring while a student was enrolled in another district and for which placement in an alternative education program is permitted by Section 37.008(j); and

(C) the number of days the student was assigned to the program and the number of days the student attended the program; and

(2) for each expulsion under Section 37.007:

(A) information identifying the student, including the student's race, sex, and date of birth, that will enable the agency to compare placement data with information collected through other reports;

(B) information indicating whether the expulsion was based on:

(i) conduct for which expulsion is required under Section 37.007, including information specifically indicating whether a student was expelled on the basis of Section 37.007(e);

(ii) conduct, other than conduct described by Subparagraph (iii), for which expulsion is permitted under Section 37.007; or

(iii) serious or persistent misbehavior occurring while the student was placed in an alternative education program;

(C) the number of days the student was expelled; and

(D) information indicating whether:

(i) the student was placed in a juvenile justice alternative education program under Section 37.011;

(ii) the student was placed in an alternative education program; or

(iii) the student was not placed in a juvenile justice or other alternative education program.

Commentary by Lisa Capers

Source: SB 133
Effective Date: Beginning of 1997-1998 school year
Applicability: None stated
Summary of Changes: This section was added to require school districts to report annually to the commissioner of education certain information relating to each student's removal to an alternative education program and for each expulsion under 37.007. Prior to the addition of this section, there was only a requirement for school districts to report expulsions for firearm offenses.

Code of Criminal Procedure art. 15.27. Notification to Schools Required [SB 133]

(a) A law enforcement agency that arrests **any person** or **refers a child to the office or official designated by the juvenile court** [~~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 **referral** [~~detention~~] within 24 hours after the arrest or **referral is made** [~~detention~~], or on the next school day. The superintendent shall promptly notify all instructional and support personnel who have **responsibility for supervision of** [~~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. **Both the oral and written notice shall contain sufficient details of the arrest or referral and the acts allegedly committed by the student to enable the superintendent or the superintendent's designee to determine whether there is a reasonable belief that the student has engaged in conduct defined as a**

felony offense by the Penal Code. The information contained in the notice may be considered by the superintendent or the superintendent's designee in making such a determination. [~~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) unchanged.

(c) A parole or probation office having jurisdiction over a student described by Subsection (a), (b), or (e) [~~of this article~~] who transfers from a school or is subsequently removed from a school and later returned to a school or school district other than the one the student was enrolled in when the arrest, **referral to a juvenile court** [~~detention~~], conviction, or adjudication occurred shall notify the new school officials of the arrest or **referral** [~~detention~~] in a manner similar to that provided for by Subsection (a) or (e)(1) [~~of this article~~], or of the conviction or delinquent adjudication in a manner similar to that provided for by Subsection (b) or (e)(2) [~~of this article~~].

(d) unchanged.

(e) (1) A law enforcement agency that arrests**,** or **refers to a juvenile court under Chapter 52, Family Code,** [~~detains~~] an individual **who** [~~that~~] the law enforcement agency knows or believes is enrolled as a student in a private primary or secondary school shall make the oral and written notifications described by Subsection (a) [~~of this article~~] to the principal or a school employee designated by the principal of the school in which the student is enrolled.

(2) and (3) unchanged.

(f) unchanged.

(g) **The office of the prosecuting attorney or the office or official designated by the juvenile court shall, within two working days, notify the school district that removed a student to an alternative education program under Section 37.006, Education Code, if:**

(1) prosecution of the student's case was refused for lack of prosecutorial merit or insufficient evidence and no formal proceedings, deferred adjudication, or deferred prosecution will be initiated; or

(2) the court or jury found the student not guilty or made a finding the child did not engage in delinquent conduct or conduct indicating a need for supervision and the case was dismissed with prejudice. [~~On receipt of a notice under this article, a school official may take the precautions necessary to prevent further violence in the school, on school property, or at school sponsored or school related activities on or off school property, but may not penalize a student solely because a notification is received about the student.~~]

(h) This article applies to **any felony offense**[~~:~~]

[~~(1) an offense listed in Section 8(c), Article 42.18, Code of Criminal Procedure; reckless conduct, as described by Section 22.05, Penal Code; or a terroristic threat, as described by Section 22.07, Penal Code;~~]

[~~(2) the unlawful use, sale, or possession of a controlled substance, drug paraphernalia, or marihuana, as defined by Chapter 481, Health and Safety Code;~~]

[~~(3) the unlawful possession of any of the weapons or devices listed in Sections 46.01(1)-(14) or (16), Penal Code; or a weapon listed as a prohibited weapon under Section 46.05, Penal Code; or~~]

[~~(4) a criminal offense under Section 71.02, Penal Code~~].

Commentary by Lisa Capers

Source: SB 133
Effective Date: Beginning of 1997-1998 school year
Applicability: None stated
Summary of Changes: SB 133 and HB 1150 both amended various provisions of Article 15.27, Code of Criminal Procedure. This section details the changes made by SB 133. The following section of the commentary shows what changes were made by HB 1150 and attempts to resolve potential conflicts or inconsistencies between the two bills.

SB 133 amends Article 15.27(a), Code of Criminal Procedure, to require a law enforcement agency to notify a school district when the agency "arrests" or "refers a child to the office or official designated by the juvenile court," rather than when the agency "arrests or takes into custody an individual as provided by Chapter 52, Family Code." As before, the notice goes to the superintendent of the school district where the agency knows or believes the student is enrolled. Similarly, the bill changes subsections (c) and (e)(1) to require notice after referral to juvenile court, rather than detention of an individual for one of the covered offenses. These changes are designed to assure

notice is given when a child is referred to juvenile court without having been taken into custody or detained (an out-of-custody paper referral). These requirements apply to all students whether they are adults or juveniles.

The bill also changes which school personnel a superintendent is supposed to notify when notice regarding a student is received from law enforcement. Previously, notice was to be sent to all personnel who have "regular contact with" the student. The bill limits this to all personnel who have "responsibility for supervision of" the student. For example, a school janitor or secretary might get notice under the former language (regular contact with student), while they would not under the new language (responsibility for supervision of student).

Subsection (a) has additional language requiring the oral and written notice to contain sufficient details of the referral or arrest and the acts allegedly committed by the student to enable the superintendent to determine whether there is a reasonable belief that the student has engaged in felony conduct. Although this change indicates that it applies to felony conduct, it should be read to apply to all offenses covered by the article after taking into account both SB 133 and HB 1150. Reading the bills together, the article applies to all felonies, as well as some misdemeanors. A detailed discussion of which offenses are now covered by Article 15.27 may be found below in the commentary to HB 1150.

Language in subsection (a) was deleted which required a written warning to appear on the face of the notice stating that the information is confidential and that an arrest does not mean a student is guilty. This was deleted because it was viewed as unnecessary.

The bill changes subsection (g) to require the prosecutor or juvenile court intake officer to notify the school district that removed a student to an alternative education program within two working days if the student is found not guilty or prosecution of the student is refused and no proceedings, including deferred prosecution or deferred adjudication, will be initiated. Once again, this applies to all students who are adults and juveniles.

The previous language of subsection (g) was deleted. It permitted an official receiving a notice under this article to take steps necessary to prevent violence in the school, but forbade the official from penalizing a student solely because a notice was received about the student. What action an official receiving a notice under this article may take is addressed in Chapter 37, Education Code.

The bill also changes the offenses covered by Article 15.27 by amending subsection (h). The bill makes the article apply to all felony offenses, rather than the extensive list of felonies and misdemeanors previously covered. HB 1150 also adds some misdemeanors, which are detailed in the following section.

Code of Criminal Procedure art. 15.27. Notification to Schools Required [HB 1150]

(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 **attempt to ascertain whether the person is so enrolled. If the law enforcement agency ascertains that the individual is enrolled as a student in a public primary or secondary school, the agency 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. **If the law enforcement agency cannot ascertain whether the individual is enrolled as a student, the agency shall orally notify the superintendent or a person designated by the superintendent in the school district in which the student is believed to be enrolled of that arrest or detention within 24 hours after the arrest or detention, or on the next school day. If the individual is a student, the** [~~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 INFOR-

MATION CONTAINED IN THIS NOTICE IS CONFIDENTIAL!"

(b) On conviction or on an adjudication of delinquent conduct of an individual enrolled as a student in a public primary or secondary school, for an offense or for any conduct listed in Subsection (h) of this article, the office of the prosecuting attorney acting in the case shall **orally** notify the superintendent or a person designated by the superintendent in the school district in which the student is enrolled of the conviction or adjudication. Oral notification must be given within 24 hours of the time of the determination of guilt, or on the next school day. **The superintendent shall promptly notify all instructional and support personnel who have regular contact with the student.** Within seven days after the date the oral notice is given, the office of the prosecuting attorney shall mail written notice, which must contain a statement of the offense of which the individual is convicted or on which the adjudication is grounded.

(c) A parole or probation office having jurisdiction over a student described by Subsection (a), (b), or (e) of this article who transfers from a school or is subsequently removed from a school and later returned to a school or school district other than the one the student was enrolled in when the arrest, detention, conviction, or adjudication occurred shall notify the new school officials of the arrest or detention in a manner similar to that provided for by Subsection (a) or (e)(1) of this article, or of the conviction or delinquent adjudication in a manner similar to that provided for by Subsection (b) or (e)(2) of this article. **The new school officials shall promptly notify all instructional and support personnel who have regular contact with the student.**

(d) through (g) unchanged.

(h) This article applies to:

(1) an offense **under** [~~listed in Section 8(c), Article 42.18, Code of Criminal Procedure; reckless conduct, as described by~~] Section **19.02, 19.03, 19.04, 19.05, 20.02, 20.03, 20.04, 21.08, 21.11, 22.01, 22.011, 22.02, 22.021, 22.04,** 22.05, [~~Penal Code; or a terroristic threat, as described by Section~~] 22.07, **28.02, 29.02, 29.03, 30.02, or 71.02,** Penal Code;

(2) the unlawful use, sale, or possession of a controlled substance, drug paraphernalia, or marihuana, as defined by Chapter 481, Health and Safety Code;

(3) the unlawful possession of any of the weapons or devices listed in Sections 46.01(1)-(14) or (16), Penal Code; or a weapon listed as a prohibited weapon under Section 46.05, Penal Code; or

(4) a **felony** [~~criminal~~] offense **in which a deadly weapon, as defined by Section 1.07, Penal Code, was used or exhibited** [~~under Section 71.02, Penal Code~~].

Commentary by Lisa Capers

Source: HB 1150
Effective Date: Beginning of 1997-1998 school year
Applicability: None stated
Summary of Changes: HB 1150 also made changes to Article 15.27, Code of Criminal Procedure. Under the Code Construction Act, Tex. Gov't Code Ann. (311.025(b) (Vernon 1988 & Supp. 1996), if a statute is amended by separate bills during the same session of the legislature without reference to each other, the statutory amendments must be harmonized if possible. If the new language cannot be harmonized, the latest bill in date of enactment takes precedence. The time of enactment is defined as the time of the final action of the last house in which the bill is finally passed. Because both bills were enacted on the same day, June 1, 1997, it must be determined which bill was enacted later in time. From House and Senate journals and calendars, it appears that SB 133 was enacted latest.

Fortunately however, it appears the bills may be read broadly so that they do not conflict. HB 1150 adds two requirements to Article 15.27(a). The first requires the law enforcement agency to attempt to ascertain whether a person is a student enrolled in a public primary or secondary school. The second addition requires the agency, if it cannot determine whether the person is a student, to notify the superintendent of the school district in which the person is believed to be enrolled. This is meant to assure that some effort is made to determine whether a young person is a student and to err on the side of giving notice to schools if the person's status as a student cannot be determined with certainty.

HB 1150 leaves the "arrest" and "detention" language in place. Reading HB 1150 together with the changes made by SB 133 above, law enforcement agencies should conduct the investigation and give notice to the superintendent if a student is arrested, detained, or referred to juvenile court (including out-of-custody paper referrals). This covers all possible scenarios and assures that notice is given to the proper school officials, and is consistent with the intent of the both bills: to provide safe schools.

HB 1150 adds a new mandate for school superintendents in subsections (b) and (c). It requires the superintendent or other school officials to notify all instructional and support personnel who have regular contact with a student when one of the following two types of notices is received on a student: (1) notice from a prosecutor when a student is convicted or adjudicated for one of the listed offenses, or (2) notice from a probation or parole officer when a student on probation or parole for a covered offense changes schools. This would seem to conflict with the change made in SB 133 to notify only the school personnel who have "responsibility for supervision of" the student. However that provision only applies when the superintendent receives notice of arrest, detention, or referral of a student from a law enforcement agency. Fortunately, Representative Greenberg, the author of HB 1150 stated her intent for the meaning of this language on the House floor when the conference committee report to HB 1150 was passed. She stated that the authors agreed that the intent of the language in HB 1150 regarding "regular contact with the student" refers to "instructional and support personnel who have the responsibility for supervision of the student." [See Tape 239 Side A of the official House tapes]. Thus the intent of the HB 1150 and SB 133 are the same on this point.

HB 1150, like SB 133, also changes the offenses to which the notice provisions apply by amending Article 15.27(h). The list of offenses requiring notice includes specific felonies and misdemeanors. Reading this together with the changes made by SB 133, the notice requirements of Article 15.27, Code of Criminal Procedure, should apply to all felonies and the following misdemeanors: false imprisonment; indecent exposure; assault; deadly conduct; terroristic threat; engaging in organized criminal activity; the unlawful use, sale, or possession of a controlled substance, drug paraphernalia, or marihuana, as defined by Chapter 481, Health and Safety Code; the unlawful possession of any of the weapons or devices listed in Sections 46.01(1)-(14) or (16) or 46.05, Penal Code.

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

(a) unchanged.

(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 **37.007(c)** [~~21.3011~~], Education Code; or

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

Commentary by Lisa Capers

Source: SB 133
Effective Date: Beginning of 1997-1998 school year
Applicability: None stated
Summary of Changes: This amendment is purely a technical cleanup. Section 51.03(b)(6) refers to the CINS offense created last legislative session for an expulsion based upon a child violating the school district student code of conduct while placed in the school's AEP. This is the section typically referred to as the "serious or persistent misbehavior" expulsion. The citation to Section 21.3011 was to the old Education Code, and this amendment cites to the correct location of Section 37.007(c) of the new Education Code.

There is one small technical problem in the citation within this Section. Because of the deletion of first and second offense of DWI from the list of CINS offenses under Section 51.03(b), old Section 51.03(b)(6) is actually now 51.03(b)(5) instead. New Section 51.03(b)(6) now refers to violation of a court order entered under Section 264.305 of the Family Code.

Family Code § 52.041. Referral of Child to Juvenile Court After Expulsion

(a) and (b) unchanged.

(c) Within five working days of receipt of an expulsion notice under this section by the office or official designated by the juvenile court, a preliminary investigation and determination shall be conducted as required by Section 53.01.

(d) The office or official designated by the juvenile court shall within two working days notify the school district that expelled the child if:

(1) a determination was made under Section 53.01 that the person referred to juvenile court was not a child within the meaning of this title;

(2) a determination was made that no probable cause existed to believe the child engaged in delinquent conduct or conduct indicating a need for supervision;

(3) no deferred prosecution or formal court proceedings have been or will be initiated involving the child;

(4) the court or jury finds that the child did not engage in delinquent conduct or conduct indicating a need for supervision and the case has been dismissed with prejudice; or

(5) the child was adjudicated but no disposition was or will be ordered by the court.

(e) In any county where a juvenile justice alternative education program is operated, no student shall be expelled without written notification by the board of the school district or its designated agent to the juvenile board's designated representative. The notification shall be made not later than two business days following the board's determination that the student is to be expelled. Failure to timely notify the designated representative of the juvenile board shall result in the child's duty to continue attending the school district's educational program, which shall be provided to that child until such time as the notification to the juvenile board's designated representative is properly made.

Commentary by Lisa Capers

Source: SB 133
Effective Date: Beginning of 1997-1998 school year
Applicability: None stated
Summary of Changes: The changes made to Section 52.041 were a part of the major clean-up of the safe schools provisions in Chapter 37 of the Education Code that were done in Senate Bill 133. Subsection (c) now requires that an intake under Section 53.01 be done within five working days if the child has been expelled and the juvenile court has received the requisite notice of the expulsion from the school as required under 52.041(b).

Subsection (d) provides that the juvenile court must notify the school within two working days if an expelled child's juvenile court referral did not result in an informal or formal disposition of some type. The school must be notified if the child's case was 1) not within juvenile court jurisdiction because of the person's age; 2) dismissed because of a lack of probable cause; 3) not acted upon by the prosecutor or probation and no formal or informal proceedings will be initiated; 4) dismissed with prejudice due to a not guilty finding by the judge or jury; or 5) adjudicated but will not result in a disposition. This section is intended to give the school notice so that the school officials may revisit their expulsion decision in light of the actions and outcomes of the juvenile court process. The school is under no obligation to reverse the expulsion decision, but may wish to do so in light of the new information received under this section.

Subsection (e) applies to any county that operates a juvenile justice alternative education program (JJAEP) under Section 37.011 of the Education Code, which includes both the mandatory and non-mandatory programs. It requires the school to provide notice of an expulsion of a student to the county juvenile board within two business days following the decision to expel. The child cannot be formally expelled without such notice. If the school fails to notify the juvenile board of the expulsion, the school district is obligated to continue educating the child and the child is obligated to attend school until the required notice is provided to the juvenile board.

Family Code § 53.02. Release from Detention

(a) through (d) unchanged.

(e) Unless otherwise agreed in the memorandum of understanding under Section 37.011, Education Code, in a county with a population greater than 125,000, if a child being released under this section is expelled under Section 37.007, Education Code, the release shall be conditioned on the child's attending a juvenile justice alternative education program pending a deferred prosecution or formal court disposition of the child's case.

Commentary by Lisa Capers

Source: SB 133
Effective Date: Beginning of 1997-1998 school year
Applicability: None stated
Summary of Changes: Subsection (e) is new and was another part of the Chapter 37 Education Code cleanup provisions related to safe schools. This section applies to counties with a population greater than 125,000 (i.e., the mandated JJAEP counties). It mandates that an expelled student who is being released from a detention facility by an intake officer or the court be required to attend the JJAEP pending a disposition of the child's case as a condition of the release. The rationale behind this amendment is to ensure that expelled students are immediately placed into an educational setting so that there is no expulsion "to the street." It is important to recall that the cited Section of the Education Code (i.e., 37.007) includes both the mandatory and discretionary expellable offenses. Those children expelled for the manda-

tory offenses will be eligible for state funding through TJPC from the day of their expulsion, and should be placed into the JJAEP immediately if they are not in detention and immediately upon release from detention under this section. For those children who are expelled for the offenses for which the school has discretion to expel, the memorandum of understanding (MOU) required under Section 37.011 of the Education Code must address which educational setting is most appropriate for the child (i.e., a school setting, the JJAEP, a private vendor, etc.) If the MOU does not specifically address the placement of the discretionary expulsion children, upon release from detention under Section 53.02 or 54.01, these children must be placed into the JJAEP. This issue is further discussed under the education provisions of Section 37.011 and 37.012 of this commentary.

Family Code § 54.01. Detention Hearing

(a) through (e) unchanged.

(f) **Unless otherwise agreed in the memorandum of understanding under Section 37.011, Education Code, a** [~~A~~] release may be conditioned on requirements reasonably necessary to insure the child's appearance at later proceedings, but the conditions of the release must be in writing and a copy furnished to the child. **In a county with a population greater than 125,000, if a child being released under this section is expelled under Section 37.007, Education Code, the release shall be conditioned on the child's attending a juvenile justice alternative education program pending a deferred prosecution or formal court disposition of the child's case.**

Commentary by Lisa Capers

Source: SB 133
Effective Date: Beginning of 1997-1998 school year
Applicability: None stated
Summary of Changes: The changes made to Subsection (f) are basically identical to the changes made to Section 53.02 that are discussed above. A conditional release under Section 53.02 is one that is normally conducted prior to the first detention hearing and is usually ordered by the intake officer at the detention facility. A conditional release under Section 54.01 is actually done by the court at a formal detention hearing or at some time after the first detention hearing is held.

