STATE BAR SECTION REPORT JUVENILE LAW

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CHAIR'S MESSAGE
by Emily Helm

I want to take this opportunity to thank our past chair, Lisa Capers, for her most able and professional leadership of the Juvenile Law Section. Under her direction, this section has attained a high degree of quality and competence, while accomplishing many of its goals.

I would like to take this time to set out three goals the Juvenile Law Section council has discussed for the coming year.

- Continue to strive for specialization in the area of juvenile law;
- Re-establish a standing committee to develop a juvenile law form book; and
- Establish a scholarship fund for eligible at-risk youth

The council will meet within the next three months to bring you more detailed information about our goals.

In the meantime there are other routine endeavors that we as a council will continue to perform, such as attending meetings of the chairs, providing an annual budget, maintaining current by-laws, updating our web page, recruiting section members, hosting/coordinating/sponsoring (pick one) Annual Juvenile Law Conference, and last but not the least, providing membership with the quarterly newsletter edited by Professor Dawson.

If you were at the post legislative conference sponsored by the Texas Juvenile Probation Commission and held in Austin June 23rd through the 25th, you were able to receive very pertinent materials and information concerning the 76th Texas Legislative Session. If you were not able to attend and would like information from that seminar**,** please contact Kristy Carr the Commission at (512) 424-6710 or www.tjpc.state.tx.us.

One of our aims for the 13th Annual Juvenile Law Conference is to provide information from this past legislative session. If you have such information or expertise in the area of juvenile law and would be interested in speaking at this conference**,** please contact Judge Darlene Whitten at (940) 898-5870.

In closing, I am very honored to be your section chair and excited about all our plans. We have a full agenda and an ambitious schedule. It will be my greatest hope to obtain and maintain them all. I invite comments and ideas from you and your colleagues on any subject. Feel free to contact me at (512) 424-6181.

EDITOR'S FOREWORD
by Robert O. Dawson

Special Legislative Issue. This is the third special legislative issue of the Juvenile Law Section Report to be published. Although shorter than the first two, it is still quite substantial and could not have been accommodated in our ordinary quarterly format. This is a bonus issue; our September and December issues will appear as usual.

Special Recognitions. This was a very good session for juvenile justice in Texas. Undoubtedly, the two juvenile justice leaders in the legislature were Representative **Toby Goodman** and Senator **Royce West**. Representative Goodman once again chaired the important Juvenile Justice and Family Issues Committee in the House. "The Chairman," as he is affectionately called, authored HB 3517--the major juvenile bill of the session. Senator West chaired the Senate Interim Committee on Juvenile Justice and Gangs. He produced several important bills out of that effort. He and Representative Goodman collaborated on Senate Bill 8, setting up a statewide juvenile gang membership database. The entire Texas juvenile justice community owes each a huge debt.

Contributors to the Issue. As in the past, in producing this Special Legislative Issue I have adhered to the motto that if it is important enough to do, it is important enough to delegate. I have been aided by several excellent attorneys who made significant contributions to this Issue by commenting on statutes in their areas of expertise. **Lisa Capers**, Deputy Executive Director and General Counsel to the Texas Juvenile Probation Commission, ably assisted by Senior Staff Attorney, **Wesley Shackelford**, contributed to her third Special Legislative Issue. **Neil Nichols**, General Counsel to the Texas Youth Commission, also contributed commentary to his third Special Legislative Issue. **Jim Bethke**, Special Counsel for Trial Courts in the Office of Court Administration, contributed commentaries to his second Special Legislative Issue. **Charles Childress**, Chief Attorney, Field Operations of the Texas Department of Protective and Regulatory Services, is contributing to his first Special Legislative Issue.

In addition to those who wrote or contributed to the writing of section-by-section commentaries, three persons contributed special articles. **Vicki Spriggs**, Executive Director of the Texas Juvenile Probation Commission, contributed an article on the legislative appropriation process and its impact on juvenile probation. **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 of 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 76TH TEXAS LEGISLATURE

Vicki Spriggs
Executive Director

The Texas juvenile justice system was once again the beneficiary of additional appropriations, although the increases are not as dramatic as in the previous two sessions. The legislative session also produced a number of refinements of the juvenile justice system and a significant revision of Chapter 55 of the Family Code dealing with mentally ill and mentally retarded juvenile offenders. The General Appropriations Act added approximately $33 million to the Texas Juvenile Probation Commission (TJPC) budget for the FY 2000-2001 biennium over funding for the current biennium or an increase of about 18%. Virtually all of the increase was directed towards increasing funds available for placement of children outside the home. This category includes significant increases in the appropriation for Title IV-E foster care placements, operating costs for the bond construction facilities initially authorized in 1995, and funding for placements in secure post-adjudication correctional facilities. Through the appropriations process, the legislature also encouraged the expansion of Juvenile Justice Alternative Education Programs (JJAEPs) to smaller counties. The following chart shows a comparison of TJPC funding for the FY 1998-1999 and FY 2000-2001 bienniums in each of the funding categories.

TYC Funding Comparison
FY 1998-1999 v. FY 2000-2001

	Current Funding FY 1998-1999	Amount Appropriated FY 2000-2001
Basic Probation	$70,446,032	**$70,446,032**
Community Corrections (Current)	$83,921,058	$83,921,058
New Funding:		
Additional Operation Cost for Bond Facilities		*$5,053,403*
Level Five Secure Placements		*$8,788,873*
Non-Residential Programs in Counties <72,000		*$500,000*
Total Community Corrections		**$98,263,335**
Probation Assistance (Current)	$8,661,832	$8,661,832
Additional Title IV-E Funds		*$17,479,444*
Additional 5 Full Time Employees		*$312,800*
Total Probation Assistance		**$26,454,076**
JJAEP Funding	$20,000,000	**$20,000,000**
Direct and Indirect Administration (Current)	$1,458,738	$1,458,738
Additional 2 Full Time Employees		*$127,400*
Total Direct and Indirect Administration		**$1,586,138**
TOTAL FUNDING	**$184,487,660**	**$216,749,581**

Appropriations Riders to TJPC Budget

While the chart above shows the amount of funding in each strategy, the riders to the budget show the funding details on how the money is to be spent. Below are the riders to the TJPC budget that provide detailed instructions on how the funds appropriated above are to be spent.

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.

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. *Juvenile Non-Residential Program Funding.* Out of the funds appropriated above in Strategy A.2.1., Community Corrections, an amount not to exceed $250,000 in each year shall be expended in the form of grants to counties with a population of 72,000 or less which operate non-residential programs during the 2000–01 biennium. To be eligible, a county must contribute at least 60 percent of the costs of such programs from local funds, and the state share may not exceed (1) 40 percent of the funding for the program and (2) a total of $25,000 in fiscal year 2000 and $25,000 in fiscal year 2001 per county.

5. *Dan Kubiak Buffalo Soldier At-Risk Program**. The commission shall fund the Dan Kubiak 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 2000 and U.B. in fiscal year 2001 out of funds appropriated in Strategy A.1.1. Strategy, Basic Probation, for delinquency prevention. The administrative cost for the program oversight cannot 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.

6. *Unexpended Balances—Construction of Local Facilities with General Obligation Bond Proceeds.* Any unexpended and unencumbered balance (estimated to be $1,000,000) 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 1999 are hereby appropriated for the same purpose for the fiscal biennium ending August 31, 2001.

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 2000-01 biennium for the purpose of funding substance abuse grants to local juvenile probation departments.

9. *Funding for Progressive Sanctions.*

a. Out of the funds appropriated above in A.1.1., Basic Probation, $10,200,000 in fiscal year 2000 and $10,200,000 in fiscal year 2001 can be distributed only to local probation departments for funding juvenile probation services associated with sanction levels described in Sections 59.003(a)(1), 59.003(a)(2), and 59.003(a)(3) of the Family Code, or for 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.

b. Out of the funds appropriated above in A.2.1., Community Corrections, $4,394,436 in fiscal year 2000 and $4,394,437 in fiscal year 2001 can be used only for the purpose of funding secure post-adjudication placements for (1) juveniles who have a progressive sanction guideline level of 5 or higher as described by Section 59.003(a)(5), 59.003(a)(6), and 59.003(a)(7), (2) are adjudicated for a felony offense that includes as an element of the offense the possession, carrying, using or exhibiting of a deadly weapon, (3) the juvenile court's order of adjudication contains a finding that the child committed a felony offense and the child used or exhibited a deadly weapon during the commission of the conduct or during immediate flight from commission of the conduct: or (4) are adjudicated for a sex offense of the grade of felony that requires registration under the Texas Sexual Offender Registration Program.

The Commission shall reimburse a county juvenile probation department a specified number of placements under this section, as determined by the Commission, after the requirements for reimbursement as outlined herein have been met to the satisfaction of the Commission.

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 $7,514,362 in fiscal year 2000 and $8,409,987 in fiscal year 2001 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 the Juvenile Probation Commission pursuant to Texas Education Agency (TEA) rider 45 and appropriated above in Strategy A.2.3., Juvenile Justice Alternative Education Programs, the Juvenile Probation Commission shall allocate $1,500,000 at the beginning of each fiscal year to be distributed on the basis of juvenile age population among the 22 mandated counties identified in Chapter 37, Texas Education Code, and those counties with populations between 72,000 and 125,000 which choose to participate under the requirements of Chapter 37.

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 counties mandated by the Section 37.011(a) Texas Education Code, at the rate of $59 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, Texas 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 at the beginning of each fiscal year have been expended at the rate of $59 per student per day of attendance. Counties in which populations exceed 72,000, but are 125,000 or less, may participate in the juvenile justice alternative education program, and are eligible for state reimbursement at the rate of $59 per student per day.

The Juvenile Probation Commission may expend any remaining funds for summer school programs in counties with a population over 72,000 which are funded as mandated counties in Chapter 37. Funds may be used for any student assigned to a JJAEP. Summer school expenditures may not exceed $3.0 million in any year.

Unspent balances in fiscal year 2000 shall be appropriated to fiscal year 2001 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 45. The amount of $59 per student per day may vary depending on the total number of students actually attending the juvenile justice education programs.

13. *Funding for Additional Eligible Students in JJAEPs.* Out of funds appropriated above in Strategy A.2.3., Juvenile Justice Alternative Education Programs, a maximum of $500,000 in each year (for a maximum of 90 attendance days per child), is allocated for counties with a population of at least 72,000 which operate a JJAEP under the standards of Chapter 37, Texas Education Code. The county is eligible to receive funding from the Texas Juvenile Probation Commission at the rate of $59 per day per student for students who are required to be expelled under Section 37.007, Texas Education Code, and who are expelled from a school district in a county that does not operate a JJAEP.

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.

15. *JJAEP Accountability.* The Juvenile Probation Commission and the Texas Education Agency shall develop a system to ensure that JJAEP pro-

grams are held accountable for student academic success. The agencies shall jointly submit a report to the Legislative Budget Board and the Governor's Office by May 31, 2000, detailing a recommendation for such accountability, including the desired and expected impact of education programs on students served in JJAEP programs. The report shall include the percent of eligible JJAEP students demonstrating growth in TAAS math and reading, as measured in terms of the Texas Learning Index.

16. *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.

17. *Unexpended Balances—Hold Harmless Provision.* Any unexpended balances as of August 31, 2000 in Strategy A.1.1., Basic Probation (estimated to be $483,516) and in Strategy A.2.1., Community Corrections (estimated to be $857,078) above are hereby reappropriated to the Juvenile Probation Commission in fiscal year 2001 for the purpose of providing Hold Harmless funding for juvenile probation departments whose allocation would otherwise be reduced as a result of reallocations related to population shifts.

*Note that the Dan Kubiak Buffalo Soldier At-Risk Program and funding associated with it will be transferred to the Department of Protective and Regulatory Services beginning September 1, 1999 by Senate Bill 1574.

Narrative Summary of TJPC Fiscal Years 2000-2001 Appropriations

The appropriations in the Basic Probation or State Aid strategy remain the same at $70,446,032. This amount continues the funding for 185 juvenile probation officers initially authorized in 1997, as well as funds for Progressive Sanctions level one, two, and three programs.

In the Community Corrections strategy, the legislature added significant new funds to assist counties in placing youth outside the home. First, the legislature decided to continue partially funding the operational costs of the 19 post-adjudication secure correctional facilities constructed using proceeds of general obligation bonds distributed by TJPC. To this end it appropriated $15,924,349 to fund 25% of the operation cost of these facilities for the next two years. Counties with these facilities will receive $21.25 per bed per day of operation over the biennium. The amount increased by about $5 million over FY 1998-1999 because more facilities will be operational in the approaching biennium. This appropriation required a change in Human Resources Code Section 141.086 that authorized the funding of these facilities, which HB 3517 made. In 1995, when the facilities were authorized, the legislature indicated that the state would assist counties in operating the facilities through 1999. In light of the fact that many of the facilities have just opened in the last year and a few remain to be completed, the legislature decided to extend this assistance through at least 2001 to be sure that each facility receives assistance in the critical first year of operation.

The legislature also added about $8.8 million to the Community Corrections Strategy for the placement of youth in post-adjudication secure correctional facilities. Additional secure placement funds were TJPC's top priority in the appropriations process based on the placement study the agency conducted in November 1998. That study showed that placements in post-adjudication secure correctional facilities average only about 3 months, while Progressive Sanctions level 5 recommends a 6-12 month length of stay followed by an additional 6-12 months probation. To meet the level 5 requirements, placements using these funds must be for a minimum of 6 months followed by at least 6 months of probation. As set out in Rider 9(b) above, these funds may only be used to reimburse counties for the placement of youth who have a Progressive Sanctions guideline level of 5 or higher, are adjudicated for a felony offense involving the use of a deadly weapon, are adjudicated for a felony and the court makes a finding that the youth exhibited a deadly weapon during the commission of the offense, or are adjudicated for a felony offense that requires the youth to register as a sex offender. Counties will be able to receive reimbursement for the actual cost of placement up to $85 per day for dispositions and modifications of disposition entered on or after September 1, 1999.

Non-residential program funding of $500,000 over the biennium was also added to the Community Corrections strategy. According to Rider 4, counties with populations below 72,000 are eligible to apply for the funds. The county must contribute at least 60% of the cost, with the state share limited to 40% of the total cost. Each county would be eligible for a maximum of one $25,000 grant each year of the biennium. The funds are available for a broad array of programs from day boot camps to other community-based programs that work to improve the lives of youth and their families.

The Probation Assistance strategy was also increased by nearly $18 million. The vast majority

of this reflects increases in the federal funds brought into the juvenile probation system through the Title IV-E foster care reimbursement program. This increase merely reflects the expected additional federal funds that TJPC will pass through to local departments for these services and do not involve the expenditure of any new state monies. The remaining $312,800 is to fund five new full time employees at the commission. These employees will support JJAEP programs in the field, assist research efforts on the juvenile probation system, and perform investigations of child abuse and neglect in juvenile probation facilities and programs.

In the Juvenile Justice Alternative Education Program (JJAEP) strategy, the legislature maintained the $20 million appropriation for FY 2000-2001 despite the fact that TJPC will spend substantially less than the $20 million appropriated for the FY 1998-1999 period. Instead of reducing the appropriation, the legislature chose to encourage expansion of the program to more counties and make JJAEP services available to more expelled students. Riders 12-15 spell out in detail how these funds are to be spent. The daily attendance rate was increased from $53 to $59 following an analysis of the cost of the programs by the State Auditor, the Legislative Budget Board, and TJPC. Counties with a population between 72,000 and 125,000 may choose to operate a JJAEP in the same manner as counties over 125,000 and receive reimbursement at the $59 rate for mandatorily expelled students. In an effort to bring JJAEP services to even more expelled students, the TJPC appropriation allows up to $1 million to be spent to educate mandatorily expelled students who reside in counties that do not operate a JJAEP. These students may be educated in a mandatory JJAEP with the agreement of the juvenile board operating the JJAEP and the school district and county juvenile board sending the child. The juvenile board serving these students will then be eligible to receive the $59 daily reimbursement rate for educating these out-of-county students for up to a maximum of 90 attendance days per child. The legislature also continued to set aside $1 million for grant funding. The amount that may be accessed by a single county will be raised to $45,000 per year from $35,000 to help small counties operate a summer school program.

Lastly, the Direct and Indirect Administration funding increased by $127,400 to fund an additional two full time employees and other expenses associated with those employees (computers, travel, etc.) at TJPC. These employees will support our management information systems and accounting divisions.

A Closing Message

Although the juvenile justice system was not in the center of the spotlight this session, children remained the legislature's primary focus as it decided what to do with a large budget surplus. Significant new funds were appropriated to improve our public schools and increase the pay of those who teach our students. Additionally, new resources were granted to Child Protective Services to help care for our state's most vulnerable children. The legislature also cut taxes in a variety of ways, including property tax relief for homeowners and a sales tax holiday on shoes and clothes prior to the start of school each August. The legislature is to be commended for providing additional resources directed to improving the lives of our children and for investing in Texas' future. These efforts, along with the additional funds for the juvenile probation system, add up to another successful session for the juvenile justice system and all the youth of our state.

TYC MAKES GAINS IN 76TH LEGISLATIVE SESSION

Steve Robinson
Executive Director

Legislators strengthened juvenile correction efforts in the 76th session with funds for new beds, additional correctional officers and pay increases. These results are evidence that juvenile corrections, and the need to hold offenders accountable for their criminal behavior, remains a priority of the Texas Legislature.

The Texas Youth Commission, which works to rehabilitate the state's most chronically problematic or serious juvenile offenders, was granted an appropriation of $268.6 million for FY 2000 and $247.8 million for FY 2001.

The Criminal Justice Policy Council projects that TYC will need 5,916 beds by FY 2001, and 6,037 beds by FY 2002. TYC's average daily population has almost tripled since 1994, and the number of beds in TYC-run facilities has more than doubled.

This budget was funded to accommodate the projected increases in commitments and in average daily population. Importantly, this means that the Texas Youth Commission should be able to continue to manage its population without overcrowding and without early releases. It is crucial to rehabilitation efforts that delinquents be confined as long as it takes to change their behavior and thinking patterns, even if that means that they stay at TYC months past their assigned minimum stay.

TYC also received funds for :

- an additional 320 single-cell beds at the McLennan County State Juvenile Correctional Facility in Mart. This first phase of this facility (352 beds) was authorized in the previous legislative session. The facility is scheduled to receive its first offenders in December 1999. The authorization to build the second phase with single cell beds will help the agency in its efforts to control a growing population of aggressive offenders.
- 64 beds and other construction at the Sheffield Boot Camp. The boot camp will become a 128-bed facility.
- 48 beds and a new education building at the Corsicana Residential Treatment Center, and 24 additional beds and a security-infirmary building at Gainesville State School.
- 112 new beds for TYC offenders placed in contract care programs.
- 100 additional correctional officers to work directly with juvenile offenders in 14 state schools and institutions. This will improve the agency's staff-to-youth ratio and improve safety and security.
- A pay increase for the agency's 2,359 juvenile correctional officers so they will be paid comparably to corrections officers in adult prisons.
- A $3,000 teacher pay raise that extends to the 378 teachers in TYC facilities.
- Four extra teachers who specialize in English as a Second Language to help TYC youth who speak little or no English learn to read and improve in their school studies.
- Additionally, there are a number of measures affecting TYC that resulted from the session:
- Under current law, TYC is required to discharge non-sentenced youth with mental illness or mental retardation who have met their minimum length of stay and are unable to progress in rehabilitation treatment due to their mental impairment. New legislation allows the effective date of the discharge to be moved up from 30 days following the filing of an application for follow-up mental health services to the date the court takes action on the application (or, in the case of mental retardation services, to the date action is taken on the referral). The discharge would be effective immediately if the child already is receiving court-ordered mental health or mental retardation services at the time of eligibility. If these services are being received outside the child's home county, TYC is required to provide the mental health authority of the child's home county notice of the child's discharge 30 days prior to the discharge effective date.
- Adult jails now will be allowed to temporarily hold TYC youth who are at least 17 years old who have been taken into custody for technical parole violations or who have escaped from a TYC facility.
- The penalty for escape from a TYC facility or secure contract facility was increased from a Class A misdemeanor to a third degree felony.
- TYC was authorized to develop a program in which select teenage mothers at TYC will be able to keep their babies and toddlers with them in a program that blends rehabilitation and prevention. A substantial number of TYC youth have children of their own. In FY 1998, 13 girls who were pregnant when committed to

TYC gave birth while incarcerated. This program will be the first in the nation set in a juvenile corrections facility. It is being designed as a small contract program.

TEXAS DPRS: Delinquency Prevention Programs and Funding

Thomas Chapmond
Director, Community Initiatives

The Department of Protective and Regulatory Services (PRS) administers several programs aimed at preventing delinquent behavior. This article provides information on the status of the two existing programs (Services to At Risk Youth - STAR and Community Youth Development -CYD), two new programs added by the 76th Legislature (Prevention Case Management and At Risk Mentoring), and several programs transferred to PRS from other state agencies.

Existing Programs

Services to At Risk Youth (STAR)

The STAR program utilizes local contractors to provide services to children and families who may be at risk of becoming involved in either the juvenile justice system or the child protective services system. Services such as crisis intervention, counseling, parent training and mentoring are made available to families experiencing problems such as: minor unadjudicated delinquent conduct, family conflict, truancy, running away, etc. The program expanded during the 1998/1999 biennium and is now available in all 254 Texas counties. The 76th Legislature continued Fiscal Year 1999 funding ($22.1 million per year) for Fiscal Years 2000/2001.

Community Youth Development (CYD)

The CYD program was implemented by the 74th Legislature to target neighborhoods with high rates of juvenile delinquency. Grants of $500,000 per year are made available to 13 zip codes across the state that were selected based on juvenile delinquency data. Local steering committees determine how to best use the funding to impact delinquency in their area. Emphasis is placed on developing positive opportunities for young people including: after school programs, tutoring, mentoring, cultural enrichment, etc. The 76th Legislature provided funding for two new sites in the 2000/2001 biennium. An interagency work group will determine the location of the two new sites.

New Programs

Prevention Case Management Project

Approximately $6.6 million was appropriated to implement a "prevention case management project". The goal of the project is to develop case management services in several communities around the state to assist families in accessing prevention and early intervention services. Two populations are targeted:

- families for whom a Child Protecitve Services investigation was performed and child abuse was confirmed, yet sufficient risk was not present to warrant opening a case, and
- children and youths who are arrested by police, but there is no referral to juvenile probation.

At Risk Mentoring

Approximately $3 million was appropriated for the biennium to develop contracts with local mentoring programs to expand their services to children in at risk situations.

Transferred Programs

Senate Bill 1574 - Senator Royce West

Senate Bill 1574 was authored by Senator Royce West and sponsored in the House by Representative Patricia Gray. The bill moves the following programs to PRS: Communities in Schools from Texas Workforce Commission; Parents as Teachers from the Texas Department of Mental Health and Mental Retardation; and Dan Kubiak Buffalo Soldiers Program from the Texas Juvenile Probation Commission. Funding for all of the programs remains the same except Communities in Schools, which received an increase in funding of approximately $2 million for the biennium.

JUVENILE JUSTICE IN THE 76TH TEXAS LEGISLATURE

by
Robert O. Dawson

The 76th Texas Legislature passed about 40 bills that deal with juvenile justice. The most important is **House Bill 3517**, by **Toby Goodman**. It is the general juvenile cleanup bill and makes a number of significant changes in Texas juvenile law, including a comprehensive re-writing of Family Code Chapter 55, dealing with children with mental illness or mental retardation. Also of great importance is **Senate Bill 8**, by **Royce West**, which creates and regulates a state-wide database of gang members.

We have organized the 40 bills into 8 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 other categories. For example, some provisions dealing with gangs amended Title 3, so appear in both categories.

The major bill was **HB 3517** (authored by **Toby Goodman**, sponsored by **Chris Harris**), which is the general juvenile cleanup bill. Others are **HB 1269**, the Governor's use-a-firearm-go-to-detention bill, (authored by **Toby Goodman**, sponsored by **Florence Shapiro**); **HB 2671** dealing with questioning of children in the custody of DPRS (authored by **Sylvester Turner**, sponsored by **Eliot Shapleigh**); **HB 2947** restricting commitments to the TYC (authored by **Toby Goodman**, sponsored by **Chris Harris**); **HB 251** dealing with appeals in plea bargained cases (authored by **Robert Puente**, sponsored by **Rodney Ellis**); **SB 422** expediting the process of implementing records sealing orders (authored by **Chris Harris**, sponsored by **Phil King**); **HB 1749** dealing with the sharing of records between schools and juvenile justice officials (authored by **Leticia Van de Putte**, sponsored by **Ken Armbrister**); **HB 1583** dealing with release of juvenile information by DPS (authored by **Jesse Jones**, sponsored by **Royce West**); **SB 187** also dealing with release of juvenile information by DPS (authored by **Eddie Lucio**, sponsored by **Terry Keel**); **HB 2145** dealing with sex offender registration (authored by **Ray Allen**, sponsored by **John Whitmire**); **SB 399** also dealing with sex offender registration (authored by **Florence Shapiro**, sponsored by **Ray Allen**); **HB 2869** requiring juvenile probationers to reveal the sources of handguns (authored by **Jaime Capelo**, sponsored by **Rodney Ellis**); **HB 2870** prohibiting appellate reversal for failure to follow guidel**ines or report deviations (authored by** Jaime Capelo, sponsored by **Rodney Ellis**); **SB 1571** restricting residences venue (authored by **Royce West**, sponsored by **Toby Goodman**); **HB 3355** relieving Sheriff's Departments of the obligation to transport juveniles to out-of-county detention facilities (authored by **Todd Staples**, sponsored by **Robert Duncan**); **HB 688** dealing with juveniles in municipal or justice courts (authored by **Pete Gallego**, sponsored by **Rodney Ellis**); **SB 283** dealing with law enforcement informal disposition or first offender guidelines (authored by **Royce West**, sponsored by **Toby Goodman**); **SB 365** dealing with intensive supervision of sexual predators (authored by **Buster Brown**, sponsored by **Brian McCall**); and **HB 1063** dealing with graffiti eradication fees (authored by **Joe Pickett**, sponsored by **Eliot Shapleigh**).

(2) Gang Legislation. The most important bill was **SB 8** which established a state-wide gang membership database (authored by **Royce West**, sponsored by **Toby Goodman**). Others were **SB 1578** dealing with the gang resource database in the Attorney General's Office (authored by **Royce West**, sponsored by **Toby Goodman**); **SB 1579** dealing with soliciting gang membership (authored by **Royce West**, sponsored by **Juan Hinojosa**); **SB 1580** establishing a state-wide gang taskforce (authored by **Royce West**, sponsored by **Toby Goodman**); **HB 861** dealing with coercing gang violent conduct (authored by **Dawnna Dukes**, sponsored by **Rodney Ellis**); **HB 751** dealing with graffiti (authored by **Leticia Van de Putte**, sponsored by **Royce West**); and **HB 152** also dealing with graffiti (authored by **Joe Pickett**, sponsored by **Eliot Shapleigh**).

(3) Sex Offender Legislation. The most important bill was **HB 2145** with made extensive changes in the sex offender registration statute (authored by **Ray Allen**, sponsored by **John Whitmire**). Also included are **SB 1650** dealing with public notice of registered sex offenders (authored by **Mike Jackson**, sponsored by **Pat Haggerty**) and **HB 1939** dealing with driver's license registration of

sex offenders (authored by **Kent Grusendorf**, sponsored by **Chris Harris**).

(4) Prosecution of Juveniles and Municipal and Justice Courts. Included are **SB 528** dealing with prosecution of cases under the Alcoholic Beverage Code (authored by **Royce West**, sponsored by **Helen Giddings**) and **HB 1603**, dealing with prosecution of juveniles in JP and Municipal Courts (authored by **Senfronia Thompson**, sponsored by **Chris Harris**).

(5) Education and Juvenile Justice. Included are **SB 4** dealing with many education issues (authored by **Teel Bivins**, sponsored by **Paul Sadler**) and **HB 1749** dealing with sharing school information with juvenile justice officials (authored by **Leticia Van de Putte**, sponsored by **Ken Armbrister**).

(6) Selected Texas Youth Commission Provisions. Included are **SB 1607** dealing with infant care programs in the TYC (authored by **John Whitmire**, sponsored by **Ray Allen**), **SB 894** dealing with illicit sexual relations with an incarcerated person (authored by **Steve Ogden**, sponsored by **Ray Allen**), **HB 1188** dealing with DNA samples (authored by **Pete Gallego**, sponsored by **Florence Shapiro**), and **HB 3215** dealing with the same topic (authored by **Brian McCall**, sponsored by **Florence Shapiro**).

(7) Selected Texas Juvenile Probation Commission Provisions. Included, in addition to **HB 3517**, are **HB 774** dealing with the Fisher, Mitchell and Nolan counties juvenile board (authored by **David Counts**, sponsored by **Tom Haywood**) and **HB 1082** dealing with the Harris County Juvenile Board (authored by **Fred Bosse**, sponsored by **Rodney Ellis**).

(8) Selected Department of Protective and Regulatory Services Provisions. Included is **SB 1574** dealing with at-risk children (authored by **Royce West**, sponsored by **Patricia Gray**).

1. Title 3 and Related Provisions

Title 3. Juvenile Justice Code

Chapter 51. General Provisions

§ 51.04. Jurisdiction.

(f) If the judge of the juvenile court or any alternate judge named under Subsection (b) or (c) [~~of this section~~] is not in the county or is otherwise unavailable, any magistrate may make a determination under Section 53.02(f) or may conduct the detention hearing provided for in Section 54.01 [~~of this code~~].

(g) The juvenile board, or if there is no juvenile board, the juvenile court, may appoint a referee to make determinations under Section 53.02(f) or to conduct hearings under this title [~~and in accordance with Section 54.10 of this code~~]. The referee shall be an attorney licensed to practice law in this state and shall comply with Section 54.10. Payment of any referee services shall be provided from county funds.

Commentary by Robert Dawson
Source: HB 1269
Effective Date: September 1, 1999
Applicability: Conduct occurring on or after effective date
Summary of Changes: These amendments are part of the use-a-firearm-go-to-detention legislation. A release decision, which can be made by telephone, is authorized by section 53.02(f). Subsection (f) of this section authorizes any detention magistrate to make that decision, while subsection (g) permits a referee or master to make it. This bill allows judicial release from police custody or detention prior to the normally-scheduled detention hearing in firearms cases.

§ 51.06. Venue.

(a) A proceeding under this title shall be commenced in[~~:~~]

(1) [~~the county in which the child resides; or~~

[~~(2)~~] the county in which the alleged delinquent conduct or conduct indicating a need for supervision occurred; or

(2) the county in which the child resides at the time the petition is filed, but only if:

(A) the child was under probation supervision in that county at the time of the commis-

sion of the delinquent conduct or conduct indicating a need for supervision;

(B) it cannot be determined in which county the delinquent conduct or conduct indicating a need for supervision occurred; or

(C) the county in which the child resides agrees to accept the case for prosecution, in writing, prior to the case being sent to the county of residence for prosecution.

Commentary by Robert Dawson

Source: SB 1571

Effective Date: September 1, 1999

Applicability: None stated.

Summary of Changes: Ordinarily, juvenile offenses should be prosecuted in the county where they were committed because that county has the strongest prosecutorial interest in the matter and the evidence and witnesses are located in that county. These amendments are intended to discourage a county in which an offense was committed from "dumping" cases onto the county of residence of the child. Accordingly, it restricts residence venue to three situations where the need for it seems particularly strong: the child is already on probation in his county of residence and it would be desirable to process the new charges and to conduct the modification proceedings in the same court; it cannot be determined in which county the offense was committed, such as in a case of sexual assault against a very young child; or the residence county gives written consent to the case being filed there.

§ 51.095. Admissibility of a Statement of a Child.

(a) Notwithstanding Section 51.09, 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 under a circumstance described by Subsection (d) [~~when the child is in a detention facility or other place of confinement or in the custody of an officer~~] and:

(A) through (D) unchanged;

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

(4) the statement is made:

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

(B) before a grand jury considering a petition, under Section 53.045, 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; or

(5) the statement is made orally under a circumstance described by Subsection (d) [~~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) through (D) unchanged.

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

(1) the statement does not stem from [~~custodial~~] interrogation of the child under a circumstance described by Subsection (d); or

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

(d) *[first of two]* Subsections (a)(1) and (a)(5) apply to the statement of a child made:

(1) while the child is in a detention facility or other place of confinement;

(2) while the child is in the custody of an officer; or

(3) during or after the interrogation of the child by an officer if the child is in the possession of the Department of Protective and Regulatory Services and is suspected to have engaged in conduct that violates a penal law of this state.

(d) *[second of two]* A juvenile law referee or master may perform the duties imposed on a magistrate under this section without the approval of the juvenile court if the juvenile board of the county in which the statement of the child is made has authorized a referee or master to perform the duties of a magistrate under this section.

Commentary by Robert Dawson

Source: HB 2671; HB 3517

Effective Date: September 1, 1999

Applicability: HB 2671: statement made on or after effective date; HB: 3517:Conduct occurring on or after effective date

Summary of Changes: The amendments in subsections (a), (b) and the first (d) were made by HB 2671. That bill deals with the narrow situation in which a child is in the custody of Texas Department of Protective and Regulatory Services as an abused

or neglected child and the police wish to interrogate him or her as a suspect in a criminal investigation. Subsection (d) requires that the police treat the matter as a case of custodial interrogation under this section because the child is already in the custody of the State of Texas (DPRS), which is empowered to make decisions that a parent would ordinarily make about giving police access to the child. This per se rule means that all such children must receive magistration prior to being questioned for a written or tape recorded statement. No other changes were made by these amendments.

The second (d) authorizes a referee or master to perform magistration duties if authorized by the juvenile board to do so. Unlike all other actions of a referee or master, magistration does not require ratification by the juvenile court judge but is a "stand-alone" decision by the referee or master. A referee or master is probably the judicial official in the county who is most involved in the juvenile process and who has the most experience with it and for those reasons perhaps the most appropriate person in the county to perform magistration duties.

§ 51.12. Place and Conditions of Detention.

(a) 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;

(3) certified juvenile detention facility that complies with the requirements of Subsection (f); [~~or~~]

(4) secure detention facility as provided by Subsection (j); or

(5) county jail or other facility as provided by Subsection (l) [~~(i)~~].

(d) Except as provided by Subsections (j) and (l) [~~Subsection (i)~~], a child may not be placed in a facility that has not been certified under Subsection (c) as suitable for the detention of children and registered under Subsection (i) [~~of this section~~]. Except as provided by Subsections (j) and (l) [~~Subsection (i)~~], a child detained in a facility that has not been certified under Subsection (c) 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.

(g) Except for a child detained in a juvenile processing office, a place of nonsecure custody, [~~or~~] a secure detention facility as provided by Subsection (j), or a facility as provided by Subsection (l) [~~(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) This section does not apply to a person:

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

(2) who is at least 17 [~~18~~] years of age and who has been taken into custody after having:

(A) escaped from a juvenile facility operated by or under contract with the Texas Youth Commission; or

(B) violated a condition [~~of probation or~~] of release under supervision of the Texas Youth Commission.

(i) Except for a facility operated or certified by the Texas Youth Commission or a facility as provided by Subsection (l), 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) [~~(i)~~] 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.

(k) [~~(j)~~] If a child who is detained under Subsection (j) or (l) [~~(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.

(l) A child who is taken into custody and required to be detained under Section 53.02(f) may be detained in a county jail or other facility until the child is released under Section 53.02(f) or until a detention hearing is held as required by Section

54.01(p), regardless of whether the facility complies with the requirements of this section, if:

(1) a certified juvenile detention facility or a secure detention facility described by Subsection (j) is not available in the county in which the child is taken into custody or in an adjacent county;

(2) the facility has been designated by the county juvenile board for the county in which the facility is located;

(3) the child is separated by sight and sound from adults detained in the same facility through architectural design or time-phasing;

(4) the child does not have any contact with management or direct-care staff that has contact with adults detained in the same facility on the same work shift;

(5) the county in which the child is taken into custody is not located in a metropolitan statistical area as designated by the United States Bureau of the Census; and

(6) each judge of the juvenile court and the members of the juvenile board of the county in which the child is taken into custody have personally inspected the facility at least annually and have certified in writing to the Texas Juvenile Probation Commission that the facility complies with the requirements of Subdivisions (3) and (4).

Commentary by Robert Dawson

Source: HB 3517; HB 1269

Effective Date: September 1, 1999

Applicability: Conduct occurring on or after effective date

Summary of Changes: HB 3517 made only the changes in subsection (h)(2). It lowers from 18 to 17 the minimum age at which an escapee from TYC or a TYC parole violator can be held in a county jail pending return to the agency. Escape from a contract facility as well as from a TYC institution is included in the scope of this provision. The reference to probation violation was eliminated because a child under 18 being held on a probation violation should be held in the juvenile detention facility. Of course if the violation is also a new criminal offense committed when the child was 17, then he or she can be held in the county jail as an adult on the new charge.

The other changes in this section were made by the use-a-firearm-go-to-detention bill. They were designed to lessen the economic impact of mandatory detention on small counties that do not have their own juvenile detention facilities and are not near any such county. Under limited circumstances, this section authorizes detaining a child in a separated part of the county jail but under section 54.01 only for a period of up to 24 hours excluding weekends and holidays. The following conditions under subsection (l) must be met to authorize detaining a child on a firearms charge in a county jail: (1) a juvenile detention facility or secure detention facility under (j) is not available in the county or an adjacent county; (2) the juvenile board has designated the facility for this purpose; (3) sight and sound separation from adults is effected by architecture or time sharing of facilities; (4) no contact with management or direct care staff who work with adult detainees; (5) the county in question is not located in a metropolitan statistical area, which is defined by the Census Bureau as a county with a city of at least 50,000 population under Census Bureau population estimates plus any adjacent counties that have at least 50 percent of their populations in the urban area of the major city; (6) the facility has been inspected annually by the juvenile board and each judge of the juvenile court and is certified to TJPC as complying with the facility and staff separation requirements. Metropolitan statistical areas are listed in the U.S. Census Bureau's web page: www.census.gov. The requirements in subdivisions (3) through (5) are imposed by federal law as currently interpreted.

§ 51.13. Effect of Adjudication or Disposition.

(a) Except as provided by Subsection (d), an order of adjudication or disposition in a proceeding under this title is not a conviction of crime. Except as provided by Chapter 841, Health and Safety Code, an order of adjudication or disposition[~~, and~~] does not impose any civil disability ordinarily resulting from a conviction or operate to disqualify the child in any civil service application or appointment.

(b) The adjudication or disposition of a child or evidence adduced in a hearing under this title may be used only in subsequent:

(1) proceedings under this title in which the child is a party;

(2) [~~or in subsequent~~] sentencing proceedings in criminal court against the child to the extent permitted by the Texas Code of Criminal Procedure, 1965; or

(3) civil commitment proceedings under Chapter 841, Health and Safety Code.

Commentary by Robert Dawson

Source: SB 365

Effective Date: September 1, 1999

Applicability: Only to an individual who on or after January 1, 2000, is serving a sentence in the Texas Department of Criminal Justice or is committed to the Texas Department of Mental Health and Mental Retardation for an offense committed before, on, or after the effective date.

Summary of Changes: Senate Bill 365 is the sunset bill for the Texas Department of Criminal Justice. Among many provisions, it establishes a system of super-intensive post-incarceration supervision for certain released inmates classified as "sexual predators." This system was enacted as a fiscal alternative to the original proposal for civil residential commitment of such persons to a special institution.

To be eligible for commitment to intensive supervision, a person must have two criminal convictions or juvenile adjudications for a sexually violent offense. To qualify, a juvenile adjudication for a sexually violent offense must have been under the determinate sentence act. If after the first conviction or adjudication, the person commits a new sexually violent offense and is convicted or adjudicated for it and receives a prison sentence or a determinate sentence to the TYC, then he becomes eligible for consideration as a sexually violent predator. The offenses that qualify as sexually violent offenses are indecency with a child by contact, sexual assault, aggravated sexual assault, aggravated kidnapping for a sexual purpose, burglary for a sexual purpose, or an attempt, conspiracy or solicitation to commit any of those offenses.

§ 51.17. Procedure and Evidence.

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

Commentary by Robert Dawson
Source: HB 3517
Effective Date: September 1, 1999
Applicability: Conduct occurring on or after effective date
Summary of Changes: In 1998, the Texas Supreme Court and the Texas Court of Criminal Appeals merged the Texas Rules of Evidence and Texas Rules of Criminal Evidence into a single Texas Rules of Evidence. In keeping with the change in policy made by the legislature in 1995 that evidentiary questions should be decided under criminal rules, this amendment provides that if there is a different version of the rules of evidence for criminal cases (which there are in a few instances) the criminal version is to be used in juvenile cases.

§ 51.20. PHYSICAL OR MENTAL EXAMINATION.

(a) At any stage of the proceedings under this title, the juvenile court may order a child who is referred to the juvenile court or who is alleged by a petition or found to have engaged in delinquent conduct or conduct indicating a need for supervision to be examined by an appropriate expert, including a physician, psychiatrist, or psychologist.

(b) If, after conducting an examination of a child ordered under Subsection (a) and reviewing any other relevant information, there is reason to believe that the child has a mental illness or mental retardation, the probation department shall refer the child to the local mental health or mental retardation authority for evaluation and services, unless the prosecuting attorney has filed a petition under Section 53.04.

Commentary by Robert Dawson
Source: HB 3517
Effective Date: September 1, 1999
Applicability: Conduct occurring on or after effective date
Summary of Changes: This new section is part of the comprehensive revision of Chapter 55. Subsection (a) authorizes the juvenile court to order a physical or mental examination for any child in the system. Subsection (b) is new. It requires the probation department to seek treatment for a child against whom a petition has not been filed when there is reason to believe the child may have mental illness or retardation. After a petition has been filed, that duty would fall on the judge.

Chapter 52.
Proceedings Before and Including Referral to Juvenile Court

§ 52.02. Release or Delivery to Court.

(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 law enforcement agency [~~police department~~].

Commentary by Robert Dawson
Source: HB 3517
Effective Date: September 1, 1999
Applicability: Conduct occurring on or after effective date

Summary of Changes: Some sheriff's departments took the position that a child could not be taken to an adult processing office as authorized by this section if the office is located in a sheriff's department. To include those offices, "police department" was replaced by the more encompassing "law enforcement agency."

§ 52.026. Responsibility for Transporting Juvenile Offenders.

(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 law enforcement officer who has taken the child into custody or, if authorized by the commissioners court of the county, the sheriff of that county to transport the child to the appropriate juvenile detention facility unless the child is:

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

(2) released to the parent, guardian, or custodian of the child.

Commentary by Neil Nichols

Source: HB 3355

Effective Date: June 19, 1999

Applicability: Child taken into custody on or after effective date.

Summary of Changes: Transport of children to out-of-county juvenile detention facilities is a burden for sheriff's departments with limited resources and workforces. The amendment relieves those departments of that responsibility unless the commissioners court of the county authorizes it.

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

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

(1) [~~for a traffic offense;~~

[~~(2)~~] for an offense that a justice or municipal court has jurisdiction of under Article 4.11 or 4.14, Code of Criminal Procedure, other than public intoxication [~~punishable by fine only~~]; or

(2) [~~(3)~~] as a status offender or nonoffender.

(f) A child taken into custody for an offense that a justice or municipal court has jurisdiction of under Article 4.11 or 4.14, Code of Criminal Procedure, [~~a traffic offense or an offense,~~] other than public intoxication, [~~punishable by fine only~~] may be presented or detained in a detention facility designated by the juvenile court under Section 52.02(a)(3) only if:

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

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

(h) If a child [~~A municipal court or justice court may not hold a child in contempt for~~] intentionally or knowingly fails [~~refusing~~] to obey a lawful order of disposition after an adjudication of guilt of an offense that a justice or municipal court has jurisdiction of under Article 4.11 or 4.14, Code of Criminal Procedure, the [~~a traffic offense or other offense punishable by fine only. The~~] municipal court or justice court may:

(1) except as provided by Subsection (j), hold the child in contempt of the municipal court or justice court order and order the child to pay a fine not to exceed $500; or

(2) [~~shall instead~~] refer the child to the appropriate juvenile court for delinquent conduct for contempt of the municipal court or justice court order.

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

(1) is at least 10 years of age and younger than 17 years of age and who is charged with or convicted of an offense that a justice or municipal court has jurisdiction of under Article 4.11 or 4.14, Code of Criminal Procedure, other than public intoxication [~~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)~~] is a status offender and was taken into custody as a status offender for conduct engaged in before becoming 17 years of age; or

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

(j) A municipal or justice court may not order a child to a term of confinement or imprisonment for contempt of a municipal or justice court order under Subsection (h).

Commentary by Jim Bethke

Source: HB 688

Effective Date: September 1, 1999

Applicability: Conduct occurring on or after effective date

Summary of Changes: This section provides the procedure in justice and municipal court for han-

dling children taken into custody for non-jailable offenses. The amendments to this section were part of an overall effort by the Texas Judicial Council's Committee on Juvenile Justice Reform to improve the administration of justice for children processed in justice and municipal court.

The changes made to subsection (a) and (f) are technical corrections. The changes made by subsection (a) clarify that a judge of a justice or municipal court may release a child taken into custody to the child's parent, guardian or other responsible adult as defined in section 52.02(a)(1) for any offense within the court's jurisdiction. The amendment to subsection (f) clarifies that a child taken into custody for a misdemeanor offense within the jurisdiction of justice or municipal court may only be taken to a juvenile detention facility if the case is transferred or referred to the juvenile court.

The amendment to subsection (h) provides that a justice or municipal court judge may hold a child in contempt of court and assess a fine not to exceed $500. Alternatively, a justice or municipal court judge may, as under current law, refer the child to juvenile court for delinquent conduct for contempt of the justice or municipal court. Subsection (j) is new and makes clear that a justice or municipal court judge who elects to exercise its contempt powers over a child may not under any circumstances order that child to a term of confinement or imprisonment on a finding of contempt.

The change made to subsection (i) modifies the definition of child. The purpose of this modification was to address the following issue for justice and municipal courts: "Must a person 17 years of age taken into custody for a non-jailable offense (other than a status offense) committed before becoming 17 years of age be taken to a place of non-secure custody?" The answer is "no". However, even though a person 17 years of age may be taken into secure custody for a non-jailable offense(s) (other than a status offense) committed before becoming 17 years of age, it is not recommended that courts throw "birthday parties" for persons turning 17 years of age who have outstanding warrants. Remember also that this modified definition of child does not apply to non-offenders or status offenders.

§ 52.03. Disposition Without Referral to Court

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

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

[~~(2) the guidelines have been approved~~] by the juvenile board of the county in which the disposition is made as required by Section 52.032;

(2) [~~(3)~~] the disposition is authorized by the guidelines; and

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

Commentary by Neil Nichols

Source: SB 283

Effective Date: September 1, 1999

Applicability: Conduct occurring on or after January 1, 2000.

Summary of Changes: According to a 1997 survey by the Office of Court Administration, more than half the counties place little emphasis on informal law-enforcement officer disposition without referral to the juvenile court. This amendment is aimed at encouraging increased referral of children to early intervention programs by requiring juvenile boards, in cooperation with law enforcement agencies, to adopt guidelines for informal disposition.

§ 52.031. First Offender Program.

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

[~~(1)~~] guidelines for the disposition have been adopted [~~issued~~] by the juvenile board of the county in which the disposition is made as required by Section 52.032 [~~the agency designated under Subsection (b); and~~

[~~(2) the juvenile board has approved the guidelines~~].

Commentary by Neil Nichols

Source: SB 283

Effective Date: September 1, 1999

Applicability: Conduct occurring on or after January 1, 2000.

Summary of Changes: Consistent with the change made in Section 52.03, this amendment is aimed at encouraging increased use of first offender programs by requiring juvenile boards to adopt informal disposition guidelines for the referral of children to these programs.

§ 52.032. INFORMAL DISPOSITION GUIDELINES.

The juvenile board of each county, in cooperation with each law enforcement agency in the county, shall adopt guidelines for the disposition of a

child under Section 52.03 or 52.031. The guidelines adopted under this section shall not be considered mandatory.

Commentary by Neil Nichols
Source: SB 283
Effective Date: September 1, 1999
Applicability: Guidelines must be adopted by January 1, 2000.
Summary of Changes: This legislation is aimed at encouraging increased use of early intervention and first offender programs when it is appropriate as an alternative to formal juvenile court disposition or release without services. Juvenile boards are now required to adopt guidelines that authorize, but not require, that such informal dispositions be made.

Chapter 53.
Proceedings Prior to Judicial Proceedings

§ 53.02. Release from Detention.

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

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

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

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

(4) the child [~~he~~] may be dangerous to himself or herself or the child [~~he~~] may threaten the safety of the public if released; [~~or~~]

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

(6) the child's detention is required under Subsection (f).

(f) A child who is alleged to have engaged in delinquent conduct and to have used, possessed, or exhibited a firearm, as defined by Section 46.01, Penal Code, in the commission of the offense shall be detained until the child is released at the direction of the judge of the juvenile court, a substitute judge authorized by Section 51.04(f), or a referee appointed under Section 51.04(g), including an oral direction by telephone, or until a detention hearing is held as required by Section 54.01.

Commentary by Robert Dawson
Source: HB 1269
Effective Date: September 1, 1999
Applicability: Conduct occurring on or after effective date
Summary of Changes: The addition of subsection (f) is part of the use-a-firearm-go-to-detention bill. The qualifying conduct is that the juvenile (1) engaged in delinquent conduct and (2) used, possessed or exhibited a firearm in commission of the offense. Examples of qualifying offenses would be aggravated robbery with a deadly weapon that is a firearm [PC § 29.03], aggravated assault with a deadly weapon that is a firearm [PC § 22.02], unlawfully carrying a weapon that is a firearm [PC § 46.02], possessing a firearm in a prohibited place [PC § 46.03], or possessing a prohibited weapon that is a firearm [PC § 46.05].

Subsection (d) requires that a child taken into custody for a qualifying offense cannot be released administratively by intake and must be detained until (1) his detention hearing or (2) until released on orders of a juvenile court judge, substitute judge, or referee. The judicial release order does not require a hearing. It can even be made over the telephone while the child is being detained for up to six hours in the designated juvenile processing office.

§ 53.035. GRAND JURY REFERRAL.

(a) The prosecuting attorney may, before filing a petition under Section 53.04, refer an offense to a grand jury in the county in which the offense is alleged to have been committed.

(b) The grand jury has the same jurisdiction and powers to investigate the facts and circumstances concerning an offense referred to the grand jury under this section as it has to investigate other criminal activity.

(c) If the grand jury votes to take no action on an offense referred to the grand jury under this section, the prosecuting attorney may not file a petition under Section 53.04 concerning the offense unless the same or a successor grand jury approves the filing of the petition.

(d) If the grand jury votes for approval of the prosecution of an offense referred to the grand jury under this section, the prosecuting attorney may file a petition under Section 53.04.

(e) The approval of the prosecution of an offense by a grand jury under this section does not constitute approval of a petition by a grand jury for purposes of Section 53.045.

Commentary by Robert Dawson
Source: HB 3517
Effective Date: September 1, 1999
Applicability: Conduct occurring on or after effective date
Summary of Changes: This new section is intended to permit a juvenile prosecutor to obtain an advisory opinion from a grand jury about the merits of proceeding with a case, just as a prosecutor in an adult case can do. The referral authorized by this section is not for a determinate sentence act offense and if the grand jury approves prosecution, that action does not constitute approval of a petition for determinate sentence act purposes, nor, of course, does it constitute an indictment. Grand jury approval does authorize the prosecutor to file a petition. If the grand jury refuses approval or takes no action, a petition cannot be filed unless approval is later obtained from the same or a successor grand jury.

Chapter 54.
Judicial Proceedings.

§ 54.01. Detention Hearing.

(a) Except as provided by Subsection (p), if [~~If~~] the child is not released under Section 53.02 [~~of this code~~], a detention hearing without a jury shall be held promptly, but not later than the second working day after the child [~~he~~] is taken into custody; provided, however, that when a child is detained on a Friday or Saturday, then such detention hearing shall be held on the first working day after the child is taken into custody.

(p) *[first of two]* If a child is detained in a county jail or other facility as provided by Section 51.12(l) and the child is not released under Section 53.02(f), a detention hearing without a jury shall be held promptly, but not later than the 24th hour, excluding weekends and holidays, after the time the child is taken into custody.

(p) *[second of two]* If a child has not been released under Section 53.02 or this section and a petition has not been filed under Section 53.04 concerning the child, the court shall order the child released from detention not later than:

(1) the 30th working day after the date the initial detention hearing is held, if the child is alleged to have engaged in conduct constituting a capital felony, an aggravated controlled substance felony, or a felony of the first degree; or

(2) the 15th working day after the date the initial detention hearing is held, if the child is alleged to have engaged in conduct constituting an offense other than an offense listed in Subdivision (1).

Commentary by Robert Dawson
Source: HB 1269; HB 3517
Effective Date: September 1, 1999
Applicability: Conduct occurring on or after effective date
Summary of Changes: HB 1269 made the amendment in subsection (a) and the first subsection (p). They require a detention hearing within 24 hours excluding weekends and holidays (instead of the second working day) if a child is detained in a separated part of the county jail under the use-a-firearm-go-to-detention bill.

The second (p) requires the prompt filing of a petition, if one is to be filed, when a child is in detention. If the offense for which the child is being detained is capital murder, an aggravated controlled substance felony, or a first degree felony, then the State has 30 working days after the initial detention order in which to file a petition. For all other offenses, the State has 15 working days. The remedy for violation of those requirements is that the child becomes entitled to immediate release from detention, not dismissal of charges. A petition can later be filed even though the child has been released under this section.

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

(h) If the juvenile court waives jurisdiction, it shall state specifically in the order its reasons for waiver and certify its action, including the written order and findings of the court, and shall transfer the person to the appropriate court for criminal proceedings and cause the results of the diagnostic study of the person ordered under Subsection (d), including psychological information, to be transferred to the appropriate criminal prosecutor. On transfer of the person for criminal proceedings, the person shall be dealt with as an adult and in accordance with the Code of Criminal Procedure. The transfer of custody is an arrest.

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

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

(2) the person was:

(A) 10 years of age or older and under 17 years of age at the time the person is alleged to have committed a capital felony or an offense under Section 19.02, Penal Code;

(B) 14 years of age or older and under 17 years of age at the time the person [~~he~~] is alleged to have committed [~~a capital felony,~~] an aggravated controlled substance felony[~~,~~] or a felony of the first degree other than an offense under Section 19.02, Penal Code; or

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

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

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

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

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

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

(ii) the person could not be found; or

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

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

(o) If a respondent is taken into custody for possible discretionary transfer proceedings under Subsection (j), the juvenile court shall hold a detention hearing in the same manner as provided by Section 54.01, except that the court shall order the respondent released unless it finds that the respondent:

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

(2) may be dangerous to himself or herself or may threaten the safety of the public if released; or

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

(p) If the juvenile court does not order a respondent released under Subsection (o), the court shall, pending the conclusion of the discretionary transfer hearing, order that the respondent be detained in:

(1) a certified juvenile detention facility as provided by Subsection (q); or

(2) an appropriate county facility for the detention of adults accused of criminal offenses.

(q) The detention of a respondent in a certified juvenile detention facility must comply with the detention requirements under this title, except that, to the extent practicable, the person shall be kept separate from children detained in the same facility.

(r) If the juvenile court orders a respondent detained in a county facility under Subsection (p), the county sheriff shall take custody of the respondent under the juvenile court's order. The juvenile court shall set or deny bond for the respondent as required by the Code of Criminal Procedure and other law applicable to the pretrial detention of adults accused of criminal offenses.

Commentary by Robert Dawson

Source: HB 3517

Effective Date: September 1, 1999

Applicability: Discretionary transfer proceedings in which the discretionary transfer petition or motion was filed on after the effective date.

Summary of Changes: The amendment in (h) requires if the child is transferred to criminal court that the mandatory diagnostic study must be sent to the criminal court prosecutor. Code of Criminal Procedure art. 42.09, as amended in 1999, requires that the prosecutor forward this information to the Texas Department of Criminal Justice Institutional Division if the transferred juvenile receives a prison sentence.

The amendment in (j) provides that if the person is 18 years of age or older and is alleged to have committed murder or capital murder between the ages of 10 and 14, he or she can be certified to criminal court to be tried for that offense. Only murder and capital murder qualify, the person must be 18 or older at the time of the proceedings, and the State must justify its delay in seeking certification. Without this provision, a child who commits murder or capital murder before the minimum certification age of 14 but who cannot be identified or charged until he reaches 18, could not be held legally accountable for the offense in either the juvenile or criminal justice systems. Note that this change applies to petitions or motions filed on or after September 1, 1999 regardless of when the offense was committed, so long as the person charged was between the ages of 10 and 14 at the time of commission.

Additions of subsections (o) through (r) deal with the increasingly frequent situation in which a person 18 or older is charged in a discretionary transfer petition. Where should that person be detained, if detained, pending hearing of the petition? Under prior law, the person would have to be detained in the juvenile facility since the Sheriff would not be authorized to accept the prisoner. Under these amendments, the juvenile court has the option

of release, detention in the juvenile facility or detention in the county jail. Under (o), a detention hearing must be held using those detention criteria that are relevant to the question of the detention of an adult, that is, excluding the criteria related to parental supervision or presence. Under (p) the juvenile court, if ordering the child to be detained, has the option of detention in the juvenile facility or in the county jail. Under (q) if the court orders detention in the juvenile facility, the court must re-visit the issue of detention each 10 or 15 working days under Section 54.01 and the person must to the extent possible be kept separate from children in the facility. Of course, if the court decides to certify the person to criminal court, then he will immediately be moved to the county jail, just like a child so certified. Under (r), if the court decides to detain the person in the county jail, it must set or deny bond according to criminal rules. See Code of Criminal Procedure Chapter 17 and Texas Constitution Article I, Sections 11 and 11a. The high sheriff is required to welcome to his facility a person ordered detained under this section.

§ 54.021. Justice or Municipal Court Truancy.

(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, the court has jurisdiction to enter an order that includes one or more of the following provisions requiring that:

(1) the person do either or both of the following:

(A) attend a preparatory class for the high school equivalency examination provided under Section 7.111, Education Code, if the court determines that the person is too old to do well in a formal classroom environment; or

(B) if the person is at least 16 years of age, take the high school equivalency examination provided under Section 7.111, Education Code;

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

(4) the person complete reasonable community service requirements;

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

(6) the person attend school without unexcused absences; or

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

Commentary by Jim Bethke

Source: HB 688

Effective Date: September 1, 1999

Applicability: Conduct occurring on or after effective date

Summary of Changes: The amendments to this section provide authority to the justice or municipal court judge to order a person who has engaged in certain truant conduct to either attend a preparatory class for the high school equivalency exam or to take the high school equivalency exam (the person must be at least 16 years of age) or both. Conforming changes were made to section 7.11, Education Code. The Education Code now requires the Texas Education Agency to allow these persons to sit for the high school equivalency exam.

§ 54.022. Justice or Municipal Court: Certain Misdemeanors.

(a) On a finding by a justice or municipal court that a child committed an [~~a misdemeanor~~] offense that the court has jurisdiction of under Article 4.11 or 4.14, Code of Criminal Procedure, [~~punishable by fine only~~] other than a traffic offense or public intoxication [~~or committed a violation of a penal ordinance of a political subdivision other than a traffic offense~~], the court has jurisdiction to enter an order:

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

(2) requiring that the child attend a special program that the court determines to be in the best interest of the child and, if the program involves the

expenditure of county funds, that is approved by the county commissioners court, including a rehabilitation, counseling, self-esteem and leadership, work and job skills training, job interviewing and work preparation, self-improvement, parenting, manners, violence avoidance, tutoring, sensitivity training, parental responsibility, community service, restitution, advocacy, or mentoring program[~~.~~

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

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

(3) [~~(2) the child's parents, managing conservator, or guardian attend a parenting class or parental responsibility program~~] if the court finds the parent, managing conservator, or guardian, by [~~wilful~~] act or omission, contributed to, caused, or encouraged the child's conduct, requiring that the child's parent, managing conservator, or guardian do any act or refrain from doing any act that the court determines will increase the likelihood that the child will comply with the orders of the court and that is reasonable and necessary for the welfare of the child, including:

(A) attend a parenting class or parental responsibility program; and

(B) [~~; or~~

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

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

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

(d) [~~(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.

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

(f) [~~(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 (d) [~~(e)~~]. An offense under this subsection is a Class C misdemeanor.

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

Commentary by Jim Bethke

Source: HB 688

Effective Date: September 1, 1999

Applicability: Conduct occurring on or after effective date

Summary of Changes: The changes to this section address the problem of parents or other persons associated with the child who fail to assist the child to comply with lawful orders of the justice or municipal court judge.

Subsection (a) provides that this section has applicability for any offense within the court's jurisdiction. It also dispenses with the requirement of county commissioners court approval of all or any special programs that the court may order a child or parent to attend as part of the court's sentence, unless county monies are expended for one of these programs.

The former provision posed some practical problems for municipal courts. For instance, if a municipality was having a problem with children disrupting classes and the governing body of the municipality approved and developed a special program for those offenders to attend, the county commissioners would have had to approve the municipal program. The amended provision only requires that commissioners approve programs when county monies will be expended.

Additionally, subsection (b) was deleted. By deleting subsection (b) the legislature has expanded the authority of a justice and municipal court to order the child or the child's parent(s) to do certain rehabilitative activities without regard to whether the child has been previously convicted of an offense in justice or municipal court.

The code provides some examples of kinds of programs that the court may consider. A court may order a parent to parenting classes or order the parent to attend school classes with the child. In addition, the court may require the parent to do any act or refrain from doing any act that the court deter-

mines will increase the likelihood of the child complying with the orders of the court. This additional authority given to justice and municipal court judges is in some ways analogous to the power provided juvenile court judges in section 54.041 of the Family Code.

§ 54.03. Adjudication Hearing.

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

(f) At the conclusion of the adjudication hearing, the court or jury shall find whether or not the child has engaged in delinquent conduct or conduct indicating a need for supervision. The finding must be based on competent evidence admitted at the hearing. The child shall be presumed to be innocent of the charges against the child [~~him~~] and no finding that a child has engaged in delinquent conduct or conduct indicating a need for supervision may be returned unless the state has proved such beyond a reasonable doubt. In all jury cases the jury will be instructed that the burden is on the state to prove that a child has engaged in delinquent conduct or is in need of supervision beyond a reasonable doubt. A child may be adjudicated as having engaged in conduct constituting a lesser included offense as provided by Articles 37.08 and 37.09, Code of Criminal Procedure.

Commentary by Neil Nichols

Source: HB 3517

Effective Date: September 1, 1999

Applicability: Conduct occurring on or after effective date

Summary of Changes: The amendments to subsections (d) and (f) are not substantive changes to current law. The new Texas Rules of Evidence that took effect last year now governs both civil and criminal proceedings. The amendment in subsection (f) makes explicit that adjudications for lesser included offenses are authorized in juvenile proceedings just as they are in criminal proceedings.

§ 54.034. LIMITED RIGHT TO APPEAL: WARNING.

Before the court may accept a child's plea or stipulation of evidence in a proceeding held under this title, the court shall inform the child that if the court accepts the plea or stipulation and the court makes a disposition in accordance with the agreement between the state and the child regarding the disposition of the case, the child may not appeal an order of the court entered under Section 54.03, 54.04, or 54.05, unless:

(1) the court gives the child permission to appeal; or

(2) the appeal is based on a matter raised by written motion filed before the proceeding in which the child entered the plea or agreed to the stipulation of evidence.

Commentary by Robert Dawson

Source: HB 251

Effective Date: September 1, 1999

Applicability: Conduct occurring on or after effective date

Summary of Changes: This section requires a new juvenile court admonition to the child. It requires the court to admonish the child that if the child enters a plea or stipulation in accordance with a plea bargain and receives the disposition he bargained for, he can appeal only with the permission or the court or from the denial of written pretrial motions, such as motions to suppress evidence. The substantive provision this admonition relates to is Section 56.01(n). Presumably, the requirement of a trial objection to a defect in an admonition, added in 1997, does not apply to this admonition since the requirement of a trial objection in Section 54.03(i) refers only to admonitions under 54.03(b). Of course, under Texas Supreme Court case law, a showing of harm would be required on appeal.

§ 54.04. Disposition Hearing.

(d) If the court or jury makes the finding specified in Subsection (c) 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, place the child on probation on such reasonable and lawful terms as the court may determine:

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

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

(i) a suitable foster home; or

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

(2) if the court or jury found at the conclusion of the adjudication hearing that the child engaged in delinquent conduct that violates a penal law of this state or the United States of the grade of felony or, if the requirements of Subsection (q) are met, of the grade of misdemeanor, and if the petition was not approved by the grand jury under Section 53.045, 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) and if the petition was approved by the grand jury under Section 53.045, 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) not more than 40 years if the conduct constitutes:

(i) a capital felony;

(ii) a felony of the first degree; or

(iii) an aggravated controlled substance felony;

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

(C) not more than 10 years if the conduct constitutes a felony of the third degree;

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

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

(l) Except as provided by Subsection (q), a [~~A~~] court or jury may place a child on probation under Subsection (d)(1) [~~of this section~~] for any period, except that probation may not continue on or after the child's 18th birthday. Except as provided by Subsection (q), the [~~The~~] court may, before the period of probation ends, extend the probation for any period, except that the probation may not extend to or after the child's 18th birthday.

(q) *[first of three]* The court may make a disposition under Subsection (d)(2) for delinquent conduct that violates a penal law of the grade of misdemeanor if:

(1) the child has been adjudicated as having engaged in delinquent conduct violating a penal law of the grade of felony or misdemeanor on at least two previous occasions;

(2) of the previous adjudications, the conduct that was the basis for one of the adjudications occurred after the date of another previous adjudication; and

(3) the conduct that is the basis of the current adjudication occurred after the date of at least two previous adjudications.

(q) *[second of three]* If a court or jury sentences a child to commitment in the Texas Youth Commission under Subsection (d)(3) for a term of not more than 10 years, the court or jury may place the child on probation under Subsection (d)(1) as an alternative to making the disposition under Subsection (d)(3). The court shall prescribe the period of probation ordered under this subsection for a term of not more than 10 years. The court may, before the sentence of probation expires, extend the probationary period under Section 54.05, except that the sentence of probation and any extension may not exceed 10 years. The court may, before the child's 18th birthday, discharge the child from the sentence of probation. If a sentence of probation ordered under this subsection and any extension of probation ordered under Section 54.05 will continue after the child's 18th birthday, the court shall discharge the child from the sentence of probation on the child's 18th birthday unless the court transfers the child to an appropriate district court under Section 54.051.

(q) *[third of three]* If the judge orders a disposition under this section and there is an affirmative finding that the victim or intended victim was younger than 17 years of age at the time of the conduct, the judge shall enter the finding in the order.

Commentary by Neil Nichols

Source: HB 2947; HB 3517; HB 2145; SB 399

Effective Date: September 1, 1999

Applicability: Conduct occurring on or after effective date for HB 2947 and HB 3517. None stated for HB 2145 or SB 399

Summary of Changes: Three amendments are made in Section 54.04. HB 2947, related to restrictions on commitments to TYC, adds the language in the first subsection (q). HB 3517 includes authorization for a new determinate sentence probation and adds the second subsection (q). SB 399 and HB 2145, relating to sex offender registration, add identical language to become the third subsection (q).

Last year, over seventy youth were committed to the Youth Commission for contempt of the municipal court due to their truancy or for a single misdemeanor adjudication. HB 3517 redefines the TYC commitment criteria to be more in line with the Progressive Sanctions Guidelines. As under current law, a disposition of commitment to TYC under subsection (d)(2) may be either for a felony adjudication or for a Class A or B misdemeanor adjudication.

However, if the disposition is based on a Class A or B misdemeanor adjudication, there must have been two previous adjudications for either a felony or Class A or B misdemeanor and each such offense must have been committed after a previous adjudication. Similar provisions are made for commitment to TYC as a modification of disposition under subsections 54.05 (f) and (j). These changes in the commitment eligibility criteria are not expected to result in a reduction in the number of commitments to TYC, only a reduction in the number who are committed for less serious offenses.

Under current law, a child who has been adjudicated for an offense for which he could have received a determinate sentence may be placed on probation by the court or jury. Up until age 18, then, that probation may be revoked by the judge or jury and the child sentenced to commitment to TYC for any sentence term the child could have received following the original adjudication. Subsection (q), the second of three listed above, provides for a new determinate sentence probation. Just as in adult community supervision laws, the judge or jury must first assess a sentence of not more than ten years in order for a child to be eligible for probation. If probation is recommended, the probation term plus any subsequent extensions ordered by the court up to a total term of ten years is the maximum probation term. If the court revokes probation (there is no longer a right to a jury trial at revocation since the sentence has already been imposed) the child is sentenced to commitment to TYC for a period no longer than the term originally assessed by the court or jury. The advantage to the new determinate sentence probation is that the child may be held accountable for serving the entire probation term (completing restitution payments or other requirements) when the term extends past the child's 18th birthday. The fact that the new Section 54.051 allows the State either to let the probation expire at age 18 or petition the court to transfer supervision to the criminal court (whether or not there is a violation) provides a good incentive for the youth to do well while under juvenile probation jurisdiction.

HB 2145 and SB 399 expand the list of reportable convictions and adjudications for which a person must register under the sex offender registration program to include unlawful restraint (PC § 20.02), kidnapping (PC § 20.03), and aggravated kidnapping (PC § 20.04) when the judgment or hearing order contains an affirmative finding that the victim or intended victim was younger than 17 years of age. Subsection (q), the third of three listed above, requires all disposition orders to include an entry when there is such a finding.

§ 54.0406. CHILD PLACED ON PROBATION FOR CONDUCT INVOLVING A HANDGUN.

(a) If a court or jury places a child on probation under Section 54.04(d) for conduct that violates a penal law that includes as an element of the offense the possession, carrying, using, or exhibiting of a handgun, as defined by Section 46.01, Penal Code, and if at the adjudication hearing the court or jury affirmatively finds that the child personally possessed, carried, used, or exhibited the handgun, the court shall require as a condition of probation that the child, not later than the 30th day after the date the court places the child on probation, notify the juvenile probation officer who is supervising the child of the manner in which the child acquired the handgun, including the date and place of and any person involved in the acquisition.

(b) On receipt of information described by Subsection (a), a juvenile probation officer shall promptly notify the appropriate local law enforcement agency of the information.

(c) Information provided by a child to a juvenile probation officer as required by Subsection (a) and any other information derived from that information may not be used as evidence against the child in any juvenile or criminal proceeding.

Commentary by Robert Dawson

Source: HB 2869

Effective Date: September 1, 1999

Applicability: Conduct occurring on or after effective date

Summary of Changes: This section creates a mandatory probation condition in cases in which a child is placed on probation for an offense involving a handgun. There must be an affirmative finding by a judge or jury that the juvenile personally possessed, carried, used or exhibited the handgun. Responsibility under the law of parties or conspiratorial liability is not sufficient. Within 30 days of being placed on probation, the child is required to inform his probation officer how he obtained the handgun. Refusal to do so is a probation violation. The probation officer is required to pass on the information to the appropriate law enforcement agency. Under (c), any information obtained from the child under this section cannot be used against the child in subsequent juvenile or criminal proceedings. This is use immunity, which is sufficient to supplant the child's privilege against self-incrimination and therefore enable this probation condition to be enforced without violating the Fifth Amendment.

§ 54.0461. PAYMENT OF GRAFFITI ERADICATION FEES.

(a) If a child is adjudicated as having engaged in delinquent conduct that violates Section 28.08, Penal Code, the juvenile court shall order the child, parent, or other person responsible for the child's support to pay to the court a $5 graffiti eradication fee as a cost of court.

(b) The court shall deposit fees received under this section to the credit of the county graffiti eradication fund provided for under Article 102.0171, Code of Criminal Procedure.

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

Commentary by Neil Nichols

Source: HB 1063

Effective Date: September 1, 1999

Applicability: Conduct occurring on or after effective date

Summary of Changes: The county graffiti eradication fund, administered by the commissioners court, was established during the last legislative session to provide a fund for the repair of graffiti damage, graffiti prevention programs and public rewards for reporting graffiti offenders. This amendment requires payment of the $5 eradication fee for graffiti offenders in juvenile court as is currently required in criminal court. The juvenile court, however, is authorized to waive the fee when the court finds that the persons required to make the payment are unable to do so.

§ 54.05. Hearing to Modify Disposition.

(f) Except as provided by Subsection (j), a [~~A~~] disposition based on a finding that the child engaged in delinquent conduct that violates a penal law of this state or the United States of the grade of felony or, if the requirements of Subsection (j) are met, of the grade of misdemeanor, may be modified so as to commit the child to the Texas Youth Commission if the court after a hearing to modify disposition finds by a preponderance of the evidence that the child violated a reasonable and lawful order of the court. A disposition based on a finding that the child engaged in habitual felony conduct as described by Section 51.031 [~~of this code~~] or in delinquent conduct that included a violation of a penal law listed in Section 53.045(a) [~~of this code~~] may be modified to commit the child to the Texas Youth Commission with a possible transfer to the institutional division or the pardons and paroles division of the Texas Department of Criminal Justice for a definite term prescribed by Section 54.04(d)(3) [~~of this code~~] if the original petition was approved by the grand jury under Section 53.045 [~~of this code~~] and if after a hearing to modify the disposition the court [~~or jury~~] finds that the child violated a reasonable and lawful order of the court.

(g) Except as provided by Subsection (j), a [~~A~~] disposition based solely on a finding that the child engaged in conduct indicating a need for supervision may not be modified to commit the child to the Texas Youth Commission. A new finding in compliance with Section 54.03 [~~of this code~~] must be made that the child engaged in delinquent conduct that meets the requirements for commitment under Section 54.04 [~~as defined in Section 51.03(a) of this code~~].

(h) A hearing shall be held prior to commitment to the Texas Youth Commission as a modified disposition. In other disposition modifications, the child and the child's [~~his~~] parent, guardian, guardian ad litem, or attorney may waive hearing in accordance with Section 51.09 [~~of this code. A child in jeopardy of a sentence for a determinate term is entitled to a jury of 12 persons on the issues of the violation of the court's orders and the sentence~~].

(j) [first of two] If, after conducting a hearing to modify disposition without a jury, the court finds by a preponderance of the evidence that a child violated a reasonable and lawful condition of probation ordered under Section 54.04(q), the court may modify the disposition to commit the child to the Texas Youth Commission under Section 54.04(d)(3) for a term that does not exceed the original sentence assessed by the court or jury.

(j) [second of two] The court may modify a disposition under Subsection (f) that is based on a finding that the child engaged in delinquent conduct that violates a penal law of the grade of misdemeanor if:

(1) the child has been adjudicated as having engaged in delinquent conduct violating a penal law of the grade of felony or misdemeanor on at least two previous occasions; and

(2) of the previous adjudications, the conduct that was the basis for the adjudications occurred after the date of another previous adjudication.

Commentary by Neil Nichols

Source: HB 2947; HB 3517

Effective Date: September 1, 1999

Applicability: Conduct occurring on or after effective date

Summary of Changes: The first subsection (j) listed above was enacted under HB 3517 and relates to the new determinate sentence probation. The second subsection (j) was enacted under HB 2947 and relates to the new restrictions on commitments to TYC. To confuse matters further, subsection (f) includes a reference to the new TYC commitment criteria. The reference in subsection (g) is to the second subsection (j).

As under current law, the new criteria for commitments to TYC enacted under HB 2947 continue to include commitments to TYC that are prompted by revocation of a felony or Class A or B misdemeanor probation under subsection (f). However, the new subsection (j) (the second of two listed above) requires that, if the commitment is for violating a condition of a Class A or B misdemeanor probation, there must have been at least one adjudication for a felony or Class A or B misdemeanor offense that was committed and adjudicated before the adjudication that resulted in the child's current probation. This amendment and the ones in subsections 54.04 (d)(2) and (q) are intended to redefine the TYC commitment criteria to be more in line with the Progressive Sanctions Guidelines.