There is one slight technical error in Subsection (f) that was an oversight during the hectic conference committee report drafting process. The phrase at the beginning of Subsection (f) that states "Unless otherwise agreed in the memorandum of understanding under Section 37.011, Education Code, a" is misplaced at the beginning of the subsection. This phrase makes no sense there, and actually belongs at the beginning of the second sentence. Thus, the second sentence should read: "Unless otherwise agreed in the memorandum of understanding under Section 37.011, Education Code, in a county with a population greater than 125,000, if a child being released under this section is expelled under Section 37.007, Education Code, the release shall be conditioned on the child's attending a juvenile justice alternative education program pending a deferred prosecution or formal court disposition of the child's case." This change makes the statute read identically to the changes made to Section 53.02(e).

Family Code § 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 **conduct described in Section 51.03(b)(6) or** a Class A or B misdemeanor, the sanction level is one;

(2) for **conduct indicating a need for supervision under Section 51.03(b)(6) or** 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) through (7) unchanged.

Commentary by Lisa Capers

Source: SB 133
Effective Date: Beginning of 1997-1998 school year
Applicability: None stated
Summary of Changes: This amendment affects the assignment guidelines in Progressive Sanctions. Under the change, a "serious or persistent misbehavior" expulsion offense under the old Family Code Section 51.03(b)(6) is assigned to level two of Progressive Sanctions. Previously, this CINS offense was a level one offense for which a supervisory caution disposition was recommended. The recommended disposition under the modification is now deferred prosecution or

court ordered probation. The rationale behind this change was to allow the prosecutor, probation department, or court to order a more significant disposition for expelled juveniles without having to deviate because many counties have agreed to accept these type expulsions into the JJAEPs.

There is one small technical problem in the citation within this Section. Because of the deletion of first and second offense of DWI from the list of CINS offenses under Section 51.03(b), the reference to Section 51.03(b)(6) is actually now 51.03(b)(5) instead. Section 51.03(b)(6) now refers to violation of a court order entered under Section 264.305 of the Family Code.

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4. Sex Offender Legislation

Family Code § 54.04. Disposition Hearing

(a) through (o) unchanged.

(p) Except as provided by Subsection (l), a court that places a child on probation under Subsection (d)(1) for conduct described by Section 54.0405(b) and punishable as a felony shall specify a minimum probation period of two years.

Commentary by Neil Nichols

Source: SB 1232
Effective Date: September 1, 1997
Applicability: Offenses committed on or after effective date
Summary of Changes: A minimum probation term of two years or until age 18, whichever is shorter, must be ordered when youth are placed on probation for a felony offense of indecency with a child, sexual assault, aggravated sexual assault, prohibited sexual conduct, aggravated kidnapping with intent to violate or abuse the victim sexually or first degree felony burglary of a habitation when committed with the intent to commit one of the previous sex offenses or indecent exposure. The victim need not be a child for purposes of imposing the minimum probation term under this section. The purpose of the minimum term is to provide sufficient time for the possibility of successful sex offender treatment while on probation.

Family Code § 54.0405. Child Placed on Probation for Conduct Constituting Sexual Offense

(a) If a court or jury makes a disposition under Section 54.04 in which a child described by Subsection (b) is placed on probation and the court determines that the victim of the offense was a child as defined by Section 22.011(c), Penal Code, the court may require as a condition of probation that the child:

(1) attend psychological counseling sessions for sex offenders as provided by Subsection (e); and

(2) submit to a polygraph examination as provided by Subsection (f) for purposes of evaluating the child's treatment progress.

(b) This section applies to a child placed on probation for conduct constituting an offense:

(1) under Section 21.08, 21.11, 22.011, 22.021, or 25.02, Penal Code;

(2) under Section 20.04(a)(4), Penal Code, if the child engaged in the conduct with the intent to violate or abuse the victim sexually; or

(3) under Section 30.02, Penal Code, punishable under Subsection (d) of that section, if the child engaged in the conduct with the intent to commit a felony listed in Subdivision (1) or (2) of this subsection.

(c) Psychological counseling required as a condition of probation under Subsection (a) must be with an individual or organization that:

(1) provides sex offender treatment or counseling;

(2) is specified by the local juvenile probation department supervising the child; and

(3) meets minimum standards of counseling established by the local juvenile probation department.

(d) A polygraph examination required as a condition of probation under Subsection (a) must be administered by an individual who is:

(1) specified by the local juvenile probation department supervising the child; and

(2) licensed as a polygraph examiner under the Polygraph Examiners Act (Article 4413(29cc), Vernon's Texas Civil Statutes).

(e) A local juvenile probation department that specifies a sex offender treatment provider

under Subsection (c) to provide counseling to a child shall:

(1) establish with the cooperation of the treatment provider the date, time, and place of the first counseling session between the child and the treatment provider;

(2) notify the child and the treatment provider, not later than the 21st day after the date the order making the disposition placing the child on probation under Section 54.04 becomes final, of the date, time, and place of the first counseling session between the child and the treatment provider; and

(3) require the treatment provider to notify the department immediately if the child fails to attend any scheduled counseling session.

(f) A local juvenile probation department that specifies a polygraph examiner under Subsection (d) to administer a polygraph examination to a child shall arrange for a polygraph examination to be administered to the child:

(1) not later than the 60th day after the date the child attends the first counseling session established under Subsection (e); and

(2) after the initial polygraph examination, as required by Subdivision (1), on the request of the treatment provider specified under Subsection (c).

(g) A court that requires as a condition of probation that a child attend psychological counseling under Subsection (a) may order the parent or guardian of the child to:

(1) attend four sessions of instruction with an individual or organization specified by the court relating to:

(A) sexual offenses;

(B) family communication skills;

(C) sex offender treatment;

(D) victims' rights;

(E) parental supervision; and

(F) appropriate sexual behavior; and

(2) during the period the child attends psychological counseling, participate in monthly treatment groups conducted by the child's treatment provider relating to the child's psychological counseling.

(h) A court that orders a parent or guardian of a child to attend instructional sessions and participate in treatment groups under Subsection (g) shall require:

(1) the individual or organization specified by the court under Subsection (g) to notify the court immediately if the parent or guardian fails to attend any scheduled instructional session; and

(2) the child's treatment provider specified under Subsection (c) to notify the court immediately if the parent or guardian fails to attend a session in which the parent or guardian is required to participate in a scheduled treatment group.

(i) A court that requires as a condition of probation that a child attend psychological counseling under Subsection (a) may, before the date the probation period ends, extend the probation for any additional period necessary to complete the required counseling as determined by the treatment provider, except that the probation may not be extended to a date after the date of the child's 18th birthday.

Commentary by Neil Nichols

Source: SB 1232
Effective Date: September 1, 1997
Applicability: Offenses committed on or after effective date
Summary of Changes: This new section is similar to a 1995 amendment of the Code of Criminal Procedure, Article 42.12, Sec. 13B, that requires adults who are convicted of a sex offense against a child and placed on community supervision to, among other things, attend psychological counseling for sex offenders. Due to the high costs associated with extending the same requirement to juveniles, the bill as finally passed authorizes the counseling as a condition of juvenile probation (or of parole, Human Resources Code Section 61.0813), but does not require it.

Psychological counseling that is ordered under this section, as opposed to Sec. 54.04(d)(1), is provided to youth whose victim was a child under age 17 and who are adjudicated for indecent exposure, indecency with a child, sexual assault, aggravated sexual assault, prohibited sexual conduct, aggravated kidnapping with intent to violate or abuse the victim sexually or first degree felony burglary of a habitation when committed with the intent to commit one of the previous sex offenses. Within 21 days of the order requiring the counseling, the probation department is required to arrange for the first counseling session. The treatment provider must meet the department's minimum standards of counseling, notify the department whenever the youth fails to attend a counseling session, and submit a monthly report indicating the number of sessions the youth attended and the reason for his failure to complete the program. This section also authorizes the court to require the youth to submit to a polygraph examination, conducted by a licensed examiner, for purposes of evaluating his treatment progress. If the court

orders the examination, this section requires that the initial exam be conducted within the first 60 days of treatment. The use of polygraph examination is a fairly standard practice in sex offender treatment.

This section also authorizes the court, without the findings or notice and hearing requirements of Sec. 54.041(a), to order a parent or guardian to attend four sessions of instruction on various topics related to sex offenses and to attend monthly treatment groups conducted by the youth's treatment provider. If the court enters such an order, the treatment providers must report immediately if the parents or guardians fail to attend.

The provision in this section authorizing the court to extend the probation period up to age 18 to allow completion of the treatment program is the same as Sec. 54.04(l).

Human Resources Code § 61.0813. Sex Offender Counseling and Treatment

(a) Before releasing a child described by Subsection (b) under supervision, the commission may require as a condition of release that the child:

(1) attend psychological counseling sessions for sex offenders as provided by Subsection (e); and

(2) submit to a polygraph examination as provided by Subsection (f) for purposes of evaluating the child's treatment progress.

(b) This section applies to a child only if:

(1) the child has been adjudicated for engaging in delinquent conduct constituting an offense:

(A) under Section 21.08, 21.11, 22.011, 22.021, or 25.02, Penal Code;

(B) under Section 20.04(a)(4), Penal Code, if the child engaged in the conduct with the intent to violate or abuse the victim sexually; or

(C) under Section 30.02, Penal Code, punishable under Subsection (d) of that section, if the child engaged in the conduct with the intent to commit a felony listed in Paragraph (A) or (B) of this subdivision; and

(2) the victim of the conduct described by Subdivision (1) was a child as defined by Section 22.011(c), Penal Code.

(c) Psychological counseling required as a condition of release under Subsection (a) must be with an individual or organization that:

(1) provides sex offender treatment or counseling;

(2) is specified by the commission; and

(3) meets minimum standards of counseling established by the commission.

(d) A polygraph examination required as a condition of release under Subsection (a) must be administered by an individual who is:

(1) specified by the commission; and

(2) licensed as a polygraph examiner under the Polygraph Examiners Act (Article 4413(29cc), Vernon's Texas Civil Statutes).

(e) In addition to specifying a sex offender treatment provider to provide counseling to a child described by Subsection (b), the commission shall:

(1) establish with the cooperation of the treatment provider the date, time, and place of the first counseling session between the child and the treatment provider;

(2) notify the child and the treatment provider before the release of the child of the date, time, and place of the first counseling session between the child and the treatment provider; and

(3) require the treatment provider to notify the commission immediately if the child fails to attend any scheduled counseling session.

(f) If the commission specifies a polygraph examiner under Subsection (d) to administer a polygraph examination to a child, the commission shall arrange for a polygraph examination to be administered to the child:

(1) not later than the 60th day after the date the child attends the first counseling session established under Subsection (e); and

(2) after the initial polygraph examination, as required by Subdivision (1), on the request of the treatment provider specified under Subsection (c).

(g) If the commission requires as a condition of release that a child attend psychological counseling under Subsection (a), the commission shall notify the court that committed the child to the commission. After receiving notification from the commission under this subsection, the court may order the parent or guardian of the child to:

(1) attend four sessions of instruction with an individual or organization specified by the commission relating to:

(A) sexual offenses;

(B) family communication skills;

(C) sex offender treatment;

(D) victims' rights;

(E) parental supervision; and

(F) appropriate sexual behavior; and

(2) during the time the child attends psychological counseling, participate in month-

ly treatment groups conducted by the child's treatment provider relating to the child's psychological counseling.

(h) A court that orders a parent or guardian of a child to attend instructional sessions and participate in treatment groups under Subsection (g) shall require:

(1) the individual or organization specified by the commission under Subsection (g) to notify the court immediately if the parent or guardian fails to attend any scheduled instructional session; and

(2) the child's treatment provider specified under Subsection (c) to notify the court immediately if the parent or guardian fails to attend a session in which the parent or guardian is required to participate in a scheduled treatment group.

(i) If the commission requires as a condition of release that a child attend psychological counseling under Subsection (a), the commission may, before the date the period of release ends, petition the appropriate court to request the court to extend the period of release for an additional period necessary to complete the required counseling as determined by the treatment provider, except that the release period may not be extended to a date after the date of the child's 18th birthday.

Commentary by Neil Nichols

Source: SB 1232
Effective Date: September 1, 1997
Applicability: Offenses committed on or after effective date
Summary of Changes: The sex offender counseling and treatment provisions that are added for TYC parolees are substantially the same as those in Family Code Section 54.0405. Due to the high costs associated with requiring sex offender treatment for all the youth who need it, the bill as finally passed authorizes the TYC to add treatment as a condition of parole, but does not require that it do so.

Psychological counseling that is ordered as a parole condition under this section is provided to youth whose victim was a child under age 17 and who are adjudicated for indecent exposure, indecency with a child, sexual assault, aggravated sexual assault, prohibited sexual conduct, aggravated kidnapping with intent to violate or abuse the victim sexually or first degree felony burglary of a habitation when committed with the intent to commit one of the previous sex offenses. Before the youth's parole release, the TYC is required to arrange for the first counseling session. The treatment provider must meet the TYC's minimum standards of counseling, notify the TYC whenever the youth fails to attend a counseling session, and submit a monthly report indicating the number of sessions the youth attended and the reason for his failure to complete the program. This section also authorizes the TYC to require the youth to submit to a polygraph examination, conducted by a licensed examiner, for purposes of evaluating his treatment progress. If the TYC requires the examination, this section requires that the initial exam be conducted within the first 60 days of treatment. The use of polygraph examination is a fairly standard practice in sex offender treatment.

This section also requires the TYC to notify the committing court when it requires psychological counseling under this section. The committing court, then, is authorized to order a parent or guardian to attend four sessions of instruction on various topics related to sex offenses and to attend monthly treatment groups conducted by the youth's treatment provider. If the court enters such an order, the treatment providers must report immediately if the parents or guardians fail to attend.

The final provision in this section authorizes the TYC to petition the committing court for an extension of the parole term up to age 18 to allow completion of the treatment program. Since the TYC's jurisdiction extends to age 21, the TYC will never have the need to file such a petition.

Government Code § 493.017. Reports of Sex Offender Treatment

(a) and (b) unchanged.

(c) A sex offender correction program that provides counseling sessions for a child under Section 54.0405, Family Code, shall report to the local juvenile probation department supervising the child, not later than the 15th day of each month, the following information about the child:

(1) the total number of counseling sessions attended by the child during the preceding month; and

(2) if during the preceding month the child terminates participation in the program before completing counseling, the reason for the child's termination of counseling or that the reason for the termination of counseling is unknown.

(d) A sex offender correction program that provides counseling sessions for a child who is released under supervision under Section 61.0813, Human Resources Code, shall report to the Texas Youth Commission, not later than the 15th day of each month, the following information about the child:

(1) the total number of counseling sessions attended by the child during the preceding month; and

(2) if during the preceding month the child terminates participation in the program before completing counseling, the reason for the child's termination of counseling or the the reason for the termination of counseling is unknown.

Commentary by Robert Dawson

Source: SB 1232
Effective Date: September 1, 1997
Applicability: Offenses committed on or after effective date; first report due October 15, 1997
Summary of Changes: This section requires the entities providing sex offender counseling to report to the probation department or TYC on the number of sessions attended by a probationer or parolee, whether the child terminated counseling and, if so, why. Of course, the purpose of these reports are to enable the court or TYC to determine whether to take supervisory action.

Sexual Offender Registration Program

Article 6252-13c.l of the Revised Statutes [Sexual Offender Registration Program] is redesignated as Chapter 62, Code of Criminal Procedure.

Code of Criminal Procedure
CHAPTER 62.
SEX [~~Art. 6252-13c.1. SEXUAL~~] OFFENDER REGISTRATION PROGRAM

Code of Criminal Procedure Art. 62.01 [~~Sec. 1~~]. Definitions
In this **chapter** [~~article~~]:

(1) "Department" means the Department of Public Safety.

(2) "Local law enforcement authority" means the chief of police of a municipality or the sheriff of a county in this state.

(3) "Penal institution" means a confinement facility operated by or under a contract with any 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) "Released" means discharged, paroled, **placed in a nonsecure community program for juvenile offenders,** or placed on **juvenile probation, community supervision, or** mandatory supervision.

(5) "Reportable conviction or adjudication" means **a conviction or adjudication, regardless of the pendency of an appeal, that is**:

(A) a conviction for **a** violation of Section 21.11 (Indecency with a child), 22.011 (Sexual assault), 22.021 (Aggravated sexual assault), **or** 25.02 (Prohibited sexual conduct), Penal Code;

(B) a conviction for **a** violation of Section **43.05 (Compelling prostitution),** 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 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) an adjudication of delinquent conduct based on a violation of one of the offenses listed in Paragraph (A), (B), (C), (D), or (F) [~~of this subdivision~~] or for which two violations of the **offense** [~~offenses~~] listed in Paragraph (E) [~~of this subdivision~~] are shown;

(H) a deferred adjudication for an offense listed in Paragraph (A), (B), (C), (D), or (F) [~~of this subdivision~~];

(I) a conviction under the laws of another state **or the Uniform Code of Military Justice** 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 **or the Uniform Code of Military Justice** for an offense containing elements that are substantially similar to the elements of the offense of indecent exposure.

(6) "Sexually violent offense" means any of the following offenses committed by a person 17 years of age or older:

(A) an offense under Section 21.11(a)(1) (Indecency with a child), 22.011 (Sexual assault), or 22.021 (Aggravated sexual assault), Penal Code;

(B) an offense under Section 43.25 (Sexual performance by a child), Penal Code;

(C) an offense under 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) an offense under 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 Subdivision (5); or

(E) an offense under the laws of another state if the offense contains elements that are substantially similar to the elements of an offense listed under Paragraph (A), (B), (C), or (D).

Commentary by Robert Dawson

Source: SB 875
Effective Date: September 1, 1997
Applicability: Offenses committed on or after effective date

Summary of Changes: The sex offender registration statute was revised and moved from the Civil Statutes to Chapter 62 of the Code of Criminal Procedure.

The change in (5)(B) adds Compelling Prostitution to the list of covered offenses.

Under (5)(G) an adjudication of delinquency for a covered offense is included in the reporting scheme. Under (5)(H) a deferred adjudication in juvenile or criminal court is a reportable event for any covered offense except indecent exposure. A deferred prosecution or pretrial diversion in either juvenile or criminal court is not covered at all by the reporting scheme.

The new category of Sexually Violent Offense in (6) does not apply to juveniles because of the requirement that the offender must be 17 or older when the offense is committed.

Code of Criminal Procedure Art. 62.02 [~~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 **chapter** [~~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 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 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 **chapter** [~~article~~] to register. The registration form shall require:

(1) and (2) unchanged;

(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) **an indication as to whether the person is discharged, paroled, or released on juvenile probation, community supervision, or mandatory supervision; and**

(5) any other information required by the department.

(c) unchanged.

(d) A person for whom registration is completed under this **chapter** [~~article~~] shall report to the applicable local law enforcement authority to verify the information in the registration form received by the authority under this **chapter** [~~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 **complete and** accurate, the person shall verify registration by signing the form. If the information is **not complete or** not accurate, the person shall make any necessary **additions or** corrections before signing the form.

[~~(d) On the day a court pronounces a sentence of imprisonment, deferred adjudication, community supervision, juvenile probation, fine only, or other disposition for a person who is subject to registration under this article, the court shall:~~]

[~~(1) inform the person of the person's duty to register under this article and require the person to sign a written statement that the person was informed of the duty, or if the person refuses to sign the statement, certify that the person was informed of the duty;~~]

[~~(2) complete the registration form for the person and send the form to the department and:~~]

[~~(A) if the person is sentenced to a penal institution and imposition of sentence is not suspended, to the penal institution; or~~]

[~~(B) if the person is sentenced to a penal institution and the imposition of the sentence is suspended or the person receives other disposition, to the local law enforcement authority in the municipality or unincorporated area of the county in which the person expects to reside.~~]

(e) **A person who is required to register or verify registration under this chapter shall ensure that the person's registration form is complete and accurate with respect to each item of information required by the form in accordance with Subsection (b).**

(f) If a person subject to registration under this **chapter** [~~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 **juvenile probation officer,** 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

Source: SB 875
Effective Date: September 1, 1997
Applicability: Offenses committed on or after effective date
Summary of Changes: Under (b)(4) the registration form must indicate the status of the legal case--either the type of community supervision or that the defendant has been discharged from the criminal or juvenile justice system.