Subjection (j), the first one listed above, relates to modification of the new Section 54.04 (q) determinate sentence probation. Just as in adult community supervision laws, the judge or jury must first assess a sentence of not more than ten years in order for a child to be eligible for determinate sentence probation. If probation is recommended, the probation term plus any subsequent extensions ordered by the court up to a total term of ten years is the maximum sentence that can be imposed if probation is revoked. If the court revokes probation (there is no longer a right to a jury trial at revocation since the sentence has already been imposed) the child is sentenced to commitment to TYC or TDCJ for a period no longer than the term originally assessed by the court or jury.

§ 54.051. TRANSFER OF DETERMINATE SENTENCE PROBATION TO APPROPRIATE DISTRICT COURT.

(a) On motion of the state concerning a child who is placed on probation under Section 54.04(q) for a period, including any extension ordered under Section 54.05, that will continue after the child's 18th birthday, the juvenile court shall hold a hearing to determine whether to transfer the child to an appropriate district court or discharge the child from the sentence of probation.

(b) The hearing must be conducted before the child's 18th birthday and in the same manner as a hearing to modify disposition under Section 54.05.

(c) If, after a hearing, the court determines to discharge the child, the court shall specify a date on or before the child's 18th birthday to discharge the child from the sentence of probation.

(d) If, after a hearing, the court determines to transfer the child, the court shall transfer the child to an appropriate district court on the child's 18th birthday.

(e) A district court that exercises jurisdiction over a child transferred under Subsection (d) shall place the child on community supervision under Article 42.12, Code of Criminal Procedure, for the remainder of the child's probationary period and under conditions consistent with those ordered by the juvenile court. If a child who is placed on community supervision under this subsection violates a condition of that supervision or if the child violated a condition of probation ordered under Section 54.04(q) and that probation violation was not discovered by the state before the child's 18th birthday, the district court shall dispose of the violation of community supervision or probation, as appropriate, in the same manner as if the court had originally exercised jurisdiction over the case. The time that a child serves on probation ordered under Section 54.04(q) is the same as time served on community supervision ordered under this subsection for purposes of determining the child's eligibility for early discharge from community supervision under Section 20, Article 42.12, Code of Criminal Procedure.

(f) The juvenile court may transfer a child to an appropriate district court as provided by this section without a showing that the child violated a condition of probation ordered under Section 54.04(q).

Commentary by Robert Dawson

Source: HB 3517

Effective Date: September 1, 1999

Applicability: Conduct occurring on or after effective date

Summary of Changes: This section sets out the transfer procedures for the new up-to-10 year determinate sentence probation created by Section 54.04(q). If a child has been placed on probation by a judge or jury for a determinate sentence offense and the judge initially or by extension has imposed a probation term that extends beyond the child's 18th birthday, that probation automatically expires on the child's 18th birthday unless the State requests a transfer hearing under this section. If the State files a transfer petition, the court conducts a hearing before the child's 18th birthday using procedures of section 54.05 on modification of disposition. If the

court decides not to transfer the child, then it specifies a discharge date on or before the child's 18th birthday. If the court orders transfer, the child's probation is transferred to the Community Supervision and Corrections Department on the 18th birthday.

If probation is transferred, the person is placed on adult community supervision on substantially the same conditions that were imposed by the juvenile court for the remainder of the probation term. A probation violation occurring and discovered before the child's 18th birthday is handled in juvenile court. A violation occurring or discovered on or after the child's 18th birthday is handled as a violation of adult community supervision in the district court. Upon revocation, a sentence can be assessed between the minimum for the offense and the punishment originally assessed by the judge or jury in the case. Time spent on juvenile supervision counts toward early discharge from adult community supervision under the Code of Criminal Procedure requirement of a that a person serve a minimum of one-third of the term or two years, whichever is less, to be eligible for early discharge. Finally, the juvenile court can transfer the probation to adult court without any showing that the juvenile violated his probation. This is a discretionary decision made by the juvenile court which is similar to the discretionary decision made whether to transfer service of a determinate sentence to TDCJ under section 54.11.

§ 54.10. Hearings Before Referee.

(a) Except as provided by Subsection (e) [~~(c) of this section~~], a [~~the~~] hearing under Section [~~provided in Sections 54.01,~~] 54.03, 54.04, or [~~and~~] 54.05, including a jury trial, a hearing under Chapter 55, including a jury trial, or a [~~of this code and the~~] hearing under [~~provided in~~] Article IV, Article V, and Article VI of the Uniform Interstate Compact on Juveniles (Chapter 60 [~~25 of this code~~]) may be held by a referee appointed in accordance with Section 51.04(g) or a master appointed under Chapter 54, Government Code, [~~of this code~~] provided:

(1) the parties have been informed by the referee or master that they are entitled to have the hearing before the juvenile court judge [~~or in the case of a detention hearing provided for in Section 54.01 of this code, a substitute judge as authorized by Section 51.04(f) of this code~~]; and [~~or~~]

(2) after each party is given an opportunity to object, no party objects to holding the hearing before the referee or master [~~the child and the attorney for the child have in accordance with the requirements of Section 51.09 of this code waived the right to have the hearing before the juvenile court judge or substitute judge~~].

(b) The determination under Section 53.02(f) whether to release a child may be made by a referee appointed in accordance with Section 51.04(g) if:

(1) the child has been informed by the referee that the child is entitled to have the determination made by the juvenile court judge or a substitute judge authorized by Section 51.04(f); or

(2) the child and the attorney for the child have in accordance with Section 51.09 waived the right to have the determination made by the juvenile court judge or a substitute judge.

(c) If a child objects to a referee making the determination under Section 53.02(f), the juvenile court judge or a substitute judge authorized by Section 51.04(f) shall make the determination.

(d) At the conclusion of the hearing or immediately after making the determination, 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. Failure to act within that time results in release of the child by operation of law and a recommendation that the child be released operates to secure the child's [~~his~~] immediate release subject to the power of the juvenile court judge to modify or reject that recommendation.

(e) [~~(c)~~] The hearings provided by Sections 54.03, 54.04, and 54.05 [~~of this code~~] may not be held before a referee if the grand jury has approved of the petition and the child is subject to a determinate sentence.

Commentary by Robert Dawson

Source: HB 1269; HB 3517

Effective Date: September 1, 1999

Applicability: Conduct occurring on or after effective date

Summary of Changes: The amendments in subsection (a) were made by HB 3517. They authorize referees and masters to conduct Chapter 55 proceedings, which often are embedded in juvenile adjudication proceedings. The amendment also authorizes referees and masters to conduct jury trials. The amendments in subdivisions (1) and (2) provide for the warnings the referee or master must give the parties about their rights to a hearing before the elected judge and authorize the referee or master to conduct the hearing unless a party objects. These requirements are the same as for referee or master conduct of detention hearings under section 54.01(l).

The additions of (b) and (c) are part of the use-a-firearm-go-to-detention bill. They spell out the

circumstances under which a referee or master may make the release decision under section 53.02(f).

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

Introductory Comments by Robert Dawson

Chapter 55 deals with children who have cases in the juvenile system and who are suspected, believed, or shown to be suffering from a mental illness or mental retardation.

The policy of the State of Texas is to first address the issue of whether the child suffers from mental illness or retardation and the appropriate response to any such conditions and then to proceed with the juvenile case.

Chapter 55 deals with three distinct situations: (1) the child before the juvenile court who is believed to be mentally ill, (2) the child before the juvenile court who is believed to be unfit to proceed because of mental illness or retardation, and (3) the child before the juvenile court who is believed not to be responsible for his conduct because of mental illness or retardation. There can be overlap in these three categories and often is between (1) and (2).

Chapter 55 was totally rewritten in 1999. The purposes of the rewriting are to spell out in greater detail the procedural steps and legal standards to be used in addressing questions of mental illness or mental retardation in the juvenile justice context and to authorize juvenile court judges to conduct commitment proceedings themselves or to refer such cases to the appropriate county or probate court for it to conduct the proceedings.

There are four subchapters. Subchapter A deals with general provisions. Subchapter B deals with children in the juvenile system with mental illness. This was section 55.02 before the revision. Subchapter C deals with children who may be unfit to proceed in the juvenile system because of mental illness or mental retardation. This was section 55.04 before the revision. And subchapter D deals with children who may not be responsible for their conduct because of mental illness or mental retardation. This was section 55.05 before the revision.

Old section 55.03, dealing with children with mental retardation who were found unfit to proceed or non-responsible, has been repealed and its provisions moved to appropriate places in Subchapters C and D.

SUBCHAPTER A. GENERAL PROVISIONS

§ 55.01. MEANING OF "HAVING A MENTAL ILLNESS."

For purposes of this chapter, a child who is described as having a mental illness means a child who suffers from mental illness as defined by Section 571.003, Health and Safety Code [~~PHYSICAL OR MENTAL EXAMINATION. (a) At any stage of the proceedings under this title, the juvenile court may order a child alleged by petition or found to have engaged in delinquent conduct or conduct indicating a need for supervision to be examined by appropriate experts, including a physician, psychiatrist, or psychologist.~~

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

Commentary by Robert Dawson
Source: HB 3517
Effective Date: September 1, 1999
Applicability: Conduct occurring on or after effective date
Summary of Changes: Health and Safety Code § 571.003(14) defines mental illness as "an illness, disease, or condition, other than epilepsy, senility, alcoholism, or mental deficiency, that: (A) substantially impairs a person's thought, perception of reality, emotional process, or judgment; or (B) grossly impairs behavior as demonstrated by recent disturbed behavior."

§.55.02. MENTAL HEALTH AND MENTAL RETARDATION JURISDICTION.

For the purpose of initiating proceedings to order mental health or mental retardation services for a child or for commitment of a child as provided by this chapter, the juvenile court has jurisdiction of proceedings under Subtitle C or D, Title 7, Health and Safety Code.

Commentary by Robert Dawson
Source: HB 3517
Effective Date: September 1, 1999
Applicability: Conduct occurring on or after effective date

Summary of Changes: This section gives juvenile courts jurisdiction over mental illness and mental retardation proceedings as though the juvenile court were a county court.

§ 55.03. STANDARDS OF CARE.

(a) Except as provided by this chapter, a child for whom inpatient mental health services is ordered by a court under this chapter shall be cared for as provided by Subtitle C, Title 7, Health and Safety Code.

(b) Except as provided by this chapter, a child who is committed by a court to a residential care facility for mental retardation shall be cared for as provided by Subtitle D, Title 7, Health and Safety Code.

Commentary by Robert Dawson

Source: HB 3517

Effective Date: September 1, 1999

Applicability: Conduct occurring on or after effective date

Summary of Changes: It is an important foundation for the constitutionality of any special commitment proceedings, such as criminal or juvenile proceedings, to state the legal principle that children who are committed as mentally ill or mentally retarded are not to be disadvantaged in their care because their commitments originated from juvenile courts. This section states that principle for both mentally ill and mentally retarded children.

SUBCHAPTER B. CHILD WITH MENTAL ILLNESS

§ 55.11. MENTAL ILLNESS DETERMINATION; EXAMINATION.

(a) On a motion by a party, the juvenile court shall determine whether probable cause exists to believe that a child who is alleged by petition or found to have engaged in delinquent conduct or conduct indicating a need for supervision has a mental illness. In making its determination, the court may:

(1) consider the motion, supporting documents, professional statements of counsel, and witness testimony; and

(2) make its own observation of the child.

(b) If the court determines that probable cause exists to believe that the child has a mental illness, the court shall temporarily stay the juvenile court proceedings and immediately order the child to be examined under Section 51.20. The information obtained from the examination must include expert opinion as to whether the child has a mental illness and whether the child meets the commitment criteria under Subtitle C, Title 7, Health and Safety Code. If ordered by the court, the information must also include expert opinion as to whether the child is unfit to proceed with the juvenile court proceedings.

(c) After considering all relevant information, including information obtained from an examination under Section 51.20, the court shall:

(1) if the court determines that evidence exists to support a finding that the child has a mental illness and that the child meets the commitment criteria under Subtitle C, Title 7, Health and Safety Code, proceed under Section 55.12; or

(2) if the court determines that evidence does not exist to support a finding that the child has a mental illness or that the child meets the commitment criteria under Subtitle C, Title 7, Health and Safety Code, dissolve the stay and continue the juvenile court proceedings.

Commentary by Robert Dawson

Source: HB 3517

Effective Date: September 1, 1999

Applicability: Conduct occurring on or after effective date

Summary of Changes: This section defines the initial stages of the process of determining whether a child before the juvenile court is mentally ill and should be committed for care and treatment. The great majority of youth passing through the juvenile system will not show overt signs of mental illness. Under (a) the issue of the existence of mental illness can initially be raised on motion of the defense or the State. If from the motion and supporting information, including the court's own observations of the child, the judge, referee or master believes there is probable cause to believe the child may be mentally ill, it is required under (b) temporarily to stay all pending juvenile proceedings and order an examination under section 51.20. The examination report must address the question of mental illness and commitability under the Mental Health Code. It must also include the expert's opinion as to whether the child is unfit to proceed if ordered by the court.

If from the report and all other available information, the court concludes that "evidence exists to support" a finding of mental illness and commitability, then it proceeds with commitment proceedings or referral for such proceedings as provided by section 55.12 and the temporary stay entered earlier remains in effect. Otherwise, it dissolves the temporary stay and proceeds with the juvenile case. The "evidence exists to support" standard is intended to state a standard of whether it would be irrational for a trier of fact to conclude based on the evidence thus far accumulated that the child is mentally ill and

committable. It is a type of evidence sufficiency standard. Commitment criteria are discussed in the commentary to section 55.13.

§ 55.12 [~~55.02~~]. INITIATION OF COMMITMENT PROCEEDINGS [~~CHILD WITH MENTAL ILLNESS~~].

If, after considering all relevant information, the juvenile court determines that evidence exists to support a finding that a child has a mental illness and that the child meets the commitment criteria under Subtitle C, Title 7, Health and Safety Code, the [~~(a) The~~] court shall:

(1) initiate proceedings as provided by Section 55.13 to order temporary or extended mental health services, as provided in Subchapter C, Chapter 574, Health and Safety Code[~~, for a child alleged or found to have engaged in delinquent conduct or conduct indicating a need for supervision, if:~~

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

(2) refer the child's case as provided by Section 55.14 to the appropriate court for the initiation of proceedings in that court for commitment of the child under Subchapter C, Chapter 574, Health and Safety Code.

Commentary by Robert Dawson

Source: HB 3517

Effective Date: September 1, 1999

Applicability: Conduct occurring on or after effective date

Summary of Changes: This section gives the juvenile court the option of either conducting the commitment proceedings itself or of referring them to the appropriate county or probate court for it to conduct the proceedings. These proceedings occur with such infrequency in juvenile cases that many juvenile courts lack sufficient familiarity with them to feel comfortable conducting them. The referral option is new and intended to aid those juvenile courts that prefer not to conduct commitment proceedings themselves.

§ 55.13. COMMITMENT PROCEEDINGS IN JUVENILE COURT.

(a) If the juvenile court initiates proceedings for temporary or extended mental health services under Section 55.12(1), the prosecuting attorney or the attorney for the child may file with the juvenile court an application for court-ordered mental health services under Section 574.001, Health and Safety Code. The juvenile court shall:

(1) set a date for a hearing and provide notice as required by Sections 574.005 and 574.006, Health and Safety Code; and

(2) conduct the hearing in accordance with Subchapter C, Chapter 574, Health and Safety Code.

(b) The burden of proof at the hearing is on the party who filed the application.

(c) The juvenile court shall appoint the number of physicians necessary to examine the child and to complete the certificates of medical examination for mental illness required under Section 574.009, Health and Safety Code.

(d) After conducting a hearing on an application under this section, the juvenile court shall:

(1) if the criteria under Section 574.034, Health and Safety Code, are satisfied, order temporary mental health services for the child; or

(2) if the criteria under Section 574.035, Health and Safety Code, are satisfied, order extended mental health services for the child.

Commentary by Robert Dawson

Source: HB 3517

Effective Date: September 1, 1999

Applicability: Conduct occurring on or after effective date

Summary of Changes: If the juvenile court elects to conduct commitment proceedings, under (a), either the prosecutor or the defense attorney may file an application for mental health services. Whether the application is filed by the prosecutor or the defense will often depend upon the seriousness of the underlying juvenile charge; defense attorneys would be expected to file applications in cases of more serious charges or when the need for mental health care appears to be central to the welfare of the child. In any event, juvenile proceedings are stayed until the commitment process, which must begin with an application, is completed.

Under Health and Safety Code § 574.001 the application must be sworn and, if filed by anybody other than the prosecutor, must be accompanied by a certificate of medical examination, which should have been part of the section 51.20 report. Health and Safety Code § 574.002 requires that the application be styled using the proposed patient's initials only and state whether the application is for temporary or extended mental health services. The application must state the proposed patient's name and address, county of residence, and an averment that the proposed patient is mentally ill and meets the criteria for temporary or extended mental health services, as the case may be.

The application must also state whether the proposed patient is charged with a criminal offense. Health and Safety Code § 571.011(a) provides, "A

child alleged to have engaged in delinquent conduct or conduct indicating a need for supervision under Title 3, Family Code, is not considered under this subtitle [Subtitle C. Texas Mental Health Code] to be a person charged with a criminal offense." Therefore, in every juvenile case it should be alleged that the proposed patient is not charged with a criminal offense no matter what the juvenile charge may be.

The duties of the attorney for the proposed patient are spelled out in Health and Safety Code § 574.004. Those same duties apply to the juvenile's attorney in juvenile court commitment proceedings or to an attorney appointed by a county or probate court to represent the proposed patient/juvenile in referred commitment proceedings.

Under Health and Safety Code § 574.005, the juvenile court must set a date for the hearing that is not later than 14 days after the filing of the application, but the hearing may not be held during the first three days after the application was filed if the juvenile or his attorney objects. The juvenile court may grant continuances, but the hearing must be held within 30 days of the filing of the application.

Health and Safety Code § 574.006 requires that a copy of the application and written notice of the time and place of the hearing must be provided to the proposed patient immediately after the court sets the hearing date.

The hearing is conducted under Health and Safety Code provisions. Section 574.031 provides that the Rules of Evidence in civil cases apply. Section 574.032 provides that trial on an application for temporary mental health services is to the court unless the proposed patient or his attorney requests a jury trial but that trial on an application for extended mental health services is to a jury, unless jury is waived by the proposed patient or his attorney. Section 574.031(g) provides that the burden is upon the State to prove commitability by clear and convincing evidence, but subsection (b) of 55.13 places that burden on the party who filed the application when the proceedings are in juvenile court.

Subsection (c) requires the juvenile court to appoint physicians to examine the child. Health and Safety Code § 574.009 requires that two certificates of medical examination for mental illness must be filed before the hearing can begin. The content of the certificates is specified by Health and Safety Code § 574.011.

Subsection (d) requires the juvenile court to enter a commitment order if the child is committable for temporary (no longer than 90 days) or extended (no longer than 12 months) mental health services. Health and Safety Code § 574.034 sets out commitment standards for temporary mental health services:

> (1) the proposed patient is mentally ill; and
>
> (2) as a result of that mental illness the proposed patient:
>
> (A) is likely to cause serious harm to himself;
>
> (B) is likely to cause serious harm to others; or
>
> (C) is:
>
> (i) suffering severe and abnormal mental, emotional, or physical distress;
>
> (ii) experiencing substantial mental or physical deterioration of the proposed patient's ability to function independently, which is exhibited by the proposed patient's inability, except for reasons of indigence, to provide for the proposed patient's basic needs, including food, clothing, health, or safety; and
>
> (iii) unable to make a rational and informed decision as to whether or not to submit to treatment.

Health and Safety Code § 574.035 sets out the same criteria for commitment for extended mental health services, but adds the following two requirements:

> (3) the proposed patient's condition is expected to continue for more than 90 days; and
>
> (4) the proposed patient has received court-ordered inpatient mental health services under this subtitle or under Article 46.02, Code of Criminal Procedure, for at least 60 consecutive days during the preceding 12 months.

§ 55.14. REFERRAL FOR COMMITMENT PROCEEDINGS.

(a) If the juvenile court refers the child's case to the appropriate court for the initiation of commitment proceedings under Section 55.12(2), the juvenile court shall:

(1) send all papers relating to the child's mental illness to the clerk of the court to which the case is referred;

(2) send to the office of the appropriate county attorney or, if a county attorney is not available, to the office of the appropriate district attorney, copies of all papers sent to the clerk of the court under Subdivision (1); and

(3) if the child is in detention:

(A) order the child released from detention to the child's home or another appropriate place;

(B) order the child detained in an appropriate place other than a juvenile detention facility; or

(C) if an appropriate place to release or detain the child as described by Paragraph (A) or (B) is not available, order the child to remain in the juvenile detention facility subject to further detention orders of the court.

(b) The papers sent to the clerk of a court under Subsection (a)(1) constitute an application for mental health services under Section 574.001, Health and Safety Code.

Commentary by Robert Dawson

Source: HB

Effective Date: September 1, 1999

Applicability: Conduct occurring on or after effective date

Summary of Changes: This section spells out the procedures when the juvenile court elects to refer the mental health commitment proceedings to the county court. The court must send all papers relating to mental illness to the clerk of that court and send copies of those papers to the appropriate prosecutor, which would ordinarily by a county attorney if there is one in the county.

Subsection (a)(3) authorizes the juvenile court if the child is in detention to release the child or place the child elsewhere pending commitment hearing. If release or placement is not feasible, then the court is authorized to detain the child in the juvenile detention facility. The continuing need for detention must be addressed each 10 or 15 working days under Section 54.01 as in all other cases of extended juvenile detention.

Subsection (b) provides that the papers sent to the county court under this section constitute an application for mental health services, which under Health and Safety Code § 574.001 may be filed by any adult. The papers should include all the requirements of an application as provided by Health and Safety Code § 574.001 and 574.002. Once the papers are filed with the clerk of the county court, the requirements of the Health and Safety Code pertaining to appointment of counsel, notice of hearing, timing of hearing and conduct of hearing automatically apply.

§ 55.15. STANDARDS OF CARE; EXPIRATION OF COURT ORDER FOR MENTAL HEALTH SERVICES.

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

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

[~~(c)~~] If the juvenile court or a court to which the child's case is referred under Section 55.12(2) orders mental health services for the child, the child shall be cared for, treated, and released in conformity to Subtitle C, Title 7, Health and Safety Code, except:

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

(2) the administrator of a mental health facility shall notify, in writing, by certified mail, return receipt requested, the juvenile court that ordered mental health services or the juvenile court that referred the case to a court that ordered the mental health services of the intent to discharge the child at least 10 days prior to discharge.

Commentary by Robert Dawson

Source: HB 3517

Effective Date: September 1, 1999

Applicability: Conduct occurring on or after effective date

Summary of Changes: This section substantially restates prior law. It states the important principle that all children committed for mental health services must receive the same care as other persons receive.

All juvenile court-originated mental health commitments expire automatically 120 days after the child's 18th birthday. Section 55.19 sets out requirements for transfer of certain cases to criminal court when a child is still committed upon his or her 18th birthday. Of course, commitments also automatically expire when 90 days or 12 months, depending upon the type of commitment, pass.

If a facility intends to discharge a child, it is required to provide the juvenile court with certified mail notice of the release 10 days in advance to enable the court to resume juvenile proceedings should it desire to do so.

§ 55.16. ORDER FOR MENTAL HEALTH SERVICES; STAY OF PROCEEDINGS.

(a) If the court to which the child's case is referred under Section 55.12(2) orders temporary or extended inpatient mental health services for the child, the court shall immediately notify in writing the referring juvenile court of the court's order for mental health services.

(b) [~~(d)~~] If the juvenile court orders temporary or extended inpatient mental health services for the child or if the juvenile court receives notice under

Subsection (a) from the court to which the child's case is referred, the proceedings under this title then pending in juvenile court shall be stayed.

Commentary by Robert Dawson
Source: HB 3517
Effective Date: September 1, 1999
Applicability: Conduct occurring on or after effective date
Summary of Changes: If the child receives commitment for temporary or extended mental health services, the juvenile proceedings must be stayed while the child is committed. Subsection (a) requires the county court to notify the juvenile court if it orders commitment to enable the juvenile court to make appropriate stay orders.

§ 55.17. MENTAL HEALTH SERVICES NOT ORDERED; DISSOLUTION OF STAY.

(a) If the court to which a child's case is referred under Section 55.12(2) does not order temporary or extended inpatient mental health services for the child, the court shall immediately notify in writing the referring juvenile court of the court's decision.

(b) If the juvenile court does not order temporary or extended inpatient mental health services for the child or if the juvenile court receives notice under Subsection (a) from the court to which the child's case is referred, the juvenile court shall dissolve the stay and continue the juvenile court proceedings.

Commentary by Robert Dawson
Source: HB 3517
Effective Date: September 1, 1999
Applicability: Conduct occurring on or after effective date
Summary of Changes: If the child is not committed by the juvenile or county court, the temporary stay of juvenile proceedings previously entered is dissolved by the juvenile court. Subsection (a) requires the county court to notify the juvenile court it has refused to commit the child.

§ 55.18. DISCHARGE FROM MENTAL HEALTH FACILITY BEFORE REACHING 18 YEARS OF AGE.

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

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

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

Commentary by Robert Dawson
Source: HB 3517
Effective Date: September 1, 1999
Applicability: Conduct occurring on or after effective date
Summary of Changes: This section restates prior law. It provides that if a child is discharged before becoming 18, the juvenile court may in the interest of justice either dismiss the juvenile proceedings with prejudice or resume them. What action the court takes is totally discretionary but would be expected to depend upon the length of confinement under commitment orders and the seriousness of the juvenile charges.

§ 55.19. TRANSFER TO CRIMINAL COURT ON 18TH BIRTHDAY.

(a) [~~(f)~~] The juvenile court shall transfer all pending proceedings from the juvenile court to a criminal court on the 18th birthday of a child for whom the juvenile court or a court to which the child's case is referred under Section 55.12(2) has ordered inpatient mental health services [~~under this section~~] if:

(1) the child is not discharged or furloughed from the inpatient mental health [~~residential care~~] facility before reaching 18 years of age; and

(2) the child is alleged to have engaged in delinquent conduct that included a violation of a penal law listed in Section 53.045 and no adjudication concerning the alleged conduct has been made.

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

Commentary by Robert Dawson
Source: HB 3517
Effective Date: September 1, 1999

Applicability: Conduct occurring on or after effective date

Summary of Changes: This section substantially restates prior law. If the child is charged with an offense that could have been charged under the determinate sentence act, has not been adjudicated, has been committed for inpatient mental health services, but has not been discharged on his or her 18th birthday, the juvenile court is required to transfer the case to the appropriate criminal court on the person's 18th birthday. The criminal court is required to determine whether the person is competent to stand trial. If not competent, then the juvenile court-originated commitment automatically expires 120 days after the 18th birthday. If competent, then the criminal court can proceed with criminal proceedings but the person can be sentenced to no longer a term than he or she could have received from the juvenile court for the same offense.

SUBCHAPTER C. CHILD UNFIT TO PROCEED AS A RESULT OF MENTAL ILLNESS OR MENTAL RETARDATION

§ 55.31 [~~55.04~~]. UNFITNESS TO PROCEED DETERMINATION; EXAMINATION.

(a) A child alleged by petition or found to have engaged in delinquent conduct or conduct indicating a need for supervision who as a result of mental illness or mental retardation lacks capacity to understand the proceedings in juvenile court or to assist in the child's [~~his~~] own defense is unfit to proceed and shall not be subjected to discretionary transfer to criminal court, adjudication, disposition, or modification of disposition as long as such incapacity endures.

(b) On a [~~If on~~] motion by a party, the juvenile court shall determine whether probable cause exists to believe that a child who is alleged by petition or who is found to have engaged in delinquent conduct or conduct indicating a need for supervision is [~~or the court it is alleged that a child may be~~] unfit to proceed as a result of mental illness or mental retardation[~~, the court shall order appropriate examinations as provided by Section 55.01 of this chapter~~]. In making its determination, the court may:

(1) consider the motion, supporting documents, professional statements of counsel, and witness testimony; and

(2) make its own observation of the child.

(c) If the court determines that probable cause exists to believe that the child is unfit to proceed, the court shall temporarily stay the juvenile court proceedings and immediately order the child to be examined under Section 51.20. The information obtained from the examination [~~examinations~~] must include expert opinion as to whether the child is unfit to proceed as a result of mental illness or mental retardation.

(d) After considering all relevant information, including information obtained from an examination under Section 51.20, the court shall:

(1) if the court determines that evidence exists to support a finding that the child is unfit to proceed, proceed under Section 55.32; or

(2) if the court determines that evidence does not exist to support a finding that the child is unfit to proceed, dissolve the stay and continue the juvenile court proceedings.

Commentary by Robert Dawson

Source: HB 3517

Effective Date: September 1, 1999

Applicability: Conduct occurring on or after effective date

Summary of Changes: Subsection (a) states the constitutional requirement that a person must be mentally fit (competent) in order to stand trial and codifies the constitutional standard that the child is unfit to proceed if he lacks capacity to understand the proceedings or to assist in his own defense. The incapacity may result either from mental illness or mental retardation.

Subsection (b) deals with the initial stages of the proceedings to determine whether the child is unfit to proceed. It is the same as Section 55.11(a), which deals with the initial stages in the process of determining whether a child is mentally ill.

Subsection (c), identically to Section 55.11(b), requires the court to stay juvenile proceedings and order an examination under Section 51.20 if there is probable cause to believe the child is unfit to proceed.

Subsection (d), similarly to Section 55.11(c), requires the court to proceed under the next section if from all the evidence including the examination report the court concludes that evidence exists to support a finding of unfitness. Otherwise, the court dissolves the stay and resumes juvenile proceedings.

§ 55.32. HEARING ON ISSUE OF FITNESS TO PROCEED.

(a) If the juvenile court determines that evidence exists to support a finding that a child is unfit to proceed as a result of mental illness or mental retardation, the court shall set the case for a hearing on that issue.

(b) [~~(c)~~] The issue of [~~court or jury shall determine~~] whether the child is unfit to proceed as a result of mental illness or mental retardation shall be de-

termined at a hearing separate from any other [~~the adjudication~~] hearing.

(c) The court shall determine the issue of whether the child is unfit to proceed unless the child or the attorney for the child demands a jury before the 10th day before the date of the hearing.

(d) Unfitness to proceed as a result of mental illness or mental retardation must be proved by a preponderance of the evidence.

(e) If the court or jury determines that the child is fit to proceed, the juvenile court shall continue with proceedings under this title as though no question of fitness to proceed had been raised.

(f) If the court or jury determines that the child is unfit to proceed as a result of mental illness or mental retardation, the court shall:

(1) stay the juvenile court proceedings for as long as that incapacity endures; and

(2) proceed under Section 55.33 [~~initiate proceedings under Section 55.02 or Section 55.03 of this chapter~~].

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

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

Commentary by Robert Dawson

Source: HB 3517

Effective Date: September 1, 1999

Applicability: Conduct occurring on or after effective date

Summary of Changes: This section is substantially the same as prior law. The fitness hearing must be held separate from any other hearing, such as an adjudication hearing. It is before the court, unless the child or attorney demands a jury. The burden is by a preponderance to prove unfitness to proceed; ordinarily, the defense would assume this burden.

If the court or jury determines the child is unfit, then the juvenile court orders juvenile proceedings stayed for the duration of the incapacity and proceeds under the next section.

Under (g), the fact that the child is unfit to proceed does not prevent litigating legal objections to the proceedings that do not require personal participation of the child. An example would be the defense of statute of limitations. If the child prevails in such a claim, then he or she is discharged from the juvenile system and is no longer subject to Chapter 55.

§ 55.33. PROCEEDINGS FOLLOWING FINDING OF UNFITNESS TO PROCEED.

(a) If the juvenile court or jury determines under Section 55.32 that a child is unfit to proceed with the juvenile court proceedings for delinquent conduct, the court shall:

(1) if the unfitness to proceed is a result of mental illness or mental retardation:

(A) provided that the child meets the commitment criteria under Subtitle C or D, Title 7, Health and Safety Code, order the child placed with the Texas Department of Mental Health and Mental Retardation for a period of not more than 90 days, which order may not specify a shorter period, for placement in a facility designated by the department; or

(B) on application by the child's parent, guardian, or guardian ad litem, order the child placed in a private psychiatric inpatient facility for a period of not more than 90 days, which order may not specify a shorter period, but only if the placement is agreed to in writing by the administrator of the facility; or

(2) if the unfitness to proceed is a result of mental illness and the court determines that the child may be adequately treated in an alternative setting, order the child to receive treatment for mental illness on an outpatient basis for a period of not more than 90 days, which order may not specify a shorter period.

(b) If the court orders a child placed in a private psychiatric inpatient facility under Subsection (a)(1)(B), the state or a political subdivision of the state may be ordered to pay any costs associated with the child's placement, subject to an express appropriation of funds for the purpose.

Commentary by Robert Dawson

Source: HB 3517

Effective Date: September 1, 1999

Applicability: Conduct occurring on or after effective date

Summary of Changes: This section spells out the options when a judge or jury has found the child to be unfit to proceed. A 90 day evaluational placement is required. The placement may be in an MHMR facility, or in a private psychiatric facility, or if the cause of unfitness is mental illness in an outpatient center.

Placement in an MHMR facility requires the juvenile court to find that “the child meets the commitment criteria” as a mentally ill or mentally retarded person. That finding should be made by the juvenile court based on the information already before the court from examinations, reports and testimony. The purpose of the 90 day placement is to

permit MHMR to evaluate the child to aid in determining whether he is commitable. Obviously, the legislature did not intend to require the juvenile court to conduct a commitment hearing to make this finding in order to commit him for evaluation on whether to conduct a commitment hearing.

Placement in a private facility requires either a private source of payment or under subsection (b) public payment from an express appropriation of funds for that purpose. In other words, the juvenile court cannot just order the county or a state agency to pay the costs of private psychiatric placement. Placement in an outpatient setting is restricted to children with mental illness since there currently are no such centers for mentally retarded persons.

The court order for the evaluational placement must specify that it is for "not more than 90 days." MHMR can return the child to the court at any earlier time; there is no minimum period of observation required.

§ 55.34. TRANSPORTATION TO AND FROM FACILITY.

(a) If the court issues a placement order under Section 55.33(a)(1), the court shall order the probation department or sheriff's department to transport the child to the designated facility.

(b) On receipt of a report from a facility to which a child has been transported under Subsection (a), the court shall order the probation department or sheriff's department to transport the child from the facility to the court. If the child is not transported to the court before the 11th day after the date of the court's order, an authorized representative of the facility shall transport the child from the facility to the court.

(c) The county in which the juvenile court is located shall reimburse the facility for the costs incurred in transporting the child to the juvenile court as required by Subsection (b).

Commentary by Robert Dawson

Source: HB 3517

Effective Date: September 1, 1999

Applicability: Conduct occurring on or after effective date

Summary of Changes: Responsibility for transporting the child to and from a facility rests with the county, either the probation department or the sheriff's department, depending on the court's order. If the county fails promptly to transport a child back to court upon receipt of the evaluational report, MHMR may transport the child and obtain reimbursement from the county.

§ 55.35. INFORMATION REQUIRED TO BE SENT TO FACILITY; REPORT TO COURT.

(a) If the juvenile court issues a placement order under Section 55.33(a), the court shall order the probation department to send copies of any information in the possession of the department and relevant to the issue of the child's mental illness or mental retardation to the public or private facility or outpatient center, as appropriate.

(b) Not later than the 75th day after the date the court issues a placement order under Section 55.33(a), the public or private facility or outpatient center, as appropriate, shall submit to the court a report that:

(1) describes the treatment of the child provided by the facility or center; and

(2) states the opinion of the director of the facility or center as to whether the child is fit or unfit to proceed.

(c) The court shall provide a copy of the report submitted under Subsection (b) to the prosecuting attorney and the attorney for the child.

Commentary by Robert Dawson

Source: HB 3517

Effective Date: September 1, 1999

Applicability: Conduct occurring on or after effective date

Summary of Changes: The purpose of the 90 day placement is to obtain information on whether the child remains unfit to proceed and may, therefore, require a commitment for treatment. Subsection (a) requires the juvenile probation department to send complete relevant information to the placement facility.

Subsection (b) requires the facility to report back to the court not later than 75 days after placement began. The report should address the treatments that have been provided to the child and state an opinion as to whether the child remains unfit to proceed. In some cases of unfitness due to mental illness the child can be restored to fitness with medications, which would enable juvenile proceedings to resume. Although this section does not state, section 55.37 requires that the report also address the question whether the child is committable as a mentally ill or retarded person.

Subsection (c) requires the State and the defense attorney to be given a copy of the facility's report.

§ 55.36. REPORT THAT CHILD IS FIT TO PROCEED; HEARING ON OBJECTION.

(a) If a report submitted under Section 55.35(b) states that a child is fit to proceed, the juvenile court shall find that the child is fit to proceed unless the

child's attorney objects in writing or in open court not later than the second day after the date the attorney receives a copy of the report under Section 55.35(c).

(b) On objection by the child's attorney under Subsection (a), the juvenile court shall promptly hold a hearing to determine whether the child is fit to proceed, except that the hearing may be held after the date that the placement order issued under Section 55.33(a) expires. At the hearing, the court shall determine the issue of the fitness of the child to proceed unless the child or the child's attorney demands in writing a jury before the 10th day before the date of the hearing.

(c) If, after a hearing, the court or jury finds that the child is fit to proceed, the court shall dissolve the stay and continue the juvenile court proceedings as though a question of fitness to proceed had not been raised.

(d) If, after a hearing, the court or jury finds that the child is unfit to proceed, the court shall proceed under Section 55.37.

Commentary by Robert Dawson

Source: HB 3517

Effective Date: September 1, 1999

Applicability: Conduct occurring on or after effective date

Summary of Changes: If the report states the child is fit to proceed, the juvenile court is required to make a finding of current fitness unless the defense objects within two days of receiving the report. If a finding of current fitness is made, the stay is dissolved and juvenile proceedings resume. If an objection is lodged, a prompt hearing must be held to determine current fitness. The hearing is to the court unless the defense demands a jury trial.

If following hearing, the court or jury finds the child is fit to proceed, the juvenile court dissolves the stay and proceeds with the juvenile case. If the court or jury finds the child remains unfit, then the court must proceed in accordance with the next section.

§ 55.37. REPORT THAT CHILD IS UNFIT TO PROCEED AS A RESULT OF MENTAL ILLNESS; INITIATION OF COMMITMENT PROCEEDINGS.