The language in (d) about court notification of the obligation to register was repealed because of the expanded definition of "released" in art. 62.01(4) to include probation. The requirement of notifying the releasee--whether probationer or parolee--of his or her reporting obligations is now consolidated and expressed in the next section.

Subsection (f) was amended to include juveniles within the scope of the duty to report weekly should the juvenile not move to his or her intended new place of residence on the date reported.

Code of Criminal Procedure Art. 62.03 [~~Sec. 3~~]. Prerelease Notification

(a) Before a person who will be subject to registration under this **chapter** [~~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 **juvenile probation officer,** 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 **juvenile probation officer,** community supervision and corrections department officer**,** or [~~the~~] parole officer supervising the person; and

(C) unchanged;

(2) through (4) unchanged.

(b) On the seventh day before the date on which a person who will be subject to registration under this **chapter** [~~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 **chapter** [~~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 the department and to:

(1) and (2) unchanged.

(c) If a person who is subject to registration under this **chapter** [~~article~~] receives an order deferring adjudication, **placing the person on juvenile probation or** community supervision, or **imposing** only a fine, the court pronouncing the order or sentence shall ensure that the prerelease notification and registration requirements specified in this **article** [~~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 **article** [~~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 **article** [~~section~~].

(d) If a person who has a reportable conviction for an offense described **by Article 62.01(5)(I) or (J)** [~~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 **article**

[~~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 **chapter** [~~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 **the** public [~~schools of the~~] school district **and to the administrator of any private primary or secondary school located in the public school district** in which the person subject to registration intends to reside by mail to the [~~district~~] office **of the superintendent or administrator, as appropriate**.

(f) unchanged.

(g) The local law enforcement authority shall include in the notice to the superintendent of **the** public **school district and to the administrator of any private primary or secondary school located in the public school district** [~~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

Source: SB 875
Effective Date: September 1, 1997
Applicability: Offenses committed on or after effective date
Summary of Changes: This section consolidates notifying the offender of his or her obligation to register into a single section. Subsections (a) and (b) deal with release from a penal institution. Subsection (c) with release by a court on probation or community supervision.

Subsection (e), requiring the local law enforcement agency to take out a "sex offender living on your block" advertisement in the local paper does not apply to juvenile sex offenders. However, the requirement in (e) that the local law enforcement agency must notify schools of the residency of a sex offender if the victim was under 17 applies to juveniles as well as adults. School notification under amended (e) and (g) now includes private schools.

Code of Criminal Procedure Art. 62.04 [~~Sec. 4~~]. Change of Address

(a) If a person required to register intends to change address, **regardless of whether the person intends to move to another state,** the person shall, not later than the seventh day before the intended change, report in person to the local law enforcement authority with whom the person last registered and to the **juvenile probation officer,** 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 **juvenile probation officer,** 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) unchanged.

(d) Not later than the third day after receipt of information under Subsection (a) or (b) [~~of this section~~], whichever is earlier, 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) unchanged; and

(2) report to the **juvenile probation officer,** community supervision and corrections de-

partment 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 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 **chapter** [~~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 **the** public [~~schools of the~~] school district **and to the administrator of any private primary or secondary school located in the public school district** in which the person subject to registration intends to reside by mail to the [~~district~~] office **of the superintendent or administrator, as appropriate**.

(g) unchanged.

(h) The local law enforcement authority shall include in the notice to the superintendent of **the** public **school district and the administrator of any private primary or secondary school located in the public school district** [~~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) and (2) unchanged.

Commentary by Robert Dawson

Source: SB 875
Effective Date: September 1, 1997
Applicability: Offenses committed on or after effective date
Summary of Changes: The amendment to this section includes juvenile probation officer among the authorities to whom a registered sex offender must report an intent to change residence.

Code of Criminal Procedure Art. 62.05. Status Report by Supervising Officer

If the juvenile probation officer, community supervision and corrections department officer, or parole officer supervising a person subject to registration under this chapter receives information to the effect that the person's status has changed in any manner that affects proper supervision of the person, including a change in the person's physical health, job status, incarceration, or terms of release, the supervising officer shall promptly notify the appropriate local law enforcement authority or authorities of that change. If the person required to register intends to change address, the person's supervising officer shall notify the local law enforcement authorities designated by Article 62.04(b).

Commentary by Robert Dawson

Source: SB 875
Effective Date: September 1, 1997
Applicability: Offenses committed on or after effective date
Summary of Changes: This new section requires juvenile probation and parole officers to report to the local law enforcement agency any status changes that might affect the continuing obligation of the person to register.

Code of Criminal Procedure Art. 62.06. Law Enforcement Verification of Registration Information

(a) A person subject to registration under this chapter who has on two or more occasions been convicted of or received an order of deferred adjudication for a sexually violent offense shall report to the local law enforcement authority with whom the person is required to register not less than once in each 90-day peri-

od following the date the person first registered under this chapter to verify the information in the registration form maintained by the authority for that person. A person subject to registration under this chapter who is not subject to the 90-day reporting requirement described by this subsection shall report to the local law enforcement authority with whom the person is required to register once each year not earlier than the 30th day before and not later than the 30th day after the anniversary of the date on which the person first registered under this chapter to verify the information in the registration form maintained by the authority for that person.

(b) A local law enforcement authority with whom a person is required to register under this chapter may direct the person to report to the authority to verify the information in the registration form maintained by the authority for that person. The authority may direct the person to report under this subsection once in each 90-day period following the date the person first registered under this chapter, if the person has on two or more occasions been convicted of or received an order of deferred adjudication for a sexually violent offense, or, if not, once in each year not earlier than the 30th day before and not later than the 30th day after the anniversary of the date on which the person first registered under this chapter. A local law enforcement authority may not direct a person to report to the authority under this subsection if the person is required to report under Subsection (a) and is in compliance with the reporting requirements of that subsection.

(c) A local law enforcement authority with whom a person reports under this article 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 complete and accurate, the person shall verify registration by signing the form. If the information is not complete or not accurate, the person shall make any necessary additions or corrections before signing the form.

(d) A local law enforcement authority with whom a person is required to register under this chapter may at any time mail a nonforwardable verification form to the last reported address of the person. Not later than the 21st day after receipt of a verification form under this subsection, the person shall:

(1) indicate on the form whether the person still resides at the last reported address and, if not, provide on the form the person's new address;

(2) complete any other information required by the form;

(3) sign the form; and

(4) return the form to the authority.

Commentary by Robert Dawson

Source: SB 875
Effective Date: September 1, 1997
Applicability: Offenses committed on or after effective date
Summary of Changes: This new section puts local law enforcement agencies in the middle of the supervision process for registered sex offenders. A person who was convicted or who has received deferred adjudication for two or more sexually violent offenses is required to report to the police every 90 days to verify information in the registration form. "Sexually violent offense" is defined to exclude juveniles [art. 62.01(6)] who, therefore, are never subject to the 90 day reporting requirement.

However, all other persons are subject to a one year reporting requirement, and this includes juveniles.

Under (b) if the person does not report on the 90 day or one year schedule, the local law enforcement agency may demand reporting.

Under (d) it may also, at any time, send out a change of status form to the registrant and require that it be returned within 21 days.

Code of Criminal Procedure Art. 62.07 [~~Sec. 4A~~]. Remedies Related to Public Notice

A person subject to registration under this **chapter** [~~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 **Article 62.03 or 62.04** [~~Section 3 or Section 4 of this article~~]. The court may issue a temporary restraining order under this **article** [~~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 **chapter** [~~article~~] proves by a preponderance of the evidence specific facts indicating that newspaper publication under **Article 62.03 or 62.04** [~~Section 3 or Section 4 of this article~~] would place the person's health and well-being in immediate danger.

Commentary by Robert Dawson

Source: SB 875
Effective Date: September 1, 1997
Applicability: Offenses committed on or after effective date
Summary of Changes: These amendments simply conform this section to the Code of Criminal Procedure identifying scheme.

Code of Criminal Procedure Art. 62.08 [~~Sec. 5~~]. Central Database; Public Information

(a) The department shall maintain a computerized central database containing only the information required for registration under this **chapter** [~~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 is required by the department under Article 62.02(b)(5); or**

(3) 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.

(d) On the written request of a licensing authority that identifies an individual and states that the individual is an applicant for or a holder of a license issued by the authority, the department shall release any information described by Subsection (a) to the licensing authority.

(e) For the purposes of Subsection (d):

(1) "License" means a license, certificate, registration, permit, or other authorization that:

(A) is issued by a licensing authority; and

(B) a person must obtain to practice or engage in a particular business, occupation, or profession.

(2) "Licensing authority" means a department, commission, board, office, or other agency of the state or a political subdivision of the state that issues a license.

Commentary by Robert Dawson

Source: SB 875
Effective Date: September 1, 1997
Applicability: Offenses committed on or after effective date
Summary of Changes: The information provided to the Department of Public Safety by local agencies is a public database, available to anyone, subject to the exclusions in (b).

Subsection (d) is new. It requires the DPS to release all information from the database upon inquiry by any occupational licensing agency that seeks registration information about an applicant for or holder of a license. There are probably in excess of 150 different types of occupational licenses issued under Texas law.

Code of Criminal Procedure Art. 62.09 [~~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 **chapter** [~~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) unchanged.

(d) A private primary or secondary school or administrator of a private primary or secondary school may release to the public information regarding a person required to register if the information is public information under this chapter and is released to the administrator under Article 62.03 or 62.04. A private primary or secondary school or administrator of a private primary or secondary school is not liable under any law for damages arising from conduct authorized by this subsection.

Commentary by Robert Dawson

Source: SB 875
Effective Date: September 1, 1997
Applicability: Offenses committed on or after effective date
Summary of Changes: New (d) adds private school officials to the list of persons who are immune from civil liability for the release of public information from the registration database.

Code of Criminal Procedure Art. 62.10 [~~Sec. 7~~]. Failure to Comply with Registration Requirements

(a) A person commits an offense if the person is required to register and fails to comply with **any requirement of** this **chapter** [~~article~~].

(b) An offense under this **article** [~~section~~] is a **state jail felony** [~~Class A misdemeanor~~].

(c) If it is shown at the trial of a person for an offense under this **article** [~~section~~] that the person has previously been convicted of an offense under this **article** [~~section~~], the person shall be punished for a felony of the third degree.

Commentary by Robert Dawson

Source: SB 875
Effective Date: September 1, 1997
Applicability: Offenses committed on or after effective date
Summary of Changes: The amendments to this section make failure to comply with registration, change of address, reporting or any other requirements of this chapter a state jail felony.

Code of Criminal Procedure Art. 62.11 [~~Sec. 8~~]. **Applicability** [~~Exemptions~~]

[~~(a)~~] This **chapter** [~~article~~] applies only to a reportable conviction or adjudication[~~:~~] [~~(1)~~] occurring on or after[~~:~~] [~~(A)~~] September 1, **1970, except that the provisions of Articles 62.03 and 62.04 of this chapter relating to the requirement of newspaper publication apply only to a reportable conviction or adjudication occurring on or after:**

(1) September 1, 1997, if the conviction or adjudication relates to an offense under Section 43.05, Penal Code; or

(2) September 1, 1995, if the conviction or adjudication relates to any other offense listed in Article 62.01(5) [~~1991, if the conviction is for or the adjudication is based on an offense listed in Section 1(5)(A) of this article; (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~~].

[~~(b) A person who has a reportable conviction or adjudication may petition a district judge in the county where the person resides or intends to reside for an exemption from this article. If the person shows good cause, the district judge shall grant the exemption.~~]

Commentary by Robert Dawson

Source: SB 875
Effective Date: September 1, 1997
Applicability: Offenses committed on or after effective date
Summary of Changes: The registration requirements apply to all convictions or adjudications for covered offenses that have occurred on or after September 1, 1970, except for newspaper reporting requirements which apply only to post-September 1, 1995 or 1997 convictions, depending upon the offense.

The repeal of subsection (b) means that a person can no longer petition a court for exemption from the registration requirements. One can still petition for exemption from the newspaper publication requirement.

Code of Criminal Procedure Art. 62.12 [~~Sec. 9~~]. Expiration of Duty to Register

(a) The duty to register for a person with a reportable **conviction or** adjudication **for a sexually violent offense or for an offense under Section 25.02, 43.05(a)(2), or 43.26, Penal Code,** [~~under Section 1(5)(D) of this article~~] ends **when the person dies.**

(b) The duty to register for a person with a reportable conviction or adjudication for an offense other than an offense described by Subsection (a) ends:

(1) if the person's duty to register is based on an adjudication of delinquent conduct, on the 10th anniversary of the date on which[~~: (1) the person ceases to be under the supervision of the Texas Youth Commission, if the person was committed to the Texas Youth Commission other than under a determinate sentence; (2) the person is discharged from the Texas Youth Commission or the Texas Department of Criminal Justice, whichever date is later, if the person was committed to the Texas Youth Commission under a determinate sentence; or (3)~~] the disposition is made or the person completes the terms of the disposition, whichever date is later**; or**

(2) if the person's duty to register is based on a conviction or on an order of deferred adjudication, [~~if the person received a disposition that did not include a commitment to the Texas Youth Commission. (b) The duty to~~

~~register for a person with a reportable conviction, other than a conviction for a violation of Section 21.11(a)(1), 22.021, or 43.25, Penal Code, ends~~] on the 10th anniversary of the date on which **the court dismisses the criminal proceedings against the person and discharges the person,** the person is released from **county jail,** [~~the institutional division of the Texas Department of Criminal Justice~~] or the person discharges [~~parole or~~] community supervision, whichever date is later.

(c) **A person with a reportable conviction or adjudication for a sexually violent offense who is registered under this chapter may petition the district court in the county where the person resides for an order exempting the person from the lifetime registration requirement established by Subsection (a). After a hearing on the matter, the court may issue an order under this subsection if it appears by a preponderance of the evidence as presented by not fewer than two registered sex offender treatment providers and a licensed psychiatrist that:**

(1) the person received mental health or other appropriate treatment during the person's term of confinement, parole, or community supervision and is unlikely to commit an offense listed in Article 62.01(5); and

(2) there is reason to believe that the person no longer poses a significant threat to the community. [~~The duty to register for a person with a reportable conviction or adjudication based on an order of deferred adjudication under Section 1(5)(E) of this article, other than an order of deferred adjudication for a violation of Section 21.11(a)(1), 22.021, or 43.25, Penal Code, ends on the 10th anniversary of the date on which: (1) the court dismisses the criminal proceedings against the person and discharges the person; or (2) the person is released from the institutional division of the Texas Department of Criminal Justice or the person discharges parole or community supervision, if the court proceeded to final adjudication in the case.~~]

Commentary by Robert Dawson

Source: SB 875
Effective Date: September 1, 1997
Applicability: Offenses committed on or after effective date
Summary of Changes: Subsection (a) provides for a lifetime reporting requirement but its scope is unclear. "Sexually violent offense" is defined by art. 62.01 to be restricted to an offense committed by an adult. Therefore, the obligation for lifetime registration undoubtedly reaches an adult convicted of a sexually violent offense [indecency with a child by contact, sexual assault, aggravated sexual assault, sexual performance by a child, aggravated kidnapping with intent to violate or abuse the victim sexually, and burglary of a habitation with intent to commit a sex offense]. It would be possible, but irrational, to say that the balance of subsection (a) applies both to adults and juveniles, so that a juvenile is required to register for the rest of his life if adjudicated of prohibited sexual conduct (incest), compelling prostitution by any means of a person under 17, or possession/promotion of child pornography but not if adjudicated for aggravated sexual assault. That result is so bizarre as to defy rational attribution to the legislature. Therefore, the best reading of (a) that none of its requirements for lifetime registration reaches juveniles.

Under (b), which deals explicitly with an adjudication of delinquency, the duty to register extends for ten years beyond the person's exit from the juvenile justice system.

Subsection (c) contains very stringent requirements under which one convicted of a sexually violent offense can petition a court for relief from the requirement of lifetime registration. Again, as defined by art. 62.01(6) a juvenile cannot fall within the category of having committed a sexually violent offense.

Code of Criminal Procedure 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 **any** information **the department maintains in the central database under Article 62.08** [~~concerning whether an offender is required to register under Article 6252-13c.1, Revised Statutes~~].

Commentary by Robert Dawson

Source: SB 875
Effective Date: September 1, 1997
Applicability: Offenses committed on or after effective date
Summary of Changes: The amendment in this section changes the nature of the computerized criminal history database as regards sex offense registration. Under prior law, the computerized criminal history database would simply contain a pointer to the sex offender database. Under the amendment, all of that information is apparently now to be imported into the computerized criminal history database.

Revised Statutes Article 4512g-1. Sex Offender Information Exchange

Section 1 In this article:

(1) through (3) unchanged.

(4) "Local law enforcement authority" has the meaning assigned by [~~Section 1,~~] Article **62.01, Code of Criminal Procedure** [~~6252-13c.1, Revised Statutes~~].

Commentary by Robert Dawson

Source: SB 875
Effective Date: September 1, 1997
Applicability: Offenses committed on or after effective date
Summary of Changes: This simply updates the statutory reference without substantive change.

Senate Bill 875 Applicability Provisions

SECTION 10. This Act takes effect September 1, 1997. The change in law made by this Act to Article 62.10, Code of Criminal Procedure, as redesignated and amended by this Act (formerly Section 7, Article 6252-13c.1, Revised Statutes), applies only to an offense committed on or after September 1, 1997. An offense committed before September 1, 1997, is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before September 1, 1997, if any element of the offense occurred before that date.

SECTION 11. (a) The change in law made by this Act to Article 62.11, Code of Criminal Procedure, as redesignated and amended by this Act (formerly Subsection (a), Section 8, Article 6252-13c.1, Revised Statutes), applies only to a defendant who, with respect to an offense listed in Subdivision (5), Article 62.01, Code of Criminal Procedure, as redesignated and amended by this Act (formerly Subdivision (5), Section 1, Article 6252-13c.1, Revised Statutes), on or after the effective date of this Act:

(1) is confined in a penal institution, as that term is defined by Subdivision (3), Article 62.01, Code of Criminal Procedure, as redesignated and amended by this Act (formerly Subdivision (3), Section 1, Article 6252-13c.1, Revised Statutes); or

(2) is under the supervision and control of a juvenile probation office or an agency or entity operating under contact with a juvenile probation office, a community supervision and corrections department, or the pardons and paroles division of the Texas Department of Criminal Justice.

(b) A defendant who, on the effective date of this Act, is not described by Subdivision (1) or (2) of Subsection (a) of this section is covered by the law in effect under Subsection (a), Section 8, Article 6252-13c.1, Revised Statutes, before that section was redesignated and amended by this Act, and the former law is continued in effect for that purpose.

SECTION 12. The Department of Public Safety shall take action necessary to ensure that the requirements of Article 60.051, Code of Criminal Procedure, as amended by this Act, and Subsection (b), Article 62.02, Code of Criminal Procedure, as redesignated and amended by this Act (formerly Subsection (b), Section 2, Article 6252-13c.1, Revised Statutes), are satisfied not later than January 1, 1998.

Commentary by Robert Dawson

Source: SB 875
Effective Date: September 1, 1997
Summary of Changes: Section 10 provides that the changes in art. 62.10, expanding the scope of criminal offenses to reach failure to comply with any requirement of this chapter, not just registration, applies only to an offense committed on or after the effective date.

Section 11 is very confusing. It states that the applicability provisions of art. 62.11 are applicable to all persons in a penal institution or on probation, parole or community supervision on or after the effective date of the act. That provision simply cannot be parsed to make of it anything remotely rational. Best advice is to ignore it.

Section 12 requires DPS to have new forms as specified by art. 62.02 ready by January 1, 1998 and to have sex offender information integrated into the computerized criminal history database no later than January 1, 1998.