If a report submitted under Section 55.35(b) states that a child is unfit to proceed as a result of mental illness and that the child meets the commitment criteria for civil commitment under Subtitle C, Title 7, Health and Safety Code, the director of the public or private facility or outpatient center, as appropriate, shall submit to the court two certificates of medical examination for mental illness. On receipt of the certificates, the court shall:

(1) initiate proceedings as provided by Section 55.38 in the juvenile court for commitment of the child under Subtitle C, Title 7, Health and Safety Code; or

(2) refer the child's case as provided by Section 55.39 to the appropriate court for the initiation of proceedings in that court for commitment of the child under Subtitle C, Title 7, Health and Safety Code.

Commentary by Robert Dawson

Source: HB 3517

Effective Date: September 1, 1999

Applicability: Conduct occurring on or after effective date

Summary of Changes: If the facility finds the child is unfit to proceed and meets the commitment criteria for a mentally ill person, it must include two certificates of medical examination for mental illness to enable commitment proceedings to occur. The juvenile court then has the option of either conducting commitment proceedings itself or of referring commitment proceedings to the county court.

§ 55.38. COMMITMENT PROCEEDINGS IN JUVENILE COURT FOR MENTAL ILLNESS.

(a) If the juvenile court initiates commitment proceedings under Section 55.37(1), the prosecuting attorney may file with the juvenile court an application for court-ordered mental health services under Section 574.001, Health and Safety Code. The juvenile court shall:

(1) set a date for a hearing and provide notice as required by Sections 574.005 and 574.006, Health and Safety Code; and

(2) conduct the hearing in accordance with Subchapter C, Chapter 574, Health and Safety Code.

(b) After conducting a hearing under Subsection (a)(2), the juvenile court shall:

(1) if the criteria under Section 574.034, Health and Safety Code, are satisfied, order temporary mental health services; or

(2) if the criteria under Section 574.035, Health and Safety Code, are satisfied, order extended mental health services.

Commentary by Robert Dawson

Source: HB 3517

Effective Date: September 1, 1999

Applicability: Conduct occurring on or after effective date

Summary of Changes: This section sets out the procedures when the juvenile court elects to conduct

the commitment proceedings. It is identical to Section 55.13 for mental illness proceedings in juvenile court except that only the prosecutor may file an application for mental health services since the child would not necessarily wish commitment in view of the finding of unfitness to proceed.

§ 55.39. REFERRAL FOR COMMITMENT PROCEEDINGS FOR MENTAL ILLNESS.

(a) If the juvenile court refers the child's case to an appropriate court for the initiation of commitment proceedings under Section 55.37(2), the juvenile court shall:

(1) send all papers relating to the child's unfitness to proceed, including the verdict and judgment of the juvenile court finding the child unfit to proceed, to the clerk of the court to which the case is referred;

(2) send to the office of the appropriate county attorney or, if a county attorney is not available, to the office of the appropriate district attorney, copies of all papers sent to the clerk of the court under Subdivision (1); and

(3) if the child is in detention:

(A) order the child released from detention to the child's home or another appropriate place;

(B) order the child detained in an appropriate place other than a juvenile detention facility; or

(C) if an appropriate place to release or detain the child as described by Paragraph (A) or (B) is not available, order the child to remain in the juvenile detention facility subject to further detention orders of the court.

(b) The papers sent to a court under Subsection (a)(1) constitute an application for mental health services under Section 574.001, Health and Safety Code.

Commentary by Robert Dawson

Source: HB 3517

Effective Date: September 1, 1999

Applicability: Conduct occurring on or after effective date

Summary of Changes: This section sets out the procedures when the juvenile court elects to refer the mental health commitment proceedings to the county court. It is in substance identical to Section 55.14.

§ 55.40. REPORT THAT CHILD IS UNFIT TO PROCEED AS A RESULT OF MENTAL RETARDATION.

If a report submitted under Section 55.35(b) states that a child is unfit to proceed as a result of mental retardation and that the child meets the commitment criteria for civil commitment under Subtitle D, Title 7, Health and Safety Code, the director of the residential care facility shall submit to the court an affidavit stating the conclusions reached as a result of the diagnosis. On receipt of the affidavit, the court shall:

(1) initiate proceedings as provided by Section 55.41 in the juvenile court for commitment of the child under Subtitle D, Title 7, Health and Safety Code; or

(2) refer the child's case as provided by Section 55.42 to the appropriate court for the initiation of proceedings in that court for commitment of the child under Subtitle D, Title 7, Health and Safety Code.

Commentary by Robert Dawson

Source: HB 3517

Effective Date: September 1, 1999

Applicability: Conduct occurring on or after effective date

Summary of Changes: If the facility concludes the child is unfit to proceed as a result of mental retardation and that the child meets commitment criteria, an affidavit to that effect must accompany the report. In that event, the juvenile court can elect to conduct commitment proceedings or refer them to the county court.

§ 55.41. COMMITMENT PROCEEDINGS IN JUVENILE COURT FOR MENTAL RETARDATION.

(a) If the juvenile court initiates commitment proceedings under Section 55.40(1), the prosecuting attorney may file with the juvenile court an application for placement under Section 593.041, Health and Safety Code. The juvenile court shall:

(1) set a date for a hearing and provide notice as required by Sections 593.047 and 593.048, Health and Safety Code; and

(2) conduct the hearing in accordance with Sections 593.049-593.056, Health and Safety Code.

(b) After conducting a hearing under Subsection (a)(2), the juvenile court may order commitment of the child to a residential care facility if the commitment criteria under Section 593.052, Health and Safety Code, are satisfied.

Commentary by Robert Dawson

Source: HB 3517

Effective Date: September 1, 1999

Applicability: Conduct occurring on or after effective date

Summary of Changes: This section sets out the procedures when the juvenile court elects to conduct the mental retardation commitment proceedings. The prosecutor is authorized to file an application for placement. Health and Safety Code § 593.041 permits any "interested person" to file an application for long term placement in a residential facility. Prior to commitment, a report of an interdisciplinary team recommending placement must have been completed. That will have been done during the 90 day evaluational placement that just concluded. A copy of the team report must accompany the application. The formal requirements for the application are set out in Health and Safety Code § 593.042. Under Health and Safety Code § 593.047, the juvenile court is required to set the "earliest practicable date" for a hearing and under Health and Safety Code § 593.048 to provide the child with a copy of the application and interdisciplinary team report and notice of the time and place of the hearing.

The juvenile court conducts a hearing, which, on motion of any party or the court's own motion, shall be before a jury. The rules of evidence in civil cases apply and the interdisciplinary team report is admissible in evidence. The hearing is public unless the child requests a closed hearing and the court determines there is good cause to close the hearing. The State has the burden to prove beyond a reasonable doubt that the child meets commitment criteria.

Health and Safety Code § 593.052 sets out the commitment criteria for long term placement in a residential facility:

(1) the proposed resident is a person with mental retardation;

(2) evidence is presented showing that because of retardation, the proposed resident:

(A) represents a substantial risk of physical impairment or injury to himself or others; or

(B) is unable to provide for and is not providing for the proposed resident's most basic personal physical needs;

(3) the proposed resident cannot be adequately and appropriately habilitated in an available, less restrictive setting; and

(4) the residential care facility provides habilitative services, care, training, and treatment appropriate to the proposed resident's needs.

If those criteria are met and the court determines that "long-term placement in a residential care facility is appropriate" it commits the child "for care, treatment, and training to a community center or the department when space is available in a residential care facility." There is no expiration date for the commitment.

§ 55.42. REFERRAL FOR COMMITMENT PROCEEDINGS FOR MENTAL RETARDATION.

(a) If the juvenile court refers the child's case to an appropriate court for the initiation of commitment proceedings under Section 55.40(2), the juvenile court shall:

(1) send all papers relating to the child's mental retardation to the clerk of the court to which the case is referred;

(2) send to the office of the appropriate county attorney or, if a county attorney is not available, to the office of the appropriate district attorney, copies of all papers sent to the clerk of the court under Subdivision (1); and

(3) if the child is in detention:

(A) order the child released from detention to the child's home or another appropriate place;

(B) order the child detained in an appropriate place other than a juvenile detention facility; or

(C) if an appropriate place to release or detain the child as described by Paragraph (A) or (B) is not available, order the child to remain in the juvenile detention facility subject to further detention orders of the court.

(b) The papers sent to a court under Subsection (a)(1) constitute an application for placement under Section 593.041, Health and Safety Code.

Commentary by Robert Dawson

Source: HB 3517

Effective Date: September 1, 1999

Applicability: Conduct occurring on or after effective date

Summary of Changes: This section sets out the procedures when a juvenile court refers mental retardation commitment proceedings to the county court. It is identical in substance to Section 55.39 dealing with referrals to mental health commitments following a finding of unfitness to proceed, which is in turn identical in substance to Section 55.14 dealing with referral of mental health commitment proceedings to the county court.

§ 55.43. RESTORATION HEARING.

(a) The prosecuting attorney may file with the juvenile court a motion for a restoration hearing concerning a child if:

(1) the child is found unfit to proceed as a result of mental illness or mental retardation; and

(2) the child:

(A) is not:

(i) ordered by a court to receive inpatient mental health services;

(ii) committed by a court to a residential care facility; or

(iii) ordered by a court to receive treatment on an outpatient basis; or

(B) is discharged or furloughed from a mental health facility or outpatient center before the child reaches 18 years of age.

(b) At the restoration hearing, the court shall determine the issue of whether the child is fit to proceed.

(c) The restoration hearing shall be conducted without a jury.

(d) The issue of fitness to proceed must be proved by a preponderance of the evidence.

(e) If, after a hearing, the court finds that the child is fit to proceed, the court shall continue the juvenile court proceedings.

(f) If, after a hearing, the court finds that the child is unfit to proceed, the court shall dismiss the motion for restoration.

Commentary by Robert Dawson

Source: HB 3517

Effective Date: September 1, 1999

Applicability: Conduct occurring on or after effective date

Summary of Changes: This section enables the prosecutor to have a restoration hearing for a child who has been found unfit to proceed because of either mental illness or mental retardation and who either was not committed for residential care or was committed but discharged before becoming 18 years old. Unless the prosecutor initiates restoration proceedings, the child remains judicially declared unfit to proceed and cannot be proceeded against in the juvenile system but is not receiving care or treatment for his mental condition. Fitness must be proved in a trial without a jury by a preponderance of the evidence. If the court concludes the child is fit, then juvenile proceedings can resume.

§ 55.44. TRANSFER TO CRIMINAL COURT ON 18TH BIRTHDAY OF CHILD.

(a) The juvenile court shall transfer all pending proceedings from the juvenile court to a criminal court on the 18th birthday of a child for whom the juvenile court or a court to which the child's case is referred has ordered inpatient mental health services or residential care for persons with mental retardation if:

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

(2) the child is alleged to have engaged in delinquent conduct that included a violation of a penal law listed in Section 53.045 and no adjudication concerning the alleged conduct has been made.

(b) The juvenile court shall send notification of the transfer of a child under Subsection (a) to the facility. The criminal court shall, before the 91st day after the date of the transfer, institute proceedings under Article 46.02, Code of Criminal Procedure. If those or any subsequent proceedings result in a determination that the defendant is competent to stand trial, the defendant may not receive a punishment for the delinquent conduct described by Subsection (a)(2) that results in confinement for a period longer than the maximum period of confinement the defendant could have received if the defendant had been adjudicated for the delinquent conduct while still a child and within the jurisdiction of the juvenile court.

Commentary by Robert Dawson

Source: HB 3517

Effective Date: September 1, 1999

Applicability: Conduct occurring on or after effective date

Summary of Changes: This section sets out the procedures for transferring a juvenile case to criminal court when a child has been found unfit to proceed and remains in residential care on his 18th birthday. It permits criminal proceedings to be initiated if the person is found competent to stand trial and is charged with an offense that could have been charged under the determinate sentence act. It is in substance identical to Section 55.19 for mental health commitments.

SUBCHAPTER D. LACK OF RESPONSIBILITY FOR CONDUCT AS A RESULT OF MENTAL ILLNESS OR MENTAL RETARDATION

Sec. 55.51 [~~55.05~~]. LACK OF RESPONSIBILITY FOR CONDUCT DETERMINATION; EXAMINATION.

(a) A child alleged by petition to have engaged in delinquent conduct or conduct indicating a need

for supervision is not responsible for the conduct if at the time of the conduct, as a result of mental illness or mental retardation, the child [~~he~~] lacks substantial capacity either to appreciate the wrongfulness of the child's [~~his~~] conduct or to conform the child's [~~his~~] conduct to the requirements of law.

(b) On a [~~If on~~] motion by [~~of~~] a party in which [~~or the court~~] it is alleged that a [~~the~~] child may not be responsible as a result of mental illness or mental retardation for the child's conduct, the court shall order the child to be examined under [~~appropriate examinations as provided by~~] Section 51.20 [~~55.01 of this chapter~~]. The information obtained from the examinations must include expert opinion as to whether the child is not responsible for the child's conduct as a result of mental illness or mental retardation.

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

(d) Lack of responsibility for conduct as a result of mental illness or mental retardation must be proved by a preponderance of the evidence.

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

(f) If the court or jury finds the child is not responsible for the child's [~~his~~] conduct as a result of mental illness or mental retardation, the court shall proceed [~~initiate proceedings~~] under Section 55.52 [~~55.02 or 55.03 of this chapter~~].

(g) A child found to be not responsible for the child's [~~his~~] conduct as a result of mental illness or mental retardation shall not be subject to proceedings under this title with respect to such conduct, other than proceedings under Section 55.52 [~~55.02 or 55.03 of this chapter~~].

Commentary by Robert Dawson

Source: HB 3517

Effective Date: September 1, 1999

Applicability: Conduct occurring on or after effective date

Summary of Changes: This section is substantially identical to prior law. It states the defense of non-responsibility from mental illness or mental retardation—what in criminal cases is called the insanity defense. Subsection (a) states the conventional standard of non-responsibility in juvenile cases. Subsection (b) requires a Section 51.20 examination on motion of a party to the juvenile proceedings. The issue of non-responsibility is tried in the adjudication hearing with any other adjudication issues that may be present. If there is a finding or verdict of non-responsibility, the court then proceeds under the next section. Such a finding is an acquittal of all liability for the offense tried and precludes further juvenile proceedings concerning those charges except for mental illness or retardation proceedings.

§ 55.52. PROCEEDINGS FOLLOWING FINDING OF LACK OF RESPONSIBILITY FOR CONDUCT.

(a) If the court or jury finds that a child is not responsible for the child's conduct under Section 55.51, the court shall:

(1) if the lack of responsibility is a result of mental illness or mental retardation:

(A) provided that the child meets the commitment criteria under Subtitle C or D, Title 7, Health and Safety Code, order the child placed with the Texas Department of Mental Health and Mental Retardation for a period of not more than 90 days, which order may not specify a shorter period, for placement in a facility designated by the department; or

(B) on application by the child's parent, guardian, or guardian ad litem, order the child placed in a private psychiatric inpatient facility for a period of not more than 90 days, which order may not specify a shorter period, but only if the placement is agreed to in writing by the administrator of the facility; or

(2) if the child's lack of responsibility is a result of mental illness and the court determines that the child may be adequately treated in an alternative setting, order the child to receive treatment on an outpatient basis for a period of not more than 90 days, which order may not specify a shorter period.

(b) If the court orders a child placed in a private psychiatric inpatient facility under Subsection (a)(1)(B), the state or a political subdivision of the state may be ordered to pay any costs associated with the child's placement, subject to an express appropriation of funds for the purpose.

Commentary by Robert Dawson

Source: HB 3517

Effective Date: September 1, 1999

Applicability: Conduct occurring on or after effective date

Summary of Changes: This section requires a 90 day evaluational placement when a child has been found to be non-responsible because of mental illness or mental retardation. It is substantially identical to Section 55.33, dealing with the 90 day placement following a finding of unfitness to proceed.

§ 55.53. TRANSPORTATION TO AND FROM FACILITY.

(a) If the court issues a placement order under Section 55.52(a)(1), the court shall order the probation department or sheriff's department to transport the child to the designated facility.

(b) On receipt of a report from a facility to which a child has been transported under Subsection (a), the court shall order the probation department or sheriff's department to transport the child from the facility to the court. If the child is not transported to the court before the 11th day after the date of the court's order, an authorized representative of the facility shall transport the child from the facility to the court.

(c) The county in which the juvenile court is located shall reimburse the facility for the costs incurred in transporting the child to the juvenile court as required by Subsection (b).

Commentary by Robert Dawson

Source: HB 3517

Effective Date: September 1, 1999

Applicability: Conduct occurring on or after effective date

Summary of Changes: This section specifies transportation responsibilities. It is identical to Section 55.34, dealing with transportation of the child found to be unfit to proceed.

§ 55.54. INFORMATION REQUIRED TO BE SENT TO FACILITY; REPORT TO COURT.

(a) If the juvenile court issues a placement order under Section 55.52(a), the court shall order the probation department to send copies of any information in the possession of the department and relevant to the issue of the child's mental illness or mental retardation to the public or private facility or outpatient center, as appropriate.

(b) Not later than the 75th day after the date the court issues a placement order under Section 55.52(a), the public or private facility or outpatient center, as appropriate, shall submit to the court a report that:

(1) describes the treatment of the child provided by the facility or center; and

(2) states the opinion of the director of the facility or center as to whether the child is mentally ill or mentally retarded.

(c) The court shall send a copy of the report submitted under Subsection (b) to the prosecuting attorney and the attorney for the child.

Commentary by Robert Dawson

Source: HB 3517

Effective Date: September 1, 1999

Applicability: Conduct occurring on or after effective date

Summary of Changes: This section specifies the information that must accompany the child to the evaluational placement and the reporting obligations of the placement facility. It is identical to Section 55.35, dealing with a child found unfit to proceed except under subsection (b)(2) the report addresses mental illness and mental retardation rather than fitness to proceed.

§ 55.55. REPORT THAT CHILD IS NOT MENTALLY ILL OR MENTALLY RETARDED; HEARING ON OBJECTION.

(a) If a report submitted under Section 55.54(b) states that a child does not have a mental illness or mental retardation, the juvenile court shall discharge the child unless:

(1) an adjudication hearing was conducted concerning conduct that included a violation of a penal law listed in Section 53.045(a) and a petition was approved by a grand jury under Section 53.045; and

(2) the prosecuting attorney objects in writing not later than the second day after the date the attorney receives a copy of the report under Section 55.54(c).

(b) On objection by the prosecuting attorney under Subsection (a), the juvenile court shall hold a hearing without a jury to determine whether the child has a mental illness or mental retardation and whether the child meets the commitment criteria for civil commitment under Subtitle C or D, Title 7, Health and Safety Code.

(c) At the hearing, the burden is on the state to prove by clear and convincing evidence that the child has a mental illness or mental retardation and that the child meets the commitment criteria for civil commitment under Subtitle C or D, Title 7, Health and Safety Code.

(d) If, after a hearing, the court finds that the child does not have a mental illness or mental retardation and that the child does not meet the commitment criteria under Subtitle C or D, Title 7, Health and Safety Code, the court shall discharge the child.

(e) If, after a hearing, the court finds that the child has a mental illness or mental retardation and that the child meets the commitment criteria under Subtitle C or D, Title 7, Health and Safety Code, the court shall issue an appropriate commitment order.

Commentary by Robert Dawson
Source: HB 3517
Effective Date: September 1, 1999
Applicability: Conduct occurring on or after effective date
Summary of Changes: This section specifies the procedures when the placement report states the child is not mentally ill or mentally retarded and therefore is not commitable. The juvenile court is required to discharge such a child on the ground that the mental condition that existed at the time of the offense no longer exists and therefore that the child cannot be committed as a mentally ill or retarded child. There is one exception, however. If the child was charged under the determinate sentence act and the prosecutor objects in writing, then there must be a hearing to review the report's conclusions of no mental illness or retardation. At the hearing the burden is on the State to show by clear and convincing evidence that the child is commitable under mental illness or retardation standards. If the juvenile court concludes the juvenile meets mental illness or mental retardation commitment standards, then it orders commitment. The right to object is a significant infringement upon the evaluational capabilities of MHMR and is for that reason restricted to determinate sentence act cases.

§ 55.56. REPORT THAT CHILD HAS MENTAL ILLNESS; INITIATION OF COMMITMENT PROCEEDINGS.

If a report submitted under Section 55.54(b) states that a child has a mental illness and that the child meets the commitment criteria for civil commitment under Subtitle C, Title 7, Health and Safety Code, the director of the public or private facility or outpatient center, as appropriate, shall submit to the court two certificates of medical examination for mental illness. On receipt of the certificates, the court shall:

(1) initiate proceedings as provided by Section 55.57 in the juvenile court for commitment of the child under Subtitle C, Title 7, Health and Safety Code; or

(2) refer the child's case as provided by Section 55.58 to the appropriate court for the initiation of proceedings in that court for commitment of the child under Subtitle C, Title 7, Health and Safety Code.

Commentary by Robert Dawson
Source: HB 3517
Effective Date: September 1, 1999
Applicability: Conduct occurring on or after effective date
Summary of Changes: This section specifies the procedures when the report states the child is commitable as a mentally ill child. It is substantially identical to Section 55.37 and provides the juvenile court with a choice of conducting the commitment proceedings or referring them to a county court.

§ 55.57. COMMITMENT PROCEEDINGS IN JUVENILE COURT FOR MENTAL ILLNESS.

(a) If the juvenile court initiates commitment proceedings under Section 55.56(1), the prosecuting attorney may file with the juvenile court an application for court-ordered mental health services under Section 574.001, Health and Safety Code. The juvenile court shall:

(1) set a date for a hearing and provide notice as required by Sections 574.005 and 574.006, Health and Safety Code; and

(2) conduct the hearing in accordance with Subchapter C, Chapter 574, Health and Safety Code.

(b) After conducting a hearing under Subsection (a)(2), the juvenile court shall:

(1) if the criteria under Section 574.034, Health and Safety Code, are satisfied, order temporary mental health services; or

(2) if the criteria under Section 574.035, Health and Safety Code, are satisfied, order extended mental health services.

Commentary by Robert Dawson
Source: HB 3517
Effective Date: September 1, 1999
Applicability: Conduct occurring on or after effective date
Summary of Changes: This section specifies the procedures when the juvenile court elects to conduct commitment proceedings. It is identical to Section 55.38 dealing with commitment proceedings by the juvenile court following a finding of fitness to proceed.

§ 55.58. REFERRAL FOR COMMITMENT PROCEEDINGS FOR MENTAL ILLNESS.

(a) If the juvenile court refers the child's case to an appropriate court for the initiation of commitment proceedings under Section 55.56(2), the juvenile court shall:

(1) send all papers relating to the child's mental illness, including the verdict and judgment of the juvenile court finding that the child was not responsible for the child's conduct, to the clerk of the court to which the case is referred;

(2) send to the office of the appropriate county attorney or, if a county attorney is not availa-

ble, to the office of the district attorney, copies of all papers sent to the clerk of the court under Subdivision (1); and

(3) if the child is in detention:

(A) order the child released from detention to the child's home or another appropriate place;

(B) order the child detained in an appropriate place other than a juvenile detention facility; or

(C) if an appropriate place to release or detain the child as described by Paragraph (A) or (B) is not available, order the child to remain in the juvenile detention facility subject to further detention orders of the court.

(b) The papers sent to a court under Subsection (a)(1) constitute an application for mental health services under Section 574.001, Health and Safety Code.

Commentary by Robert Dawson

Source: HB 3517

Effective Date: September 1, 1999

Applicability: Conduct occurring on or after effective date

Summary of Changes: This section specifies the procedures when the juvenile court elects to refer mental illness commitment proceedings to the county court. It is identical to Section 55.39, dealing with a child found unfit to proceed.

§ 55.59. REPORT THAT CHILD HAS MENTAL RETARDATION; INITIATION OF COMMITMENT PROCEEDINGS.

If a report submitted under Section 55.54(b) states that a child has mental retardation and that the child meets the commitment criteria for civil commitment under Subtitle D, Title 7, Health and Safety Code, the director of the residential care facility shall submit to the court an affidavit stating the conclusions reached as a result of the diagnosis. On receipt of an affidavit, the juvenile court shall:

(1) initiate proceedings in the juvenile court as provided by Section 55.60 for commitment of the child under Subtitle D, Title 7, Health and Safety Code; or

(2) refer the child's case to the appropriate court as provided by Section 55.61 for the initiation of proceedings in that court for commitment of the child under Subtitle D, Title 7, Health and Safety Code.

Commentary by Robert Dawson

Source: HB 3517

Effective Date: September 1, 1999

Applicability: Conduct occurring on or after effective date

Summary of Changes: This section specifies the procedures to be used when the report states the child is mentally retarded and commitable. It is identical to Section 55.40, dealing with a child found unfit to proceed because of mental retardation.

§ 55.60. COMMITMENT PROCEEDINGS IN JUVENILE COURT FOR MENTAL RETARDATION.

(a) If the juvenile court initiates commitment proceedings under Section 55.59(1), the prosecuting attorney may file with the juvenile court an application for placement under Section 593.041, Health and Safety Code. The juvenile court shall:

(1) set a date for a hearing and provide notice as required by Sections 593.047 and 593.048, Health and Safety Code; and

(2) conduct the hearing in accordance with Sections 593.049-593.056, Health and Safety Code.

(b) After conducting a hearing under Subsection (a)(2), the juvenile court may order commitment of the child to a residential care facility only if the commitment criteria under Section 593.052, Health and Safety Code, are satisfied.

Commentary by Robert Dawson

Source: HB 3517

Effective Date: September 1, 1999

Applicability: Conduct occurring on or after effective date

Summary of Changes: This section specifies the procedures when the juvenile court elects to conduct mental retardation commitment proceedings. It is identical to Section 55.41, dealing with unfitness to proceed.

§ 55.61. REFERRAL FOR COMMITMENT PROCEEDINGS FOR MENTAL RETARDATION.

(a) If the juvenile court refers the child's case to an appropriate court for the initiation of commitment proceedings under Section 55.59(2), the juvenile court shall:

(1) send all papers relating to the child's mental retardation to the clerk of the court to which the case is referred;

(2) send to the office of the appropriate county attorney or, if a county attorney is not available, to the office of the appropriate district attorney, copies of all papers sent to the clerk of the court under Subdivision (1); and

(3) if the child is in detention:

(A) order the child released from detention to the child's home or another appropriate place;

(B) order the child detained in an appropriate place other than a juvenile detention facility; or

(C) if an appropriate place to release or detain the child as described by Paragraph (A) or (B) is not available, order the child to remain in the juvenile detention facility subject to further detention orders of the court.

(b) The papers sent to a court under Subsection (a)(1) constitute an application for placement under Section 593.041, Health and Safety Code.

Commentary by Robert Dawson

Source: HB 3517

Effective Date: September 1, 1999

Applicability: Conduct occurring on or after effective date

Summary of Changes: This section specifies the procedures when the juvenile court elects to refer mental retardation commitment proceedings to the county court. It is identical to Section 55.42, dealing with unfitness to proceed.

Chapter 56.
Appeal.

§ 56.01. Right to Appeal.

(c) An appeal may be taken:

(1) except as provided by Subsection (n), by or on behalf of a child from an order entered under:

(A) Section 54.03 [~~of this code~~] with regard to delinquent conduct or conduct indicating a need for supervision;

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

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

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

(2) by a person from an order entered under Section 54.11(i)(2) [~~of this code~~] transferring the person to the custody of the institutional division of the Texas Department of Criminal Justice.

(d) A child has the right to:

(1) appeal, as provided by this subchapter;

(2) representation by counsel on appeal; and

(3) appointment of an attorney for the appeal if an attorney cannot be obtained because of indigency.

(n) A child who enters a plea or agrees to a stipulation of evidence in a proceeding held under this title may not appeal an order of the juvenile court entered under Section 54.03, 54.04, or 54.05 if the court makes a disposition in accordance with the agreement between the state and the child regarding the disposition of the case, unless:

(1) the court gives the child permission to appeal; or

(2) the appeal is based on a matter raised by written motion filed before the proceeding in which the child entered the plea or agreed to the stipulation of evidence.

Commentary by Robert Dawson

Source: HB 3517; HB 251

Effective Date: September 1, 1999

Applicability: Conduct occurring on or after effective date

Summary of Changes: The amendment in subsection (c)(1)(D) was made by HB 3517 to restrict the right to appeal to those Chapter 55 cases in which the juvenile court chose to conduct commitment proceedings. If the juvenile court referred such proceedings to the county court, then appeal rights and procedures are specified in the Health and Safety Code § 574.070 (mental illness commitments) and § 593.056 (mental retardation commitments).

HB 251 added subsections (d) and (n). Subsection (n) both restricts and expands a child's right to appeal when the case was disposed of on a plea bargain. It is restricted in that it requires the consent of the juvenile court to appeal any issue but denial of a pretrial motion but it is expanded in that it permits an appeal of denial of written pretrial motions (such a motion to suppress or exceptions to the petition), which some courts of appeal had held were waived under prior law. This is the same rule as in criminal cases but with one exception: unlike in criminal cases it is not required in juvenile cases that the notice of appeal must state that the appeal is taken under authority of this provision. Compare TRAP 25.2.

Chapter 58
Records; Juvenile Justice Information System

§ 58.001. Collection of Records of Children

(c) A law enforcement agency shall [~~may~~] forward information, including [~~photographs and~~] fingerprints, relating to a child who has been [~~detained or~~] taken into custody under Section 52.01 by the

agency to the Department of Public Safety for inclusion in the juvenile justice information system created under Subchapter B, but 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 under Section 52.01. 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 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 the date the child successfully completes a first offender program under Section 52.031, the law enforcement agency shall destroy all information, including photographs and fingerprints, relating to the child.

Commentary by Neil Nichols

Source: HB 3517

Effective Date: September 1, 1999

Applicability: Dissemination or inspection of information on or after the effective date without regard to whether the information was compiled before, on, or after that date.

Summary of Changes: The changes made in this section help ensure uniform collection of law enforcement information for the Department of Public Safety's juvenile justice information system. Since the reporting requirements under the juvenile justice information system (§ 58.110) are mandatory, the collection of juvenile justice information under this section is made mandatory. Since the juvenile justice information system is fingerprint-based, and DPS does not have the means of filing and accessing photographs, the requirement for forwarding photographs to DPS is deleted. The deletion of the term "detained" is intended to correct some confusion that the term might relate to law enforcement "field detentions" of youth for questioning. That interpretation meant that forwarding information collected under this section to DPS would be prohibited if a child is not referred to the juvenile court within 10 days of such a contact. The amendment clarifies that the 10-day period begins to run from the time the child is actually taken into custody -- the equivalent of arrest.

§ 58.002. Photographs and Fingerprints of Children.

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

Commentary by Neil Nichols

Source: HB 3517

Effective Date: September 1, 1999

Applicability: Conduct occurring on or after effective date

Summary of Changes: The added language is intended to correct some confusion that a child may not be fingerprinted and photographed if the child is referred to the juvenile court without being taken into custody. That interpretation conflicts with the requirement of § 58.104 that children referred for delinquent conduct be fingerprinted for the juvenile justice information system.

§ 58.003. Sealing of Records.

(g) On entry of the order:

(1) all law enforcement, prosecuting attorney, clerk of court, and juvenile court records ordered sealed shall be sent before the 61st day after the date the order is received to the court issuing the order;

(2) all records of a public or private agency or institution ordered sealed shall be sent before the 61st day after the date the order is received to the court issuing the order;

(3) all index references to the records ordered sealed shall be deleted before the 61st day after the date the order is received, and verification of the deletion shall be sent before the 61st day after the date of the deletion to the court issuing the order;

(4) the juvenile court, clerk of court, prosecuting attorney, public or private agency or institution, and law enforcement officers and agencies shall properly reply that no record exists with respect to the person on inquiry in any matter; and

(5) the adjudication shall be vacated and the proceeding dismissed and treated for all purposes other than a subsequent capital prosecution, including the purpose of showing a prior finding of delinquent conduct, as if it had never occurred.

(o) An agency or official named in the order that cannot seal the records because there is incorrect or insufficient information in the order shall notify the court issuing the order before the 61st day after the date the agency or official receives the order.

The court shall notify the person who made the application or who is the subject of the records named in the motion, or the attorney for that person, before the 61st day after the date the court receives the notice that the agency or official cannot seal the records because there is incorrect or insufficient information in the order.

Commentary by Neil Nichols

Source: SB 422

Effective Date: September 1, 1999

Applicability: Sealing order entered on or after effective date.

Summary of Changes: Three important changes are made in the procedures for sealing juvenile records. First, a 61-day time limit is imposed for responding to sealing orders. Second, some verification that index references have been deleted is required to be sent to the court along with the records that are ordered sealed. Third, within the 61-day time limit, the court must be notified if the official or agency named in the order is unable to seal the records because of incorrect or insufficient information. The court has 61 days from receipt of the notice then to notify the applicant of the problem.

§ 58.0051. INTERAGENCY SHARING OF RECORDS.

(a) Within each county, a district school superintendent and the juvenile probation department may enter into a written interagency agreement to share information about juvenile offenders. The agreement must specify the conditions under which summary criminal history information is to be made available to appropriate school personnel and the conditions under which school records are to be made available to appropriate juvenile justice agencies.

(b) Information disclosed under this section by a school district must relate to the juvenile system's ability to serve, before adjudication, the student whose records are being released.

(c) A juvenile justice agency official who receives educational information under this section shall certify in writing that the institution or individual receiving the personally identifiable information has agreed not to disclose it to a third party, other than another juvenile justice agency.

(d) A juvenile justice agency that receives educational information under this section shall destroy all information when the child is no longer under the jurisdiction of a juvenile court.

Commentary by Lisa Capers

Source: HB 1749

Effective Date: Upon signing

Applicability: None stated

Summary of Changes: This statute creates new section 58.0051 in the Family Code and codifies the juvenile justice system exception to the federal law governing student records. All public elementary and secondary schools are subject to the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. Section 1232g), a federal law that governs the disclosure of information from educational records. FERPA details under what circumstances and what information from a student's record may be shared with local community entities including juvenile justice professionals. Recent increases in violent offenses committed by juveniles and the rash of violence on school campuses has further contributed to the need for school officials and juvenile justice officials to exchange information to better serve and protect students. FERPA allows schools to play a vital role in a community's efforts to identify children who are at risk of delinquency and provide services prior to a child's becoming involved with the juvenile justice system. A 1994 amendment to FERPA permits educators to share information with juvenile justice officials on children who are at risk of involvement or have become involved in the juvenile justice system, prior to adjudication, to the extent State statute allows.

The juvenile justice system exception allows the disclosure of educational records, or information from educational records, without consent of the parent or eligible student if certain conditions are met. These conditions are set out in subsections (a)-(d).

Information sharing under this statute is two-way between the juvenile probation department and the local school district. Although this section does not require the juvenile court or juvenile board to approve the interagency information sharing agreement, it is strongly suggested that the juvenile board approve any policy of the probation department.

§ 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 the storage of information, by electronic means or otherwise, concerning the child from which a physical record or file could be generated 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.

(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:

(1) required or authorized to be maintained under the laws regulating the operation of motor vehicles in this state;

(2) [~~or to a record or file relating to a child that is~~] maintained by a municipal or justice court; or

(3) subject to disclosure under Chapter 62, Code of Criminal Procedure, as added by Chapter 668, Acts of the 75th Legislature, Regular Session, 1997.

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records; [~~and~~]

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

(h) The juvenile court may disseminate to the public the following information relating to a child who is the subject of a directive to apprehend or a warrant of arrest and who cannot be located for the purpose of apprehension:

(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) a description of the conduct the child is alleged to have committed, including the level and degree of the alleged offense.

Commentary by Neil Nichols

Source: HB 3517; HB 1583; HB 2145.

Effective Date: HB 3517: September 1, 1999; HB 1583: June 19, 1999; HB 2145: September 1, 1999.

Applicability: HB 3517: Dissemination or inspection of information on or after the effective date without regard to whether the information was compiled before, on, or after that date; HB 1583: None stated; HB 2145 applies only to records and files created or maintained under Chapter 62, Code of Criminal Procedure on or after September 1, 1995.

Summary of Changes: HB 1583 amends subsections (a) and (c). HB 2145 adds the second set of changes to subsection (a) and HB 3517 adds subsection (h).

The amendments to subsections (a) and (c) update provisions related to the separate storage of juvenile and adult records, recognizing that most of these records are now stored electronically and used to generate the tangible files and records. The amendments clarify that this section does apply to electronically stored information and require that when adult and juvenile records are maintained electronically in the same computer system that the juvenile information be accessible under controls that are separate and distinct from controls to access adult information.

The amendment to the second listed subsection (a) provides that this section does not apply to information that is provided in compliance with the requirements of the sex offender registration program (CCP, Chapter 62). The new subsection (h) authorizes the juvenile court to release the listed information to the public for the purpose of apprehending a child who cannot be located and who is the subject of a directive to apprehend or a warrant of arrest.

§ 58.106. Confidentiality.

(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 or from another secure detention or correctional facility:

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

(2) the juvenile's [~~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) a description of the conduct for which the juvenile [~~offender~~] was committed to the Texas Youth Commission or detained in the secure detention or correctional facility, including the level and degree of the alleged offense.

(d) The department may, if necessary to protect the welfare of the community, disseminate to the public the information listed under Subsection (c) relating to a juvenile offender when notified by a law enforcement agency of this state that the law

enforcement agency has been issued a directive to apprehend the offender or an arrest warrant for the offender or that the law enforcement agency is otherwise authorized to arrest the offender and that the offender is suspected of having:

(1) committed a felony offense under the following provisions of the Penal Code:

(A) Title 5;

(B) Section 29.02; or

(C) Section 29.03; and

(2) fled from arrest or apprehension for commission of the offense.

Commentary by Neil Nichols

Source: HB 3517; SB 187.

Effective Date: September 1, 1999

Applicability: HB 3517: Dissemination or inspection of information on or after the effective date without regard to whether the information was compiled before, on, or after that date; SB 187: conduct occurring on or after effective date.

Summary of Changes: The amendments to subsection (c) were made by HB 3517 to authorize the Department of Public Safety, when it is warranted, to release the listed information to the public about escapees from any secure detention or correctional facility, not just from TYC facilities. Since some escapees from secure detention facilities may not yet be adjudicated as "offenders", that term was deleted. The new subsection (d) added by SB 187 authorizes the Department of Public Safety, when it is warranted, to release the same information to the public about youth who have fled apprehension for commission of felony-level offenses against persons, robbery or aggravated robbery.

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)(5) [~~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)(5) [~~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) for a misdemeanor involving the use or possession of a firearm or for a state jail felony or a felony of the third degree, the sanction level is three;

(4) for a felony of the second degree, the sanction level is four;

(5) for a felony of the first degree, other than a felony involving the use of a deadly weapon or causing serious bodily injury, the sanction level is five;

(6) for a felony of the first degree involving the use of a deadly weapon or causing serious bodily injury, for an aggravated controlled substance felony, or for a capital felony, the sanction level is six; or

(7) 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, 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.

Commentary by Neil Nichols

Source: HB 3517

Effective Date: September 1, 1999

Applicability: Conduct occurring on or after effective date

Summary of Changes: This is a technical correction to correspond with the intent of SB 133 from the last legislative session that a violation of a school rule that has resulted in a child's expulsion from school be sanctioned at level two. The referenced section was renumbered by another bill that session.

§ 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 probation~~] for not less than three months or more than six months;

(2) require the child to make restitution to the victim of the child's conduct or perform community service restitution appropriate to the nature and degree of harm caused and according to the child's ability;

(3) require the child's parents or guardians to identify restrictions the parents or guardians will impose on the child's activities and requirements the parents or guardians will set for the child's behavior;

(4) provide the information required under Sections 59.004(a)(2) and (4);

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

(6) refer the child to a community-based citizen intervention program approved by the juvenile court; and

(7) if appropriate, impose additional conditions of probation.

Commentary by Neil Nichols

Source: HB 3517

Effective Date: September 1, 1999

Applicability: Conduct occurring on or after effective date

Summary of Changes: This change is a technical correction. Section 53.03 relates to deferred prosecution only. Court-ordered probation is the sanction at level three.

§ 59.014. Appeal.

A child may not bring an appeal or a postconviction writ of habeas corpus based on:

(1) the [~~The~~] failure or inability of any person to provide a service listed under Sections 59.004-59.010;

(2) [~~or~~] the failure of a court or of any person to make a sanction level assignment as provided in Section 59.002 or 59.003;

(3) a deviation from the sanction level assignment guidelines provided by this chapter; or

(4) the failure of a juvenile court or probation department to report a deviation from the guidelines as required by Section 59.003(e) [~~may not be used by a child as a ground for appeal or for a post-conviction writ of habeas corpus~~].

Commentary by Neil Nichols

Source: HB 2870; HB 3517

Effective Date: September 1, 1999

Applicability: Conduct occurring on or after effective date

Summary of Changes: The changes in the two bills are identical except that HB 2870 adds subdivision (3) as well as (4). Both bills clarify that no appeal may be based on a deviation from the Guidelines or on the failure of the court or the probation department to report the deviation. The Progressive Sanctions Guidelines are not mandatory.

Code of Criminal Procedure. Art. 4.18. CLAIM OF UNDERAGE [~~TRANSFER OF JURISDICTION FROM JUVENILE COURT~~].

(g) This article does not apply to a claim of a defect or error in a discretionary transfer proceeding in juvenile court. A defendant may appeal a defect or error only as provided by Article 44.47.

Commentary by Robert Dawson

Source: HB 3517

Effective Date: September 1, 1999

Applicability: Conduct occurring on or after effective date

Summary of Changes: The change in the caption of this article and the addition of subdivision (g) is intended to make it abundantly clear that the requirement of a trial objection in the criminal court applies only when the claim is that the criminal defendant should have received, but did not receive, a juvenile court certification hearing. The requirement has no applicability to an appeal from a criminal conviction in which errors are claimed in the juvenile court certification process.

Code of Criminal Procedure. Art. 42.09. Commencement of Sentence; Status during Appeal; Pen Packet

Sec. 8.

(c) A county that transfers a defendant to the Texas Department of Criminal Justice under this article shall also deliver to the designated officer any presentence or postsentence investigation report, revocation report, psychological or psychiatric evaluation of the defendant, including an evaluation prepared for the juvenile court before transferring the defendant to criminal court and contained in the criminal prosecutor's file, and available social or psychological background information relating to the defendant and may deliver to the designated officer any additional information upon which the judge or jury bases the punishment decision.

Commentary by Lisa Capers

Source: HB 3517

Effective Date: September 1, 1999

Applicability: Conduct occurring on or after effective date

Summary of Changes: Art. 42.09(c) of the Code of Criminal Procedure is the section that tells adult prosecutors which information about an adult offender they must send to the Texas Department of Criminal Justice (TDCJ) along with the offender. This is information that is useful to TDCJ as they classify the person and analyze their special needs or issues presented regarding the person’s supervision.

For juvenile offenders who are certified to stand trial as an adult, there is a statutory requirement for a complete psychological exam as a part of the certification procedure. This amendment was needed because TDCJ is not consistently receiving this information on certified youth who receive prison sentences. This amendment, along with a companion amendment to Section 54.02(h) of the Family Code, make clear that the juvenile prosecutor must forward any psychological or psychiatric evaluations of the juvenile done at the certification hearing to the adult criminal prosecutor. This information is valuable to the prosecutor in determining what disposition to seek and having the evaluations follow the person will also prevent the costly evaluations from being conducted more than once. Then, upon transfer to TDCJ, the adult criminal prosecutor under this amendment to Art. 42.09(c) must forward this same information received from the juvenile court to TDCJ with the offender.

Health and Safety Code § 576.025. Administration of Psychoactive Medication

(a) A person may not administer a psychoactive medication to a patient receiving voluntary or involuntary mental health services who refuses the administration unless:

(1) the patient is having a medication-related emergency;

(2) the patient is younger than 16 years of age and the patient's parent, managing conservator, or guardian consents to the administration on behalf of the patient;

(3) the refusing patient's representative authorized by law to consent on behalf of the patient has consented to the administration;

(4) the administration of the medication regardless of the patient's refusal is authorized by an order issued under Section 574.106; or

(5) the patient is receiving court-ordered mental health services authorized by an order issued under:

(A) Article 46.02 or 46.03, Code of Criminal Procedure; or

(B) Chapter 55, Family Code.

Commentary by Neil Nichols

Source: HB 3517

Effective Date: September 1, 1999

Applicability: Conduct occurring on or after effective date

Summary of Changes: This amendment extends the authority of the Texas Department of Mental Health and Mental Retardation to administer psychoactive medication involuntarily to children who are receiving court-ordered mental health services authorized by an order issued under Chapter 55. Current law authorizes involuntary administration of medication to children under age 16 only with the consent of the child's parent or guardian. Particularly when dealing with volatile and manipulative children with mental illness and with their parents who may harbor ill feelings for the system in general, this authority is important for the safety and stabilization of these youth.

2. Gang Legislation

Introductory Comment

As a result of the efforts of Senator Royce West's Senate Interim Committee and of his collaboration with Representative Goodman on Senate Bill 8, Texas now has legislation authorizing and regulating a state-wide database of gang membership to be maintained by the Texas Department of Public Safety.

CHAPTER 61. COMPILATION OF INFORMATION PERTAINING TO [~~A~~] CRIMINAL COMBINATIONS AND CRIMINAL STREET GANGS [~~COMBINATION~~]

Art. 61.01. Definitions.

(1) "Combination" and "criminal street gang" have [~~has~~] the meanings [~~meaning~~] assigned by Section 71.01, Penal Code.

(7) "Department" means the Department of Public Safety of the State of Texas.

(8) "Intelligence database" means a collection or compilation of data organized for search and retrieval to evaluate, analyze, disseminate, or use intelligence information relating to a criminal combination or a criminal street gang for the purpose of investigating or prosecuting criminal offenses.

(9) "Law enforcement agency" does not include the Texas Department of Criminal Justice or the Texas Youth Commission.

Commentary by Robert Dawson

Source: SB 8

Effective Date: September 1, 1999

Applicability: Criminal information collected before, on, or after the effective date.

Summary of Changes: A "criminal street gang" is defined by Penal Code § 71.01(d) as "three or more persons having a common identifying sign or symbol or an identifiable leadership who continuously or regularly associate in the commission of criminal activities." A "combination" is defined by Penal Code § 71.01(a) more broadly as "three or more persons who collaborate in carrying on criminal activities, although: (1) participants may not know each other's identity; (2) membership in the combination may change from time to time; and (3) participants may stand in a wholesaler-retailer or other arm's-length relationship in illicit distribution operations." The first refers to the Sharks, while the second attempts to describe the Mafia.

The Texas Department of Criminal Justice and the Texas Youth Commission are defined as not being law enforcement agencies because their databases on prison gangs and incarcerated youth gangs are not regulated by these provisions.

Art. 61.02. CRIMINAL COMBINATION AND CRIMINAL STREET GANG INTELLIGENCE DATABASE; SUBMISSION CRITERIA [~~INFORMATION SYSTEM~~].

(a) Subject to Subsection (b), a [~~A~~] criminal justice agency may compile criminal information into an intelligence database [~~a system~~] for the purpose of investigating or prosecuting the criminal activities of criminal combinations or criminal street gangs. The information may be compiled on paper, by computer, or in any other useful manner.

(b) A law enforcement agency may compile and maintain criminal information relating to a criminal street gang as provided by Subsection (a) in a local or regional intelligence database only if the agency compiles and maintains the information in accordance with the criminal intelligence systems operating policies established under 28 C.F.R. Section 23.1 et seq. and the submission criteria established under Subsection (c).

(c) Criminal information collected under this chapter relating to a criminal street gang must:

(1) be relevant to the identification of an organization that is reasonably suspected of involvement in criminal activity; and

(2) consist of any two of the following:

(A) a self-admission by the individual of criminal street gang membership;

(B) an identification of the individual as a criminal street gang member by a reliable informant or other individual;

(C) a corroborated identification of the individual as a criminal street gang member by an informant or other individual of unknown reliability;

(D) evidence that the individual frequents a documented area of a criminal street gang, associates with known criminal street gang members, and uses criminal street gang dress, hand signals, tattoos, or symbols; or

(E) evidence that the individual has been arrested or taken into custody with known criminal street gang members for an offense or conduct consistent with criminal street gang activity.

Commentary by Robert Dawson

Source: SB 8

Effective Date: September 1, 1999

Applicability: Criminal information collected before, on, or after the effective date.

Summary of Changes: Subsection (b) authorizes a law enforcement agency to collect gang information for a local or regional database but only if it complies with the requirements of this section. There are two independent requirements for collecting gang information. First, the information must meet the standards set by the United States Department of Justice in 28 C.F.R. Section 23.1 et seq. This is necessary because many of the databases are established and maintained with substantial federal financial assistance and adherence to those standards is required for eligibility to receive federal assistance. Those criteria currently require reasonable suspicion if criminal activity by the person identified as a gang member.

Second, the State of Texas has established independent submission criteria. Some of these overlap with the federal requirements but others go further. Subsection (c)(1) requires that all gang information collected must relate to an organization—criminal combination or criminal street gang—that is "reasonably suspected of involvement in criminal activity." The group must meet the statutory definition of a combination or gang.

Subsection (c)(2) sets out requirements for determining whether a particular person is a member of such a group. Two of the five requirements must be satisfied in order to have some assurance of reliability. Although in the past, self-admission has been the major indication and has been accepted without corroboration as sufficient, that will not be true with respect to information collected on or after September 1, 2000. Self-admission will have to be corroborated because of false claims of gang membership by young persons who would like to be thought of as a gang member and who do not realize the implications of such an admission.

The other four criteria all relate to circumstances that reasonably indicate gang membership. Under (B), an identification of a person as a gang member by an informant or other person who is reliable, for example by having previously given reliable information, can count as one of the two indicia. Under (C) an identification by an unproven informant or individual can count but only if corroborated by other information. Obviously, one cannot use the same information to corroborate under (C) and also to count as the second indicia because that would totally eliminate the corroboration requirement under (C) for untested informants. Under (D), three circumstantial indicia of gang membership are specified that in combination count as one of the two requirements. Finally, under (D) being arrested in the company of gang members for conduct typical of criminal street gang activity can count as one of the two required indicia.

Art. 61.03. Release of Information.

(c) If a [~~A~~] local law enforcement [~~criminal justice~~] agency compiles and maintains information under this chapter relating to a criminal street gang, the agency shall [~~may not~~] send the information [~~collected under this chapter~~] to the department [~~a statewide database~~].

(d) The department shall establish an intelligence database and shall maintain information received from an agency under Subsection (c) in the database in accordance with the policies established under 28 C.F.R. Section 23.1 et seq. and the submission criteria under Article 61.02(c) [~~A local criminal justice agency may send information collected under this chapter to a regional database~~].

(e) The department shall designate a code to distinguish criminal information contained in the intelligence database relating to a child from criminal information contained in the database relating to an adult offender.

Commentary by Robert Dawson

Source: SB 8

Effective Date: September 1, 1999

Applicability: Criminal information collected before, on, or after the effective date.

Summary of Changes: Subsection (c) requires that if a law enforcement agency collects gang information it must send that information to the DPS. Only if that mandate is observed can the state-wide database established and maintained by DPS be sufficiently comprehensive to be useful to criminal justice agencies. Subsection (b) requires the DPS to maintain its database on the same submission criteria required for information to be placed in a local or regional database.

The requirement of a code to identify information relating to a child (under 17 years old) exists because different exit criteria are used depending upon whether the person was an adult or a child at the time the information was placed in the system.

Art. 61.04. Criminal Information Relating to Child

(a) Notwithstanding Chapter 58, Family Code, criminal information relating to a child associated with a combination or a criminal street gang may be compiled and released under this chapter regardless of the age of the child.

(d) If a local law enforcement agency collects criminal information under this chapter relating to a criminal street gang, the governing body of the county or municipality served by the law enforcement agency may adopt a policy to notify the parent or guardian of a child of the agency's observations relating to the child's association with a criminal street gang.

Commentary by Robert Dawson

Source: SB 8

Effective Date: September 1, 1999

Applicability: Criminal information collected before, on, or after the effective date.

Summary of Changes: Subsection (d) applies only to information collected about children. It authorizes the local political authority to require notification of parents or guardians about law enforcement information concerning the involvement of their sons and daughters in gang activities. This is a local option system.

Art. 61.06. REMOVAL [~~DESTRUCTION~~] OF RECORDS RELATING TO AN INDIVIDUAL OTHER THAN A CHILD.

(a) This article does not apply to information collected under this chapter by the Texas Department of Criminal Justice or the Texas Youth Commission.

(b) Subject to [~~Except as provided by~~] Subsection (c) [~~(b)~~], information collected under this chapter relating to a criminal street gang must be removed from an intelligence database established under Article 61.02 and the intelligence database maintained by the department under Article 61.03 [~~destroyed~~] after three [~~two~~] years if:

(1) the information relates to the investigation or prosecution of criminal activity engaged in by an individual other than a child; and

(2) the individual who is the subject of the information has not been arrested for [~~charged with~~] criminal activity reported to the department under Chapter 60.

(c) In determining whether information is required to be removed from an intelligence database under Subsection (b), the three-year period does not include any period during which the individual who is the subject of the information is confined in the institutional division or the state jail division of the Texas Department of Criminal Justice [~~(b) The information destruction requirements of Subsection (a) are suspended until September 1, 1999~~].

Commentary by Robert Dawson

Source: SB 8

Effective Date: September 1, 1999

Applicability: Criminal information collected before, on, or after the effective date.

Summary of Changes: This article sets out the exit procedures for information collected about a person who was an adult at the time the information was put into the system. Under (a), it does not apply to the prison gang database maintained by TDCJ or the incarcerated youth gang database maintained by the TYC. Information must be removed from local, regional and state-wide databases if the subject has not been arrested for three years. To count as an arrest, the event must have been reported to the DPS and be included in its computerized criminal history system maintained under Chapter 60. The Chapter 60 database is searchable by all law enforcement agencies and provides a convenient, certain yardstick for when information must be removed from databases. Under (c), the three year period is tolled for any time the subject is incarcerated in TDCJ.

Art. 61.07. REMOVAL OF RECORDS RELATING TO A CHILD. ***[first of two]***

(a) This article does not apply to information collected under this chapter by the Texas Department of Criminal Justice or the Texas Youth Commission.

(b) Subject to Subsection (c), information collected under this chapter relating to a criminal street gang must be removed from an intelligence database established under Article 61.02 and the intelligence database maintained by the department under Article 61.03 after two years if:

(1) the information relates to the investigation or prosecution of criminal activity engaged in by a child; and

(2) the child who is the subject of the information has not been:

(A) arrested for criminal activity reported to the department under Chapter 60; or

(B) taken into custody for delinquent conduct reported to the department under Chapter 58, Family Code.

(c) In determining whether information is required to be removed from an intelligence database under Subsection (b), the two-year period does not include any period during which the child who is the subject of the information is:

(1) committed to the Texas Youth Commission for conduct that violates a penal law of the grade of felony; or

(2) confined in the institutional division or the state jail division of the Texas Department of Criminal Justice.

Commentary by Robert Dawson

Source: SB 8

Effective Date: September 1, 1999

Applicability: Criminal information collected before, on, or after the effective date.

Summary of Changes: This article sets out the exit procedures for information collected about a person who was a child (under 17) at the time it was collected. It requires removal following a period of two years (instead of three years for an adult) without an arrest that was reported to the DPS. Such information is maintained by DPS in a searchable database of criminal history information that forms a clear source of information pertaining to when data must be removed from the database systems. Periods of confinement in TYC for a felony or in TDCJ don't count in calculating the two year period.

Art. 61.07. TEXAS VIOLENT GANG TASK FORCE. ***[second of two]***

(a) In this article, "task force" means the Texas Violent Gang Task Force.

(b) The purpose of the task force is to form a strategic partnership between state, federal, and local law enforcement agencies to better enable law enforcement and correctional agencies to take a proactive stance towards tracking gang activity and the growth and spread of gangs statewide.

(c) The task force shall focus its efforts on:

(1) developing a statewide networking system that will provide timely access to gang information;

(2) establishing communication between different law enforcement agencies, combining independent agency resources, and joining agencies together in a cooperative effort to focus on gang membership, gang activity, and gang migration trends; and

(3) forming a working group of law enforcement and correctional representatives from throughout the state to discuss specific cases and investigations involving gangs and other related gang activities.

(d) The task force may take any other actions as necessary to accomplish the purposes of this article.

(e) The Department of Public Safety shall support the task force to assist in coordinating statewide antigang initiatives.

(f) The task force shall consist of:

(1) a representative of the Department of Public Safety designated by the director of that agency;

(2) a representative of the Texas Department of Criminal Justice designated by the executive director of that agency;

(3) a representative of the Texas Youth Commission designated by the executive director of that agency;

(4) a representative of the Texas Juvenile Probation Commission designated by the executive director of that agency;

(5) a representative of the Criminal Justice Policy Council designated by the executive director of that agency;

(6) a representative of the office of the attorney general designated by the attorney general; and

(7) three local law enforcement or adult or juvenile community supervision personnel and a prosecuting attorney designated by the governor.

Commentary by Robert Dawson

Source: SB 1580

Effective Date: June 18, 1999.

Applicability: Appointments to be made to task force not later than October 1, 1999.

Summary of Changes: The gang taskforce established by this article has as its purpose developing strategies for dealing with gang activities. It is intended to coordinate the efforts of the law enforcement and other agencies that deal with gangs.

Art. 61.08. RIGHT TO REQUEST REVIEW OF CRIMINAL INFORMATION. ***[first of two]***

(a) On receipt of a written request of a person or the parent or guardian of a child that includes a showing by the person or the parent or guardian that a law enforcement agency may have collected criminal information under this chapter relating to the person or child that is inaccurate or that does not comply with the submission criteria under Article 61.02(c), the head of the agency or the designee of the agency head shall review criminal information collected by the agency under this chapter relating to the person or child to determine if:

(1) reasonable suspicion exists to believe that the information is accurate; and

(2) the information complies with the submission criteria established under Article 61.02(c).

(b) If, after conducting a review of criminal information under Subsection (a), the agency head or designee determines that:

(1) reasonable suspicion does not exist to believe that the information is accurate or the information does not comply with the submission criteria, the agency shall:

(A) destroy all records containing the information; and

(B) notify the department and the person who requested the review of the agency's determination and the destruction of the records; or

(2) reasonable suspicion does exist to believe that the information is accurate and the information complies with the submission criteria, the agency shall notify the person who requested the review of the agency's determination and that the person is entitled to seek judicial review of the agency's determination under Article 61.09.

(c) On receipt of notice under Subsection (b), the department shall immediately destroy all records containing the information that is the subject of the notice in the intelligence database maintained by the department under Article 61.03.

(d) A person who is committed to the Texas Youth Commission or confined in the institutional division or the state jail division of the Texas Department of Criminal Justice does not while committed or confined have the right to request review of criminal information under this article.

Commentary by Robert Dawson

Source: SB 8

Effective Date: September 1, 1999

Applicability: Criminal information collected before, on, or after the effective date.

Summary of Changes: This article sets out the right to require a review of information in any gang database to determine whether it should be removed. A preliminary showing is required that the information is inaccurate or was collected without complying the statutory submission criteria. Once that preliminary showing is made, the law enforcement agency must determine whether there is reasonable suspicion that the information is accurate and that it complies with statutory submission criteria.

Under (b) if the agency determines that there is not reasonable suspicion that the information is accurate or determines it does not comply with submission criteria, it is required to destroy the information and notify the DPS and the person requesting review of its actions. If the agency determines that the information is properly in its database, it must notify the person of that and inform them of their right to seek judicial review of that decision under article 61.09.

Under (c), DPS is required to destroy any information that is the subject of the notice when a law enforcement agency informs DPS that the information is inaccurate or does not comply with submission criteria.

Under (d), a person while confined in the TYC or TDCJ has no right to seek review of the correctness of information in a local, regional or state-wide gang database. TYC and TDCJ databases are excluded by article 61.01 from the restrictions of this Chapter. This provision excludes inmates and incarcerated youths from demanding review of databases maintained by law enforcement agencies or the DPS.

Art. 61.08. GANG RESOURCE SYSTEM. ***[second of two]***

(a) The office of the attorney general shall establish an electronic gang resource system to provide criminal justice agencies and juvenile justice agencies with information about criminal street gangs in the state. The system may include the following information with regard to any gang:

(1) gang name;

(2) gang identifiers, such as colors used, tattoos, and clothing preferences;

(3) criminal activities;

(4) migration trends;

(5) recruitment activities; and

(6) a local law enforcement contact.

(b) Upon request by the office of the attorney general, criminal justice agencies and juvenile justice agencies shall make a reasonable attempt to provide gang information to the office of the attorney general for the purpose of maintaining an updated, comprehensive gang resource system.

(c) The office of the attorney general shall cooperate with criminal justice agencies and juvenile justice agencies in collecting and maintaining the accuracy of the information included in the gang resource system.

(d) Information relating to the identity of a specific offender or alleged offender may not be maintained in the gang resource system.

(e) Information in the gang resource system may be used in investigating gang-related crimes but may be included in affidavits or subpoenas or used in connection with any other legal or judicial proceeding only if the information from the system is corroborated by information not provided or maintained in the system.

(f) Access to the gang resource system shall be limited to criminal justice agency personnel and juvenile justice agency personnel.

(g) Information in the gang resource system shall be accessible by:

(1) municipality or county; and

(2) gang name.

(h) The office of the attorney general may coordinate with the Texas Department of Criminal Justice to include information in the gang resource system regarding groups which have been identified by the Security Threat Group Management Office of the Texas Department of Criminal Justice.

Commentary by Robert Dawson
Source: SB 1578
Effective Date: August 30, 1999
Applicability: None stated.
Summary of Changes: This article ratifies a gang resource system that is already maintained by the Office of the Attorney General. The information in this database relates only to gangs, not to gang members, who under (d) cannot be identified in this database.

Art. 61.09. JUDICIAL REVIEW.

(a) A person who is entitled to seek judicial review of a determination made under Article 61.08(b)(2) may file a petition for review in district court in the county in which the person resides.

(b) On the filing of a petition for review under Subsection (a), the district court shall conduct an in camera review of the criminal information that is the subject of the determination to determine if:

(1) reasonable suspicion exists to believe that the information is accurate; and

(2) the information complies with the submission criteria under Article 61.02(c).

(c) If, after conducting an in camera review of criminal information under Subsection (b), the court finds that reasonable suspicion does not exist to believe that the information is accurate or that the information does not comply with the submission criteria, the court shall:

(1) order the law enforcement agency that collected the information to destroy all records containing the information; and

(2) notify the department of the court's determination and the destruction of the records.

(d) A petitioner may appeal a final judgment of a district court conducting an in camera review under this article.

(e) Information that is the subject of an in camera review under this article is confidential and may not be disclosed.

Commentary by Robert Dawson
Source: SB 8
Effective Date: September 1, 1999
Applicability: Criminal information collected before, on, or after the effective date.
Summary of Changes: This article authorizes judicial review of a decision by a law enforcement agency under article 61.08 *[first of two]* that information is correctly in the database. The petition for judicial review may be filed in the county where the petitioner resides regardless of where the database is located. The judge is required to conduct an in camera review of relevant information without revealing the information being reviewed to the petitioner or others. If the court from its in camera review determines that the information should be removed from the database it orders its destruction. If the court decides adversely to the petitioner there is a right to appeal. Information revealed to the judge for in camera review is confidential and may not be disclosed except as necessary to effectuate the purposes of this article, such as for appellate review.

SECTION 9 [not to be codified].

(a) A law enforcement agency is not required to send information to the intelligence database as required by Subsection (c), Article 61.03, Code of Criminal Procedure, as amended by this Act, until September 1, 2000.

(b) The Department of Public Safety of the State of Texas is not required to establish an intelligence database as required by Article 61.03, Code of Criminal Procedure, as amended by this Act, until September 1, 2000.

(c) Not later than September 1, 2000, each law enforcement agency that compiled and maintained criminal information under Chapter 61, Code of Criminal Procedure, shall:

(1) review the information contained in the agency's database that was compiled or maintained on or before September 1, 1999, to determine if the agency compiled the information and is maintaining the information in accordance with the criminal intelligence systems operating policies established under 28 C.F.R. Section 23.1 et seq. and the submission criteria established under Subsection (c), Article 61.02, Code of Criminal Procedure, as added by this Act; and

(2) except as provided by Subsection (d) of this section, remove all records containing any criminal information kept in the agency's database that was not collected or is not being maintained in accordance with the criminal intelligence systems operating policies established under 28 C.F.R. Section 23.1 et seq. and the submission criteria under Subsection (c), Article 61.02, Code of Criminal Procedure, as added by this Act.

(d) A law enforcement agency is not required under Subdivision (2) of Subsection (c) of this section to remove from the agency's database any crim-

inal information that consists solely of a self-admission by an individual of criminal street gang membership.

Commentary by Robert Dawson

Source: SB 8

Effective Date: September 1, 1999

Applicability: Criminal information collected before, on, or after the effective date.

Summary of Changes: The state-wide system is to begin operations on September 1, 2000. By that date, each law enforcement agency currently maintaining a local or regional database must search its database and remove any information that does not comply with the federal and Texas submission criteria. Under subsection (d), the agency may maintain under a grandfather clause records based solely on uncorroborated self-admission of gang membership. That provision excuses the agency from retroactively destroying such information. Information collected on or after September 1, 2000 based on self-admission must be collected in compliance with the requirement of a corroborated self-admission.

SECTION 10 [not to be codified].

Not later than December 1, 2000, the Department of Public Safety of the State of Texas shall report to the legislature on the implementation of the intelligence database maintained by the department under Article 61.03, Code of Criminal Procedure, as amended by this Act.

Commentary by Robert Dawson

Source: SB 8

Effective Date: September 1, 1999

Applicability: Criminal information collected before, on, or after the effective date.

Summary of Changes: The question whether to establish a state-wide database and, if so, the form it should take, was hotly debated in the legislature. This section requires DPS to submit a report to the legislature by December 1, 2000 on its implementation of the system to permit the legislature to evaluate the future of the program.

Penal Code § 22.015. COERCING, SOLICITING, OR INDUCING GANG MEMBERSHIP.

(a) In this section:

(1) "Child" means an individual younger than 17 years of age.

(2) "Criminal street gang" has the meaning assigned by Section 71.01.

(b) A person commits an offense if, with intent to coerce, induce, or solicit a child to actively participate in the activities of a criminal street gang, the person:

(1) threatens the child with imminent bodily injury; or

(2) causes bodily injury to the child.

(c) An offense under Subsection (b)(1) is a state jail felony. An offense under Subsection (b)(2) is a felony of the third degree.

Commentary by Neil Nichols

Source: HB 861

Effective Date: September 1, 1999

Applicability: None stated.

Summary of Changes: This new Penal Code provision makes it a state jail felony to threaten a child with imminent bodily injury, and a felony of the third degree to cause bodily injury to a child, in order to get the child actively involved with a gang (three or more persons who regularly associate in the commission of criminal activities).

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 with:

(1) aerosol paint;

(2) an indelible marker; or

(3) an etching or engraving device.

(d) An offense under this section is a state jail felony if:

(1) the marking is made on a school, an institution of higher education, a place of worship or human burial, a public monument, or a community center that provides medical, social, or educational programs; and

(2) 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) "Etching or engraving device" means a device that makes a delineation or impression on tangible property, regardless of the manufacturer's intended use for that device.

(3) "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.

(3) "Institution of higher education" has the meaning assigned by Section 481.134, Health and Safety Code.

(4) "School" means a private or public elementary or secondary school.

Commentary by Neil Nichols

Source: HB 152; HB 751

Effective Date: September 1, 1999

Applicability: Offenses committed on or after effective date

Summary of Changes: Changes in subsection (d) and the additions of the second subdivision (3) and subdivision (4) of subsection (e) were made by HB 152. These changes add public and private elementary and secondary schools, technical institutes, colleges, and universities to the list of properties covered by the graffiti law as a state jail felony level offense. HB 751 adds etching and engraving devices to the list of devices that might be used for marking in violation of the graffiti law.

Penal Code § 71.022. SOLICITING MEMBERSHIP IN A CRIMINAL STREET GANG.

(a) A person commits an offense if the person knowingly causes, enables, encourages, recruits, or solicits another person to become a member of a criminal street gang which, as a condition of initiation, admission, membership, or continued membership, requires the commission of any conduct which constitutes an offense punishable as a Class A misdemeanor or a felony.

(b) Except as provided by Subsection (c), an offense under this section is a felony of the third degree.

(c) A second or subsequent offense under this section is a felony of the second degree.

Commentary by Neil Nichols

Source: SB 1579

Effective Date: September 1, 1999

Applicability: None stated.

Summary of Changes: This new Penal Code provision is directed at criminal street gang members who recruit new members and condition their membership on their commission of a Class A misdemeanor or a felony. The offense is punishable as a third degree felony the first time; after that it is a second degree felony.

Family Code § 54.0461. PAYMENT OF GRAFFITI ERADICATION FEES.

(a) If a child is adjudicated as having engaged in delinquent conduct that violates Section 28.08, Penal Code, the juvenile court shall order the child, parent, or other person responsible for the child's support to pay to the court a $5 graffiti eradication fee as a cost of court.

(b) The court shall deposit fees received under this section to the credit of the county graffiti eradication fund provided for under Article 102.0171, Code of Criminal Procedure.

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

Commentary by Neil Nichols

Source: HB 1063

Effective Date: September 1, 1999

Applicability: Offenses committed on or after effective date

Summary of Changes: The county graffiti eradication fund, administered by the commissioners court, was established during the last legislative session to provide a fund for the repair of graffiti damage, graffiti prevention programs and public rewards for reporting graffiti offenders. This amendment requires payment of the $5 eradication fee for graffiti offenders in juvenile court as is currently required of graffiti offenders in criminal court. The juvenile court, however, is authorized to waive the fee when the court finds that the persons required to make the payment are unable to do so.

3. Sex Offender Legislation

CODE OF CRIMINAL PROCEDURE
CHAPTER 62
SEX OFFENDER REGISTRATION PROGRAM

Introductory Comment

There were major amendments in the sex offender registration program legislation that affect only adults. Only the amendments applicable to juveniles are included here.

Art. 62.01. Definitions.

(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 juvenile secure pre-adjudication or post-adjudication facility operated by or under a local juvenile probation department, or a county jail.

(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);

(E) a conviction for a violation of Section 20.02 (Unlawful restraint), 20.03 (Kidnapping), or 20.04 (Aggravated kidnapping), Penal Code, if the judgment in the case contains an affirmative finding under Article 42.015;

(F) the second conviction for a violation of Section 21.08 (Indecent exposure), Penal Code;

(G) [~~(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), or (E);

(H) [~~(G)~~] an adjudication of delinquent conduct:

(i) based on a violation of one of the offenses listed in Paragraph (A), (B), (C), (D), or (G) or, if the order in the hearing contains an affirmative finding that the victim or intended victim was younger than 17 years of age, one of the offenses listed in Paragraph (E); [~~(F)~~] or

(ii) for which two violations of the offense listed in Paragraph (F) [~~(E)~~] are shown;

(I) [~~(H)~~] a deferred adjudication for an offense listed in:

(i) Paragraph (A), (B), (C), (D), or (G) [~~(F)~~]; or

(ii) Paragraph (E) if the papers in the case contain an affirmative finding that the victim or intended victim was younger than 17 years of age;

(J) [~~(I)~~] a conviction under the laws of another state, federal law, 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), (E), or (G) [~~(F)~~];

(K) an adjudication of delinquent conduct under the laws of another state or federal law based on a violation of an offense containing elements that are substantially similar to the elements of an offense listed under Paragraph (A), (B), (C), (D), (E), or (G);

(L) [~~or (J)~~] the second conviction under the laws of another state, federal law, 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; or

(M) the second adjudication of delinquent conduct under the laws of another state or federal law based on a violation of 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, federal law, or the Uniform Code of Military Justice if the offense contains elements that are substantially similar to the elements of an offense listed under Paragraph (A), (B), (C), or (D).

(7) "Residence" includes a residence established in this state by a person described by Article 62.061(e).

Commentary by Robert Dawson

Source: HB 2145

Effective Date: September 1, 1999

Applicability: Under Section 27 of HB 2145, the new offenses of unlawful restraint, kidnapping and aggravated kidnapping are covered for juvenile disposition hearings that begin on or after the effective date, regardless of when the offense was committed. However, under Section 28 of HB 2145 these same offenses are applied fully retroactively to "juvenile offenders adjudicated as having engaged in delinquent conduct before, on, or after the effective date … regardless of when the conduct occurred."

Summary of Changes: The addition of secure juvenile pre and post-adjudication facilities to the definition of "penal institution" imposes on operators of such facilities under article 62.03 the obligation to notify persons being released of their sex offender registration obligations.

The addition of unlawful restraint, kidnapping and aggravated kidnapping to the list of covered offenses by subsection (5)(E) is significant because for the first time criminal offenses that may have nothing to do with sex are covered under the Sex Offender Registration Program. However, those three offenses are covered only if an affirmative finding is made under Code of Criminal Procedure art. 42.015 that the victim or intended victim of the offense was under 17 years of age at the time of the offense. There is, however, no requirement that the offense must have been committed with a sexual motive. Subsection (5)(H), as amended, makes those three offenses covered offenses for juveniles if the "order in the hearing" [presumably the disposition hearing because of a conforming amendment to Family Code § 54.04] contains the same affirmative finding. There is no requirement in the juvenile provision, unlike under article 42.015 that the judge must make the finding if the evidence would support it, so presumably a juvenile court judge, unlike a criminal court judge, has discretion not to make such a finding in the interest of justice. In addition, article 42.015 requires the affirmative finding not only for the three new offenses but also for attempt, conspiracy or solicitation to commit one of those three offenses; those preparatory offenses are not included in the provision applicable to juveniles.

The addition of (5)(K) to include sister state or federal adjudications for similar offenses in the Texas system responds to Op.Atty.Gen. No. LO 98-125 (12-22-98), which states that out-of-state juvenile adjudications were not covered by the Texas registration system. The addition of (5)(M) does the same thing for second offense indecent exposure.

The definition of "residence" added by subsection (7) refers to a provision added by article 62.061 for the registration of persons who are temporarily in Texas as students or workers. See the comment to that section.

Art. 62.011. WORKERS OR STUDENTS.

(a) A person is employed or carries on a vocation for purposes of this chapter if the person works on a full-time or part-time basis for a consecutive period exceeding 14 days or for an aggregate period exceeding 30 days in a calendar year, whether the person works for compensation or for governmental or educational benefit.

(b) A person is a student for purposes of this chapter if the person enrolls in any educational facility, including:

(1) a public or private primary or secondary school, including a high school or alternative learning center; or

(2) a public or private institution of higher education, including a college, university, community college, or technical or trade institute.

Commentary by Robert Dawson

Source: HB 2145

Effective Date: September 1, 1999

Applicability: None stated

Summary of Changes: Workers or students temporarily in Texas but who have a reportable conviction or adjudication from elsewhere are now required by article 62.061 to register in Texas if their temporary stay here meets these minimal standards. "Worker" includes unpaid interns as well as compensated employment and part-time as well as full-time employment.

Art. 62.02. Registration.

(a) A person who has a reportable conviction or adjudication or who is required to register as a condition of parole, release to mandatory supervision, or community supervision shall register or, if the person is a person for whom registration is completed under this chapter, verify registration as provided by Subsection (d), 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.

(g) If the other state has a registration requirement for sex offenders, a person who has a reportable conviction or adjudication, who resides in this state, and who is employed, carries on a vocation, or is a student in another state shall, not later than the 10th day after the date on which the person begins to work or attend school in the other state, register with the law enforcement authority that is identified by the department as the authority designated by that state to receive registration information.

Commentary by Robert Dawson
Source: HB 2145
Effective Date: September 1, 1999
Applicability: None stated.
Summary of Changes: The amendment in subsection (a) permits probation and parole authorities to require registration even if the person does not have a reportable conviction or adjudication.

New subsection (g) is the reverse of the requirement that a resident of another state who is a worker or student in Texas must register in Texas. It requires that a resident of Texas who is a worker or student elsewhere must register in the other state if it has a registration system. It is a violation of Texas law not to register in the other state; it may also be a violation of the law of the other state

Art. 62.021. OUT-OF-STATE REGISTRANTS.