Government Code § 411.088. Fees

~~(a)~~] The department may charge a person that is not primarily a criminal justice agency a fee for processing inquiries for criminal history record information **and information described as public information under Section 5, Article 6252-13c.1, Revised Statutes**. The department may charge:

(1) a fee of $10 for each inquiry for criminal history record information **or information described as public information** on a person that is processed only on the basis of the

person's name, unless the inquiry is submitted electronically or by magnetic media, in which event the fee is $1;

(2) a fee of $15 for each inquiry for criminal history record information **or information described as public information** on a person that is processed on the basis of a fingerprint comparison search; and

(3) actual costs for processing all other information inquiries.

Commentary by Robert Dawson

Source: HB 1176
Effective Date: September 1, 1997
Applicability: Offenses committed on or after effective date
Summary of Changes: This bill regulates fees that DPS may charge non-criminal justice agencies for information from the computerized criminal history database. The reference to section 5 of article 6252-13c.1 is to the Sex Offender Registration Act prior to being moved to Chapter 62 of the Code of Criminal Procedure. That reference should now be read to mean art. 62.08 of the Code of Criminal Procedure.

Government Code § 411.135. Access to Certain Information by Public

(a) Any person is entitled to obtain from the department:

(1) any information described as public information under Section 5, Article 6252-13c.1, Revised Statutes; and

(2) criminal history record information maintained by the department that is a court record of a public judicial proceeding and that relates to:

(A) the conviction of a person for any criminal offense; or

(B) a grant of deferred adjudication to a person charged with a felony offense.

(b) The department by rule shall design and implement a system to respond to electronic inquiries and other inquiries for information described by Subsection (a).

(c) A person who obtains information from the department under Subsection (a) may:

(1) use the information for any purpose; or

(2) release the information to any other person.

Commentary by Robert Dawson

Source: HB 1176
Effective Date: September 1, 1997
Applicability: "The Department of Public Safety shall implement the system described by Section 411.135, Government Code, as added by this Act, no later than January 1, 1998."
Summary of Changes: This new section creates a major change in the way computerized criminal history information has historically been maintained in the United States. Although conviction data for an adult are open to all at the courthouse, that same information, when added to a computer database as a "rap sheet" has historically been confidential and its use restricted to law enforcement or correctional purposes. This new section makes some of that database information available to the public for the first time.

Any person is entitled to obtain from the DPS (1) sex offender registration information, (2) information relating to the conviction in a public judicial proceeding for any offense, and (3) information relating to a grant of deferred adjudication in a public judicial proceeding for a felony.

Excluded from this provision are (1) information relating to an arrest for or charge of a criminal or juvenile offense, (2) all juvenile records in the DPS Juvenile Justice Information System [Family Code chapter 58] even those resulting in adjudication and determinate sentence and (3) all adult misdemeanor deferred adjudication records.

There may be federal problems because of the interplay of the DPS computerized criminal history system and the Federal Bureau of Investigation's database. Federal law may require that the DPS database not be made public.

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5. Prosecution of Juveniles in Municipal and Justice Courts

Transportation Code § 729.001. Operation of Motor Vehicle by Minor in Violation of Traffic Laws; Offense

(a) A person who is [~~at least 14 years of age but~~] younger than 17 years of age commits an offense if the person operates a motor vehicle on a public road or highway, a street or alley in a municipality, or a public beach in violation of any traffic law of this state, including:

(1) Chapter 502, other than Section 502.282[~~,~~] [~~502.408(b), 502.409(c),~~] or 502.412;

(2) Chapter 521;

(3) Subtitle C**, other than an offense under Section 550.021, 550.022, or 550.024**;

(4) Chapter 601;

(5) Chapter 621;

(6) Chapter 661; and

(7) Chapter 681.

(b) unchanged.

(c) An offense under this section is a **Class C** misdemeanor [~~punishable by a fine not to exceed $100~~].

Commentary by Jim Bethke

Source: HB 1550
Effective Date: September 1, 1997
Applicability: Offenses committed on or after effective date
Summary of Changes: Subsection (a) eliminates the language that limited the special handling provision of Transportation Code, Chapter 729 to minors from age 14 through 16. Now the chapter applies to any person under the age of 17. In addition, subsection (a)(3) removed from the jurisdiction of justice and municipal courts the following traffic offenses: 1) Accident Involving Personal Injury or Death; 2) Accident Involving Damage to Vehicles; and 3) Duty on Striking Unattended Vehicle

Under subsection (c) the former $100 limit on fines for a minor traffic offender is deleted. All traffic offenses listed under this section are now Class C misdemeanors. The amendment to subsection (c) on its face is seemingly unambiguous. A Class C misdemeanor pursuant to section 12.23 of the Penal Code provides for a fine not to exceed $500. On the other hand, in the Transportation Code, Subtitle C—Rules of the Road (formerly the *Uniform Traffic Act*) section 542.401 provides for a penalty not to exceed $200 for offenses for which another penalty is not provided. Most offenses, including speeding, running red lights, failure to signal intent, stop sign violations and the like, under Subtitle C do not provide for another penalty. Hence, these offenses are all punishable by fines not to exceed $200.

This creates an interesting dilemma in that arguably a person younger than 17 charged with committing certain traffic offenses might be fined more harshly than an adult charged with a similar offense.

On a practical note, it seems unlikely that the legislature would have intended to subject juvenile traffic offenders to higher fines than adult traffic offenders in light of possible equal protection concerns. A court cannot, of course, re-write a statute or code, but a court must avoid unconstitutional interpretations, reconcile conflicting statutes to give affect to both, and eschew absurd or meaningless results. For guidance in interpreting legislation, a court may look to the codified canons of statutory construction contained in the Code Construction Act.

One reasonable approach in interpreting this new amendment until clarification is provided by the courts or the legislature would be for judges to assess penalties on juvenile offenders no higher than for adult offenders who commit the same offense.

Transportation Code § 729.001. Operation of Motor Vehicle by Minor in Violation of Traffic Laws; Offense

(a) A person who is at least 14 years of age but younger than 17 years of age commits an offense if the person operates a motor vehicle on a public road or highway, a street or alley in a municipality, or a public beach in violation of any traffic law of this state, including:

(1) Chapter 502, other than Section 502.282[~~, 502.408(b), 502.409(c),~~] or 502.412;

(2) Chapter 521;

(3) Subtitle C**, other than an offense under Section 550.021, 550.022, or 550.024**;

(4) Chapter 601;

(5) Chapter 621;

(6) Chapter 661; and

(7) Chapter 681.

Commentary by Jim Bethke

Source: SB 81
Effective Date: September 1, 1997
Applicability: Offenses committed on or after effective date
Summary of Changes: Under current law, all traffic offenses committed by minors are excluded from the jurisdiction of juvenile court and all violations of traffic law regardless of the seriousness

of the offense must be prosecuted in either justice or municipal court. Chapter 729 of the Transportation Code does not fully provide punishments commensurate with certain traffic offenses committed by minors.

Subsection (a)(1) deleted the references made to sections 502.408(b) and 502.409(c) of the Transportation Code to conform to repeal of those sections by the 74th Legislative Session.

Subsection (a)(3) removes from justice and municipal court jurisdiction the following offenses committed by minors: 1) section 550.021 (Accident Involving Personal Injury or Death); 2) section 550.022 (Accident Involving Damage to a Vehicle); 3) and section 550.024 (Duty on Striking Unattended Vehicle). Conforming amendments were made to both the Family and Penal Code to allow for prosecution of these offenses in juvenile court.

Family Code § 51.02. Definitions

In this title:

(1) through (15) unchanged

(16) "Traffic offense" means:

(A) a violation of a penal statute cognizable under Chapter **729, Transportation Code, except for:**

(i) conduct constituting an offense under Section 550.021, Transportation Code;

(ii) conduct constituting an offense punishable as a Class B misdemeanor under Section 550.022, Transportation Code; or

(iii) conduct constituting an offense punishable as a Class B misdemeanor under Section 550.024, Transportation Code [~~302, Acts of the 55th Legislature, Regular Session, 1957, as amended (Article 6701l-4, Vernon's Texas Civil Statutes)~~]; or

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

Commentary by Jim Bethke

Source: HB 1550 and SB 81
Effective Date: September 1, 1997
Applicability: Offenses committed on or after effective date
Summary of Changes: The definition of "traffic offense" was changed to conform to the amendments made to Chapter 729 of the Transportation Code and section 8.07 of the Penal Code. The following offenses are no longer classified as "traffic offenses": 1) section 550.021—hit and run involving personal injury or death; 2) section 550.022—hit and run involving damage in excess of $200 to all vehicles; and 3) section 550.024—hit and run involving an unattended vehicle that results in damage in excess of $200 to all vehicles.

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 **729, Transportation Code, except for:**

(A) an offense under Section 550.021, Transportation Code;

(B) an offense punishable as a Class B misdemeanor under Section 550.022, Transportation Code; or

(C) an offense punishable as a Class B misdemeanor under Section 550.024, Transportation Code [~~302, Acts of the 55th Legislature, Regular Session, 1957 (Article 6701l-4, Vernon's Texas Civil Statutes)~~];

Commentary by Jim Bethke

Source: HB 1550 and SB 81
Effective Date: September 1, 1997
Applicability: Offenses committed on or after effective date
Summary of Changes: The amendment to subsection (a) (2) conforms to the changes made to section 51.02 (16), Family Code and section 729.001 (a)(3), Transportation Code, which both redefine "traffic offense" to exclude the following offenses: 1) section 550.021—hit and run involving personal injury or death; 2) section 550.022—hit and run involving damage in excess of $200 to all vehicles; and 3) section 550.024—hit and run involving an unattended vehicle that results in damage in excess of $200 to all vehicles.

Transportation Code § 729.002. Operation of Motor Vehicle by Minor Without License

(a) A person who is [~~at least 14 years of age but~~] younger than 17 years of age commits an offense if the person operates a motor vehicle without a driver's license authorizing the operation of a motor vehicle on a:

(1) public road or highway;

(2) street or alley in a municipality; or

(3) public beach as defined by Section 729.001.

(b) An offense under this section is a **Class C** misdemeanor [~~punishable by a fine not to exceed $100~~].

Commentary by Jim Bethke

Source: HB 1550
Effective Date: September 1, 1997
Applicability: Offenses committed on or after effective date
Summary of Changes: Subsection (a) eliminates the language that limited the special handling provisions of Transportation Code, Chapter 729 to minors from age 14 through 16 charged with operating a motor vehicle without a driver's license. Now this section applies to any person under the age of 17.

Under subsection (b) the former $100 limit on fines for a minor who operates a motor vehicle without a driver's license is deleted. This offense and the other offenses listed under section 729.001 of the Transportation Code are now classified as Class C misdemeanors. This amendment creates the same dilemma as discussed earlier in that arguably a person younger than 17 charged with operating a motor vehicle without a driver's license may be fined up to $500 whereas someone 17 or older only faces a maximum fine of $200. See, section 521.461, Transportation Code.

Transportation Code § 729.003. Procedure and Jurisdiction in Cases Involving Minors

(a) A person may not plead guilty to an offense under Section 729.001 **or 729.002 or to a violation of a motor vehicle traffic ordinance of an incorporated city or town** except in open court before a judge. A person may not be convicted of an offense or fined as provided by this chapter **or under a municipal traffic ordinance** except in the presence of one or both parents or guardians having legal custody of the person. The court shall summon one or both parents or guardians to appear in court and shall require one or both of them to be present during all proceedings in the case. The court may waive the requirement of the presence of parents or guardians if, after diligent effort, the court cannot locate them or compel their presence.

Commentary by Jim Bethke

Source: HB 1550
Effective Date: September 1, 1997
Applicability: Offenses committed on or after effective date
Summary of Changes: Prior to the amendment to subsection (a), Chapter 729 of the Transportation Code was silent on whether persons charged with violations of city traffic ordinances were subjected to the same procedural process afforded persons charged under state law. This amendment makes clear that a person charged under a city traffic ordinance is entitled to same process as a person charged under state law.

Family Code § 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 **or to a record or file relating to a child that is maintained by a municipal or justice court**.

Commentary by Jim Bethke

Source: HB 1550
Effective Date: September 1, 1997
Applicability: Law enforcement files and records maintained before, on or after effective date.
Summary of Changes: The amendment to subsection (a) states the obvious and reiterates present law—that is, a record or file relating to a child maintained by a justice or municipal court is afforded no special protections under the law. Therefore, records and files relating to a child maintained by justice and municipal courts may be recorded on the same dockets and handled just as are adult records and files.

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

(a) through (h) unchanged.

(i) In this section, "child" means a person who**:**

(1) is at least 10 years of age and younger than **17** [~~18~~] years of age and who[~~: (1)~~] is charged with or convicted of a traffic offense**;** or

(2) is at least 10 years of age and younger than 18 years of age and who:

(A) is charged with or convicted of an offense, other than public intoxication,

punishable by fine only as a result of an act committed before becoming 17 years of age;

(B) [~~(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

(C) [~~(3)~~] is a nonoffender and became a nonoffender before becoming 17 years of age.

Commentary by Jim Bethke

Source: SB 81
Effective Date: September 1, 1997
Applicability: Offenses committed on or after effective date
Summary of Changes: Subsection (i)'s definition of child has been modified and conforms to the definition of child in section 51.02(2). This section's limitations on custody apply not only to an offender younger than 17 who is charged with or convicted of a traffic offense but also to a 17 year-old who is charged with or convicted of a fine-only offense other than public intoxication committed before age 17, is a status offender and was taken into custody as a status offender for conduct engaged in before age 17, or is a non-offender and became a non-offender before age 17.

This change is confusing because a traffic offense is a fine-only offense and thus part (2) of subsection (i) includes part (1). The intent of this amendment may have been to allow a 17 year-old who committed a traffic offense before age 17 to be taken into custody and detained in a place other than a nonsecure detention facility. Then, it follows that a person charged with a traffic offense before age 17 may be taken into custody as an adult upon reaching 17 years of age and processed accordingly. Note, however, that Chapter 729 of the Transportation Code provides special procedures and penalties for persons younger than 17 who commit traffic offenses and states that "a person may not be committed to jail in default of payment of a fine imposed under this chapter. . ."

Family Code § 54.022. Justice or Municipal Court; Certain Misdemeanors

(a) through (d) unchanged

(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. **The summons must include a warning that the failure of the parent, managing conservator, or guardian to appear may be punishable as a Class C misdemeanor.**

(f) unchanged.

(g) **A person commits an offense if the person is a parent, managing conservator, or guardian who fails to attend a hearing under this section after receiving an order under Subsection (e). An offense under this subsection is a Class C misdemeanor.**

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

Commentary by Robert Dawson

Source: HB 115
Effective Date: September 1, 1997
Applicability: Court orders entered on or after effective date
Summary of Changes: The amendments made to this section conform to the new article 45.331, Code of Criminal Procedure, which requires the issuance of a summons to secure the appearance of parent, guardian or managing conservator at proceedings in a justice or municipal court involving a defendant younger than 17 years of age.

Subsection (e) requires the summons to include a warning that the failure of the parent, managing conservator or guardian to appear in response to a summons may be punishable as a Class C misdemeanor.

Subsection (g) makes it a Class C misdemeanor offense for a parent, managing conservator or guardian to not attend a hearing under this section after being summoned pursuant to subsection (e).

Transportation Code § 521.201. License Ineligibility in General
The department may not issue any license to a person who:

(1) through (7) unchanged.

(8) has been reported by a court for failure to appear or default in payment of a fine for a misdemeanor that is not covered under Subdivision (7) and that is punishable by a fine only, including a misdemeanor under a municipal ordinance, 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.

Commentary by Jim Bethke

Source: HB 1055
Effective Date: September 1, 1997
Applicability: None stated; applies to offenses committed on or after effective date
Summary of Changes: The addition of subsection (8) extends authority to the Department of Public Safety to deny issuance of a driver's license to a person who was under 17 years of age at the time of the alleged offense and fails to appear or defaults in payment of a fine involving a *non-traffic* misdemeanor offense. This sanction formerly was only available for traffic-related offenses. Unlike failure to appear or default in payment of fine for a traffic offense, a court is not obligated by this section to report the failure to appear or default in payment of fine for non-traffic offenses. The Department of Public Safety will, however, deny issuance of a driver's license only for reported violations of this section.

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~~].

Commentary by Jim Bethke

Source: HB 1291
Effective Date: September 1, 1997
Applicability: Offenses committed on or after effective date
Summary of Changes: The amendment to (a)(2)(B) eliminates the qualifying language of "rehabilitative or remedial" placed on sanctions imposed by justice courts. In theory, a sanction authorized by the legislature could be purely punitive and not remedial or rehabilitative in nature. An example might be court-ordered community service. Hence, such sanction might have the unintended affect of removing jurisdiction from the justice court. This amendment clarifies that the justice court may impose a fine and a sanction authorized by the legislature so long as the sanction does not consist of confinement in jail or imprisonment.

Code of Criminal Procedure art. 4.14. Jurisdiction of Municipal Courts

(a) and (b) unchanged.

(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**, if any,** as authorized by statute not consisting of confinement in jail or imprisonment [~~that are rehabilitative or remedial in nature~~].

Commentary by Jim Bethke

Source: HB 1291
Effective Date: September 1, 1997
Applicability: Offenses committed on or after effective date

Summary of Changes: This article and section 29.003, Government Code provides the general jurisdiction for municipal courts in this state. The amendments to subsection (c) make clear that a municipal court may exercise jurisdiction even if a statute or code does not provide for a sanction in addition to a fine. In addition, this bill similarly eliminates as it did for justice courts the qualifying language of "rehabilitative or remedial" placed on sanctions authorized by the legislature.

Government Code § 29.003. Jurisdiction

(a) and (b) unchanged.

(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**, if any,** as authorized by statute not consisting of confinement in jail or imprisonment [~~that are rehabilitative or remedial in nature~~].

Commentary by Jim Bethke

Source: HB 1291
Effective Date: September 1, 1997
Applicability: Offenses committed on or after effective date
Summary of Changes: As stated earlier this section and article 4.14, Code of Criminal Procedure provide the general jurisdiction for municipal courts in this state. The changes made to this section mirror the changes made to article 4.14 and have no additional effect.

Code of Criminal Procedure art. 45.331. Plea by Minor and Appearance of Parent

(a) If a defendant is younger than 17 years of age and has not had the disabilities of minority removed, the court:

(1) must take the defendant's plea in open court; and

(2) shall issue a summons to compel the defendant's parent, guardian, or managing conservator to be present during:

(A) the taking of the defendant's plea; and

(B) all other proceedings relating to the case.

(b) If the court is unable to secure the appearance of the defendant's parent, guardian, or managing conservator by issuance of a summons, the court may, without the defendant's parent, guardian, or managing conservator present, take the defendant's plea and proceed against the defendant.

(c) If the defendant resides in a county other than the county in which the alleged offense occurred, the defendant may, with leave of court, enter the plea, including a plea under Article 45.55, before a justice in the county in which the defendant resides.

Commentary by Jim Bethke

Source: HB 1545
Effective Date: September 1, 1997
Applicability: None stated; probably proceedings begun on or after effective date
Summary of Changes: This new article, among other things, establishes a uniform set of special procedures for handling all children accused of any misdemeanor offense within the jurisdiction of justice or municipal court. Prior to the 75th legislative changes, children accused of violations other than traffic and alcohol-related offenses were afforded no special procedures or protections. Accordingly, for example, a child accused of theft, may pursuant to article 27.14, Code of Criminal Procedure, mail to the court his or her plea of guilty and suffer the consequences of a conviction of crime of moral turpitude without his or her parent ever being aware of the situation.

The new procedural requirements for taking a plea from a person younger than 17 years of age are as follows: 1) plea must be taken in open court; 2) the court must summons the parent, managing conservator or guardian; 3) the parent, managing conservator or guardian must be present during all proceedings involving the child. The court may, however, proceed against the child if the parental figure ignores the summons.

In addition, the bill provides that, if the defendant resides in a county other than the county in which the alleged offense occurred, the defendant may, with leave of the court, enter a plea before a justice in the county in which the defendant resides. Presumably, the justice taking the plea will forward to the court of original jurisdiction all paper work, fines and the like regarding the child for disposition.

Family Code § 54.021. Justice or Municipal Court Truancy

(a) and (b) unchanged.

(c) On a finding that a person has engaged in conduct described by Section 51.03(b)(2) **or conduct that violates Section 25.094, Education Code**, 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 has engaged in truant conduct **described in Section 51.03(b)(2) or conduct that violates Section 25.094, Education Code** [~~and that the conduct is of a recurrent nature~~], the court has jurisdiction to enter an order that includes one or more of the following provisions requiring that:

(1) unchanged;

(2) the person attend a special program that the court determines to be in the best interests of the person, including**:**

(A) an alcohol and drug abuse program;

(B) rehabilitation;

(C) counseling, including self-improvement counseling;

(D) training in self-esteem and leadership;

(E) work and job skills training;

(F) training in parenting, including parental responsibility;

(G) training in manners;

(H) training in violence avoidance;

(I) sensitivity training; and

(J) training in advocacy and mentoring;

(3) through (7) unchanged.

(e) unchanged.

(f) A school attendance officer may refer a person alleged to have engaged in conduct described in Section 51.03(b)(2) of this code to **a** [~~the~~] justice court in the **county** [~~precinct~~] where the person resides or [~~in the precinct~~] where the person's school is located **or to a municipal court of the municipality where the person resides or where the person'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.

Commentary by Jim Bethke

Source: HB 1606
Effective Date: September 1, 1997
Applicability: Conduct occurring on or after effective date
Summary of Changes: This section pertains to truancy proceedings conducted in justice or municipal court after transfer from the juvenile court and has been amended to add Failure to Attend School prosecutions under section 25.094, Education Code and renders these prosecutions subject to the special procedures authorized by this section.

Subsection (d) also has been amended to eliminate the former requirement that the truant conduct be of "a recurrent nature" (which was not defined and hence unclear) before the specific sanctions of subsection (d) could be imposed. In addition, this section adds nine special programs that a court may order after finding a person violated this section. The new programs are: 1) rehabilitation; 2) counseling, including self-improvement counseling; 3) training in self-esteem and leadership; 4) work and job skills training; 5) training in parenting, including parental responsibility; 6) training in manners; 7) training in violence avoidance; 8) sensitivity training; and 9) training in advocacy and mentoring.

This section was amended in 1995 to permit the transfer of truancy cases to the municipal court in addition to justice courts, but subsection (f) called for the referral of cases only to justice courts. Subsection (f) now gives a school attendance officer the option of referring of an alleged truant to either a justice court or a municipal court.

Subsection (f) also provides that venue for the justice court is *in the county* where the person resides or where the person's school is located and is not tied to the precinct of where the court is located or where the person resides. Additionally, venue resides in municipal court of the municipality where the person resides or where the school of alleged truant is located.

Education Code § 25.093. Thwarting Compulsory Attendance Law

(a) and (b) unchanged.

(c) The attendance officer shall file a complaint against the parent in the county court, in **a** [~~the~~] justice court **in the county in which the parent resides or in which the school is located** [~~of the parent's resident precinct~~], or in **a** [~~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.

Commentary by Jim Bethke

Source: HB 1606
Effective Date: September 1, 1997
Applicability: Conduct occurring on or after effective date
Summary of Changes: The change in subsection (c) loosens the venue restrictions in Thwarting Compulsory Attendance Law cases. Under current law, a school attendance officer may file on a truant's parent or a person standing in parental relation to the child only in the precinct where the person lives or where the truant's school is located. This situation has caused a significant backlog of cases in some precincts that serve more than one school.

To facilitate a balancing of caseloads, this amendment expands venue for justice courts from the precinct to the county where the school is located or the parent resides. In municipal court, venue lies in the municipality where the parent resides or where the school is located.

Education Code § 25.094. Failure to Attend School

(a) unchanged.

(b) An offense under this section may be prosecuted in **a** [~~the~~] justice court **in the county** [~~for the precinct~~] in which the child resides or in which the school is located **or in a municipal court in the municipality in which the child resides or in which the school is located**.

Commentary by Jim Bethke

Source: HB 1606
Effective Date: September 1, 1997
Applicability: Conduct occurring on or after effective data
Summary of Changes: The amendment to subsection (b) clarifies that the offense of Failure to Attend School may be prosecuted not only in the justice court but in the municipal court as well. In addition, venue extends county wide (not just the precinct) for justice courts and is triggered by where the child resides or where the school is located. For municipal courts, the offense may be prosecuted in the municipal court in the municipality where the child resides or where the school is located.

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6. Selected Texas Youth Commission Provisions

Human Resources Code § 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. **Except as provided by Section 61.093(c), these** [~~These~~] records are not public and are available only according to the provisions of Section 58.005, Family Code**, and Chapter 61, Code of Criminal Procedure**.

Commentary by Neil Nichols

Source: HB 1550
Effective Date: September 1, 1997
Applicability: Offenses committed on or after effective date
Summary of Changes: TYC youth records are subject to the same confidentiality provisions of the Family Code that apply to the records of other public or private agencies having custody of children under order of the juvenile court, Family Code Section 58.005. Two exceptions are added with regard to TYC records. TYC is authorized to release to the public certain information about escapees, Human Resources Code Section 61.09(c), and to release to law enforcement agencies information that is reasonably related to the investigation of a combination's criminal activity, Code of Criminal Procedure Chapter 61.

Human Resources Code § 61.077. Children with Mental Illness or Mental Retardation [~~Mentally Ill or Retarded Child~~]

(a) [~~If the commission determines that a child committed to it is mentally ill, 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 **ill or mentally** retarded.

(b) Unless a child is committed to the commission under a determinate sentence under Section 54.04(d)(3), 54.04(m), or 54.05(f), Family Code, the commission shall discharge a child who is mentally ill or mentally retarded from its custody if:

(1) the child has completed the minimum length of stay for the child's committing offense; and

(2) the commission determines that the child is unable to progress in the commission's rehabilitation programs because of the child's mental illness or mental retardation.

Commentary by Neil Nichols

Source: HB 1550
Effective Date: June 19, 1997
Applicability: Person in or committed to TYC custody on or after effective date
Summary of Changes: The amendments to this section require the TYC to accept youth with mental illness. It also requires the TYC to discharge youth with mental illness or mental retardation if the youth prove unable to progress in agency rehabilitation programs due to their mental illness or mental retardation; have completed the minimum length of stay for their committing offense; and have not been sentenced to commitment under the violent and habitual offender law.

Prior to this amendment the TYC was required to either return youth with mental illness to the committing court or refer them to the local county court for appropriate action. Until the 1995 amendments, the same requirement also applied to youth with mental retardation. The law was changed to require the agency to accept youth with mental illness and mental retardation because the alternative of returning them to court did not assure that the youth would be held accountable for their conduct or that they would get the care and treatment they need in many cases. Unchanged, however, is the expectation that commitment of these youth to TYC continue to be based primarily on the severity of their committing offense or offense history, and not on their need for mental health services.

Due largely to the absence of a clear statutory guideline for screening, the TYC has for many years accepted youth with various forms of mental disorders and emotional disturbance. It has returned youth with mental illness to court (usually the local county court for court-ordered temporary mental health services) only when it lacked the resources to properly manage their behavior. Over the last two years, however, there has been a dramatic increase in the number of youth committed to TYC with severe mental illness. Twenty-two per cent of TYC commitments (approximately 600 youth) are diagnosed with a primary brain disorder (primary categories include psychotic disorders; bipolar disorders; major depressive disorders; and organic disorders). A majority of these youth, as well as others who have other forms of mental disorders or emotional disturbance (who make up another 8 %), are currently mainstreamed at training schools. The 25% who cannot be mainstreamed are being placed in the more intensive therapeutic environment of the Corsicana Residential Treatment Center or in contracted residential treatment programs.

The TYC's mission is not to treat mental illness specifically, but to stabilize youth sufficiently to enable their participation in the regular correctional and resocialization program. The high structure of training school programs and use of psychotropic medication, both under psychological and psychiatric oversight, allow most of these youth to be maintained safely there and to progress to earn parole release. Some youth, however, are unable to progress due to the severity and intractability of their mental disorder. Their confinement time can be disproportionate to the seriousness of their committing offense relative to other youth simply because they can never earn parole release as other youth can by just applying themselves to the task. Continuing to confine these youth in a correctional facility until their mandatory discharge at age 21 could invite challenge on constitutional grounds if they have completed the minimum confinement period for their offense and are not receiving treatment appropriate to their needs. This is the reason the new law requires discharge (and referral for appropriate mental health services, Sec. 61.0772) under these circumstances.

Human Resources Code § 61.0772. Examination Before Discharge.

(a) The commission shall establish a system that identifies children in the commission's custody who are mentally ill or mentally retarded.

(b) Not later than the 30th day before the date a child who is identified as mentally ill is discharged from the commission's custody under Section 61.077(b), a commission psychiatrist shall examine the child. The psychiatrist

shall file a sworn application for court-ordered mental health services, as provided in Subchapter C, Chapter 574, Health and Safety Code, if the psychiatrist determines that the child is mentally ill and the child meets at least one of the criteria listed in Section 574.034, Health and Safety Code.

(c) Not later than the 30th day before the date a child who is identified as mentally retarded is discharged from the commission's custody under Section 61.077(b), the commission shall refer the child for a determination of mental retardation and an interdisciplinary team recommendation 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.

Commentary by Neil Nichols

Source: HB 1550
Effective Date: June 19, 1997
Applicability: Person in or committed to TYC custody on or after effective date
Summary of Changes: The Government Code includes a provision (§ 501.057) applicable to the Texas Department of Criminal Justice that requires a Department psychiatrist to apply for court-ordered temporary mental health services for adult inmates "not later than the 30th day before the initial parole eligibility date" (a date that corresponds to completion of the administrative minimum length of stay in the juvenile context). This new section tracks this language for TYC youth with mental illness and mental retardation who are pending discharge so that a referral for court-ordered mental health services is completed prior to their departure from TYC's custody.

Human Resources Code § 61.093. Escape and Apprehension.

(a) and (b) unchanged.

(c) Notwithstanding Section 58.005, Family Code, the commission may disseminate to the public the following information relating to a child who has escaped from custody:

(1) the child's name, including other names by which the child is known;

(2) the child's physical description, including sex, weight, height, race, ethnicity, eye color, hair color, scars, marks, and tattoos;

(3) a photograph of the child; and

(4) if necessary to protect the welfare of the community, any other information that reveals dangerous propensities of the child or expedites the apprehension of the child.

Commentary by Neil Nichols

Source: HB 1550
Effective Date: June 19, 1997
Applicability: Person in or committed to TYC custody on or after effective date
Summary of Changes: TYC youth records are subject to the same confidentiality provisions of the Family Code that apply to the records of other public or private agencies having custody of children under order of the juvenile court, Family Code Section 58.005. In recognition of the increasingly dangerous population of youth who are being committed to the TYC, this exception is added to authorize, but not require, the agency to release certain information to the public when a youth escapes from custody. In addition to the youth's name, physical description and photograph, if necessary for public safety, the TYC is authorized to release any other information about an escaped youth that might reveal his dangerous propensities or expedite his apprehension.

Human Resources Code § 61.101. Youth Boot Camp Programs.

(a) unchanged.

(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.

(c) [~~(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.

(d) [~~(g)~~] The commission shall adopt rules of conduct for children participating in the program under this section.

Commentary by Neil Nichols

Source: HB 1550
Effective Date: September 1, 1997
Applicability: Offenses committed on or after effective date
Summary of Changes: Increased use of intermediate sanction residential programs for youth on probation was one of the 1995 juvenile justice system reforms that is necessary for successful implementation of the Progressive Sanctions Guidelines, Family Code Chapter 59. Two mechanisms for utilizing increased state funding for this purpose were adopted into law. Ultimately, the one that called for the programs to be developed by the TYC for use by county probation departments was not funded. Provisions that authorized this alternative are now repealed since the programs to implement them are non-existent, Family Code Section 54.04(d)(1)(C). One such intermediate sanction program that was authorized in 1995 and now repealed is the TYC youth boot camp program for children on probation. Other sections in TYC's enabling act that related to intermediate sanction programs are also repealed, Human Resources Code Sections 61.0386, 61.102 & 61.103.

Human Resources Code § 61.0422. Complaints Regarding Services

(a) The commission shall keep **a** [~~an information~~] file about each **written** complaint filed with the commission **by a person, other than a child receiving services from the commission or the child's parent or guardian,** that **the commission has authority to resolve** [~~relates to services provided by the commission~~]. **The commission shall provide to the person filing the complaint and the persons or entities complained about the commission's policies and procedures pertaining to complaint investigation and resolution. The** [~~(b) If a written complaint relating to the commission is filed with the commission, the~~] commission, at least [~~as frequently as~~] quarterly and until final disposition of the complaint, shall notify the **person filing the complaint and the persons or entities complained about** [~~complainant~~] of the status of the complaint unless the notice would jeopardize an undercover investigation.

(b) The commission shall keep information about each file required by Subsection (a). The information must include:

(1) the date the complaint is received;

(2) the name of the complainant;

(3) the subject matter of the complaint;

(4) a record of all persons contacted in relation to the complaint;

(5) a summary of the results of the review or investigation of the complaint; and

(6) for complaints for which the commission took no action, an explanation of the reason the complaint was closed without action.

(c) The commission shall keep information about each written complaint filed with the commission by a child receiving services from the commission or the child's parent or guardian. The information must include:

(1) the subject matter of the complaint;

(2) a summary of the results of the review or investigation of the complaint; and

(3) the period of time between the date the complaint is received and the date the complaint is closed.

Commentary by Neil Nichols

Source: HB 2074
Effective Date: September 1, 1997
Applicability: None stated
Summary of Changes: Certain across-the-board provisions are routinely included in each state agency's sunset legislation. This one requires state agencies to keep a file on each complaint indicating when the complaint was received, who filed it, what it concerns, who were contacted in relation to it and what was the result or, if no action is taken, what is the explanation. An exception is made with regard to the information that must be kept on complaints that are filed by youth who are committed to TYC or by their parents.

Due to the large number of youth complaints, only information that is most important for monitoring the effectiveness of the youth complaint resolution system is required to be kept. This information includes an indication of the subject matter of the complaint, the resolution and the time required for resolution.

Human Resources Code § 61.051. Client Service Contract Standards

In each contract for the purchase of residential program-related client services, the commission shall include:

(1) clearly defined contract goals, outputs, and measurable outcomes that relate directly to program objectives;

(2) clearly defined sanctions or penalties for failure to comply with or perform contract terms or conditions; and

(3) clearly specified accounting, reporting, and auditing requirements applicable to money received under the contract.

Commentary by Neil Nichols

Source: HB 2074
Effective Date: September 1, 1997
Applicability: None stated
Summary of Changes: Privatization of government services has generally expanded in recent years as a means to achieve greater efficiencies and improved quality. As some recent state agency audits have shown, though, the results have been mixed and greater accountability of private contractors is expected. Sunset legislation for all state agencies can be expected to include a provision requiring that contracts for the provision of government services include clearly defined goals, outputs and measurable outcomes; penalties for contract breach; and clear accounting, reporting and auditing requirements. Such a provision is included in TYC's sunset legislation for its residential services contracts.

Human Resources Code § 61.051. Sale or License of Treatment Programs

(a) The commission may sell or license to an individual or a private or public entity the right to use a treatment program developed by the commission.

(b) Proceeds from the sale or license of a treatment program shall be deposited to the credit of the fund that provided the money to finance the development of the treatment program.

Commentary by Neil Nichols

Source: 2082
Effective Date: September 1, 1997
Applicability: None stated
Summary of Changes: Indeterminate periods of confinement, at least until the age of majority, have always been associated with the expectation of individualized treatment in juvenile corrections systems. In order to build some measure of offense accountability and proportionate punishment into the system, certain minimum lengths of stay are usually established based on the severity of the adjudicated offense. The problem, though, has been in establishing an effective system for determining length of stay, beyond the minimums, that is based on clear treatment objectives for each youth that are measurable, established early in the youth's stay, and attainable by the youth in precharted progressive steps that are accompanied by increased levels of freedom and continue on after parole release. TYC has developed such a system with its Resocialization Program and has gained national recognition for its work. This new section was added to authorize TYC to recoup some of its development costs, particularly from other states that are interested in adopting the system and making use of the TYC's copyrighted documents and training materials.

Human Resources Code § 61.052. Contract Monitoring

The commission shall establish a formal program to monitor residential program-related client services contracts made by the commission. The commission must:

(1) monitor compliance with financial and performance requirements using a risk assessment methodology; and

(2) obtain and evaluate program cost information to ensure that each cost, including an administrative cost, is reasonable and necessary to achieve program objectives.

Commentary by Neil Nichols

Source: HB 2074
Effective Date: September 1, 1997
Applicability: None stated
Summary of Changes: As the number of youth served in privately operated residential programs increases, the more important it is that the pro-

grams be properly monitored, not only for youth safety, but also for quality assurance and cost effectiveness. This new section, a part of TYC's sunset legislation, requires that the larger and costlier programs receive the most emphasis during financial and performance monitoring and that cost information be evaluated to help ensure that claimed costs are reasonable and necessary.

Human Resources Code § 61.096. Liability of Volunteers

(a) Except as provided by Subsection (b), a volunteer is not liable for damages arising from an act or omission that results in personal injury, death, or property damage if the act or omission is:

(1) in the course and scope of the volunteer's duties as a volunteer; and

(2) not intentional or grossly negligent.

(b) A volunteer is liable for personal injury, death, or property damage proximately caused by an act or omission related to the operation or use of any motor-driven equipment to the extent of the greater of:

(1) the amount of financial responsibility required for the motor-driven equipment, if any, under Chapter 601, Transportation Code; or

(2) the amount of any liability insurance coverage that applies to the act or omission.

(c) In this section, "volunteer" means an individual rendering services for or on behalf of the commission who does not receive compensation in excess of reimbursement for expenses incurred.

Commentary by Neil Nichols

Source: HB 1756
Effective Date: September 1, 1997
Applicability: Cause of action that accrues on or after the effective date
Summary of Changes: This new section extends to TYC volunteers the same liability protection that is provided to direct service volunteers of non-profit organizations under the Charitable Immunity and Liability Act of 1987. It makes TYC volunteers immune from liability for damages arising from an act or omission (except for damages related to the volunteer's use of any motor-driven equipment) that results in personal injury, death, or property damage if the act or omission is in the course and scope of the volunteer's duties as a volunteer and is not intentional or grossly negligent; limits the liability of a TYC volunteer for personal injury, death or damages resulting from the volunteer's operation of any motor-driven equipment to the greater of the amount required under financial responsibility laws or the amount of any liability insurance coverage that applies to the act; and defines "volunteer" to include a person who renders services for or on behalf of the TYC who does not receive compensation in excess of reimbursement for expenses.

Health and Safety Code § 574.001. Application for Court Ordered Mental Health Services

(a) unchanged.

(b) **Except as provided by Subsection (f), the** [~~The~~] application must be filed with the county clerk in the county in which the proposed patient:

(1) resides;

(2) is found; or

(3) is receiving mental health services by court order or under Subchapter A, Chapter 573.

(c) through (e) unchanged.

(f) An application in which the proposed patient is a child in the custody of the Texas Youth Commission may be filed in the county in which the child's commitment to the commission was ordered.

Commentary by Neil Nichols

Source: HB 1550
Effective Date: June 19, 1997
Applicability: Person in or committed to TYC custody on or after effective date
Summary of Changes: This section was amended to add the county that committed the youth to TYC to the list of locations where an application for court ordered mental health services may be filed when TYC is required to discharge a youth who has completed his minimum length of stay and is unable to progress in TYC rehabilitation programs due to mental illness, Human Resources Code Section 61.0772.

Health and Safety Code § 593.041. Application for Placement; Jurisdiction

(a) unchanged.

(b) **Except as provided by Subsection (e), the** [~~The~~] application must be filed with the county clerk in the county in which the proposed resident resides. If the superintendent of a residential care facility files an application for judicial commitment of a voluntary resident, the county in which the facility is located is considered the resident's county of residence.