(a) This article applies to a person who is required to register as a sex offender under the laws of another state with which the department has entered into a reciprocal registration agreement and who is not otherwise required to register under this chapter because:

(1) the person does not have a reportable conviction for an offense under the laws of the other state containing elements that are substantially similar to an offense requiring registration under this chapter; or

(2) the person does not have a reportable adjudication of delinquent conduct based on a violation of an offense under the laws of the other state containing elements that are substantially similar to an offense requiring registration under this chapter.

(b) A person described by Subsection (a) is required to comply with the annual verification requirements of Article 62.06 in the same manner as a person who is required to verify registration on the basis of a reportable conviction or adjudication.

(c) The expiration of the duty to register for a person described by Subsection (a) expires on the date the person's duty to register would expire in the other state had the person remained in that state.

(d) The department may negotiate and enter into a reciprocal registration agreement with any other state to prevent residents of this state and residents of the other state from frustrating the public purpose of the registration of sex offenders by moving from one state to the other.

Commentary by Robert Dawson
Source: HB 2145
Effective Date: September 1, 1999
Applicability: None stated.
Summary of Changes: This new section expands the scope of the registration to include persons who move to Texas and who are required to register under the laws of another state but who do not have a conviction or adjudication that would otherwise make them required to register under Texas law. The offenses included under this provision depend upon the scope of reciprocal registration agreements entered into between the Texas Department of Public Safety and other states.

Art. 62.03. Prerelease Notification. ***[Amended by HB 2145]***

(d) If a person who has a reportable conviction [~~for an offense~~] described by Article 62.01(5)(J) [~~62.01(5)(I)~~] or (L) [~~(J)~~] 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, the division or community supervision and corrections department shall conduct the prerelease notification and registration requirements specified in this article on the date the person is placed under the supervision of the division or community supervision and corrections department. If a person who

has a reportable adjudication of delinquent conduct described by Article 62.01(5)(K) or (M) is, as permitted by Section 60.002, Family Code, placed under the supervision of the Texas Youth Commission, a public or private vendor operating under contract with the Texas Youth Commission, a local juvenile probation department, or a juvenile secure pre-adjudication or post-adjudication facility, the commission, vendor, probation department, or facility shall conduct the prerelease notification and registration requirements specified in this article on the date the person is placed under the supervision of the commission, vendor, probation department, or facility.

(e) Not later than the eighth day after receiving a registration form under Subsection (b), (c), or (d), the local law enforcement authority shall verify the age of the victim, the age of the person subject to registration, and the basis on which the person is subject to registration under this chapter. 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 and is not a conviction or a deferred adjudication for an offense under Section 25.02, Penal Code, the authority shall immediately publish notice in English and Spanish in the newspaper of greatest paid circulation in the county in which the person subject to registration intends to reside or, if there is no newspaper of paid circulation in that county, in the newspaper of greatest general circulation in the county. 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 or the person subject to registration is 17 years of age or older and a student enrolled in a public or private secondary school, regardless of the basis on which the person is subject to registration, the authority shall immediately provide 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 in which the person subject to registration intends to reside by mail to the office of the superintendent or administrator, as appropriate. On receipt of a notice under this subsection, the superintendent shall release the information contained in the notice to appropriate school district personnel, including peace officers and security personnel, principals, nurses, and counselors.

(f) The local law enforcement authority shall include in the notice by publication in a newspaper the following information only:

(1) the person's full name, age, and gender;

(2) a brief description of the offense for which the person is subject to registration; [~~and~~]

(3) the municipality, numeric street address or physical address, if a numeric street address is not available [~~name~~], and zip code number where the person intends to reside; and

(4) either a recent photograph of the person or the Internet address of a website on which the person's photograph is accessible free of charge.

(h) Before a person who will be subject to registration under this chapter is due to be released from a penal institution in this state, an official of the penal institution shall inform the person that:

(1) if the person intends to reside in another state and to work or attend school in this state, the person must, not later than the seventh day after the date on which the person begins to work or attend school, register or verify registration with the local law enforcement authority in the municipality or county in which the person intends to work or attend school; and

(2) if the person intends to reside in this state and to work or attend school in another state and if the other state has a registration requirement for sex offenders, the person must, not later than the 10th day after the date on which the person begins to work or attend school in the other state, register with the law enforcement authority that is identified by the department as the authority designated by that state to receive registration information.

Commentary by Robert Dawson

Source: HB 2145

Effective Date: September 1, 1999

Applicability: Amendment in subsection (d) applies to a juvenile adjudicated delinquent regardless of when the adjudication or the conduct occurred.

Summary of Changes: The amendment in subsection (d) applies to juveniles who have committed offenses in other states that are similar to offenses covered by Texas law. It places on Texas authorities—TYC, private vendor, probation department, or secure local facility—as appropriate, the obligations to notify the juvenile of registration requirements.

Subsection (e) requires the local law enforcement authority when verifying registration to verify the age of the registrant as well as the victim. Notice to schools is expanded to include a registrant who is 17 or older and a student in a public or private secondary school. Previously, school notification was limited to cases in which the victim was under the age of 17. The final amendment in subsection (e) requires the school superintendent receiving notification to distribute the information to "appropriate school district personnel."

The amendments in (f) deals with the contents of public newspaper notice. Newspaper notice is required for adults but not for juveniles. This amendment requires that the newspaper notice include full name, street or physical address, and recent photograph of the offender or an internet address where such a photo is available.

Subsection (h) implements the worker and student registration provisions of article 62.061 to require prerelease notification of the obligation to register as a worker or student in Texas if residing elsewhere but working or attending school here. Release notification is also required regarding the obligation under Texas law to register as a worker or student in another state if the person is residing in Texas but working or attending school elsewhere.

Art. 62.03. Prerelease Notification. ***[Amended by SB 1650]***

(a) Before a person who will be subject to registration under this chapter is due to be released from a penal institution, the risk assessment review committee established under Article 62.035 shall determine the person's level of risk to the community using the sex offender screening tool developed or selected under that article, assign to the person a numeric risk level of one or two, and immediately send a written notice of the risk level to the penal institution from which the person is due to be released. On receiving notice under this subsection, an official of the penal institution shall:

(1) through (4) unchanged.

(b) On the seventh day before the date on which a person who will be subject to registration under this chapter 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 is due to be released in less than seven days, an official of the penal institution shall send the person's completed registration form and numeric risk level to the department and to:

(1) the applicable local law enforcement authority in the municipality or county in which the person expects to reside, if the person expects to reside in this state; or

(2) the law enforcement agency that is identified by the department as the agency designated by another state to receive registration information, if the person expects to reside in that other state and that other state has a registration requirement for sex offenders.

(c) If a person who is subject to registration under this chapter 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 make a determination of the person's numeric risk level using the sex offender screening tool developed or selected under Article 62.035, assign to the person a numeric risk level of one or two, and ensure that the prerelease notification and registration requirements specified in this article 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 obtain the person's numeric risk level from the court and conduct the prerelease notification and registration requirements specified in this article. In any other case in which the court pronounces a sentence under this subsection, the court shall designate another appropriate individual to obtain the person's numeric risk level from the court and conduct the prerelease notification and registration requirements specified in this article.

(e) Not later than the eighth day after receiving a registration form under Subsection (b), (c), or (d), 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, and the person's numeric risk level. 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 and is not a conviction or a deferred adjudication for an offense under Section 25.02, Penal Code, the authority shall immediately publish notice in English and Spanish in the newspaper of greatest paid circulation in the county in which the person subject to registration intends to reside or, if there is no newspaper of paid circulation in that county, in the newspaper of greatest general circulation in the county. 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 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 office of the superintendent or administrator, as appropriate.

(f) The local law enforcement authority shall include in the notice by publication in a newspaper the following information only:

(1) the person's age and gender;

(2) a brief description of the offense for which the person is subject to registration; [~~and~~]

(3) the municipality, street name, and zip code number where the person intends to reside; and

(4) the person's numeric risk level assigned under this chapter and the guidelines used to determine a person's risk level generally.

Commentary by Robert Dawson

Source: SB 1650

Effective Date: August 30, 1999

Applicability: Applies to persons released from a penal institution or placed on juvenile probation on or after January 1, 2000.

Summary of Changes: Under subsection (a) as amended by SB 1650, a person subject to registration must be assigned a numeric risk level of one or two prior to release from a penal institution based upon an assessment tool adopted by the risk assessment review committee set up under article 62.035. As applied to juveniles, "penal institution" now includes secure local facilities as well as the TYC.

The amendment in subsection (b) requires that the penal institution accompany the registration information with the numeric risk level when it notifies the DPS and the appropriate law enforcement authority of the release of a registered offender.

The amendment in subsection (c) requires the court that places a juvenile on probation to obtain a numeric risk level, which must be one or two, and to include it with the registration information to be sent to the DPS and the appropriate law enforcement authority.

Subsection (e) as amended requires the local law enforcement authority to verify the registrant's numeric risk level as part of the registration verification process.

Subsection (f) as amended requires that the public newspaper notice include the person's numeric risk level and a description of the guidelines used to determine risk level. HB 2145 also amended subsection (f) to require the person's name, street address, and photograph in the newspaper notification. Since there is no inconsistency between the amendments in (f) made by these two bills, both sets of amendments are valid.

Art. 62.035. RISK ASSESSMENT REVIEW COMMITTEE; SEX OFFENDER SCREENING TOOL.

(a) The Texas Department of Criminal Justice shall establish a risk assessment review committee composed of at least five members, each of whom is a state employee whose service on the review committee is in addition to the employee's regular duties. The review committee, to the extent feasible, should include at least:

(1) one member having experience in law enforcement;

(2) one member having experience working with juvenile sex offenders;

(3) one member having experience as a sex offender treatment provider; and

(4) one member having experience working with victims of sex offenses.

(b) The risk assessment review committee shall develop or select from among existing tools a sex offender screening tool to be used in determining the level of risk of a person subject to registration under this chapter. The sex offender screening tool must use an objective point system under which a person is assigned a designated number of points for each of various factors, such as the nature of the offense for which the person is subject to registration, the age of the victim, and the number of occasions on which the person has been convicted of or adjudicated for an offense for which a person is subject to registration under this chapter. In developing or selecting the sex offender screening tool, the risk assessment review committee shall use or shall select a screening tool that may be adapted to use the following general guidelines:

(1) level one:

(A) a designated number of points or higher on the sex offender screening tool; and

(B) a basis for concern that the person poses a serious danger to the community or will continue to engage in criminal sexual conduct;

(2) level two, either, but not both, of the following:

(A) a designated number of points or higher on the sex offender screening tool; or

(B) a basis for concern that the person poses a serious danger to the community or will continue to engage in criminal sexual conduct; and

(3) level three: no basis for concern that the person poses a serious danger to the community or will continue to engage in criminal sexual conduct.

(c) The risk assessment review committee may assign to a person a numeric risk level of three only on receipt of notice under Article 62.04 that the person intends to move to a new residence in this state and only if:

(1) the person was originally assigned a numeric risk level of two under Article 62.03;

(2) the committee considers any information available to the committee that was used by the committee or by the court at the time of assigning to the person a numeric risk level of two; and

(3) the basis on which the person is subject to registration is a conviction of or a grant of deferred adjudication for an offense under Section

21.11 or Section 22.011(a)(2), Penal Code, or an adjudication of delinquent conduct based on a violation of one of those offenses, committed against a victim who is of the opposite sex of the person and is not more than five years younger than the person.

Commentary by Robert Dawson

Source: SB 1650

Effective Date: August 30, 1999

Applicability: TDCJ is required to establish the review committee not later than September 1, 1999. The committee is required to develop or select the sex offender screening tool not later than December 1, 1999. Persons released from a penal institution or placed on juvenile probation on or after January 1, 2000 must be assigned a numeric risk level.

Summary of Changes: This section establishes three risk assessment levels. Level one, the highest, is for someone who scores in a range to be established by the committee AND who presents a "basis for concern that the person poses a serious danger to the community or will continue to engage in criminal sexual conduct." Level two is for someone who scores in a range specified by the committee OR who poses a basis for the same concern specified in level one. Level three is for someone who poses no basis for the concern specified in level one. All persons released from a penal institution or placed on juvenile probation or community supervision must be given a level one or two score. After being released, upon moving to a new place of residence, the person can be re-classified to level three but (1) only if the person was originally assigned to level two and (2) the person was subject to registration for the offense of indecency with a child or sexual assault on a child, but only if either was committed against a person of the opposite sex who was not more than five years younger than the offender.

Art. 62.04. Change of Address. ***[HB 2145]***

(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 parole officer supervising the person and provide the authority and the officer with the person's anticipated move date and new address. If a person required to register changes address, the person shall, not later than the seventh day after changing the address, report in person to the local law enforcement authority in the municipality or county in which the person's new residence is located and provide the authority with proof of identity and proof of 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). Not later than the eighth day after the date on which the local law enforcement authority is informed under Subsection (a) or under this subsection, the authority shall verify the age of the victim, the age of the person subject to registration, and the basis on which the person is subject to registration under this chapter. 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 and is not a conviction or a deferred adjudication for an offense under Section 25.02, Penal Code, the authority shall immediately publish notice in English and Spanish in the newspaper of greatest paid circulation in the county in which the person subject to registration intends to reside or, if there is no newspaper of paid circulation in that county, in the newspaper of greatest general circulation in the county. 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 or the person subject to registration is 17 years of age or older and a student enrolled in a public or private secondary school, regardless of the basis on which the person is subject to registration, the authority shall immediately provide 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 in which the person subject to registration intends to reside by mail to the office of the superintendent or administrator, as appropriate. On receipt of a notice under this subsection, the superintendent shall release the information contained in the notice to appropriate school district personnel, including peace officers and security personnel, principals, nurses, and counselors.

(g) The local law enforcement authority shall include in the notice by publication in a newspaper the following information only:

(1) the person's full name, age, and gender;

(2) a brief description of the offense for which the person is subject to registration; [~~and~~]

(3) the municipality, numeric street address or physical address, if a numeric street address is not available [~~name~~], and zip code number where the person intends to reside; and

(4) either a recent photograph of the person or the Internet address of a website on which the person's photograph is accessible free of charge.

Commentary by Robert Dawson
Source: HB 2145
Effective Date: September 1, 1999
Applicability: None stated.
Summary of Changes: This section deals with re-registration when the person changes places of residence. Subsection (a) requires advance notice to the local law enforcement agency and to a supervising probation, parole or community supervision officer of intent to change place of residence. The amendment to (a) requires that within 7 days of actually moving, the registrant must report to the new local law enforcement authority to prove identity and new address.

Subsection (f) requires the local law enforcement authority in the new place of residence to comply with any applicable newspaper and school notification requirements. The amendments are identical to those made in Section 62.03(e), dealing with the responsibilities of the local law enforcement authority respecting community notification upon original registration.

The change in subsection (g) in the content of the newspaper notification is the same as was made in article 62.03(f) dealing with original registration. The requirement of newspaper notification currently applies only to adults, not juveniles.

Art. 62.04. Change of Address. ***[SB 1650]***

(d) Not later than the third day after receipt of information under Subsection (a) or (b), 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 and, if the person meets the criteria described by Article 62.035(c)(3) to be reassigned a numeric risk level of three, to the risk assessment review committee established under that article. On receipt of information under this subsection, the risk assessment review committee shall determine whether the person meets the criteria to be reassigned a numeric risk level of three, assign to the person a numeric risk level of three, if the person meets that criteria, and immediately send a written notice of the person's risk level to the department and to the local law enforcement authority in the municipality or county where the person intends to reside.

(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). Not later than the eighth day after the date on which the local law enforcement authority is informed under Subsection (a) 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, and the person's numeric risk level. 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 and is not a conviction or a deferred adjudication for an offense under Section 25.02, Penal Code, and the person is not assigned a numeric risk level three, the authority shall immediately publish notice in English and Spanish in the newspaper of greatest paid circulation in the county in which the person subject to registration intends to reside or, if there is no newspaper of paid circulation in that county, in the newspaper of greatest general circulation in the county. 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 or the person's numeric risk level, the authority shall immediately provide 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 in which the person subject to registration intends to reside by mail to the office of the superintendent or administrator, as appropriate.

(g) The local law enforcement authority shall include in the notice by publication in a newspaper the following information only:

(1) the person's age and gender;

(2) a brief description of the offense for which the person is subject to registration; [~~and~~]

(3) the municipality, street name, and zip code number where the person intends to reside; and

(4) the person's numeric risk level assigned under this chapter and the guidelines used to determine a person's risk level generally.

Commentary by Robert Dawson
Source: SB 1650
Effective Date: August 30, 1999
Applicability: None stated.
Summary of Changes: These amendments in the change of address section were made by the bill creating the risk assessment system. Subsection (a) is amended to require the local law enforcement au-

thority to inform the risk assessment review committee if the person appears to meet the criteria established by article 62.035(c)(3): registered for indecency with a child or for sexual assault of a child and either offense was committed against a person of the opposite sex who is not more than five years younger than the registrant. The committee reviews the risk level and, if re-classification to level three occurs, notifies the DPS and the local law enforcement authority in the new place of residence of the re-classification.

Subsection (f) is amended to establish that the major consequence of being re-classified to level three is that the local law enforcement agency in the new place of residence does not send registration information to the local newspaper. However, if the victim is younger than 17, registration information must be sent to schools even if the person is re-classified to level three.

The amendment in subsection (g), like the amendment in article 62.03(f), requires that the newspaper notification contain the risk assessment level assigned and information about the assessment system. Although this same subsection was amended by HB 2145 there is no conflict between that amendment and this so both can be given effect.

Art. 62.045. ADDITIONAL PUBLIC NOTICE FOR CERTAIN OFFENDERS.

(a) On receipt of notice under this chapter that a person subject to registration is due to be released from a penal institution, has been placed on community supervision or juvenile probation, or intends to move to a new residence in this state, the department shall verify the person's numeric risk level assigned under this chapter. If the person is assigned a numeric risk level one, the department shall, not later than the seventh day after the date on which the person is released or the 10th day after the date on which the person moves, provide written notice mailed or delivered to at least each residential address within a one-mile radius, in an area that has not been subdivided, or a three-block area, in an area that has been subdivided, of the place where the person intends to reside. In providing written notice under this subsection, the department shall use employees of the department whose duties in providing the notice are in addition to the employees' regular duties.

(b) The department shall include in the notice any information that is public information under this chapter. The department may not include any information that is not public information under this chapter.

(c) The department shall establish procedures for a person with respect to whom notice is provided under Subsection (a), other than a person subject to registration on the basis of an adjudication of delinquent conduct, to pay to the department all costs incurred by the department in providing the notice. The person shall pay those costs in accordance with the procedures established under this subsection.

(d) On receipt of notice under this chapter that a person subject to registration under this chapter is required to register or verify registration with a local law enforcement authority and has been assigned a numeric risk level of one, the local law enforcement authority may provide notice to the public in any manner determined appropriate by the local law enforcement authority, including holding a neighborhood meeting, posting notices in the area where the person intends to reside, distributing printed notices to area residents, or establishing a specialized local website. The local law enforcement authority may include in the notice any information that is public information under this chapter.

(e) An owner of a single-family residential property or the owner's agent has no duty to make a disclosure to a prospective buyer or tenant about registrants under this chapter.

Commentary by Robert Dawson

Source: SB 1650

Effective Date: August 30, 1999

Applicability: Applies to a conviction or adjudication that occurs on or after January 1, 2000.

Summary of Changes: If a juvenile or adult offender is released from a penal institution, placed on probation or community supervision, or intends to change residence, and has been assigned a risk assessment level one, the DPS and local law enforcement authorities have notification duties and powers in addition to any newspaper and school notification requirements that may already apply.

Under subsections (a) and (b), the DPS is required to provide in written form all public information about the offender to each residence address within a one mile or three block radius of the registrant’s new address. Under subsection (c), an adult registrant can be required by an undisclosed procedure to reimbursement the DPS for the cost of the mailing.

Under subsection (d), a local law enforcement authority that receives notice that a level one person is moving into its jurisdiction is authorized, but not required, to take the following steps to provide community notice: neighborhood meetings, posting notices where the person intends to reside, distributing printed notices to area residences or establishing a specialized local website. While not specifi-

cally mentioned, sky writing would also be authorized under this subsection. Any public information may be included in these additional notices.

The definition of public information in article 62.08 was changed to include numeric street address and photograph.

Art. 62.05. Status Report by Supervising Officer.

(a) 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).

(b) If a person required to register is not supervised by an officer listed in Subsection (a), the person shall report to the local law enforcement authority any change in the person's physical health or job status not later than the seventh day after the date of the change. For purposes of this subsection, a person's job status changes if the person leaves employment for any reason, remains employed by an employer but changes the location at which the person works, or begins employment with a new employer. For purposes of this subsection, a person's health status changes if the person is hospitalized as a result of an illness.

Commentary by Robert Dawson

Source: HB 2145

Effective Date: September 1, 1999

Applicability: None stated.

Summary of Changes: Subsection (b) applies to registrants who are not on probation, parole or community supervision. It requires them to report to the appropriate local law enforcement authority any change in job or health status. Change in job status includes termination of employment, beginning of new employment or change in the location of work.

Art. 62.06. Law Enforcement Verification of Registration Information.

(a) A person subject to registration under this chapter who has for a sexually violent offense been convicted [~~on~~] two or more times, [~~occasions been convicted of or~~] received an order of deferred adjudication two or more times, or been convicted and 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 period 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 person's date of birth [~~on which the person first registered under this chapter~~] to verify the information in the registration form maintained by the authority for that person. For purposes of this subsection, a person complies with a requirement that the person register within a 90-day period following a date if the person registers at any time on or after the 83rd day following that date but before the 98th day after that date.

(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 is required to report not less than once in each 90-day period under Subsection (a) [~~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 person's date of birth, if the person is required to report once each year under Subsection (a) [~~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.

Commentary by Robert Dawson

Source: HB 2145

Effective Date: September 1, 1999

Applicability: Applies to a person who is confined in a penal institution or is on juvenile probation or parole or on adult community supervision or parole on or after the effective date.

Summary of Changes: Under subsection (a), a person who has been convicted as an adult of a sex-

ually violent offense as defined in the subsection must re-register with the appropriate local law enforcement authority every 90 days. Under the amendment to (a), the 90 day requirement is complied with by registration between the 82nd and 98th days. All other registrants, including juveniles, must re-register annually. The date of annual re-registration was changed from the anniversary of the initial registration to the anniversary of the registrant's nativity. The re-registration requirements are in addition to re-registration for change of address and are triggered only by passage of time.

Art. 62.061. REGISTRATION OF CERTAIN WORKERS OR STUDENTS.

(a) A person is subject to this article and, except as otherwise provided by this article, to the other articles of this chapter if the person:

(1) has a reportable conviction or adjudication;

(2) resides in another state; and

(3) is employed, carries on a vocation, or is a student in this state.

(b) A person described by Subsection (a) is subject to the registration and verification requirements of Articles 62.02 and 62.06 and to the change of address requirements of Article 62.04, except that the registration and verification and the reporting of a change of address are based on the municipality or county in which the person works or attends school. The person is subject to the school notification requirements of Articles 62.03 and 62.04, except that notice provided to the superintendent and any administrator is based on the public school district in which the person works or attends school.

(c) A person described by Subsection (a) is not subject to Article 62.12 and the newspaper publication requirements of Articles 62.03 and 62.04.

(d) The duty to register for a person described by Subsection (a) ends when the person no longer works or studies in this state, provides notice of that fact to the local law enforcement authority in the municipality or county in which the person works or attends school, and receives notice of verification of that fact from the authority. The authority must verify that the person no longer works or studies in this state and must provide to the person notice of that verification within a reasonable time.

(e) Notwithstanding Subsection (a), this article does not apply to a person who has a reportable conviction or adjudication, who resides in another state, and who is employed, carries on a vocation, or is a student in this state if the person establishes another residence in this state to work or attend school in this state. However, that person remains subject to the other articles of this chapter based on that person's residence in this state.

Commentary by Robert Dawson

Source: HB 2145

Effective Date: September 1, 1999

Applicability: None stated.

Summary of Changes: If the person has an adjudication or conviction from this or another state, resides in another state, but works or attends school in Texas, this section requires a special worker or student registration in the locality of employment or education. This special registration obligation terminates when the registrant no longer works or attends school in the locality, notifies the local law enforcement authority of that fact, and the authority verifies that the registrant no longer works or attends school in the locality. This special registration requirement includes neither lifetime registration under Article 62.12 nor newspaper notification under Articles 62.03 and 62.04.

Art. 62.062. REGISTRATION OF PERSONS REGULARLY VISITING LOCATION.

(a) A person subject to this chapter who on at least three occasions during any month spends more than 48 consecutive hours in a municipality or county in this state, other than the municipality or county in which the person is registered under this chapter, before the last day of that month shall report that fact to:

(1) the local law enforcement authority of the municipality in which the person is a visitor; or

(2) if the person is a visitor in a location that is not a municipality, the local law enforcement authority of the county in which the person is a visitor.

(b) A person described by Subsection (a) shall provide the local law enforcement authority with:

(1) all information the person is required to provide under Article 62.02(b);

(2) the address of any location in the municipality or county, as appropriate, at which the person was lodged during the month; and

(3) a statement as to whether the person intends to return to the municipality or county during the succeeding month.

(c) This article does not impose on a local law enforcement authority requirements of public notification or notification to schools relating to a person about whom the authority is not otherwise required by this chapter to make notifications.

Commentary by Robert Dawson

Source: HB 2145

Effective Date: September 1, 1999
Applicability: None stated.
Summary of Changes: This new article requires any registrant to visits a locality on three or more occasions within a month for at least 48 hours on each occasion to notify the local law enforcement authority of that fact along with all information required for an initial registration and the address at which the registrant was staying while in the community.

Art. 62.08. Central Database; Public Information.

(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;

(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.

Commentary by Robert Dawson
Source: HB 2145
Effective Date: September 1, 1999
Applicability: None stated.
Summary of Changes: The amendments expand the scope of registration information that is public information to include photographs and numeric street addresses. This determines what information is available to the public from local law enforcement authorities, the DPS and on the Internet.

Art. 62.10. Failure to Comply With Registration Requirements.

(b) An offense under this article is:

(1) a state jail felony if the actor is a person whose duty to register expires under Article 62.12(b);

(2) a felony of the third degree if the actor is a person whose duty to register expires under Article 62.12(a) and who is required to verify registration once each year under Article 62.06; and

(3) a felony of the second degree if the actor is a person whose duty to register expires under Article 62.12(a) and who is required to verify registration once each 90-day period under Article 62.06.

(c) If it is shown at the trial of a person for an offense under this article that the person has previously been convicted of an offense under this article, the punishment for the offense is increased to the punishment for the next highest degree of felony [~~person shall be punished for a felony of the third degree~~].

Commentary by Robert Dawson
Source: HB 2145
Effective Date: September 1, 1999
Applicability: None stated.
Summary of Changes: The penalties for noncompliance with any of the registration or reregistration requirements have been increased. The penalty is a third degree felony if the conviction is for a sexually violent offense as defined by article 62.01(6) or if the adjudication or conviction is for Prohibited Sexual Conduct (Incest), Compelling Prostitution by causing a person younger than 17 to commit prostitution, or Possession or Promotion of Child Pornography, all of which require lifetime registration. The penalty is a second degree felony if the person has as an adult been convicted or received deferred adjudication for a sexually violent offense two or more times and is therefore required to verify registration every 90 days. The penalty in all other cases is a state jail felony. A prior conviction enhances the penalty one category.

Article 62.12(c), Code of Criminal Procedure, is repealed.

Commentary by Robert Dawson
Source: HB 2145
Effective Date: September 1, 1999
Applicability: None stated
Summary of Changes: Article 62.12(c) permitted a court to excuse compliance with the requirement of lifetime registration upon a hearing and proof that the person received treatment and no longer poses a significant threat to the community.

Family Code § 54.04. Disposition Hearing.

(q) If the judge orders a disposition under this section and there is an affirmative finding that the victim or intended victim was younger than 17 years of age at the time of the conduct, the judge shall enter the finding in the order.

Commentary by Robert Dawson
Source: HB 2145
Effective Date: September 1, 1999
Applicability: None stated.
Summary of Changes: This subsection requires a juvenile court judge to enter an affirmative finding that the victim was under 17 in the disposition order.

The effect of such an entry is to make unlawful restraint, kidnapping or aggravated kidnapping a reportable adjudication. Otherwise, they are not.

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:

(1) required or authorized to be maintained under the laws regulating the operation of motor vehicles in this state;

(2) [~~or to a record or file relating to a child that is~~] maintained by a municipal or justice court; or

(3) subject to disclosure under Chapter 62, Code of Criminal Procedure, as added by Chapter 668, Acts of the 75th Legislature, Regular Session, 1997.

Commentary by Robert Dawson

Source: HB 2145

Effective Date: September 1, 1999

Applicability: Applies only to records and files created or maintained under Chapter 62 on or after September 1, 1995.

Summary of Changes: This amendment excepts from the confidentiality requirements of local juvenile records those records that are public under the sex offender registration program. It does not affect the confidentiality of duplicate information that may be possessed as part of juvenile justice system local records nor of juvenile records from which information provided for sex offender registration may have been obtained.

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 Chapter 62, Code of Criminal Procedure, as added by Chapter 668, Acts of the 75th Legislature, Regular Session, 1997, including, to the extent available, a recent photograph of each person subject to registration under that chapter [~~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 or a grant of deferred adjudication to a person for any criminal offense, including arrest information that relates to the conviction or grant of deferred adjudication[~~; or~~

[~~(B) a grant of deferred adjudication to a person charged with a felony offense~~]. **[DPS required to implement new requirements by January 1, 2000.]**

Commentary by Robert Dawson

Source: HB 2145

Effective Date: September 1, 1999

Applicability: DPS required to implement requirements of amendments not later than January 1, 2000.

Summary of Changes: The amendment in (a)(1) adds a recent photograph to the list of information available to the public. Presumably, this means that photographs will now be part of the registration information distributed on the Internet by the DPS and private commercial providers.

The amendment in (a)(2) adds misdemeanor deferred adjudication information to the list of criminal history (arrest and conviction) information available to the public. Previously, only misdemeanor convictions and felony convictions or deferred adjudications were publicly available. This makes no change in the rule that juvenile history records are not publicly available. If the offense is subject to public disclosure because it is an adult conviction or deferred adjudication, then the information that may be disclosed includes arrest information maintained by law enforcement agencies, not just information from court records. Currently, DPS and private commercial sites provide public criminal history information to the public for a fee over the Internet.

Penal Code § 15.031. Criminal Solicitation of a Minor.

(a) A person commits an offense if, with intent that an offense listed by Section 3g(a)(1), Article 42.12, Code of Criminal Procedure, be committed, the person requests, commands, or attempts to induce a minor to engage in specific conduct that, under the circumstances surrounding the actor's conduct as the actor believes them to be, would constitute an offense listed by Section 3g(a)(1), Article 42.12, or make the minor a party to the commission of an offense listed by Section 3g(a)(1), Article 42.12.

(b) A person commits an offense if, with intent that an offense under Section 21.11, 22.011, 22.021, or 43.25 be committed, the person by any means requests, commands, or attempts to induce a minor or another whom the person believes to be a minor to engage in specific conduct that, under the circumstances surrounding the actor's conduct as the actor

believes them to be, would constitute an offense under one of those sections or would make the minor or other believed by the person to be a minor a party to the commission of an offense under one of those sections.

(c) through (e) unchanged except for re-lettering.

Commentary by Robert Dawson
Source: HB 2145
Effective Date: September 1, 1999
Applicability: None stated.
Summary of Changes: The addition of subsection (b) adds solicitation of a person under 17 to commit indecency with a child, sexual assault, aggravated sexual assault or sexual performance by a child to the category of Criminal Solicitation of a Minor. This offense is covered by the determinate sentence act under Family Code § 53.045.

Penal Code § 43.25. Sexual Performance by a Child

(2) "Sexual conduct" means actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, sado-masochistic abuse, or lewd exhibition of the genitals, the anus, or any portion of the female breast below the top of the areola.

Commentary by Robert Dawson
Source: HB 2145
Effective Date: September 1, 1999
Applicability: None stated.
Summary of Changes: This amendment expands the areas of the human body that may not be lewdly exhibited under this section.

Penal Code § 43.26. Possession or Promotion of Child Pornography

(g) An offense under Subsection (e) is a felony of the second [~~third~~] degree.

Commentary by Robert Dawson
Source: HB 2145
Effective Date: September 1, 1999
Applicability: None stated.
Summary of Changes: Two to twenty instead of only two to ten.

Penal Code § 21.11. Indecency With a Child

(b) It is an affirmative defense to prosecution under this section that the actor:

(1) was not more than three years older than the victim and of the opposite sex; [~~and~~]

(2) did not use duress, force, or a threat against the victim at the time of the offense; and

(3) at the time of the offense:

(A) was not required under Chapter 62, Code of Criminal Procedure, as added by Chapter 668, Acts of the 75th Legislature, Regular Session, 1997, to register for life as a sex offender; or

(B) was not a person who under Chapter 62 had a reportable conviction or adjudication for an offense under this section.

Commentary by Robert Dawson
Source: HB 2145
Effective Date: September 1, 1999
Applicability: None stated.
Summary of Changes: This amendment narrows the scope of the affirmative defense to exclude persons who are required to register as sex offenders for life or who have a prior reportable conviction or adjudication for indecency with a child.

Penal Code § 22.011. Sexual Assault

(e) It is an affirmative defense to prosecution under Subsection (a)(2) that:

(1) the actor was not more than three years older than the victim and at the time of the offense:

(A) was not required under Chapter 62, Code of Criminal Procedure, as added by Chapter 668, Acts of the 75th Legislature, Regular Session, 1997, to register for life as a sex offender; or

(B) was not a person who under Chapter 62 had a reportable conviction or adjudication for an offense under this section; and

(2) [~~, and~~] the victim was a child of 14 years of age or older.

Commentary by Robert Dawson
Source: HB 2145
Effective Date: September 1, 1999
Applicability: None stated.
Summary of Changes: This amendment narrows the scope of the affirmative defense to exclude persons who are required to register as sex offenders for life or who have a prior reportable conviction or adjudication for sexual assault.

CODE OF CRIMINAL PROCEDURE

Art. 42.016. SPECIAL DRIVER'S LICENSE OR IDENTIFICATION REQUIREMENTS FOR CERTAIN SEX OFFENDERS.

If a person is convicted of, receives a grant of deferred adjudication for, or is adjudicated as having engaged in delinquent conduct based on a violation of an offense for which a conviction or adjudication requires registration as a sex offender under Chapter 62, as added by Chapter 668, Acts of the 75th Legislature, Regular Session, 1997, the court shall:

(1) issue an order requiring the Texas Department of Public Safety to include in any driver's license record or personal identification certificate record maintained by the department for the person an indication that the person is subject to the registration requirements of Chapter 62, as added by Chapter 668, Acts of the 75th Legislature, Regular Session, 1997;

(2) require the person to apply to the Texas Department of Public Safety in person for an original or renewal driver's license or personal identification certificate not later than the 30th day after the date the person is released or the date the department sends written notice to the person of the requirements of Article 62.065, as applicable, and to annually renew the license or certificate;

(3) notify the person of the consequence of the conviction or order of deferred adjudication as it relates to the order issued under this article; and

(4) send to the Texas Department of Public Safety a copy of the record of conviction, a copy of the order granting deferred adjudication, or a copy of the juvenile adjudication, as applicable, and a copy of the order issued under this article.

Commentary by Robert Dawson

Source: HB 1939

Effective Date: September 1, 2000

Applicability: Person confined or under supervision for covered offense on or after effective date.

Summary of Changes: This article requires a person who must register as a sex offender to apply to DPS for a driver's license or a personal identification card within 30 days of being released from a penal institution or being placed on probation or community supervision. A court placing a person on probation for a reportable conviction or adjudication is required to notify the person of his or her obligation to apply to the DPS for a license or identification card.

Art. 62.03. Prerelease Notification.

(a) Before a person who will be subject to registration under this chapter 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 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 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 parole officer supervising the person; [~~and~~]

(C) not later than the 10th day after the date on which the person arrives in another state in which the person intends to reside, the person must register with the law enforcement agency that is identified by the department as the agency designated by that state to receive registration information, if the other state has a registration requirement for sex offenders; and

(D) not later than the 30th day after the date on which the person is released, the person must apply to the department in person for the issuance of an original or renewal driver's license or personal identification certificate and a failure to apply to the department as required by this paragraph results in the automatic revocation of any driver's license or personal identification certificate issued by the department to the person;

(2) require the person to sign a written statement that the person was informed of the person's duties as described by Subdivision (1) or, if the person refuses to sign the statement, certify that the person was so informed;

(3) obtain the address where the person expects to reside on the person's release and other registration information, including a photograph and complete set of fingerprints; and

(4) complete the registration form for the person.

Commentary by Robert Dawson
Source: HB 1939
Effective Date: September 1, 2000
Applicability: Person confined or under supervision for covered offense on or after effective date.
Summary of Changes: If the person does not apply within 30 days of release from a penal institution or being placed on probation or community supervision to DPS for a driver's license or personal identification certificate, his or her license or identification card is automatically revoked.

Art. 62.065. REQUIREMENTS RELATING TO DRIVER'S LICENSE OR PERSONAL IDENTIFICATION CERTIFICATE.

(a) A person subject to registration under this chapter shall apply to the department in person for the issuance of an original or renewal driver's license under Section 521.272, Transportation Code, or for a personal identification certificate under Section 521.103, Transportation Code, not later than the 30th day after the date:

(1) the person is released from a penal institution or is released by a court on juvenile probation or community supervision; or

(2) the department sends written notice to the person of the requirements of this article.

(b) The person shall annually renew in person each driver's license or personal identification certificate issued by the department to the person, including each renewal, duplicate, or corrected license or certificate, until the person's duty to register under this chapter expires.

(c) The department shall determine from its records which persons required to register under this chapter are under the supervision and control of a juvenile probation office or an agency or entity operating under contract with a juvenile probation office, a community supervision and corrections department, or the pardons and paroles division of the Texas Department of Criminal Justice and shall provide written notice of the requirements of this article to each of those persons by not later than October 30, 2000. This subsection expires January 1, 2001.