(c) and (d) unchanged.

(e) An application in which the proposed patient is a child in the custody of the Texas Youth Commission may be filed in the county in which the child's commitment to the commission was ordered.

Commentary by Neil Nichols

Source: HB 1550
Effective Date: June 19, 1997
Applicability: Person in or committed to TYC custody on or after effective date
Summary of Changes: This section was amended to add the county that committed the youth to TYC to the list of locations where an application for placement in a residential care facility for persons with mental retardation may be filed when TYC is required to discharge a youth who has completed his minimum length of stay and is unable to progress in TYC rehabilitation programs due to mental retardation, Human Resources Code Section 61.0772.

Family Code § 58.106. Confidentiality

(a) Except as **otherwise** provided by **this section** [~~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) through (4) unchanged.

(b) unchanged.

(c) The department may, if necessary to protect the welfare of the community, disseminate to the public the following information relating to a juvenile offender who has escaped from the custody of the Texas Youth Commission:

(1) the juvenile offender's name, including other names by which the juvenile offender is known;

(2) the juvenile offender's physical description, including sex, weight, height, race, ethnicity, eye color, hair color, scars, marks, and tattoos;

(3) a photograph of the juvenile offender; and

(4) the conduct for which the juvenile offender was committed to the Texas Youth Commission, including the level and degree of the alleged offense.

Commentary by Neil Nichols

Source: SB 625
Effective Date: September 1, 1997
Applicability: Information collected by DPS on, before or after effective date
Summary of Changes: In response to legitimate concerns about the increasingly dangerous population of youth who are committed to the TYC, two provisions are added to authorize the release of information to the public when youth escape from the TYC's custody. This amendment authorizes the Department of Public Safety, if necessary for public safety, to release an escaped youth's name, physical description, photograph and committing offense from the juvenile justice information system. Another provision is added, Human Resources Code Sec. 61.093(c), that authorizes the TYC to release the same information plus any other information "that reveals dangerous propensities of the child or expedites the apprehension of the child."

Government Code § 411.132. Access to Criminal History Record Information: Texas Youth Commission

(a) The Texas Youth Commission is entitled to obtain from the department criminal history record information maintained by the department that relates to a person who is:

(1) an applicant for a position with the Texas Youth Commission;

(2) a volunteer or an intern, or an applicant volunteer or intern, with the Texas Youth Commission;

(3) a business entity or person who contracts with the Texas Youth Commission to provide direct delivery services to youth;

(4) an employee of, or an applicant for employment with, a business entity or person who contracts with the Texas Youth Commission to provide direct delivery of services to youth; or

(5) a volunteer or an intern, or an applicant volunteer or intern, with a business entity or person who contracts with the Texas Youth Commission to provide direct delivery of services to youth.

(b) Criminal history record information obtained by the Texas Youth Commission under Subsection (a) may not be released to any person except:

(1) on court order;

(2) with the consent of the entity or person who is the subject of the criminal history record information;

(3) for purposes of an administrative hearing held, or an investigation conducted, by the Texas Youth Commission concerning the person who is the subject of the criminal history record information; or

(4) as provided by Subsection (c).

(c) The Texas Youth Commission is not prohibited from releasing criminal history record information obtained under Subsection (a) to:

(1) the person who is the subject of the criminal history record information; or

(2) a business entity or person described by Subsection (a)(4) or (a)(5) who uses or intends to use the services of the volunteer or intern or employs or is considering employing the person who is the subject of the criminal history record information.

(d) The Texas Youth Commission may charge an entity or a person who requests criminal history record information under Subsection (a)(4) or (a)(5) a fee in an amount necessary to cover the costs of obtaining the information on the person's or entity's behalf.

Commentary by Neil Nichols

Source: HB 2075
Effective Date: September 1, 1997
Applicability: None stated
Summary of Changes: Under current law the TYC has access to the criminal history information it needs to screen job applicants and volunteer applicants who may be unsuitable for contact with youth. This new section provides the TYC additional authorization to obtain from the Department of Public Safety criminal history information on the employees, job applicants and volunteer applicants of an entity that contracts with TYC to provide direct services to TYC youth. It authorizes the TYC to release this information to the contracting entity and to charge the entity a fee for the costs of its doing so.

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7. Selected Texas Juvenile Probation Commission Provisions

Human Resources Code § 141.001. Purposes

The purposes of this chapter are to:

(1) through (3) unchanged;

(4) establish uniform [~~probation administration~~] standards **for the community-based juvenile justice system**; [~~and~~]

(5) improve communications among state and local entities within the juvenile justice system**; and**

(6) promote delinquency prevention and early intervention programs and activities for juveniles.

Commentary by Lisa Capers

Source: HB 1917
Effective Date: September 1, 1997
Applicability: None stated

Summary of Changes: House Bill 1917 primarily amended the enabling legislation of the Texas Juvenile Probation Commission (TJPC) in Chapter 141 of the Human Resources Code. This section details the primary purpose of TJPC. The change in subsection (4) simply clarifies that the standards promulgated by TJPC cover a wide range of programs within the community-based juvenile justice system, not simply probation administration. TJPC promulgates standards dealing with administration, special programs such as Title IV-E, progressive sanctions, JJAEPs, facilities, and other areas.

Subsection (6) simply clarifies and codifies a function that the agency has long promoted and supported, delinquency prevention and early intervention services for juveniles.

Human Resources Code § 141.042. Rules Governing Juvenile Boards, Probation Officers, Programs and Facilities [HB 1550 and 2073]

(a) The commission shall adopt reasonable rules that provide:

(1) through (3) unchanged; [~~and~~]

(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)**; and**

(5) procedures for the implementation of a progressive sanctions program under Chapter 59, Family Code.

(b) through (d) unchanged.

(e) **Juvenile probation departments shall use the** [~~The commission shall develop for voluntary use by juvenile probation departments a~~] standard assessment tool **developed by the commission or a similar tool developed by a juvenile probation department and approved by the commission** 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. **Juvenile probation departments shall report the information relating to the results from the use of the standard assessment tool or other similar tool to the commission in a manner prescribed by the commission.** The assessment tool shall:

(1) and (2) unchanged.

Commentary by Lisa Capers

Source: HB 1550; HB 2073
Effective Date: (a) January 1, 1998; (e) September 1, 1997
Applicability: (a) TJPC must adopt rules by effective date; (e) None stated
Summary of Changes: Section 141.042 of the Human Resources Code was a popular section for amendments this session with three separate bills making changes and additions . Subsection (a)(5) was added by HB 1550 to give TJPC rulemaking authority for Progressive Sanctions. Rules promulgated under this authority will deal primarily with policies and procedures relating to the deviation reporting process.

Subsection (e) was amended by TJPC's sunset legislation, HB 2073, to require probation departments to use a standard assessment tool for the initial assessment of juvenile offenders. Last session, TJPC was mandated by this section to create a standard assessment instrument, but its use by the probation departments was voluntary. Now the use is mandatory; however, the probation department may choose to use the TJPC developed instrument or another similar instrument that receives TJPC approval. The TJPC Program Services Division will be in charge of approving these assessment instruments, and Maribeth Powers, Director of Program Services or her staff can be contacted regarding this issue. Probation departments will also be required to report information regarding the results of their use of the initial assessment instrument to TJPC in the manner prescribed by TJPC.

Human Resources Code § 141.042. Rules Governing Juvenile Boards, Probation Officers, Programs and Facilities [HB 2749]

(a) The commission shall adopt reasonable rules that provide:

(1) through (3) unchanged; and

(4) minimum standards for **public and private** juvenile **pre-adjudication secure** detention facilities, public **juvenile** post-adjudication [~~juvenile~~] secure correctional facilities that are operated under the authority of a juvenile board, and private **juvenile** post-adjudication [~~juvenile~~] secure correctional facilities, except those facilities exempt from certification by Section 42.052(e).

(b) unchanged.

(c) The commission shall **operate a statewide registry for all public and private juvenile pre-adjudication secure detention facilities and all public and private juvenile post-adjudication secure correctional facilities ex-**

cept a facility operated or certified by the Texas Youth Commission [~~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 **all public and private juvenile pre-adjudication secure detention facilities and all public and private juvenile post-adjudication secure correctional facilities except a facility operated or certified by the Texas Youth Commission and 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** [~~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)~~]

Commentary by Lisa Capers

Source: HB 2749
Effective Date: September 1, 1997
Applicability: None stated
Summary of Changes: HB 2749 also amended Section 141.042 of the Human Resources Code and was one of three bills by Representative Ruth McClendon designed to create a statewide registry for pre-adjudication and post-adjudication secure juvenile facilities and clarify TJPC's authority and mandate to investigate allegations of child abuse in such facilities. HB 2749 also provided some technical clean up to the titles of these juvenile facilities. The changes to Section 141.042(a)(4) reflect an attempt to standardize how practitioners refer to the various juvenile facilities by amending the terms to read "juvenile pre-adjudication secure detention facility" and "juvenile post-adjudication secure correctional facility." The changes to Subsection (4) also clarify that TJPC rulemaking authority extends to both public and private juvenile facilities, excluding Texas Youth Commission facilities.

Subsection (c) requires TJPC to establish and operate a statewide registry for all secure juvenile facilities (pre-adjudication secure detention facilities and post-adjudication secure correctional facilities) in the state, excluding TYC operated facilities or facilities serving TYC youth only that are inspected and certified by TYC. This registry will encompass all secure juvenile facilities in Texas that are not licensed by the Texas Department of Protective and Regulatory Services. The registry will be a required step for any facility currently operating or planning to begin operations in Texas. TJPC will be disseminating the specific policies and procedures for the statewide registry as soon as those are developed, which will hopefully be prior to September 1, 1997. The language deleted from subsection (c) relating to standards compliance monitoring is replaced in a modified form in subsection (d) discussed below.

Subsection (d) requires TJPC to annually inspect all public and private juvenile secure facilities, excluding TYC facilities, and monitor for standards compliance if the facility uses TJPC standards. If the facility has chosen to use ACA standards, the TJPC monitors will ensure ACA accreditation and certification are current.

Human Resources Code § 141.042. Rules Governing Juvenile Boards, Probation Officers, Programs and Facilities [HB 1917]

(a) The commission shall adopt reasonable rules that provide:

(1) through (4) unchanged;

(5) procedures for implementation of the progressive sanctions guidelines in Chapter 59, Family Code; and

(6) minimum standards for juvenile justice alternative education programs created under Section 37.011, Education Code, in collaboration and conjunction with the Texas Education Agency, or its designee.

Commentary by Lisa Capers

Source: HB 1917
Effective Date: September 1, 1997
Applicability: None stated
Summary of Changes: HB 1917 was the fourth bill to amend Section 141.042 of the Human Resources Code. It added new subsections (a)(5) and (a)(6) that give TJPC rulemaking authority for Progressive Sanctions and JJAEPs.

Subsection (a)(5), dealing with progressive sanctions, is identical to the provision added by HB 1550; the provision was added in two separate bills in case one bill did not pass. Rules promulgated under this authority will deal primarily with the policies and procedures related to the deviation reporting process.

Subsection (a)(6) allows TJPC to promulgate minimum standards for JJAEPs created under Section 37.011 of the Education Code. These standards will be developed in cooperation with the Texas Education Agency (TEA) and will address academic/educational, programmatic and facility standards for JJAEPs. To be eligible for state funds for the JJAEPs, a county will be required to comply with all mandatory standards.

Human Resources Code § 141.0421. Standards Relating to Local Probation Departments

(a) The commission shall adopt rules that provide:

(1) standards for the collection and reporting of information about juvenile offenders by local probation departments;

(2) performance measures to determine the effectiveness of probation services provided by local probation departments; and

(3) case management standards for all probation services provided by local probation departments.

(b) The commission shall monitor local probation departments for compliance with the standards and measures that the commission adopts.

(c) The commission shall provide technical assistance to local probation departments to aid compliance with the standards and measures that the commission adopts.

Commentary by Lisa Capers

Source: HB 2073
Effective Date: September 1, 1997
Applicability: None Stated
Summary of Changes: This new section was added to TJPC's enabling legislation by the agency's sunset bill, HB 2073. Subsection (a) gives TJPC additional rulemaking authority to help implement the overall enhanced accountability concept that the Sunset Commission and the State Auditor's office recommended to the legislature for most state agencies they reviewed in the last several years.

This section requires TJPC to adopt new performance and accountability rules/standards, monitor compliance with those standards, and provide technical assistance regarding the new standards. The new rules/standards will relate to 1) the collection and reporting of information on juvenile offenders; 2) performance measures to determine the effectiveness of probation services at the local level; and 3) case management standards for probation departments.

Standards related to the collection and reporting of information and performance measures for probation services are being set initially in the 1998 State Financial Assistance Contract, and will ultimately be promulgated into a standard later this year. Case management standards are currently being developed by a working group of juvenile justice practitioners working with TJPC staff. These standards should be developed by early 1998.

Human Resources Code § 141.044. Records and Reports

Each juvenile board in the state shall:

(1) keep the financial**, programmatic,** and statistical records the commission considers necessary; and

(2) submit periodic financial**, programmatic,** and statistical reports to the commission as required by the commission **and in the format specified by the commission, including electronic submission**.

Commentary by Lisa Capers

Source: HB 1917
Effective Date: September 1, 1997
Applicability: None stated
Summary of Changes: The changes to this section from HB 1917 clarify that juvenile boards, or in reality the probation departments, must keep and report programmatic records regarding their programs and services in addition to financial and statistical records. This section ties in with the previously discussed section regarding the increased emphasis on programmatic accountability and performance measures. Accurate and easily accessible records and files related to performance of programs and services will be critical to TJPC during the monitoring of county probation departments.

This section also provides that the juvenile board (probation department) must also submit certain information in an electronic format if so specified by TJPC. TJPC is currently planning to require electronic reporting of case file data in CASEWORKER or a compatible format beginning January 31, 1999.

Human Resources Code § 141.046. Inspections and Audits

(a) The commission may inspect and evaluate a juvenile board **and probation department** and audit its financial**, programmatic, and statistical** records at reasonable times to determine compliance with the commission's rules.

(b) The commission may inspect any program or facility operated on behalf of and under the authority of the juvenile board by the probation department, a governmental entity, or private vendor.

Commentary by Lisa Capers

Source: HB 1917
Effective Date: September 1, 1997
Applicability: None stated
Summary of Changes: This section, as amended by HB 1917, clarifies whose records may be inspected by TJPC and reflects the reality that the probation department actually has the pertinent data records in their possession, not the juvenile board. The changes also reflect that TJPC is authorized to inspect a wide range of probation department and juvenile board records including programmatic, statistical and financial. The TJPC authority to inspect facilities and programs operated by the probation department is now explicitly stated in the statute; it has been implicit in other statutes and accomplished through contractual obligations in the past. Further, this section now makes it clear that TJPC can inspect any program or facility operated by a third party (i.e., private vendor, governmental entity) on behalf of or under the authority of a county juvenile board.

Human Resources Code § 141.050. Contract Standards

(a) In each contract with counties for local probation services, the commission shall include:

(1) clearly defined contract goals, outputs, and measurable outcomes that relate directly to program objectives;

(2) clearly defined sanctions or penalties for failure to comply with or perform contract terms or conditions; and

(3) clearly specified accounting, reporting, and auditing requirements applicable to money received under the contract.

(b) The commission shall require each local juvenile probation department:

(1) to include the provisions of Subsection (a) in its contracts with private service providers that involve the use of state funds; and

(2) to use data relating to the performance of private service providers in prior contracts as a factor in selecting providers to receive contracts.

Commentary by Lisa Capers

Source: HB 2073
Effective Date: September 1, 1997
Applicability: None stated
Summary of Changes: This new section was added as a part of TJPC's sunset bill. Subsection (a) reflects certain items that TJPC is required to include in its funding contracts with local juvenile boards. These elements were initially recommended by the State Auditor's office during an audit of TJPC in 1996. The 1997 State Financial Assistance Contract between TJPC and local juvenile boards contained almost all of these new provisions. While it was done in the 1997 contract simply on the suggestion of the State Auditor's office, it is now a statutory mandate for the 1998 and subsequent year's contract. The provisions are designed to ensure that state funds are being expended wisely and are producing effective goals and outcomes for juvenile probation services.

Subsection (b) also reflects a suggestion by the State Auditor's office from 1996 dealing with the contracts between local juvenile boards or probation departments and their service providers. The Auditor's office and the Sunset Commission felt very strongly that it was critical for these local service provider contracts, that are being paid with any state funds, to be subject to stricter accountability standards and performance measures. The 1997 State Financial Assistance Contracts also contained these provisions practically verbatim, so this section will not come as a great surprise to anyone. This section is another part of the overall scheme of increased accountability for any use of state appropriated funds.

Human Resources Code § 141. 051. Contract Monitoring

The commission shall establish a formal program to monitor contracts under Section 141.050 made by the commission. The commission must:

(1) monitor compliance with financial and performance requirements using a risk assessment methodology; and

(2) obtain and evaluate program cost information to ensure that each cost, including an administrative cost, is reasonable and necessary to achieve program objectives.

Commentary by Lisa Capers

Source: HB 2073
Effective Date: September 1, 1997
Applicability: None stated
Summary of Changes: Section 141.051 is new and was also added by TJPC's sunset bill. It directs the agency to formally monitor its funding contracts with local juvenile boards. TJPC is charged with monitoring compliance with financial and performance requirements using a risk assessment methodology and to obtain and evaluate cost information to ensure that each cost, including administrative cost, is reasonable and necessary to achieve program objectives.

To implement this requirement, TJPC will assign audit staff to coordinate efforts with the monitoring division of the agency in developing risk assessment and performance audit methodology and procedures. During fiscal year 1998, a limited statistical sample of probation departments will be audited for performance, reasonableness, and necessity of cost. The size of the audit sample will be increased in fiscal year 1999.

Human Resources Code § 141.054. Contracts for Out-of-State Juvenile Inmates

(a) The only entities other than the state authorized to operate a correctional facility to house in this state juvenile inmates convicted of offenses committed against the laws of another state of the United States are:

(1) a county or municipality; and

(2) a private vendor operating a correctional facility under a contract with a county or municipality.

(b) The commission shall develop rules, procedures, and minimum standards applicable to county or private correctional facilities housing out-of-state juvenile inmates. A contract made under Subsection (a) of this section shall require the county, municipality, or private vendor to operate the facility in compliance with minimum standards adopted by the commission.

Commentary by Lisa Capers

Source: HB 2073
Effective Date: September 1, 1997
Applicability: None stated
Summary of Changes: This particular provision of the TJPC sunset bill partially codifies and applies to juvenile facilities an opinion by the Texas Attorney General (Letter Opinion No. 96-151, December 1996) related to regulating private adult jail facilities housing out-of-state inmates. The opinion makes clear that only the state, a county or municipality, or a private vender operating under a contract with a county or municipality, may operate a correctional facility to house out-of-state juvenile offenders. TJPC is mandated to develop rules, procedures and minimum standards for these type facilities. A contract made by the state, a county, municipality or private vendor for such a facility must require operation of the facility in compliance with TJPC standards.

Human Resources Code § 141.082. Maintenance of Local Financial Support

(a) To **receive the full amount of state aid funds for which a juvenile board may** be eligible [~~for state aid~~], a juvenile board must demonstrate to the commission's satisfaction that the amount of local or county funds budgeted for juvenile services is at least equal to [~~or greater than~~] the amount spent**, excluding construction and capital outlay expenses,** for those services in the **1994** [~~1980~~] county fiscal year. **The commission may waive this requirement only if the juvenile board demonstrates to the commission that unusual, catastrophic, or exceptional circumstances existed during the relevant year to affect adversely the level of county funding. If the required amount of local funding is not budgeted and the commission does not grant a waiver, the commission shall reduce the allocation of state aid funds to the juvenile board by the amount equal to the amount that the county funding is below the required funding.**

Commentary by Lisa Capers

Source: HB 1917
Effective Date: September 1, 1997
Applicability: None stated
Summary of Changes: HB 1917 updated Section 141.082 of the Human Resources Code, which is the section of TJPC's enabling legislation that specifies the amount of local financial contributions that are required to access state financial assistance for juvenile probation services. This section had not been changed for many, many years and was outdated and superseded by appropriations riders. The new language makes it clear that to receive the full amount of state funds for which a juvenile board may be eligible, the local county level of monetary contributions must meet or exceed the amount spent in the 1994 county fiscal year. This amount does not include construction and capital outlay expenses. TJPC is

given the authority to waive the match requirement, but only in highly unusual, catastrophic, or exceptional circumstances. If the county cannot meet the match and TJPC does not grant a waiver of the requirement, the state funds for which the county is eligible will be reduced on a dollar for dollar basis in an amount equal to the amount the county funding is below the required level.

Human Resources Code § 141.085. Refusal, Reduction or Suspension of State Aid

(a) The commission **may** [~~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).

Commentary by Lisa Capers

Source: HB 1917
Effective Date: September 1, 1997
Applicability: None stated
Summary of Changes: This section was also amended by HB 1917 to help effectuate the changes made in Section 141.082. The use of the word "may" as opposed to "shall" will provide TJPC flexibility to implement the waiver provisions of Section 141.082 in the event circumstances merit it.

Human Resources Code § 142.001. Definition

In this chapter, "juvenile probation services" means:

(1) services provided by or under the direction of a juvenile probation officer in response to an order issued by a juvenile court and under the court's direction, including:

(A) through (C) unchanged;

(D) **deferred prosecution** [~~informal adjustment~~];

(2) services provided by a juvenile probation department that **are** [~~is~~] related to the operation of a **preadjudication or post-adjudication** juvenile [~~detention~~] facility.

Commentary by Lisa Capers

Source: HB 1917
Effective Date: September 1, 1997
Applicability: None stated
Summary of Changes: Chapter 142 of the Human Resources Code deals with juvenile probation departments and personnel. The changes made are technical cleanup. Subsection (1)(D) deletes the old "informal adjustment" and replaces it with the new term added last session, "deferred prosecution." Subsection (2) clarifies that probation services include services provided by a probation department in both a pre-adjudication or post-adjudication juvenile facility.

Human Resources Code § 142.003. Authority to Contract for Juvenile Probation Services

(a) and (b) unchanged.

(c) A juvenile board may contract with another political subdivision of the state or a private vendor for juvenile probation services.

Commentary by Lisa Capers

Source: HB 1917
Effective Date: September 1, 1997
Applicability: None stated
Summary of Changes: The changes made to this section give juvenile boards the clear and explicit authority to contract with another political subdivision or private vendor for juvenile probation services. Juvenile probation services, as defined in Section 142.001, include programs, services, and facilities.

Family Code § 51.12. Place and Conditions of Detention

(a) and (b) unchanged.

(c) In each county, **each** [~~the~~] judge of the juvenile court and the members of the juvenile board shall personally inspect the **juvenile pre-adjudication secure** detention facilities and any public or private **juvenile** 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) and (2) unchanged.

(d) No child shall be placed in a facility that has not been certified under Subsection (c) of this section as suitable for the detention of children **and registered under Subsection (i) of this section**. A child detained in a facility that has not been certified under Subsection (c) of this section as suitable for the detention of children **or that has not been registered under Subsection (i) of**

this section shall be entitled to immediate release from custody in that facility.

(e) through (h) unchanged.

(i) Except for a facility operated or certified by the Texas Youth Commission, a governmental unit or private entity that operates or contracts for the operation of a juvenile pre-adjudication secure detention facility or a juvenile post-adjudication secure correctional facility in this state shall:

(1) register the facility annually with the Texas Juvenile Probation Commission; and

(2) adhere to all applicable minimum standards for the facility.

Commentary by Lisa Capers

Source: HB 1928
Effective Date: September 1, 1997
Applicability: None stated
Summary of Changes: HB 1928 was another of the three bills by Representative Ruth McClendon designed to create a statewide registry for pre-adjudication and post-adjudication secure juvenile facilities and clarify TJPC's authority and mandate to investigate allegations of child abuse in such facilities. This bill amends Section 51.12 (c) by making some technical cleanup corrections to terminology. First, the amendment clarifies that the inspection and certification of juvenile pre-and post-adjudication juvenile secure facilities must be performed by each juvenile court judge and juvenile board member. Because most counties have multiple juvenile court judges, this was already the standard procedure, and this amendment merely codifies the practice. Second, the amendment to subsection (c) attempts to standardize the terminology for pre-adjudication and post-adjudication juvenile facilities to match all the various statutes in the Family Code and the Human Resources Code that make reference to these facilities.

Subsection (d) was amended to prohibit the placement of any child into a juvenile pre- or post-adjudication secure facility, including a hold-over detention facility, unless that facility has been formally registered in the statewide facilities registry to be established by TJPC. Subsection (i) mandates that any governmental or private entity that operates or contracts for the operation of one of these juvenile facilities must register with TJPC and adhere to minimum standards applicable to the facility. TYC operated or certified facilities are exempted from the registration requirement.

Local Government Code § 111.094. Itemized Budget

The commissioners court in preparing the county budget shall determine the amount of county funds to be spent for the juvenile probation department in the county budget.

Commentary by Lisa Capers

Source: HB 1395
Effective Date: September 1, 1997
Applicability: None stated
Summary of Changes: SB 1395 by Senator Lindsay (R-Houston) was a bill originally dealing with county budgets and the expenditures of unanticipated revenues from grants and other funds. The bill passed the Senate with one amendment and was sent to the House. Late in the session, on Tuesday May 27, the bill went to the floor of the House and two amendments were added, one of which was the predecessor of the current Section 111.094. The original amendment read: "Notwithstanding any other law, the commissioners court in preparing the county budget shall determine the amount of county funds to be spent for each item listed in the county budget." This amendment was proposed by Representative Stiles (D-Beaumont). As written, this amendment would have affected several units within county government whose budget is set by the district judges or the juvenile board (i.e., the juvenile probation department, auditor's office, bailiffs, court reporters). This amendment passed the House and ultimately SB 1395 passed the House by a vote of 136 in favor and 1 opposed. The Senate refused to concur in the amendments and the bill was sent to a conference committee. On Saturday, May 31 (2 days before the end of the session), the conference committee filed its report with the new compromise language reflected in Section 111.094 which states, "The commissioners court in preparing the county budget shall determine the amount of county funds to be spent for the juvenile probation department in the county budget." The ultimate compromise narrows the scope of the amendment to specifically apply only to juvenile probation department budgets. The House adopted the conference committee report by a vote of 139 for and 3 against on Sunday, June 1. The Senate adopted the compromise report by a vote of 23 for and 8 against also on Sunday June 1.

This amendment dramatically changes the way the budget process for juvenile probation departments ultimately works in most counties. Under the old law, the juvenile board sets the budget

for the probation department based upon the current needs, and the commissioners courts were required to pay the budget unless they could show an abuse of discretion on the part of the juvenile board. In some counties, like Dallas and Harris, the commissioners courts already basically control the juvenile budgets based upon special statutes. The underlying rationale for this amendment was the fact that the elected commissioners court members are the entity elected by the voters who are charged with raising (or lowering) county property taxes. Thus, many lawmakers believed that it is appropriate for the commissioners court to set the county funding level for all entities within the county, including juvenile probation, since they ultimately answer to the voters for any decisions involving higher taxes.

Various other statutes affecting the juvenile probation budgeting process were left intact, so basically the only difference under the new statute is that the county commissioners court will have the authority to look at the bottom line funding amount requested by the juvenile board, and either approve it as requested or reduce it. If, for example, the juvenile board requests $100,000 of county funds to supplement those funds it receives from TJPC, the commissioners court can decide to pay the full $100,000 or some lesser amount. To be eligible to receive full state funding from TJPC, the county must maintain its level of financial contributions during the 1994 county fiscal year. Section 111.094 has no impact on state funds received from TJPC, and the commissioners court has no control over these funds.

The question has arisen whether this new amendment gives the commissioners court the authority to set particular line items within the juvenile probation department budget. For example, assume the requested budget from local county funds was submitted by the juvenile board in the amount of $100,000. The commissioners court makes the decision to pay only $80,000. The issue is whether the juvenile board retains the authority to allocate the $20,000 cut in the program/service areas of their choosing based upon their knowledge of the probation department, or whether the commissioner courts can order the juvenile board, for example, to cut residential placement services or salaries by the $20,000. Because the other statutes affecting the juvenile board's management role for the probation department were not amended, it seems logical that the juvenile board retains the authority to control how the local funds allocated by the commissioners court for the juvenile probation department are actually spent. Therefore, the commissioners court controls the ultimate level of county funding, but the juvenile board should control the policy and practice of the probation department and allocate the available resources (both state and local) as their discretion dictates.

An obvious concern related to this amendment is that juvenile probation department budgets may be cut from their current level. The difference between the 1994 level of county funding and the 1996 level of county funding is approximately $24 million dollars. Therefore, if county funding levels are cut back from the 1996 levels, there could be significant ramifications to the juvenile justice system. The dramatic increase in state funding to TJPC for the juvenile justice system and its potential for effective changes could be significantly eroded if county funding levels are decreased substantially. During the debates on SB 1395, lawmakers who were in favor of this amendment expressed their faith that county commissioners courts would adequately fund the juvenile justice system because these elected officials are on the front lines with the voters in the communities who must deal with the effects of juvenile crime. Juvenile justice professionals and state officials will certainly be monitoring the effect of SB 1395 during the interim.

8. Selected Department of Protective and Regulatory Services Provisions

Family Code § 261.101. Persons Required to Report: Time to Report

(a) **[SB 359]** A person having cause to believe that a child's physical or mental health or welfare has been [~~or may be~~] adversely affected by abuse or neglect by any person shall immediately make a report as provided by this subchapter.

(b) **[HB 1929]** If a professional has cause to believe that a child has been or may be abused or neglected, the professional shall make a report not later than the 48th hour after the hour the profes-

sional first suspects that the child has been or may be abused or neglected. A professional may not delegate to or rely on another person to make the report. In this subsection, "professional" means an individual who is licensed or certified by the state or who is an employee of a facility licensed, certified, or operated by the state and who, in the normal course of official duties or duties for which a license or certification is required, has direct contact with children. The term includes teachers, nurses, doctors, [~~and~~] day-care employees**, juvenile probation officers, and juvenile detention or correctional officers**.

(b) [**SB 359]** If a professional has cause to believe that a child has been [~~or may be~~] abused or neglected **or that a child is a victim of an offense under Section 21.11, Penal Code, and that the professional has cause to believe that the child has been abused as defined by Section 261.001**, the professional shall make a report not later than the 48th hour after the hour the professional first suspects that the child has been or may be abused or neglected **or is a victim of an offense under Section 21.11, Penal Code**. A professional may not delegate to or rely on another person to make the report. In this subsection, "professional" means an individual who is licensed or certified by the state or who is an employee of a facility licensed, certified, or operated by the state and who, in the normal course of official duties or duties for which a license or certification is required, has direct contact with children. The term includes teachers, nurses, doctors, [~~and~~] day-care employees**, and employees of a clinic or health care facility that provides reproductive services**.

(c) **[SB 359]** The requirement to report under this section applies without exception to an individual whose personal communications may otherwise be privileged, including an attorney, a member of the clergy, a medical practitioner, a social worker, [~~and~~] a mental health professional**, and an employee of a clinic or health care facility that provides reproductive services**.

(d) [**HB 1826]** The identity of an individual making a report under this chapter is confidential and may be disclosed only on the order of a court **rendered under Section 261.201** or to a law enforcement officer for the purposes of conducting a criminal investigation of the report.

Commentary by Howard Baldwin

Source: SB 359, HB 1826, HB 1929
Effective Date: September 1, 1997
Applicability: SB 359 - report of abuse or neglect on or after effective date; HB 1826 - none stated; HB 1929 - none stated
Summary of Changes: Any person who has cause to believe that a child has been adversely affected by abuse or neglect has a duty to report such abuse. Section (b) clarifies that professionals have this same duty and may not delegate it to another. Subsection (c) reiterates that all professionals, including those whose communications would ordinarily be privileged, are legally obligated to report child abuse or neglect. Most particularly, this includes attorneys, medical doctors, and mental health professionals. In 1997, the Legislature amended Subsection (c) to clarify that professionals include juvenile probation, juvenile detention and correctional officers, and the employees of a clinic or other health care facility that dispenses birth control. The latter change was made along with the amendment to Subsection (b) to make it clear that sexual abuse of a child by an adult would be reported to DPRS or law enforcement.

Family Code § 264.302. Early Youth Intervention Services

(a) and (b) unchanged.

(c) The department may not provide services under this section to a child who has**:**

(1) 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**; or**

(2) been found to have engaged in delinquent conduct under Title 3.

(d) unchanged.

(e) The department shall provide services[~~, directly or by contract,~~] for a child and the child's family if **a contract to provide services under this section is available in the county and** the child is referred to the department as an at-risk child by:

(1) through (4) unchanged.

Commentary by Howard Baldwin

Source: HB 1826; HB 1550
Effective Date: September 1, 1997
Applicability: HB 1826 not stated; HB 1550 offenses committed on or after effective date
Summary of Changes: DPRS is authorized to provide services to at-risk youth, age 7 to 17, as an alternative to juvenile proceedings under Title 3. The 1997 amendment clarifies that the STAR program is intended to be an early intervention

service for youth rather than one that deals with adjudicated offenders. DPRS is precluded from providing services for youth who have been found to be delinquent or those who have been referred to the juvenile court for conduct that would be a felony offense.

Also, DPRS is mandated to provide STAR services by contract and does not have to provide the services in those counties in which there is no contract. In some counties where no such contract exists demands for DPRS to provide services through its Child Protective Services program were difficult to meet. Given that the legislature has now provided funds for the STAR program to serve all 254 counties this issue should be moot by the end of state fiscal year 1999.

9. Miscellaneous Provisions

Education Code § 87.105. Center for the Study and Prevention of Juvenile Crime and Delinquency.

(a) The Center for the Study and Prevention of Juvenile Crime and Delinquency is established at Prairie View A&M University.

(b) The organization, control, and management of the center is vested in the board of regents of The Texas A&M University System.

(c) The board of regents shall approve the employment of personnel by and the operating budget of the center. An employee of the center is an employee of Prairie View A&M University.

(d) The center may:

(1) conduct, coordinate, collect, and evaluate research in all areas relating to juvenile crime and delinquency;

(2) provide a setting for educational programs relating to juvenile crime and delinquency, including degree programs at Prairie View A&M University and other educational programs such as continuing education and in-service training for criminal justice and social service professionals;

(3) serve as a state and national resource for information on juvenile crime and delinquency; and

(4) in connection with its research and educational programs:

(A) develop programs, policies, and strategies to address juvenile crime and delinquency and related social problems; and

(B) create partnerships, collaborative efforts, or outreach, public service, or technical assistance programs to assist communities, governmental agencies, or private entities to implement programs, policies, and strategies that address juvenile crime and delinquency and related social problems.

(e) The center may enter into a cooperative agreement or contract with a public or private entity to perform the duties of the center.

(f) The board of regents may accept gifts and grants from a public or private source for the benefit of the center.

(g) Establishment of the center is subject to the availability of funds for that purpose.

Commentary by Neil Nichols

Source: HB 1550
Effective Date: September 1, 1997
Applicability: Offenses committed on or after effective date
Summary of Changes: This section creates the Center for the Study and Prevention of Juvenile Crime and Delinquency at Prairie View A&M University under the control of the board of regents of the Texas A&M University System. The Center will conduct and evaluate research relating to juvenile crime; provide degree programs and continuing education; serve as an information resource; develop programs and policies to address juvenile crime; and collaborate with communities, state agencies, and private entities to implement programs and policies.

House Bill 2272 provides a funding mechanism for the Center by providing for a 25 cents cost of court for each misdemeanor and felony conviction. See Code of Criminal Procedure art. 102.075(m).

Local Government Code Chapter 244.
Correctional or Rehabilitation
Facility Location

Local Government Code § 44.001. Definitions. In this chapter:

(1) "Correctional or rehabilitation facility" means a probation or parole office or a residential facility that:

(A) is operated by an agency of the state, a political subdivision of the state, or a private vendor operating under a contract with an agency of the state or a political subdivision of the state; and

(B) houses persons convicted of misdemeanors or felonies or children found to have engaged in delinquent conduct, regardless of whether the persons are housed in the residential facility:

(i) while serving a sentence of confinement following conviction of an offense;

(ii) as a condition of probation, parole, or mandatory supervision; or

(iii) under a court order for out-of-home placement under Title 3, Family Code, other than in a foster home operated under a contract with the juvenile board of the county in which the foster home is located or under a contract with the Texas Youth Commission.

(2) "Residential area" means:

(A) an area designated as a residential zoning district by a governing ordinance or code or an area in which the principal permitted land use is for private residences;

(B) a subdivision for which a plat is recorded in the real property records of the county and that contains or is bounded by public streets or parts of public streets that are abutted by residential property occupying at least 75 percent of the front footage along the block face; or

(C) a subdivision for which a plat is recorded in the real property records of the county and a majority of the lots of which are subject to deed restrictions limiting the lots to residential use.

Commentary by Neil Nichols

Source: HB 1550
Effective Date: September 1, 1997
Applicability: Offenses committed on or after effective date
Summary of Changes: This legislation was prompted by neighborhood associations and directed primarily at private entities that have allegedly established adult correctional facilities in unsuitable neighborhood locations without giving adequate public notice. It authorizes the commissioners court or the governing body of a municipality to deny consent to the operation of a correctional or rehabilitation facility at a location within 1,000 feet of a residential area, a primary or secondary school, a park or public recreation area or a place of worship (a place of worship may waive distance requirements), Sec. 244.003. This section defines correctional or rehabilitation facility to include post-conviction (misdemeanors and felonies) and post-adjudication (delinquent conduct only) residential facilities that are operated by, or contracted for operation by, the state or political subdivisions of the state. The definition includes probation and parole offices, but excludes foster homes operated under a contract with the juvenile board or the Texas Youth Commission.

Local Government Code § 244.002. Notice of Proposed Location.

(a) An agency of the state, a political subdivision of the state, or a private vendor operating under a contract with an agency or political subdivision of the state that proposes to construct or operate a correctional or rehabilitation facility within 1,000 feet of a residential area, a primary or secondary school, property designated as a public park or public recreation area by the state or a political subdivision of the state, or a church, synagogue, or other place of worship shall, if a request is made under Section 244.005, notify:

(1) the commissioners court of any county with an unincorporated area that includes all or part of the land within 1,000 feet of the proposed correctional or rehabilitation facility; and

(2) the governing body of any municipality that includes within its boundaries all or part of the land within 1,000 feet of the proposed correctional or rehabilitation facility.

(b) An entity required to give notice under Subsection (a) shall give notice not later than the 60th day before the date the entity begins construction or operation of the correctional or rehabilitation facility, whichever date is earlier.

(c) For purposes of this chapter, distance is measured along the shortest straight line between the nearest property line of the correctional or rehabilitation facility and the nearest property line of the residential area, school, park, recreation area, or place of worship, as appropriate.

Commentary by Neil Nichols

Source: HB 1550

Effective Date: September 1, 1997
Applicability: Offenses committed on or after effective date
Summary of Changes: This section requires the public or private entity that is proposing to operate a correctional or rehabilitation facility within 1,000 feet of one of the designated places to give the commissioners court and/or governing body of the municipality at least 60-day notice before beginning construction or operation, whichever date is earlier.

Local Government Code § 244.003. Proximity of Correctional or Rehabilitation Facility

(a) Unless local consent is denied under Section 244.004, an agency of the state, a political subdivision of the state, or a private vendor operating under a contract with an agency or political subdivision of the state may operate a correctional or rehabilitation facility within 1,000 feet of a residential area, a primary or secondary school, property designated as a public park or public recreation area by the state or a political subdivision of the state, or a church, synagogue, or other place of worship.