Commentary by Robert Dawson
Source: HB 1939
Effective Date: September 1, 2000
Applicability: Person confined or under supervision for covered offense on or after effective date.
Summary of Changes: A person must apply to DPS for a driver's license or personal identification certificate within 30 days of release or being placed on probation or within 30 days after being notified by the DPS. Annual renewals are required until the person's duty to register as a sex offender expires.

Art. 62.085. INFORMATION PROVIDED TO PEACE OFFICER.

The department shall establish a procedure by which a peace officer or employee of a law enforcement agency who provides the department with a driver's license, personal identification certificate, or license plate number is automatically provided information as to whether the person to whom the driver's license or personal identification certificate is issued is required to register under this chapter or whether the license plate number is entered in the computerized central database under Article 62.08 as assigned to a vehicle owned or driven by a person required to register under this chapter.

Commentary by Robert Dawson
Source: HB 1939
Effective Date: September 1, 2000
Applicability: Person confined or under supervision for covered offense on or after effective date.
Summary of Changes: DPS is required to provide a system for automatic provision of information upon request of a law enforcement officer as to whether the holder of a driver's license or personal identification certificate or the owner of an automobile is required to register as a sex offender.

Transportation Code § 521.057. INFORMATION REGARDING CERTAIN SEX OFFENDERS.

(a) On receipt of a court order issued under Article 42.016, Code of Criminal Procedure, the department shall ensure that any driver's license record or personal identification certificate record maintained by the department for the person includes an indication that the person is subject to the registration requirements of Chapter 62, Code of Criminal Procedure, as added by Chapter 668, Acts of the 75th Legislature, Regular Session, 1997.

(b) The department shall include the indication required by Subsection (a) in any driver's license record or personal identification certificate record maintained by the department for the person until the expiration of the person's duty to register under Chapter 62, Code of Criminal Procedure, as added by Chapter 668, Acts of the 75th Legislature, Regular Session, 1997.

Commentary by Robert Dawson
Source: HB 1939
Effective Date: September 1, 2000

Applicability: Person confined or under supervision for covered offense on or after effective date.
Summary of Changes: Information that the person is required to register as a sex offender is maintained by DPS on its records. There is no provision for indicating on the driver's license or personal identification certificate that the person is required to register.

Transportation Code § 521.101. Personal Identification Certificate

(h) The department shall automatically revoke each personal identification certificate issued by the department to a person who:

(1) is subject to the registration requirements of Chapter 62, Code of Criminal Procedure, as added by Chapter 668, Acts of the 75th Legislature, Regular Session, 1997; and

(2) fails to apply to the department for renewal of the personal identification certificate as required by Article 62.065, Code of Criminal Procedure.

(i) The department may issue a personal identification certificate to a person whose certificate is revoked under Subsection (h) only if the person applies for an original or renewal certificate under Section 521.103.

Commentary by Robert Dawson
Source: HB 1939
Effective Date: September 1, 2000
Applicability: Person confined or under supervision for covered offense on or after effective date.
Summary of Changes: Failure to renew a personal identification certificate by one required to register as a sex offender results in revocation of the certificate.

Transportation Code § 521.103. EXPIRATION AND RENEWAL REQUIREMENTS FOR CERTAIN SEX OFFENDERS.

(a) The department may issue an original or renewal personal identification certificate to a person whose driver's license or personal identification certificate record indicates that the person is subject to the registration requirements of Chapter 62, Code of Criminal Procedure, as added by Chapter 668, Acts of the 75th Legislature, Regular Session, 1997, only if the person:

(1) applies in person for the issuance of a certificate under this section; and

(2) pays a fee of $20.

(b) A personal identification certificate issued under this section, including a renewal, duplicate, or corrected certificate, expires on the first birthday of the certificate holder occurring after the date of application, except that the initial certificate issued under this section expires on the second birthday of the certificate holder occurring after the date of application.

Commentary by Robert Dawson
Source: HB 1939
Effective Date: September 1, 2000
Applicability: Person confined or under supervision for covered offense on or after effective date.
Summary of Changes: A personal application is required for a personal identification certificate, which expires on the person's second birthday and thereafter on each birthday.

Transportation Code § 521.272. RENEWAL OF LICENSE ISSUED TO CERTAIN SEX OFFENDERS.

(a) The department may issue an original or renewal driver's license to a person whose driver's license or personal identification certificate record indicates that the person is subject to the registration requirements of Chapter 62, Code of Criminal Procedure, as added by Chapter 668, Acts of the 75th Legislature, Regular Session, 1997, only if the person:

(1) applies in person for the issuance of a license under this section; and

(2) pays a fee of $20.

(b) Notwithstanding Section 521.143, a person is not required to provide proof of financial responsibility to receive the person's initial driver's license under this section.

(c) Notwithstanding Section 521.271, a driver's license issued under this section, including a renewal, duplicate, or corrected license, expires on the first birthday of the license holder occurring after the date of application, except that the initial license issued under this section expires on the second birthday of the license holder occurring after the date of application.

Commentary by Robert Dawson
Source: HB 1939
Effective Date: September 1, 2000
Applicability: Person confined or under supervision for covered offense on or after effective date.
Summary of Changes: A person may apply for a driver's license in lieu of a personal identification certificate. The application requirements are the same.

Transportation Code § 521.274. Renewal by Mail

(b) A rule adopted under this subsection may not permit renewal by mail of:

(1) a provisional license;

(2) an occupational license; or

(3) a driver's license if the license holder's:

(A) driving record as maintained by the department shows that the holder, within the four years preceding the date of the renewal application, has been convicted of:

(i) [~~(A)~~] a moving violation, as defined by department rule, in this state; or

(ii) [~~(B)~~] an offense described by Subchapter O; or

(B) driver's license record or personal identification certificate record indicates that the holder is subject to the registration requirements of Chapter 62, Code of Criminal Procedure, as added by Chapter 668, Acts of the 75th Legislature, Regular Session, 1997.

Commentary by Robert Dawson
Source: HB 1939
Effective Date: September 1, 2000
Applicability: Person confined or under supervision for covered offense on or after effective date.
Summary of Changes: Renewals must be in person, not by mail.

Transportation Code § 521.348. AUTOMATIC REVOCATION FOR CERTAIN SEX OFFENDERS.

(a) A driver's license is automatically revoked if the holder of the license:

(1) is subject to the registration requirements of Chapter 62, Code of Criminal Procedure, as added by Chapter 668, Acts of the 75th Legislature, Regular Session, 1997; and

(2) fails to apply to the department for renewal of the license as required by Article 62.065, Code of Criminal Procedure.

(b) The department may issue a driver's license to a person whose license is revoked under this section only if the person:

(1) applies for an original or renewal license under Section 521.272; and

(2) is otherwise qualified for the license.

Commentary by Robert Dawson
Source: HB 1939
Effective Date: September 1, 2000
Applicability: Person confined or under supervision for covered offense on or after effective date.
Summary of Changes: A driver's license is automatically revoked if not renewed annually in person as required by article 62.065.

4. Prosecution of Juveniles in Municipal and Justice Courts

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

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

(1) [~~for a traffic offense;~~

[~~(2)~~] for an offense that a justice or municipal court has jurisdiction of under Article 4.11 or 4.14, Code of Criminal Procedure, other than public intoxication [~~punishable by fine only~~]; or

(2) [~~(3)~~] as a status offender or nonoffender.

(f) A child taken into custody for an offense that a justice or municipal court has jurisdiction of under Article 4.11 or 4.14, Code of Criminal Procedure, [~~a traffic offense or an offense,~~] other than public intoxication, [~~punishable by fine only~~] may be presented or detained in a detention facility designated by the juvenile court under Section 52.02(a)(3) only if:

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

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

(h) If a child [~~A municipal court or justice court may not hold a child in contempt for~~] intentionally or knowingly fails [~~refusing~~] to obey a lawful order of disposition after an adjudication of guilt of an offense that a justice or municipal court has jurisdiction of under Article 4.11 or 4.14, Code of Criminal Procedure, the [~~a traffic offense or other offense punishable by fine only. The~~] municipal court or justice court may:

(1) except as provided by Subsection (j), hold the child in contempt of the municipal court or

justice court order and order the child to pay a fine not to exceed $500; or

(2) [~~shall instead~~] refer the child to the appropriate juvenile court for delinquent conduct for contempt of the municipal court or justice court order.

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

(1) is at least 10 years of age and younger than 17 years of age and who is charged with or convicted of an offense that a justice or municipal court has jurisdiction of under Article 4.11 or 4.14, Code of Criminal Procedure, other than public intoxication [~~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)~~] is a status offender and was taken into custody as a status offender for conduct engaged in before becoming 17 years of age; or

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

(j) A municipal or justice court may not order a child to a term of confinement or imprisonment for contempt of a municipal or justice court order under Subsection (h).

Commentary by Jim Bethke

Source: HB 688

Effective Date: September 1, 1999

Applicability: Offenses committed on or after effective date

Summary of Changes: This section provides the procedure in justice and municipal court for handling children taken into custody for non-jailable offenses. The amendments to this section were part of an overall effort by the Texas Judicial Council's Committee on Juvenile Justice Reform to improve the administration of justice for children processed in justice and municipal court.

The changes made to subsection (a) and (f) are technical corrections. The changes made by subsection (a) clarify that a judge of a justice or municipal court may release a child taken into custody to the child's parent, guardian or other responsible adult as defined in section 52.02(a)(1) for any offense within the court's jurisdiction. The amendment to subsection (f) clarifies that a child taken into custody for a misdemeanor offense within the jurisdiction of justice or municipal court may only be taken to a juvenile detention facility if the case is transferred or referred to the juvenile court.

The amendment to subsection (h) provides that a justice or municipal court judge may hold a child in contempt of court and assess a fine not to exceed $500. Alternatively, a justice or municipal court judge may, as under current law, refer the child to juvenile court for delinquent conduct for contempt of the justice or municipal court. Subsection (j) is new and makes clear that a justice or municipal court judge who elects to exercise its contempt powers over a child may not under any circumstances order that child to a term of confinement or imprisonment on a finding of contempt.

The change made to subsection (i) modifies the definition of child. The purpose of this modification was to address the following issue for justice and municipal courts: "Must a person 17 years of age taken into custody for a non-jailable offense (other than a status offense) committed before becoming 17 years of age be taken to a place of non-secure custody?" The answer is "no". However, even though a person 17 years of age may be taken into secure custody for a non-jailable offense(s) (other than a status offense) committed before becoming 17 years of age, it is not recommended that courts throw "birthday parties" for persons turning 17 years of age who have outstanding warrants. Remember also that this modified definition of child does not apply to non-offenders or status offenders.

Family Code § 54.021. Justice or Municipal Court Truancy.

(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, the court has jurisdiction to enter an order that includes one or more of the following provisions requiring that:

(1) the person do either or both of the following:

(A) attend a preparatory class for the high school equivalency examination provided under Section 7.111, Education Code, if the court determines that the person is too old to do well in a formal classroom environment; or

(B) if the person is at least 16 years of age, take the high school equivalency examination provided under Section 7.111, Education Code;

(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-improve-ment 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) the person and the person's parents, managing conservator, or guardian attend a class for students at risk of dropping out of school designed for both the person and the person's parents, managing conservator, or guardian;

(4) the person complete reasonable community service requirements;

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

(6) the person attend school without unexcused absences; or

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

Commentary by Jim Bethke

Source: HB 688

Effective Date: September 1, 1999

Applicability: Offenses committed on or after effective date

Summary of Changes: The amendments to this section provide authority to the justice or municipal court judge to order a person who has engaged in certain truant conduct to either attend a preparatory class for the high school equivalency exam or to take the high school equivalency exam (the person must be at least 16 years of age) or both. Conforming changes were made to section 7.11, Education Code. The Education Code now requires the Texas Education Agency to allow these persons to sit for the high school equivalency exam.

Family Code § 54.022. Justice or Municipal Court: Certain Misdemeanors.

(a) On a finding by a justice or municipal court that a child committed an [~~a misdemeanor~~] offense that the court has jurisdiction of under Article 4.11 or 4.14, Code of Criminal Procedure, [~~punishable by fine only~~] other than a traffic offense or public intoxication [~~or committed a violation of a penal ordinance of a political subdivision other than a traffic offense~~], the court has jurisdiction to enter an order:

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

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

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

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

(3) [~~(2) the child's parents, managing conservator, or guardian attend a parenting class or parental responsibility program~~] if the court finds the parent, managing conservator, or guardian, by [~~wilful~~] act or omission, contributed to, caused, or encouraged the child's conduct, requiring that the child's parent, managing conservator, or guardian do any act or refrain from doing any act that the court determines will increase the likelihood that the child will comply with the orders of the court and that is reasonable and necessary for the welfare of the child, including:

(A) attend a parenting class or parental responsibility program; and

(B) [~~; or~~

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

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

(c) [~~(d)~~] A justice or municipal court may require a child, parent, managing conservator, or guardian required to attend a program, class, or func-

tion under this section to submit proof of attendance to the court.

(d) [~~(c)~~] 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.

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

(f) [~~(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 (d) [~~(c)~~]. An offense under this subsection is a Class C misdemeanor.

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

Commentary by Jim Bethke

Source: HB 688

Effective Date: September 1, 1999

Applicability: Offenses committed on or after effective date

Summary of Changes: The changes to this section address the problem of parents or other persons associated with the child who fail to assist the child to comply with lawful orders of the justice or municipal court judge.

Subsection (a) provides that this section has applicability for any offense within the court's jurisdiction. It also dispenses with the requirement of county commissioners court approval of all or any special programs that the court may order a child or parent to attend as part of the court's sentence, unless county monies are expended for one of these programs.

The former provision posed some practical problems for municipal courts. For instance, if a municipality was having a problem with children disrupting classes and the governing body of the municipality approved and developed a special program for those offenders to attend, the county commissioners would have had to approve the municipal program. The amended provision only requires that commissioners approve programs when county monies will be expended.

Additionally, subsection (b) was deleted. By deleting subsection (b) the legislature has expanded the authority of a justice and municipal court to order the child or the child's parent(s) to do certain rehabilitative activities without regard to whether the child has been previously convicted of an offense in justice or municipal court.

The code provides some examples of kinds of programs that the court may consider. A court may order a parent to parenting classes or order the parent to attend school classes with the child. In addition, the court may require the parent to do any act or refrain from doing any act that the court determines will increase the likelihood of the child complying with the orders of the court. This additional authority given to justice and municipal court judges is in some ways analogous to the power provided juvenile court judges in section 54.041 of the Family Code.

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

(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 disposition [~~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 disposition [~~adjudication~~] for an offense alleged under this section is considered a conviction of an offense under this section.

Commentary by Jim Bethke

Source: SB 528

Effective Date: September 1, 1999

Applicability: None stated.

Summary of Changes: In 1997 the legislature virtually rewrote the laws regarding alcohol offenses committed by minors. The "deferred adjudication" language in this section was one of the areas added in 1997 by the 75th Legislature. The 1997 change, among other things, limited the number of times a minor could have his or her case dismissed by disposition without trial.

Most offenses in Chapter 106 of the Alcoholic Beverage Code are non-jailable misdemeanor offenses filed in justice or municipal court. The rules regarding deferred proceedings for these courts are found in article 45.54, Code of Criminal Procedure.* This article is entitled "Suspension of Sentence and Deferral of Final Disposition". There was apparently some confusion on whether the "deferred adjudication" language should apply to cases disposed of under article 45.54 or should apply only to offenses deferred under article 42.12, section 5, Code of Criminal Procedure, entitled "Deferred Ad-

judication." The change made this session makes clear that the legislature had intended for this language to apply to the deferred provisions in Chapter 45.

*Article 45.54 has been redesignated as section 45.051 by SB 1230, effective September 1, 1999.

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

(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 disposition [~~adjudication~~].

(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 disposition [~~adjudication~~] for an offense alleged under this section is considered a conviction of an offense under this section.

Commentary by Jim Bethke

Source: SB 528
Effective Date: September 1, 1999
Applicability: None stated.
Summary of Changes: In 1997 the legislature created this new offense of "Driving Under the Influence of Alcohol by a Minor." The change of the term "adjudication" to "disposition" in this section is a technical clean-up. The rationale for this change is discussed in the commentary to section 106.04.

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

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

(1) the court shall order a minor placed on deferred disposition for or 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 of a minor convicted of an offense to which this section applies 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 if programs or services providing that education are available in the community in which the court is located. If programs or services providing that education are not available, the court may order community service that it considers appropriate for rehabilitative purposes.

(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 disposition [~~adjudication~~] for an offense alleged under this section is considered a conviction of an offense under this section.

(h) A driver's license suspension under this section takes effect on the 11th day after the date the minor is convicted.

(i) A defendant who is not a child and who has been previously convicted at least twice of an offense to which this section applies is not eligible to receive a deferral of final disposition of a subsequent offense.

Commentary by Jim Bethke

Source: HB 688; SB 528
Effective Date: September 1, 1999
Applicability: HB 688: Offenses committed on or after effective date; SB 528: None stated.
Summary of Changes: Amendment to subsection (e) by HB 688.

The change in Subsection d(1) requires the court to impose community service hours when a minor is allowed to defer proceedings under the Code of Criminal Procedure. The amendment to subsection d(2) is a technical clean-up without any apparent substantive effect.

The provisions in subsection (e) were added in 1997. This provision required the court to assess community service upon conviction for a Chapter

106 offense. In addition, the legislature required the community service to be related to education about or prevention of misuse of alcohol. Some courts complained that such programs did not exist in their communities. This amendment provides that community service ordered under this section no longer needs to be related to education about or prevention of misuse of alcohol if there are no such programs located within the particular community. When such programs are unavailable, the court is now free to order any community service it considers rehabilitative.

Subsection (h) is new. Subsection (h) provides that a minor driver's license suspension takes effect on the 11th day after conviction. Since the suspension does not take effect immediately, the court should provide the order to suspend the minor's driver's license to the Department of Public Safety as soon after conviction as possible.

Subsection (i) is also new. This amendment prohibits a court from granting deferred disposition to a minor who is not a child (someone 17 years of age or older, but younger than 21) when he or she has two prior convictions under this section.

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

(d) If the defendant does not present the required evidence within the prescribed period, the court:

(1) 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; and

(2) may order the defendant or the parent, managing conservator, or guardian of the defendant to do any act or refrain from doing any act if the court determines that doing the act or refraining from doing the act will increase the likelihood that the defendant will present evidence to the court that the defendant has satisfactorily completed an alcohol awareness program or performed the required hours of community service.

Commentary by Jim Bethke

Source: HB 688
Effective Date: September 1, 1999
Applicability: Offenses committed on or after effective date
Summary of Changes: This amendment allows the justice or municipal judge to place the minor's parent under court order to do any act or refrain from doing any act that may increase the likelihood the minor will satisfactorily complete a court ordered alcohol awareness course or community service program. (For example, if the minor does not have transportation, the court may order the parent to transport his or her child to and from an alcohol awareness course or a community service program.)

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 disposition [~~adjudication~~] for an offense alleged under this chapter; and

(4) acquittal of an offense under Section 106.041.

Commentary by Jim Bethke

Source: SB 528
Effective Date: September 1, 1999
Applicability: None stated.
Summary of Changes: This amendment requires the court to report orders of deferred disposition for offenses under Chapter 106. See also commentary under section 106.04, Alcoholic Beverage Code that addresses the disposition/adjudication issue.

Code of Criminal Procedure art. 45.55. Dismissal of Misdemeanor Charge on Completion of Teen Court Program.

(a) A justice or municipal court may defer proceedings against a defendant who is under the age of 18 or enrolled full time in an accredited secondary school in a program leading toward a high school diploma for 90 days if the defendant:

(1) is charged with an offense that the court has jurisdiction of under Article 4.11 or 4.14, Code of Criminal Procedure [~~a misdemeanor punishable by fine only or a violation of a penal ordinance of a political subdivision, including a traffic offense punishable by fine only~~];

(2) pleads nolo contendere or guilty to the offense in open court with the defendant's parent, guardian, or managing conservator present;

(3) presents to the court an oral or written request to attend a teen court program; and

(4) has not successfully completed a teen court program in the two years preceding the date that the alleged offense occurred.

(f) A court may transfer a case in which proceedings have been deferred under this section to a court in another [~~a contiguous~~] county if the court to which the case is transferred consents. A case may not be transferred unless it is within the jurisdiction of the court to which it is transferred.

Commentary by Jim Bethke

Source: HB 688

Effective Date: September 1, 1999

Applicability: Offenses committed on or after effective date

Summary of Changes: Article 45.55 was redesignated as article 45.052 in SB 1230. The new numbering becomes effective September 1, 1999.

The amendment to subsection (a)(1) provides that any offense within the jurisdiction of justice or municipal court is eligible to be dismissed through a teen court proceeding if the conditions of the article are satisfied. This change is necessitated by the expansion of jurisdiction in justice and municipal court. The past few legislative sessions have added many offenses that provide penalties of fines and sanctions. It is arguable that under current law any offense with a sanction other than a fine could not be disposed of through teen court. This amendment resolves this issue.

The change in subsection (f) provides that a justice or municipal court may transfer a teen court proceeding to any other court in the state provided that the other court consents to the transfer and has jurisdiction. Current law limited transfer of a teen court proceeding to another court in a contiguous county.

Code of Criminal Procedure art. 45.522. Failure to Pay Fine; Contempt: Juveniles.

(b) If a person who is a child under Section 51.02, Family Code, [~~Section 51.03(a)(3), Family Code, and the procedures for the adjudication of a child for delinquent conduct apply to a child who~~] fails to obey an order of a justice or municipal court under circumstances that would constitute contempt of court, the justice or municipal court has jurisdiction to:

(1) hold the child in contempt of the justice or municipal court order as provided by Section 52.027(h), Family Code; or

(2) refer the child to the appropriate juvenile court for delinquent conduct for contempt of the justice or municipal court order.

Commentary by Jim Bethke

Source: HB 688

Effective Date: September 1, 1999

Applicability: Offenses committed on or after effective date

Summary of Changes: Same amendments made by SB 1230. In addition, SB 1230 redesignated article 45.522 as article 45.050. The new numbering becomes effective September 1, 1999.

The amendment to this article parallels the changes made in the Juvenile Justice Code and the Alcoholic Beverage Code regarding contempt of a justice or municipal court order. This article provides, as do the others, that a justice or municipal court judge may hold a child in contempt of court and assess a fine not to exceed $500. Alternatively, a justice or municipal court judge may still refer the child to juvenile court for delinquent conduct for contempt of the justice or municipal court. Subsection (j) is new and makes clear that a justice or municipal court may not under any circumstances order a child to a term of confinement or imprisonment on a finding of contempt.

Code of Criminal Procedure art. 45.54. Suspension of Sentence and Deferral of Final Disposition.

(a) [~~(1)~~] On a plea of guilty or nolo contendere by a defendant or on a finding of guilt in a misdemeanor case punishable by fine only and payment of all court costs, the justice may defer further proceedings without entering an adjudication of guilt and place the defendant on probation for a period not to exceed 180 days[~~. This article does not apply to a misdemeanor case disposed of by Section 143A, Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes), or a serious traffic violation as defined in Section 3(26), Texas Commercial Driver's License Act (Article 6687b-2, Revised Statutes).~~

[~~(2) During the deferral period, the justice shall require the defendant to successfully complete a Central Education Agency approved driving safety course, if the offense alleged is an offense involving the operation of a motor vehicle, other than a commercial motor vehicle, as defined in Subdivision (6), Section 3, Texas Commercial Driver's License Act (Article 6687b-2, Revised Statutes), and the defendant:~~

[~~(A) has completed an approved driving safety course within the preceding 12 months; or~~

[~~(B) is a first-time offender who elects deferred adjudication~~].

(b) [~~(3)~~] During the [~~said~~] deferral period, the justice may require the defendant to:

(1) [~~(a)~~] post a bond in the amount of the fine assessed to secure payment of the fine;

(2) [~~(b)~~] pay restitution to the victim of the offense in an amount not to exceed the fine assessed;

(3) [~~(c)~~] submit to professional counseling; and

(4) [~~(d)~~] comply with any other reasonable condition[~~; and~~

[~~(e) require the defendant to successfully complete a Central Education Agency approved driving safety course, if:~~

[~~(1) the offense alleged is an offense involving the operation of a motor vehicle, other than a commercial motor vehicle, as defined in Subdivision (6), Section 3, Texas Commercial Driver's License Act (Article 6687b-2, Revised Statutes); and~~

[~~(2) the defendant has not completed an approved driving safety course within the preceding 12 months~~].

(c) [~~(4)~~] At the conclusion of the deferral period, if the defendant presents satisfactory evidence that he has complied with the requirements imposed, the justice shall dismiss the complaint, and it shall be clearly noted in the docket that the complaint is dismissed and that there is not a final conviction. Otherwise, the justice may proceed with an adjudication of guilt. After an adjudication of guilt, the justice may reduce the fine assessed or may then impose the fine assessed, less any portion of the assessed fine that has been paid. If the complaint is dismissed, a special expense not to exceed the amount of the fine assessed may be imposed.

(d) [~~(5)~~] If at the conclusion of the deferral period the defendant does not present satisfactory evidence that the defendant complied with the requirements imposed, the justice may impose the fine assessed or impose a lesser fine. The imposition of the fine or lesser fine constitutes a final conviction of the defendant.

(e) [~~(6)~~] Records relating to a complaint dismissed as provided by this article may be expunged under Article 55.01 of this code. If a complaint is dismissed under this article, there is not a final conviction and the complaint may not be used against the person for any purpose.

Commentary by Jim Bethke

Source: HB 1603

Effective Date: September 1, 1999

Applicability: Offenses committed on or after effective date

Summary of Changes: Same amendments made by SB 1230. In addition, SB 1230 redesignated article 45.54 as article 45.051. The new numbering becomes effective September 1, 1999.

This is the deferred probation section for justice and municipal courts. This section has been substantially modified. What has not changed, however, is that deferred disposition is still within the absolute discretion of the judge.

The changes made to article 45.54 by SB 1230 and HB 1603 are similar except that SB 1230 added the provisions in subsection (b)(4)-(7) relating to the permissive conditions that a judge may impose on a defendant regarding diagnostic testing for alcohol and controlled substances. These conditions arguably were unnecessary since the statute already allows the judge to assess any other reasonable condition as part of the probation. In any event, the conditions have been codified and the judge has the authority to order them as part of probation or not.

Of significance, the changes made to this article will affect how traffic offenses are disposed of under this article. The old deferred law excluded cases disposed of by driving safety courses under the Transportation Code and serious traffic violations as defined in section 522.003(25), Transportation Code. In addition, the old deferred law required a driving safety course as a condition of probation for certain traffic offenses disposed of under this article. These provisions have been deleted and a new section entitled "Deferred Disposition Procedure Applicable to Traffic Offenses" has been created in article 45.0511. This section appears to augment the deferred procedures for handling certain traffic offenses. See the commentary that follows concerning article 45.0511.

Code of Criminal Procedure art. 45.541. DEFERRED DISPOSITION PROCEDURES APPLICABLE TO TRAFFIC OFFENSES.

(a) This article applies to an alleged offense involving the operation of a motor vehicle other than a commercial motor vehicle, as defined by Section 522.003, Transportation Code, and supplements Article 45.54.

(b) During the deferral period under Article 45.54, the justice:

(1) shall require the defendant to successfully complete a driving safety course approved by the Texas Education Agency if the defendant elects deferred disposition and the defendant has not completed an approved driving safety course or motorcycle operator training course, as appropriate, within the preceding 12 months; and

(2) may require the defendant to successfully complete a driving safety course approved by the Texas Education Agency if the defendant has completed an approved driving safety course within the preceding 12 months.

(c) Subsection (b)(1) applies only if:

(1) the person enters a plea in person or in writing of no contest or guilty and, before the answer date on the notice to appear:

(A) presents in person to the court an oral or written request to take a course; or

(B) sends to the court by certified mail, return receipt requested, postmarked on or before the answer date on the notice to appear, a written request to take a course;

(2) the court enters judgment on the person's plea of no contest or guilty at the time the plea is made but defers imposition of the judgment for 180 days;

(3) the person has a Texas driver's license or permit;

(4) the person is charged with an offense to which this article applies, other than speeding 25 miles per hour or more over the posted speed limit;

(5) the person provides evidence of financial responsibility as required by Chapter 601, Transportation Code;

(6) the defendant's driving record as maintained by the Texas Department of Public Safety shows the defendant has not completed an approved driving safety course or motorcycle operator training course, as appropriate, within the 12 months preceding the date of the offense; and

(7) the defendant files an affidavit with the court stating that the person is not taking a course under this section and has not completed a course that is not shown on the person's driving record within the 12 months preceding the date of the offense.

(d) Notwithstanding Subsection (c)(1), on a written motion submitted to the court before the final disposition of the case, the court may grant a request to take a driving safety course or a motorcycle operator training course under this article.

(e) A request to take a driving safety course made at or before the time and at the place at which a person is required to appear in court is an appearance in compliance with the person's promise to appear.

(f) The court may require a person requesting a driving safety course to pay a fee set by the court at an amount of not more than $10, including any other fee authorized by statute or municipal ordinance, to cover the cost of administering this article.

(g) A person who requests but does not take a course is not entitled to a refund of the fee.

(h) Fees collected by a municipal court shall be deposited in the municipal treasury. Fees collected by another court shall be deposited in the county treasury of the county in which the court is located.

(i) If a person requesting a driving safety course fails to furnish evidence of the successful completion of the course to the court, the court shall:

(1) notify the person in writing, mailed to the address appearing on the notice to appear, of that failure; and

(2) require the person to appear at the time and place stated in the notice to show cause why the evidence was not timely submitted to the court.

(j) A person who fails to appear at the time and place stated in the notice commits a misdemeanor punishable as provided by Section 543.009, Transportation Code.

(k) On a person's showing of good cause for failure to furnish evidence to the court, the court may allow an extension of time during which the person may present a uniform certificate of course completion as evidence that the person successfully completed the driving safety course.

(l) When a person complies with Subsection (b) and a uniform certificate of course completion is accepted by the court, the court shall:

(1) remove the judgment and dismiss the charge;

(2) report the fact that the person successfully completed a driving safety course and the date of completion to the Texas Department of Public Safety for inclusion in the person's driving record; and

(3) state in its report whether the course was taken under the procedure provided by this article to provide information necessary to determine eligibility to take a subsequent course under Subsection (b).

(m) The court may dismiss only one charge for each completion of a course.

(n) A charge that is dismissed under this article may not be part of a person's driving record or used for any purpose.

(o) An insurer delivering or issuing for delivery a motor vehicle insurance policy in this state may not cancel or increase the premium charged an insured under the policy because the insured completed a driving safety course or had a charge dismissed under this article.

(p) The court shall advise a person charged with a misdemeanor under Subtitle C, Title 7, Transportation Code, committed while operating a motor vehicle of the person's right under this article to successfully complete a driving safety course or, if the offense was committed while operating a motorcycle, a motorcycle operator training course. The right to complete a course does not apply to a person charged with a violation of Section 545.066, 545.401, 545.421, 550.022, or 550.023, Transporta-

tion Code, or a serious traffic violation as defined by Section 522.003, Transportation Code.

(q) Nothing in this article shall prevent a court from assessing a special expense for deferred disposition in the same manner as provided for in Article 45.54. For a deferred disposition under Subsection (b)(1), the court may only collect a fee of up to $10 in addition to any applicable court cost.

Commentary by Jim Bethke

Source: HB 1603

Effective Date: September 1, 1999

Applicability: Offenses committed on or after effective date

Summary of Changes: Article 45.0511 is entirely new and appears to be a compilation of former driving safety course provisions in the Transportation Code and provisions from the former deferred disposition article in Chapter 45 of the Code of Criminal Procedure. The amendments by HB 1603 and SB 1230 are synonymous except that HB 1603 numbered the new section under the old number scheme and added subsection (q) to the section. In applying the principles of the Code Construction Act, subsection (q) of HB 1603 will be given effect and the numbering scheme of SB 1230 will apply.

It appears that the legislature has intertwined the mandatory driving safety course dismissal provisions (sometimes referred to as defensive driving) formerly found in the Transportation Code with the discretionary deferred disposition provisions found in article 45.051 (formerly article 45.54, Code of Criminal Procedure). In addition, this bill repeals the driving safety course provisions in sections 543.102-543.110, Transportation Code.

The legislature apparently has done away with the mandatory dismissal of a traffic offense by the taking of a driving safety course. Under current law (effective until August 31, 1999), a defendant has an absolute right to take a driving safety course under section 543.103, Transportation Code to get a dismissal of a traffic offense. The defendant, of course, must satisfy the requirements and fulfill the conditions of the Code in order to get a dismissal. If the requirements are met and the conditions satisfied, the court is required to dismiss.

Subsection (b)(1) of this bill mandates driving safety as part of deferred if: 1) the defendant elects deferred and 2) he or she satisfies the conditions set forth in subsection (c). Driving safety is a mandatory condition of deferred if the two conditions above are met. However, the twist from current law is that driving safety dismissal is predicated on judicial discretion.

The legislature has carried forward in subsection (f) the limit of a $10 administrative fee for processing these cases. In addition, court costs must also be collected under this section just as under the driving safety course provisions.

Although the changes made here and to the former article 45.54 are not insignificant, the court may under these new provisions proceed with its business with little change. This new article, although not altogether clear, restores judicial discretion in disposing of traffic violations.

Education Code § 7.111. High School Equivalency Examinations.

(a) The board shall provide for the administration of high school equivalency examinations. A person who does not have a high school diploma may take the examination in accordance with rules adopted by the board if the person is:

(1) over 17 years of age;

(2) [~~or: (1) is~~] 16 years of age or older[~~;~~] and [~~(2)~~] a public agency providing supervision of the person or having custody of the person under a court order recommends that the person take the examination; or

(3) required to take the examination under a justice or municipal court order issued under Section 54.021(d)(1)(B), Family Code.

Commentary by Jim Bethke

Source: HB 688

Effective Date: September 1, 1999

Applicability: Offenses committed on or after effective date

Summary of Changes: This change allows a justice or municipal court to order a person under the truancy statute to take high school equivalency exam. This change also makes it clear that the Texas Education Agency needs to allow such a person take the exam if ordered by a justice or municipal court.

Education Code § 25.093. Thwarting Compulsory Attendance Law.

(f) A fine collected under this section shall be deposited as follows:

(1) one-half shall be deposited to the credit of the operating fund of the school district in which the child attends school or of the juvenile justice alternative education program that the child has been ordered to attend, as applicable; and

(2) one-half shall be deposited to the credit of:

(A) the general fund of the county, if the complaint is filed in the county court or justice court; or

(B) the general fund of the municipality, if the complaint is filed in municipal court.

Commentary by Jim Bethke
Source: HB 1961
Effective Date: September 1, 1999
Applicability: None stated.
Summary of Changes: This amendment pertains to the distribution of fine money collected under the compulsory school attendance law. Current law provides that one-half of the collected fine is required to be deposited to the credit of the general fund of the county or municipality in which the complaint is filed, and the other half is deposited to the credit of the operating fund of the child's school district.

In 1995, the 75th Legislature created juvenile justice alternative education programs to educate students who are expelled form school. Technically, once a student is ordered to attend an alternative education program, the student no longer attends school in the school district. Therefore, any fines collected for a student who attends an alternative education program do not go to the operating fund of the institution that is responsible for that student's education. The amendment to subsection (f) requires that a fine collected under this section be distributed between school district or the alternative education program, as appropriate, and the court.

Transportation Code § 521.457. Driving While License Invalid

(a) A person commits an offense if the person operates a motor vehicle on a highway:

(1) after the person's driver's license has been canceled under this chapter if the person does not have a license that was subsequently issued under this chapter;

(2) during a period that the person's driver's license or privilege is suspended or revoked under:

(A) this chapter;

(B) Chapter 524;

(C) Chapter 724; [~~or~~]

(D) Section 106.071, Alcoholic Beverage Code; or

(E) Article 42.12, Code of Criminal Procedure;

(3) while the person's driver's license is expired if the license expired during a period of suspension imposed under:

(A) this chapter;

(B) Chapter 524;

(C) Chapter 724; [~~or~~]

(D) Section 106.071, Alcoholic Beverage Code; or

(E) Article 42.12, Code of Criminal Procedure; or

(4) after renewal of the person's driver's license has been denied under Chapter 706, if the person does not have a driver's license subsequently issued under this chapter.

Commentary by Jim Bethke
Source: SB 528
Effective Date: September 1, 1999
Applicability: None stated.
Summary of Changes: Section 106.071 provides the punishment for five offenses under Chapter 106, Alcoholic Beverage Code (1) Purchase of Alcohol by a Minor; 2) Attempt to Purchase Alcohol by a Minor; 3) Consumption of Alcohol by a Minor; 4) Minor in Possession; and 5) Misrepresentation of Age). Upon conviction, each of these offenses carries a mandatory driver license suspension.

The amendments to section 521.457, Transportation Code provide the consequences of a minor operating a motor vehicle with a license that has been suspended under section 106.071, Alcoholic Beverage Code.

Sections 543.102-543.110, Transportation Code, are repealed.

Commentary by Jim Bethke
Source: HB 1603
Effective Date: September 1, 1999
Applicability: Offenses committed on or after effective date
Summary of Changes: Sections 543.102-543.110, Transportation Code pertain to the dismissal of traffic violations under the Transportation Code. The repeal of these sections was part of an effort to place driving safety course dismissals in the deferral law in Chapter 45 of the Code of Criminal Procedure. See commentary on articles 45.051 and 45.0511.

Transportation Code § 729.001. Operation of Motor Vehicle by Minor in Violation of Traffic Laws; Offense

(c) An offense under this section is punishable by the fine or other sanction, other than confinement or imprisonment, authorized by statute for violation of the traffic law listed under Subsection (a) that is the basis of the prosecution under this section [~~a Class C misdemeanor~~].

Commentary by Jim Bethke
Source: HB 3517
Effective Date: September 1, 1999

Applicability: Offenses committed on or after effective date

Summary of Changes: The amendment to subsection (c) clarifies the penalty provision for persons younger than 17 years of age charged with a traffic offense(s). A person younger than 17 years of age charged with a traffic offense is subjected to the same penalty provisions under the Transportation Code as is someone older than 17. This amendment corrects inadvertent change made in 1997 by the 75th Legislature of providing a penalty for minor traffic offenders greater than that of adult traffic offenders.