(b) The governing body of a church, synagogue, or other place of worship may waive the distance requirements of Section 244.002 between a correctional or rehabilitation facility and the place of worship by filing an acknowledged written statement of the waiver in the deed records of the county in which the facility is located.

Commentary by Neil Nichols

Source: HB 1550
Effective Date: September 1, 1997
Applicability: Offenses committed on or after effective date
Summary of Changes: This section authorizes the operation of a correctional or rehabilitation facility at a location within 1,000 feet of a residential area, a primary or secondary school, a park or public recreation area or a place of worship (a place of worship may waive distance requirements), unless the commissioners court and/or governing body of the municipality denies its consent for the operation of the facility at that location.

Local Government Code § 244.004. Local Consent

a) Local consent to the operation of a correctional or rehabilitation facility at a location within 1,000 feet of a residential area, a primary or secondary school, property designated as a park or public recreation area by the state or a political subdivision of the state, or a church, synagogue, or other place of worship is granted unless, not later than the 60th day after the date on which notice is received by a commissioners court or governing body of a municipality under Section 244.002(a), the commissioners court or governing body, as appropriate, determines by resolution after a public hearing that the operation of a correctional or rehabilitation facility at the proposed location is not in the best interest of the county or municipality, as appropriate.

b) A commissioners court or governing body of a municipality may rescind a resolution adopted under Subsection (a).

Commentary by Neil Nichols

Source: HB 1550
Effective Date: September 1, 1997
Applicability: Offenses committed on or after effective date
Summary of Changes: This section authorizes a commissioners court and/or governing body of a municipality to deny consent for the operation of a correctional or rehabilitation facility at a location within 1,000 feet of one of the designated places if it determines by resolution after public hearing that the operation at that location is not in the best interest of the county or municipality.

Local Government Code § 244.005. Written Request to Receive Notice

(a) The commissioners court of a county described under Section 244.002(a)(1) and the governing body of a municipality described under Section 244.002(a)(2) are entitled to notice under Section 244.002(a) only if the commissioners court or the governing body, as appropriate, submits by resolution to the agency or political subdivision of the state that proposes to construct or operate a correctional or rehabilitation facility, or that contracts for the construction or operation of a correctional or rehabilitation facility, a written request to receive notice.

(b) The commissioners court of a county described under Section 244.002(a)(1) and the governing body of a municipality described under Section 244.002(a)(2) are entitled to receive notice under Section 244.002(a) from a

private vendor that contracts with an agency or political subdivision of the state only if the commissioners court or governing body, as appropriate, submits by resolution to the contracting agency or political subdivision of the state a written request to receive notice.

Commentary by Neil Nichols

Source: HB 1550
Effective Date: September 1, 1997
Applicability: Offenses committed on or after effective date
Summary of Changes: This section requires the commissioners court or the governing body of the municipality to submit a written request, by resolution, to receive notice from the public or private entity that proposes to construct or operate a correctional or rehabilitation facility.

Local Government Code § 244.006. Exemptions

This chapter does not apply to the operation of a correctional or rehabilitation facility at a location subject to this chapter if:

(1) on September 1, 1997, the correctional or rehabilitation facility was in operation, under construction, under contract for operation or construction, or planned for construction at the location on land owned or leased by an agency or political subdivision of the state and designated for use as a correctional or rehabilitation facility;

(2) the correctional or rehabilitation facility was in operation or under construction before the establishment of a residential area the location of which makes the facility subject to this chapter;

(3) the correctional or rehabilitation facility is a temporary correctional or rehabilitation facility that will be operated at the location for less than one year;

(4) the correctional or rehabilitation facility is required to obtain a special use permit or a conditional use permit from the municipality in which the facility is located before beginning operation;

(5) the correctional or rehabilitation facility is an expansion of a facility operated by the institutional division of the Texas Department of Criminal Justice or by the Texas Youth Commission;

(6) the correctional or rehabilitation facility is a county jail or a pre-adjudication or post-adjudication juvenile detention facility operated by a county or county juvenile board;

(7) the facility is:

(A) a juvenile probation office located at, and operated in conjunction with, a juvenile justice alternative education center; and

(B) used exclusively by students attending the juvenile justice alternative education center;

(8) the facility is a public or private institution of higher education or vocational training to which admission is open to the general public;

(9) the facility is operated primarily as a treatment facility for juveniles under contract with the Texas Department of Mental Health and Mental Retardation or a local mental health or mental retardation authority;

(10) the facility is operated as a juvenile justice alternative education program;

(11) the facility:

(A) is not operated primarily as a correctional or rehabilitation facility; and

(B) only houses persons or children described by Section 244.001(1)(B) for a purpose related to treatment or education; or

(12) the facility is a probation or parole office located in a commercial use area.

Commentary by Neil Nichols

Source: HB 1550
Effective Date: September 1, 1997
Applicability: Offenses committed on or after effective date
Summary of Changes: This section exempts from the chapter's application facilities that, on September 1, 1997, are in operation, under construction, under contract for operation or construction, or planned for construction on land owned or leased by the entity that is designated for the use; facilities in operation or under construction before the establishment of a residential area within 1,000 feet; temporary facilities operating less than one year; facilities that require special or conditional use permits for operation; TDCJ - ID and TYC facilities being expanded; county jails and pre-adjudication or post-adjudication county juvenile detention centers; juvenile probation offices co-located with a JJAEP and used exclusively for JJAEP students; public or private institutions of higher education or vocational training that are open to the general public; treatment facilities operated under a contract with a local MHMR agency or TDMHMR that primarily serve youth; a JJAEP; a facility that is not operated primarily for use as a correctional or rehabilitation facility as defined in Sec. 244.001, but houses persons identified in Sec. 244.001 only for a treatment or educa-

tional purpose; and probation and parole offices that are located in commercial use areas.

Local Government Code § 244.007. Conflict with Other Law

To the extent of any conflict between this chapter and Section 509.010, Government Code, this chapter prevails.

Commentary by Neil Nichols

Source: HB 1550
Effective Date: September 1, 1997
Applicability: Offenses committed on or after effective date
Summary of Changes: Government Code Section 509.010 was added in 1995 requiring notice and public hearings related to the establishment of adult community corrections facilities that are operated by either public or private entities.

Local Government Code § 244.008. Sunset Review

(a) The Sunset Advisory Commission shall review this chapter, evaluate the operation and effectiveness of this chapter, and, not later than January 1, 2003, make recommendations to the legislature and the governor regarding:

(1) the public necessity for this chapter;

(2) changes that would improve the notice and local consent requirements of this chapter; and

(3) whether this chapter should be continued, modified, or repealed.

(b) This chapter expires September 1, 2003.

Commentary by Neil Nichols

Source: HB 1550
Effective Date: September 1, 1997
Applicability: Offenses committed on or after effective date
Summary of Changes: This chapter is subject to sunset review and expires on September 1, 2003 unless it is reenacted following that review.

Penal Code § 28.08. Graffiti

(a) A person commits an offense if with aerosol paint or an indelible marker and without the effective consent of the owner the person intentionally or knowingly makes markings, including inscriptions, slogans, drawings, or paintings, on the tangible property of the owner.

(b) Except as provided by Subsection (d), an offense under this section is:

(1) a Class B misdemeanor if the amount of pecuniary loss is less than $500;

(2) a Class A misdemeanor if the amount of pecuniary loss is $500 or more but less than $1,500;

(3) a state jail felony if the amount of pecuniary loss is $1,500 or more but less than $20,000;

(4) a felony of the third degree if the amount of pecuniary loss is $20,000 or more but less than $100,000;

(5) a felony of the second degree if the amount of pecuniary loss is $100,000 or more but less than $200,000; or

(6) a felony of the first degree if the amount of pecuniary loss is $200,000 or more.

(c) When more than one item of tangible property, belonging to one or more owners, is marked in violation of this section pursuant to one scheme or continuing course of conduct, the conduct may be considered as one offense, and the amounts of pecuniary loss to property resulting from the marking of the property may be aggregated in determining the grade of the offense.

(d) An offense under this section is a state jail felony if the marking is made on a place of worship or human burial, a public monument, or a community center that provides medical, social, or educational programs and the amount of the pecuniary loss to real property or to tangible personal property is less than $20,000.

(e) In this section:

(1) "Aerosol paint" means an aerosolized paint product.

(2) "Indelible marker" means a device that makes a mark with a paint or ink product that is specifically formulated to be more difficult to erase, wash out, or remove than ordinary paint or ink products.

Commentary by Neil Nichols

Source: SB 758
Effective Date: September 1, 1997
Applicability: Offenses committed on or after effective date
Summary of Changes: The new offense, Graffiti, was added to the Penal Code in order to increase the penalties otherwise available under the offense of Criminal Mischief (Sec. 28.03) for intentionally or knowingly using aerosol paint or indelible

markers to make markings on tangible property without the owner's consent. Under Sec. 28.08, there is no Class C misdemeanor and any pecuniary loss less than $500 is a Class B misdemeanor. Other penalties include suspension or denial of driver's licenses (Family Code Section 54.042 and Transportation Code Section 521.314); payment of a graffiti eradication fee (Code of Criminal Procedure art. 102.0171); and restoration of property and attendance at self-responsibility and victim empathy instruction (Family Code Sections 53.03 and 54.046).

Code of Criminal Procedure art. 102.0171. Court Costs: Graffiti Eradication Funds

(a) A defendant convicted of an offense under Section 28.08, Penal Code, in a county court, county court at law, or district court shall pay a $5 graffiti eradication fee as a cost of court.

(b) In this article, a person is considered convicted if:

(1) a sentence is imposed on the person;

(2) the person receives community supervision, including deferred adjudication; or

(3) the court defers final disposition of the person's case.

(c) The clerks of the respective courts shall collect the costs and pay them to the county treasurer or to any other official who discharges the duties commonly delegated to the county treasurer for deposit in a fund to be known as the county graffiti eradication fund. A fund designated by this subsection may be used only to:

(1) repair damage caused by the commission of offenses under Section 28.08, Penal Code;

(2) provide educational and intervention programs designed to prevent individuals from committing offenses under Section 28.08, Penal Code; and

(3) provide to the public rewards for identifying and aiding in the apprehension and prosecution of offenders who commit offenses under Section 28.08, Penal Code.

(d) The county graffiti eradication fund shall be administered by or under the direction of the commissioners court.

Commentary by Neil Nichols

Source: SB 758
Effective Date: September 1, 1997
Applicability: Offenses committed on or after effective date
Summary of Changes: This new article establishes a county graffiti eradication fund to be used for graffiti repair; education and intervention programs; and public rewards for the apprehension of graffiti offenders. The fund is administered by the commissioners court and funded through a mandatory $5 graffiti eradication fee imposed on persons convicted of Graffiti, Penal Code Section 28.08.

Family Code § 54.042. License Suspension

(a) A juvenile court, in a disposition hearing under Section 54.04 [~~of this code~~], shall:

(1) 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 if the court finds that the child has engaged in conduct that violates a law of this state enumerated in Section **521.342(a), Transportation Code** [~~24(a-1), Chapter 173, Acts of the 47th Legislature, Regular Session, 1941 (Article 6687b, Vernon's Texas Civil Statutes)~~]; or

(2) notify the Department of Public Safety of the adjudication, if the court finds that the child has engaged in conduct that violates a law of this state enumerated in Section **521.372(a), Transportation Code** [~~24B(b), Chapter 173, Acts of the 47th Legislature, Regular Session, 1941 (Article 6687b, Vernon's~~] [~~Texas Civil Statutes)~~].

(b) **A juvenile court, in a disposition hearing under Section 54.04, 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, if the court finds that the child has engaged in conduct that violates Section 28.08, Penal Code.**

(c) The order under Subsection (a)(1) [~~of this section~~] shall specify a period of suspension or denial that is until the child reaches the age of 19 or for a period of 365 days, whichever is longer.

(d) The order under Subsection (b) shall specify a period of suspension or denial that is:

(1) for a period not to exceed 365 days; or

(2) if the court finds the child has been previously adjudicated as having engaged in conduct violating Section 28.08, Penal Code, until the child reaches the age of 19 or for a period not to exceed 365 days, whichever is longer.

(e) [~~(c)~~] A child whose driver's license or permit has been suspended or denied pursuant to

this section may, if the child is otherwise eligible for, and fulfills the requirements for issuance of, a provisional driver's license or permit under Chapter **521, Transportation Code** [~~173, Acts of the 47th Legislature, Regular~~] [~~Session, 1941, as amended (Article 6687b, Vernon's Texas Civil Statutes)~~], apply for and receive an occupational license in accordance with the provisions of **Subchapter L of that chapter** [~~Section 23A, Chapter 173, Acts of the 47th Legislature, Regular Session, 1941, as amended (Article 6687b, Vernon's Texas Civil Statutes)~~].

(f)[~~(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 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~~].

(g) [~~(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 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 Neil Nichols

Source: SB 758
Effective Date: September 1, 1997
Applicability: Offenses committed on or after effective date
Summary of Changes: Amendments to this section authorize the juvenile court to order the Department of Public Safety to suspend or deny driver's licenses to graffiti offenders for up to 365 days or, if there are previous Graffiti adjudications, up to age 19 or 365 days, whichever is longer.

Health and Safety Code § 485.019. Restrictions of Access to Aerosol Paint

(a) A business establishment that holds a permit under Section 485.012 and that displays aerosol paint shall display the paint:

(1) in a place that is in the line of sight of a cashier or in the line of sight from a workstation normally continuously occupied during business hours;

(2) in a manner that makes the paint accessible to a patron of the business establishment only with the assistance of an employee of the establishment; or

(3) in an area electronically protected, or viewed by surveillance equipment that is monitored, during business hours.

(b) This section does not apply to a business establishment that has in place a computerized checkout system at the point of sale for merchandise that alerts the cashier that a person purchasing aerosol paint must be over 18 years of age.

(c) A court may issue a warning to a business establishment or impose a civil penalty of $50 on the business establishment for a first violation of this section. After receiving a warning or penalty for the first violation, the business establishment is liable to the state for a civil penalty of $100 for each subsequent violation.

(d) For the third violation of this section in a calendar year, a court may issue an injunction prohibiting the business establishment from selling aerosol paint for a period of not more than two years. A business establishment that violates the injunction is liable to the state for a civil penalty of $100, in addition to any other penalty authorized by law, for each day the violation continues.

(e) If a business establishment fails to pay a civil penalty under this section, the court may issue an injunction prohibiting the establishment from selling aerosol paint until the establishment pays the penalty, attorney's fees, and court costs.

(f) The district or county attorney for the county in which a violation of this section is alleged to have occurred, or the attorney general, if requested by the district or county attorney for that county, may file suit for the issuance of a warning, the collection of a penalty, or the issuance of an injunction.

(g) A penalty collected under this section shall be sent to the comptroller for deposit in the state treasury to the credit of the general revenue fund.

(h) This section applies only to a business establishment that is located in a county with a population of 75,000 or more.

Commentary by Neil Nichols

Source: SB 758
Effective Date: September 1, 1997
Applicability: Offenses committed on or after effective date
Summary of Changes: This new section requires business establishments in counties with populations of 75,000 or more to display aerosol paints in the line of sight of the cashier or other full-time workstation; make aerosol paints accessible only with assistance or in areas that are electronically monitored or supervised full-time; or provide a computerized checkout system that automatically signals products that are only available for purchase by persons over age 18. The section provides civil penalties for violations ($50/first violation; $100/subsequent violations). For the third violation in a calendar year, the court may enjoin the business from selling aerosol paint for up to two years. Violations of the injunction, then, may be penalized at $100/day. Penalty payments are deposited to the credit of the state's general revenue fund.

Transportation Code § 521.314. Suspension for Certain Criminal Mischief; License Denial

(a) A court may order the department to suspend a person's driver's license on conviction of an offense under Section 28.08, Penal Code.

(b) A court may order the department to deny an application for reinstatement or issuance of a driver's license to a person convicted of an offense under Section 28.08, Penal Code, who, on the date of the conviction, did not hold a driver's license.

(c) The period of suspension under this section is one year after the date of a final conviction. The period of license denial is one year after the date the person applies to the department for reinstatement or issuance of a driver's license.

(d) The department may not reinstate a driver's license suspended under Subsection (a) unless the person whose license was suspended applies to the department for reinstatement.

(e) A person whose license is suspended under Subsection (a) remains eligible to receive an occupational license under Subchapter L.

(f) For the purposes of this section, a person is convicted of an offense regardless of whether sentence is imposed or the person is placed on community supervision for the offense under Article 42.12, Code of Criminal Procedure.

Commentary by Neil Nichols

Source: SB 758
Effective Date: September 1, 1997
Applicability: Offenses committed on or after effective date
Summary of Changes: This section authorizes courts to suspend or deny driver's licenses to graffiti offenders for a period of one year. It requires offenders to apply for reinstatement. Occupational licenses are available.

Family Code § 53.03. Deferred Prosecution

(a) through (f) unchanged.

(g) If the child is alleged to have engaged in delinquent conduct or conduct indicating a need for supervision that violates Section 28.08, Penal Code, deferred prosecution under this section may include:

(1) voluntary attendance in a class with instruction in self-responsibility and empathy for a victim of an offense conducted by a local juvenile probation department, if the class is available; and

(2) voluntary restoration of the property damaged by the child by removing or painting over any markings made by the child, if the owner of the property consents to the restoration.

Commentary by Neil Nichols

Source: SB 758
Effective Date: September 1, 1997
Applicability: Offenses committed on or after effective date
Summary of Changes: This amendment provides that deferred prosecution of graffiti offenders may include voluntary attendance at a self-responsibility and victim empathy class and voluntary restoration of property damage with the owner's consent

Family Code § 54.046. Conditions of Probation For Damaging Property With Graffiti

(a) If a juvenile court places on probation under Section 54.04(d) a child adjudicated as having engaged in conduct in violation of Sec

tion 28.08, Penal Code, in addition to other conditions of probation, the court may, with consent of the owner of the property, order the child as a condition of probation to restore the property by removing or painting over any markings made by the child on the property.

(b) In addition to a condition imposed under Subsection (a), the court may require the child as a condition of probation to attend a class with instruction in self-responsibility and empathy for a victim of an offense conducted by a local juvenile probation department.

Commentary by Neil Nichols

Source: SB 758
Effective Date: September 1, 1997
Applicability: Offenses committed on or after effective date
Summary of Changes: In addition to the amendment of Sec. 54.042 authorizing the juvenile court to order suspension or denial of issuance of a youth's driver's license when the youth is adjudicated for the new Graffiti offense, Penal Code Sec. 28.08, this new section is added authorizing the court to impose additional conditions of probation for the offense. With the consent of the owner of the damaged property, the court may order the child to remove or paint over the graffiti and to receive instruction on self-responsibility and victim empathy conducted by the juvenile probation department. This new section reinforces child-parent restitution programs that are currently authorized in Sec. 54.041(b).

Code of Criminal Procedure art. 61.03. Release of Information

(a) through (c) unchanged.

(d) A local criminal justice agency may send information collected under this chapter to a regional database.

Commentary by Robert Dawson

Source: HB 2874
Effective Date: September 1, 1997
Applicability: Information obtained on, before or after effective date
Summary of Changes: This amendment permits the use of regional gang information databases, but still prohibits the use of a state-wide database.

Code of Criminal Procedure art. Article 61.04. Criminal Information Relating to Child

(a) Notwithstanding **Chapter 58** [~~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.

Commentary by Robert Dawson

Source: HB 2874
Effective Date: September 1, 1997
Applicability: Information obtained on, before or after effective date
Summary of Changes: This change simply reflects the removal of law enforcement confidentiality rules from Family Code § 51.14 to Chapter 58 of the Family Code.

Code of Criminal Procedure art. 61.06. Destruction of Records

(a) Except as provided by Subsection (b), information [~~Information~~] collected under this chapter must be destroyed after two years if the individual has not been charged with criminal activity.

(b) The information destruction requirements of Subsection (a) are suspended until September 1, 1999.

Commentary by Robert Dawson

Source: HB 2874
Effective Date: September 1, 1997
Applicability: Information obtained on, before or after effective date
Summary of Changes: This amendment postpones the destruction requirement following two years without a criminal charge until after the 76th legislature meets.