Transportation Code § 729.002. Operation of Motor Vehicle by Minor Without License

(b) An offense under this section is punishable in the same manner as if the person was 17 years of age or older and operated a motor vehicle without a license as described by Subsection (a), except that an offense under this section is not punishable by confinement or imprisonment [~~a Class C misdemeanor~~].

Commentary by Jim Bethke

Source: HB 3517

Effective Date: September 1, 1999

Applicability: Offenses committed on or after effective date

Summary of Changes: This reasoning for this change is the same as for section 729.001, Transportation Code discussed above.

5. Education and Juvenile Justice

Education Code § 5.001. DEFINITIONS

(8) "Residential facility" means:

(A) a facility operated by a state agency or political subdivision, including a child placement agency, that provides 24-hour custody or care of a person 22 years of age or younger, if the person resides in the facility for detention, treatment, foster care, or any noneducational purpose; and

(B) any person or entity that contracts with or is funded, licensed, certified, or regulated by a state agency or political subdivision to provide custody or care for a person under Paragraph (A).

Commentary by Lisa Capers

Source: SB 4

Effective Date: September 1, 1999

Applicability: Beginning with the 1999-2000 school year.

Summary of Changes: This amendment is part of a series of statutory changes (including Education Code 25.001; 25.003 and 29.012 discussed below) meant to clarify the responsibilities of a school district to provide a Free Appropriate Public Education (FAPE) to residents of the district who require special education services under the Individuals with Disabilities Education Act (IDEA), 20 United States Code (USC), §1400 et seq. This is frequently a problematic issue when it comes to children placed in residential facilities in the district. The need for these clarifications grew out of two specific situations: 1) juvenile offenders with special education needs placed in residential detention and correctional facilities who were not receiving educational services; and 2) medically fragile or disabled children placed in residential treatment facilities who are the subject of a lawsuit by Advocacy, Inc. against the Texas Education Agency (Angel G. v TEA). The lawsuit against TEA has ultimately been settled and part of the settlement requires residential facilities to provide certain types of notice to school districts of children placed in their facilities with special education needs.

The definitions section of the Education Code is amended here by adding a new definition of "residential facility." Subsection (A) clearly includes those facilities operated by a county governmental entity or a state agency that care for persons 22 years of age or younger. Subsection (B) is meant to apply to any private vendor who operates a residential facility under contract with a state or local governmental entity. Juvenile pre-adjudication detention and post-adjudication correctional facilities are covered under this definition.

Education Code § 25.001. ADMISSION.

(b) The board of trustees of a school district or its designee shall admit into the public schools of the district free of tuition a person who is over five and younger than 21 years of age on the first day of September of the school year in which admission is sought if:

(1) the person and either parent of the person reside in the school district;

(2) the person does not reside in the school district but a parent of the person resides in the school district and that parent is a joint managing conservator or the sole managing conservator or possessory conservator of the person;

(3) the person and the person's guardian or other person having lawful control of the person under a court order reside within the school district;

(4) the person has established a separate residence under Subsection (d);

(5) the person is homeless, as defined by 42 U.S.C. Section 11302, regardless of the residence of the person, of either parent of the person, or of the person's guardian or other person having lawful control of the person;

(6) the person is a foreign exchange student placed with a host family that resides in the school district by a nationally recognized foreign exchange program, unless the school district has applied for and been granted a waiver by the commissioner under Subsection (e);

(7) the person resides at a residential facility located in the district; or

(8) [~~(7)~~] the person resides in the school district and is 18 years of age or older or the person's disabilities of minority have been removed.

Commentary by Lisa Capers

Source: SB 4

Effective Date: September 1, 1999

Applicability: Beginning with the 1999-2000 school year.

Summary of Changes: Section 25.001 of the Education Code addresses to whom school districts have to provide admission to the public schools. This section is amended by SB 4 to clarify that a person who resides in a residential facility (as defined in Section 5.001(8) discussed above) located in the district is entitled to be admitted into the public school of the district free of tuition. There are some new statutory exceptions for out-of-state children placed into Texas facilities that are discussed in the following two sections.

Education Code § 25.003. TUITION FOR CERTAIN CHILDREN FROM OTHER STATES

(a) Notwithstanding any other provision of this code, a school district shall charge tuition for a child who resides at a residential facility [~~child-care institution~~] and whose maintenance expenses are paid in whole or in part by another state or the United States [~~may not be admitted to a public school unless the child-care institution pays tuition for the child equal to the actual cost of educating a child enrolled in a similar educational program in the district~~].

Commentary by Lisa Capers

Source: SB 4

Effective Date: September 1, 1999

Applicability: Beginning with the 1999-2000 school year.

Summary of Changes: This section mandates a school district to charge tuition for a child who resides at a residential facility (as defined in Section 5.001 discussed above) if the child's expenses are being paid in whole or part by another state or the United States. This is primarily intended to cover juvenile offenders placed in Texas facilities by out-of-state juvenile courts or juveniles being placed by the federal authorities. Additionally, this would cover child protective services children in the conservatorship of other states that are being placed in Texas.

Education Code § 25.0011. CERTAIN INCARCERATED CHILDREN.

(a) For purposes of Section 25.001, a person is not considered to reside in a school district if:

(1) the person is incarcerated in a private juvenile detention facility in the district as a result of the order of a court in another state; and

(2) the person resided in another state or country immediately before incarceration in the facility.

(b) A school district may provide educational services to a person described by Subsection (a) if the district is fully compensated for the cost of the services through payment of tuition for the person by the operator of the juvenile detention facility or other person having lawful control of the person in an amount equal to the actual cost of educating the person.

(c) For purposes of this section, "private juvenile detention facility" means a juvenile detention facility that is not operated by a governmental entity.

Commentary by Lisa Capers

Source: HB 3517

Effective Date: September 1, 1999

Applicability: Beginning with the 1999-2000 school year.

Summary of Changes: This particular part of HB 3517 reflects an amendment that was added to the bill late in the legislative session. The amendment basically contains the text of HB 2607, which did not advance in the legislative process. Since HB 3517 was pretty certain to pass, it became the vehicle for the substance of HB 2607.

This amendment creates a new section 25.0011 in the Education Code. It addresses the problem faced by some school districts that have privately

operated pre-adjudication and/or post-adjudication juvenile detention or correctional facilities in their jurisdiction who accept out-of-state children for placement, and in particular, out-of-state juvenile offenders. The language of the bill makes it clear that these children are not considered to reside in the school district, and therefore the school district has no obligation or legal mandate to educate these youth. However, the bill allows the school district to choose to provide educational services to these juveniles if the tuition for the child is paid by the facility operator or other person having lawful control of the child (i.e., the placing juvenile court or state agency having conservatorship of the child under a court order).

Education Code §29.012. RESIDENTIAL [~~INTERMEDIATE CARE~~] FACILITIES.

(a) Except as provided by Subsection (b)(2), not later than the third day after the date a person 22 years of age or younger is placed in a residential facility, the residential facility shall:

(1) if the person is three years of age or older, notify the school district in which the facility is located, unless the facility is an open-enrollment charter school; or

(2) if the person is younger than three years of age, notify a local early intervention program in the area in which the facility is located.

(b) An agency or political subdivision that funds, licenses, certifies, contracts with, or regulates a residential facility must:

(1) require the facility to comply with Subsection (a) as a condition of the funding, licensing, certification, or contracting; or

(2) if the agency or political subdivision places a person in a residential facility, provide the notice under Subsection (a) for that person.

(c) For purposes of enrollment in a school, a person who resides in a residential facility is considered a resident of the school district or geographical area served by the open-enrollment charter school in which the facility is located.

(d) The Texas Education Agency, [~~and~~] the Texas Department of Mental Health and Mental Retardation, the Texas Department of Human Services, the Texas Department of Health, the Department of Protective and Regulatory Services, the Interagency Council on Early Childhood Intervention, the Texas Commission on Alcohol and Drug Abuse, the Texas Juvenile Probation Commission, and the Texas Youth Commission by a cooperative effort shall develop and by rule adopt a memorandum of understanding. The memorandum must:

(1) establish [~~that establishes~~] the respective responsibilities of school districts and of residential [~~intermediate care~~] facilities for [~~mentally retarded persons for~~] the provision of a free, appropriate public education, as required by the Individuals with Disabilities Education Act (20 U.S.C. Section 1400 et seq.) and its subsequent amendments, including each requirement of 20 U.S.C. Section 1412(a)(12), [~~classrooms and educationally related therapy~~] for children with disabilities [~~students~~] who reside in those facilities;

(2) coordinate regulatory and planning functions of the parties to the memorandum;

(3) establish criteria for determining when a public school can provide educational services and when a residential facility must provide the services;

(4) provide for appropriate educational space when a residential facility must provide educational services;

(5) establish measures designed to ensure the safety of students and teachers; and

(6) provide for binding arbitration consistent with Chapter 2009, Government Code, and Section 154.027, Civil Practice and Remedies Code.

[~~(b) The division of responsibilities under the memorandum of understanding must be consistent with federal law relating to the state medical assistance program.~~]

Commentary by Lisa Capers

Source: SB 4

Effective Date: September 1, 1999

Applicability: Beginning with the 1999-2000 school year.

Summary of Changes: Section 29.012 of the Texas Education Code falls under the subchapter dealing with special education. TEA is the state education agency (SEA) under federal law and is responsible for ensuring that a Free Appropriate Public Education (FAPE) is provided to all students with disabilities residing in the state of Texas. TEA specifically assures that each child with a disability, regardless of severity, residing within a local school district will be identified, located, and evaluated in accordance with federal law. TEA requires local school districts to do these "child-find" activities, which include searching for students with disabilities residing in residential care facilities.

Subsection (a) of the statute requires a residential facility to do certain things for persons placed in the facility who are 22 years of age or younger and who have or may have special education needs. If the person is age 3 or older, the facility must notify the school district in which the facility is located within three days. If the child is under 3, a local

early intervention program in the area must be notified.

Subsection (b) requires state agencies that have some regulatory authority over these residential facilities to require compliance with the notification requirements above as a condition of funding, licensing, certification, or contracting. This means that TJPC will put this requirement into its funding contracts with any county that operates or contracts for the operation of a pre-adjudication detention or post-adjudication correctional facility. Other state agencies like TYC, TDPRS, TDMHMR, TCADA, TDHS and ECI will do similarly with their regulated facilities.

The additional language added to 29.012(d) codifies and clarifies the requirements for the memorandum of understanding between the Texas Education Agency (TEA) and other state agencies, including TJPC and TYC. Currently, a MOU exists between TEA and all state agencies that regulate or have some authority over residential care facilities. This MOU was originally a requirement of the settlement of a lawsuit between Advocacy, Inc. and TEA (Angel G. v TEA) and now it's requirements are being codified into the Education Code in an expanded format.

Family Code § 58.0051. INTERAGENCY SHARING OF RECORDS.

(a) Within each county, a district school superintendent and the juvenile probation department may enter into a written interagency agreement to share information about juvenile offenders. The agreement must specify the conditions under which summary criminal history information is to be made available to appropriate school personnel and the conditions under which school records are to be made available to appropriate juvenile justice agencies.

(b) Information disclosed under this section by a school district must relate to the juvenile system's ability to serve, before adjudication, the student whose records are being released.

(c) A juvenile justice agency official who receives educational information under this section shall certify in writing that the institution or individual receiving the personally identifiable information has agreed not to disclose it to a third party, other than another juvenile justice agency.

(d) A juvenile justice agency that receives educational information under this section shall destroy all information when the child is no longer under the jurisdiction of a juvenile court.

Commentary by Lisa Capers

Source: HB 1749

Effective Date: Upon signing (May 24, 1999)

Applicability: None stated

Summary of Changes: This statute creates new section 58.0051 in the Family Code and codifies the juvenile justice system exception to the federal law governing student records. All public elementary and secondary schools are subject to the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. Section 1232g), a federal law that governs the disclosure of information from educational records. FERPA details under what circumstances and what information from a student's record may be shared with local community entities including juvenile justice professionals. Recent increases in violent offenses committed by juveniles and the rash of violence on school campuses has further contributed to the need for school officials and juvenile justice officials to exchange information to better serve and protect students. FERPA allows schools to play a vital role in a community's efforts to identify children who are at risk of delinquency and provide services prior to a child's becoming involved with the juvenile justice system. A 1994 amendment to FERPA permits educators to share information with juvenile justice officials on children who are at risk of involvement or have become involved in the juvenile justice system, prior to adjudication, to the extent State statute allows.

The juvenile justice system exception allows the disclosure of educational records, or information from educational records, without consent of the parent or eligible student if certain conditions are met. These conditions are set out in subsections (a)-(d).

Information sharing under this statute is two-way between the juvenile probation department and the local school district. Although this section does not require the juvenile court or juvenile board to approve the interagency information sharing agreement, it is strongly suggested that the juvenile board approve any policy of the probation department.

Education Code § 37.084. INTERAGENCY SHARING OF RECORDS.

(a) A school district superintendent or the superintendent's designee may disclose information contained in a student's educational records to a juvenile justice agency, as that term is defined by Section 58.101, Family Code, if the disclosure is under an interagency agreement authorized by Section 58.0051, Family Code.

(b) The commissioner may enter into an interagency agreement to share educational information for research and analytical purposes with the:

(1) Texas Juvenile Probation Commission;

(2) Texas Youth Commission;

(3) Texas Department of Criminal Justice; and

(4) Criminal Justice Policy Council.

(c) This section does not require or authorize release of student-level information except in conformity with the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g), as amended.

Commentary by Lisa Capers

Source: HB 1749

Effective Date: Upon signing (May 24, 1999)

Applicability: None stated

Summary of Changes: This change creates a new section 37.084 in the Texas Education Code and is the corollary section that creates the justice system exception to the FERPA law. Subsection (a) clearly authorizes the school district to share information with a juvenile justice agency under the interagency agreement discussed in Family Code 58.0051 discussed above. Subsection (b) authorizes the Texas Education Agency (TEA) to share information for research and analytical purposes with other state agencies, including TJPC. Subsection (c) makes it clear that the information state agencies can get from TEA under Subsection (b) does not include student specific information. FERPA only authorizes aggregate data to be shared among agencies.

6. Selected Texas Youth Commission Provisions

Family Code § 261.103. Report Made to Appropriate Agency

(a) Except as provided by Subsection (b), a [~~A~~] report shall be made to:

(1) any local or state law enforcement agency;

(2) the department if the alleged or suspected abuse involves a person responsible for the care, custody, or welfare of the child;

(3) the state agency that operates, licenses, certifies, or registers the facility in which the alleged abuse or neglect occurred; or

(4) the agency designated by the court to be responsible for the protection of children.

(b) A report may be made to the Texas Youth Commission instead of the entities listed under Subsection (a) if the report is based on information provided by a child while under the supervision of the commission concerning the child's alleged abuse of another child.

Commentary by Neil Nichols

Source: HB 3517

Effective Date: September 1, 1999

Applicability: Offenses committed on or after effective date

Summary of Changes: This amendment applies only to the requirement to report possible child abuse that TYC youth confess to having committed against other children. The amendment gives TYC professionals in this limited circumstance the discretion to report the confessions to the commission for screening (according to guidelines developed with the Department of Protective and Regulatory Services) instead of directly to state and local law enforcement agencies. It was prompted by an Attorney General's Opinion that treatment providers are required to report their suspicion of child abuse to law enforcement agencies or DPRS even when the suspicion is based on dated or incomplete information (DM-458). Hundreds of vague and stale accounts of these youth's possible abuse of other youth come to light in individual and group counseling sessions every month.

Family Code § 261.105. Referral of Report by Department or Law Enforcement.

(e) In cooperation with the department, the Texas Youth Commission by rule shall adopt guidelines for identifying a report made to the commission under Section 261.103(b) that is appropriate to refer to the department or a law enforcement agency for investigation. Guidelines adopted under this subsection must require the commission to consider the severity and immediacy of the alleged abuse or neglect of the child victim.

Commentary by Neil Nichols

Source: HB 3517

Effective Date: September 1, 1999

Applicability: Offenses committed on or after effective date

Summary of Changes: The provision would require that TYC adopt rules in consultation with DPRS for identifying which reports involving confessions of child abuse by TYC youth will be referred for follow-up investigation by a law enforcement agency or DPRS based on the severity and immediacy of the alleged harm to the child victim.

Human Resources Code § 61.0762. INFANT CARE AND PARENTING PROGRAM.

(a) The commission may establish infant care and parenting programs for children who are parents.

(b) The commission may permit a child who is the mother of an infant younger than 36 months to have possession of her infant in a residential program that has an infant care and parenting program until the infant reaches the age of 36 months or the mother is released under supervision if:

(1) the infant's father or another relative or guardian of the infant agrees in advance of the infant's placement with the infant's mother to assume possession of the infant immediately upon notice by the commission to do so;

(2) the infant's parents and any other person having a duty of support acknowledge that by permitting the mother to have possession of the infant while the mother is confined in a residential facility, the commission assumes no responsibility for the infant's care beyond the responsibility of care that is ordinarily due the infant's mother and the reasonable accommodations that are necessary for the mother's care of the infant;

(3) the infant's parents and any other person having a duty of support agree to indemnify and hold the commission harmless from any claims that may be made against the commission for the infant's support, including medical support; and

(4) the commission determines that the placement is in the best interest of both the mother and her infant.

Commentary by Neil Nichols

Source: SB 1607

Effective Date: August 30, 1999

Applicability: None stated.

Summary of Changes: This new provision in the Texas Youth Commission's enabling act authorizes, but does not require, the commission to establish infant care and parenting programs for youth committed to the agency who are parents. It would authorize the commission, when it determines it appropriate, to permit a mother to keep her baby with her for the first 36 months following birth. It limits TYC's responsibility and liability for the baby's care and support. TYC would be responsible only for providing the care that it would ordinarily be responsible for providing to the baby's mother and only for making reasonable accommodations to enable the mother to properly care for her baby. TYC would be able to withdraw its permission to allow the mother's possession of the baby at any time. TYC expects to contract with a private residential service provider to provide this program for a few TYC teen mothers and their babies this fall.

Human Resources Code. § 61.077. Mentally Ill or Retarded Child

(c) If a child who is discharged from the commission under Subsection (b) as a result of mental illness is not receiving court-ordered mental health services, the child's discharge is effective on the earlier of:

(1) the date the court enters an order regarding an application for mental health services filed under Section 61.0772(b); or

(2) the 30th day after the date the application is filed.

(d) If a child who is discharged from the commission under Subsection (b) as a result of mental illness is receiving court-ordered mental health services, the child's discharge from the commission is effective immediately. If the child is receiving mental health services outside the child's home county, the commission shall notify the mental health authority located in that county of the discharge not later than the 30th day after the date that the child's discharge is effective.

(e) If a child who is discharged from the commission under Subsection (b) as a result of mental retardation is not receiving mental retardation services, the child's discharge is effective on the earlier of:

(1) the date the court enters an order regarding an application for mental retardation services filed under Section 61.0772(c); or

(2) the 30th day after the date that the application is filed.

(f) If a child who is discharged from the commission under Subsection (b) as a result of mental retardation is receiving mental retardation services, the child's discharge from the commission is effective immediately.

Commentary by Neil Nichols

Source: HB 3517

Effective Date: September 1, 1999

Applicability: Offenses committed on or after effective date

Summary of Changes: Under current law, TYC is required to discharge non-sentenced youth with

mental illness or mental retardation who have met their administratively assigned minimum length of stay and are unable to progress in the treatment program due to their mental impairment. The new amendments allow the effective date of the discharge to be moved up from 30-days following the filing of an application for follow-up mental health services to the date the court takes action on the application (or, in the case of mental retardation services, to the date action is taken on the referral). The discharge would be effective immediately if the child is already receiving court-ordered mental health or mental retardation services at the time of discharge eligibility. If these services are being received outside the child's home county, TYC is required to provide the mental health authority of the child's home county notice of the child's discharge 30 days prior to the discharge effective date.

Human Resources Code § 61.0772. Examination Before Discharge.

(b) Before [~~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 commission [~~psychiatrist~~] shall file a sworn application for court-ordered mental health services, as provided in Subchapter C, Chapter 574, Health and Safety Code, if:

(1) the child is not receiving court-ordered mental health services; and

(2) the psychiatrist who examined the child 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) Before [~~Not later than the 30th day before the date~~] a child who is identified as mentally retarded under Chapter 593, Health and Safety Code, is discharged from the commission's custody under Section 61.077(b), the commission shall refer the child for [~~a determination of~~] mental retardation services if the child is not receiving mental retardation services [~~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 3517

Effective Date: September 1, 1999

Applicability: Offenses committed on or after effective date

Summary of Changes: The changes made in this section are technical changes to correspond to the changes made in HRC § 61.077 and to eliminate an unnecessary reference to the MHMR interdisciplinary team recommendation.

Human Resources Code § 61.093. Escape and Apprehension.

(b) A child who is arrested or taken into custody under Subsection (a) [~~of this section~~] may be detained in any suitable place, including an adult jail facility if the person is 17 years of age or older, until the child is returned to the custody of the commission or transported to a commission facility.

Commentary by Neil Nichols

Source: HB 3517

Effective Date: September 1, 1999

Applicability: Offenses committed on or after effective date

Summary of Changes: This amendment to the Youth Commission's enabling act authorizes short-term detention of TYC youth in adult jail facilities if they are 17 or older and have escaped from a TYC facility or violated a condition of TYC parole. Under current law, youth who are 17 years of age may be detained temporarily in adult jails for these purposes only if they also have been charged with a criminal offense. The short-term detention of these older TYC youth (ages 17 to 20) in an adult detention facility for these purposes is more age appropriate than it is in a juvenile detention facility where children as young as age 10 may be detained.

§ 51.12. Place and Conditions of Detention.

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

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

(2) who is at least 17 [~~18~~] years of age and who has been taken into custody after having:

(A) escaped from a juvenile facility operated by or under contract with the Texas Youth Commission; or

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

Commentary by Neil Nichols

Source: HB 3517

Effective Date: September 1, 1999

Applicability: Offenses committed on or after effective date

Summary of Changes: This amendment corresponds to the change made in HRC § 61.093 that

authorizes short-term detention of TYC youth who are age 17 or older in adult jail facilities when they have escaped or violated parole conditions. This provision excepts such detentions from the requirements normally associated with the place and conditions of juvenile detention.

Penal Code § 38.06. Escape.

(c) An offense under this section is a felony of the third degree if the actor:

(1) is under arrest for, charged with, or convicted of a felony; [~~or~~]

(2) is confined in a secure correctional facility; or

(3) is committed to a secure correctional facility, as defined by Section 51.02, Family Code, other than a halfway house, operated by or under contract with the Texas Youth Commission.

Commentary by Neil Nichols

Source: SB 152

Effective Date: September 1, 1999

Applicability: Offenses committed on or after effective date

Summary of Changes: Under current law, it is an offense for a youth to escape from TYC's custody (unauthorized departure from custody or failure to return to custody following temporary leave). This amendment makes the offense punishable as a third degree felony instead of a Class A misdemeanor when the youth escapes from a secure correctional facility operated by or under contract with TYC. It does not include escapes from halfway houses. Making the offense of escape from TYC institutions a felony-level offense rather than a misdemeanor-level offense more accurately reflects the higher risk this conduct now presents to the public due to the more violent population of TYC youth and puts the youth on notice that escape is a serious offense with serious consequences. Law enforcement agencies may be more inclined to place necessary resources in the apprehension of juvenile escapees if the offense is a felony escape rather than just a misdemeanor escape.

Penal Code § 39.04. Violations of the Civil Rights of Person in Custody; Improper Sexual Activity With Person in Custody

(a) An official or employee of a correctional facility or a peace officer commits an offense if he intentionally:

(1) denies or impedes a person in custody in the exercise or enjoyment of any right, privilege, or immunity knowing his conduct is unlawful; or

(2) engages in sexual contact, sexual intercourse, or deviate sexual intercourse with an individual in custody.

(e) In this section:

(1) "Correctional facility" means:

(A) any place described by Section 1.07(a)(14); or

(B) a "secure correctional facility" or "secure detention facility" as defined by Section 51.02, Family Code.

(2) "Custody" means the detention, arrest, or confinement of an adult offender or the detention or the commitment to a facility operated by or under a contract with the Texas Youth Commission of a juvenile offender [~~a person~~].

(3) [~~(2)~~] "Sexual contact," "sexual intercourse," and "deviate sexual intercourse" have the meanings assigned by Section 21.01.

(f) An employee of the Texas Department of Criminal Justice commits an offense if the employee engages in sexual contact, sexual intercourse, or deviate sexual intercourse with an individual who is not the employee's spouse and who the employee knows is under the supervision of the department but not in the custody of the department.

(g) An offense under Subsection (f) is a state jail felony.

Commentary by Neil Nichols

Source: SB 894

Effective Date: September 1, 1999

Applicability: Offenses committed on or after effective date

Summary of Changes: Under current law, a peace officer or employee of an adult jail or correctional facility commits a state jail felony if he engages in sexual intercourse or deviate sexual intercourse with an individual in custody. The offense does not apply to employees of juvenile facilities and does not prohibit sexual contact. This amendment extends application of PC § 39.04 to employees of juvenile correctional facilities and juvenile detention centers and expands the prohibited activity to include "sexual contact" as defined in PC § 21.01(2). Before this amendment, employees of juvenile facilities committed an offense if they engaged in sexual contact with children younger than age 17 [PC §21.11(a)(1)], but committed no crime for consensual sexual activity with older youth under their supervision.

Government Code § 411.150. DNA Records of Certain Juveniles

(a) A juvenile who is committed to the Texas Youth Commission shall provide one or more blood

samples or other specimens taken by or at the request of the commission for the purpose of creating a DNA record if the juvenile is ordered by a juvenile court to give the sample or specimen or is committed to the commission for an adjudication as having engaged in delinquent conduct that violates:

(1) an offense:

(A) under Section 19.02, Penal Code (murder), or Section 22.02, Penal Code (aggravated assault);

(B) under Section 30.02, Penal Code (burglary), if the offense is punishable under Subsection (c)(2) or (d) of that section; or

(C) for which the juvenile is required to register as a sex offender under Chapter 62, Code of Criminal Procedure, as added by Chapter 668, Acts of the 75th Legislature, Regular Session, 1997 [~~one or more of the following Penal Code provisions:~~

[~~(A) Section 21.11 (indecency with a child);~~

[~~(B) Section 22.011 (sexual assault);~~

[~~(C) Section 22.021 (aggravated sexual assault);~~

[~~(D) Section 20.04(a)(4) (aggravated kidnapping), if the defendant committed the offense with the intent to violate or abuse the victim sexually; or~~

[~~(E) Section 30.02 (burglary), if the offense is punishable under Subsection (d) and the defendant committed the offense with the intent to commit a felony listed in Paragraph (A), (B), (C), or (D) of this subdivision~~]; or

(2) a penal law if the juvenile has previously been convicted of or adjudicated as having engaged in:

(A) a violation of a penal law described in Subsection (a)(1); or

(B) a violation of a penal law under federal law or the laws of another state that involves the same conduct as a violation of a penal law described by Subsection (a)(1).

(c) The Texas Youth Commission shall:

(1) obtain blood samples or other specimens from juveniles under this section;

(2) preserve each sample or other specimen collected;

(3) maintain a record of the collection of the sample or specimen; and

(4) send the sample or specimen to the director for scientific analysis under this subchapter.

(d) A medical staff employee of the Texas Youth Commission may obtain a voluntary sample or specimen from any juvenile.

(e) An employee of the Texas Youth Commission may use force against a juvenile required to provide a sample under this section when and to the degree the employee reasonably believes the force is immediately necessary to obtain the sample or specimen.

(f) The Texas Youth Commission may contract with an individual or entity for the provision of phlebotomy services under this section.

Commentary by Neil Nichols

Source: HB 1188; HB 3215

Effective Date: September 1, 1999

Applicability: None stated.

Summary of Changes: Changes in subsection (a) were made by HB 1188 to expand the list of offenses for which DNA records would be created for persons confined in TDCJ and TYC facilities. The offenses include murder, aggravated assault, burglary of a habitation or any offense for which registration as a sex offender is required. HB 3215 restates the current requirement that TYC take the blood samples and send them to DPS for creation of the DNA record. It authorizes TDCJ and TYC to take voluntary blood samples, but also to use force when it is immediately necessary to obtain the samples from those who are required, but who refuse, to give it.

7. Selected Texas Juvenile Probation Commission Provisions

Family Code § 232.002. Licensing Authorities Subject to Chapter.

The following state agencies are licensing authorities subject to this chapter:

(1) Department of Agriculture;

(2) Texas Commission on Alcohol and Drug Abuse;

(3) Texas Alcoholic Beverage Commission;

(4) Texas Appraiser Licensing and Certification Board;

(5) Texas Board of Architectural Examiners;

(6) State Board of Barber Examiners;

(7) Texas Board of Chiropractic Examiners;

(8) Comptroller of Public Accounts;

(9) Texas Cosmetology Commission;

(10) Court Reporters Certification Board;

(11) State Board of Dental Examiners;

(12) Texas State Board of Examiners of Dietitians;

(13) Texas Funeral Service Commission;

(14) Texas Department of Health;

(15) Texas Department of Human Services;

(16) Texas Board of Professional Land Surveying;

(17) Texas Department of Licensing and Regulation;

(18) Texas State Board of Examiners of Marriage and Family Therapists;

(19) Texas State Board of Medical Examiners;

(20) Midwifery Board;

(21) Texas Natural Resource Conservation Commission;

(22) Board of Nurse Examiners;

(23) Texas Board of Occupational Therapy Examiners;

(24) Texas Optometry Board;

(25) Parks and Wildlife Department;

(26) Texas State Board of Examiners of Perfusionists;

(27) Texas State Board of Pharmacy;

(28) Texas Board of Physical Therapy Examiners;

(29) Texas State Board of Plumbing Examiners;

(30) Texas State Board of Podiatric Medical Examiners;

(31) Polygraph Examiners Board;

(32) Texas Board of Private Investigators and Private Security Agencies;

(33) Texas State Board of Examiners of Professional Counselors;

(34) State Board of Registration for Professional Engineers;

(35) Department of Protective and Regulatory Services;

(36) Texas State Board of Examiners of Psychologists;

(37) Texas State Board of Public Accountancy;

(38) Department of Public Safety of the State of Texas;

(39) Public Utility Commission of Texas;

(40) Railroad Commission of Texas;

(41) Texas Real Estate Commission;

(42) State Bar of Texas;

(43) Texas State Board of Social Worker Examiners;

(44) State Board of Examiners for Speech-Language Pathology and Audiology;

(45) Texas Structural Pest Control Board;

(46) Board of Tax Professional Examiners;

(47) Secretary of State;

(48) Supreme Court of Texas;

(49) Texas Transportation Commission;

(50) State Board of Veterinary Medical Examiners;

(51) Board of Vocational Nurse Examiners;

(52) Texas Ethics Commission;

(53) Advisory Board of Athletic Trainers;

(54) State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments;

(55) Texas Board of Licensure for Professional Medical Physicists; [~~and~~]

(56) Texas Department of Insurance;[~~.~~]

(57) Texas Board of Orthotics and Prosthetics; and

(58) Texas Juvenile Probation Commission.

Commentary by Lisa Capers

Source: HB 3517

Effective Date: September 1, 1999

Applicability: Offenses committed on or after effective date

Summary of Changes: Chapter 232 of the Family Code deals with persons who are delinquent in their child support payments. The statutes allow the suspension of a business, occupational, professional, recreational, or drivers license of a person who is in arrears in an amount equal to, or greater than, the total support due for 90 days and who has been given an opportunity to make a payment plan but has failed to comply with such plan.

Section 232.002 is the section that lists the state agencies that issue licenses or other legal authorizations for a person's professional status that are subject to being suspended by a court for failure to pay child support. This amendment adds the Texas Juvenile Probation Commission (TJPC) to this list since TJPC certifies juvenile probation officers, detention officers, and corrections officers under the Texas Human Resources Code. Under this amendment, a court could order the suspension of these officers' certifications if the person fails to meet their court ordered child support obligations.

Family Code §261.405 INVESTIGATIONS IN [~~PRE-ADJUDICATION AND POST-ADJUDICATION SECURE~~] JUVENILE JUSTICE PROGRAMS AND FACILITIES.

(a) A report of alleged abuse or neglect in a public or private juvenile pre-adjudication secure detention facility, including hold-over facilities, or public or private juvenile post-adjudication secure correctional facility, except for a facility operated solely for children committed to the Texas Youth Commission, shall be made to a local law enforcement agency for investigation. The local law enforcement agency shall immediately notify the Texas Juvenile Probation Commission of any report the agency receives.

(b) The Texas Juvenile Probation Commission shall conduct an investigation as provided by this chapter if the commission receives a report of alleged abuse or neglect in any program, including a juvenile justice alternative education program, operated wholly or partly by:

(1) a local juvenile probation department; or

(2) a private vendor operating under the authority of a county juvenile board in accordance with the standards adopted by the commission.

(c) In an investigation required under this section, the investigating agency shall have access to medical and mental health records as provided by Subchapter D.

Commentary by Lisa Capers

Source: HB 3517

Effective Date: September 1, 1999

Applicability: A report received by a local law enforcement agency or the Texas Juvenile Probation Commission on or after the effective date.

Summary of Changes: Under current law, investigation of abuse and neglect in secure juvenile pre-adjudication detention and post-adjudication correctional facilities clearly is the responsibility of the Texas Juvenile Probation Commission (TJPC). However, for non-residential programs operated by the probation department and/or under the authority of the juvenile board, no agency has the clear authority or mandate to investigate, other than law enforcement. This is particularly a concern in juvenile justice alternative education programs (JJAEP).

This amendment gives TJPC the responsibility to investigate allegations of abuse and neglect for the protection of the child in all programs operated by a juvenile probation department, juvenile board, or private vendor under juvenile board authority, including JJAEPS. The addition of subsection (c) gives TJPC access to medical and mental health records needed during abuse and neglect investigations. These will normally be the medical and mental health records in the possession of the facility or department operating the program.

Human Resources Code § 141.086. Funding and Construction of Post-Adjudication Facilities

(g) For a facility constructed under this section, [~~the following amounts may be appropriated:~~

[~~(1) not more than 50 percent of the operating costs of the facility during the 1997 fiscal year; and~~

[~~(2)~~] not more than 25 percent of the operating costs of the facility may be reimbursed by the commission [~~during each of the 1998 and 1999 fiscal years~~].

(h) It is the intent of the legislature to appropriate the full amount of money authorized under Subsection (g)[~~(2)~~].

(i) [~~On and after September 1, 1999, a facility constructed under this section must be operated entirely by the county using the facility.~~

[~~(j)~~] The commission shall conduct an annual audit of the operating costs for a fiscal year of a facility constructed under this section for each fiscal year for which funds are appropriated unless the county in which the facility is located has conducted an annual audit [~~through fiscal year 1999~~]. The commission shall submit a report on the results of its or the county's [~~the~~] audit to the Legislative Budget Board and the governor not later than the 60th day

after the last day of the fiscal year covered by the audit.

(j) [~~(k)~~] In this section, "operating costs" means the operating costs of a facility at an 80-percent occupancy rate.

Commentary by Lisa Capers

Source: HB 3517

Effective Date: September 1, 1999

Applicability: Offenses committed on or after effective date

Summary of Changes: Section 141.086 of the Human Resources Code was originally enacted in 1995 during the 74th Texas Legislature. It's purpose was to authorize the Texas Juvenile Probation Commission (TJPC) to allocate $37.5 million dollars in general obligation bond proceeds to counties who wanted to build, acquire and equip post-adjudication residential or day-treatment facilities for juvenile offenders. The statute in Subsection (g) originally set out the parameters for the distribution of state appropriated funds designed to assist counties with the operational costs of these facilities once built.

The current changes made to Subsection (g) are simply to update the statute from its original version in 1995. Currently, most of the facilities have been constructed and are operational. However, there are approximately 3 that are not yet on-line. Therefore, the statute required a modification to authorize the legislature to continue the appropriation of additional operational funding for the new facilities coming on-line during the next biennium.

Additionally, in Subsection (i), TJPC will not have to contract for the annual audit of the operating funds of the facility if the county in which the facility is located has conducted an annual audit.

Sections 141.0475 and 141.0476, Human Resources Code, are repealed.

Commentary by Lisa Capers

Source: HB 3517

Effective Date: September 1, 1999

Applicability: Offenses committed on or after effective date

Summary of Changes: Current Human Resources Code Section 141.0475 requires the Texas Juvenile Probation Commission (TJPC) and the Department of Protective and Regulatory Services (DPRS) to maintain a joint memorandum of understanding (MOU) to coordinate local-level service delivery to runaways. Maintenance of an MOU is no longer necessary because the agencies already maintain a close working relationship to assure adequate and appropriate services are provided to runaway children. Coordination is achieved through a joint board subcommittee of TJPC and DPRS and staff coordination on the STAR program, which serves runaway youth. Therefore, this amendment repeals this section in its entirety.

Current Human Resources Code Section 141.0476 requires TJPC, DPRS, and the Texas Youth Commission (TYC) to maintain a joint MOU relating to children who are abused or neglected or at risk of abuse or neglect. This MOU is not necessary because coordination of services to these children is accomplished through local Community Resource Coordination Groups (CRCGs) made up of representatives from juvenile probation, child protective services, and mental health/mental retardation. TJPC also coordinates activities with DPRS and TYC through joint board committees with each agency. As with the above statute, this amendment repeals this section in its entirety.

Human Resources Code § 152.0821. Fisher County.

(a) Fisher County is included in the Fisher, Mitchell, and Nolan counties juvenile board. The juvenile board is composed of:

(1) a [~~the~~] county judge from [~~judges and the district judges in~~] Fisher, Mitchell, or [~~and~~] Nolan County elected by a majority vote of the county judges from those counties;

(2) the 32nd Judicial District judge or the judge of the county court at law in Nolan County who is selected by agreement between those two judges;

(3) one person [~~two persons~~] appointed by the Nolan County Commissioners Court;

(4) subject to Subsection (f), the city manager of Sweetwater or another person [~~two persons~~] appointed by the Sweetwater City Commission;

(5) subject to Subsection (g), the superintendent of the Sweetwater Independent School District or another person [~~two persons~~] appointed by the board of trustees of the Sweetwater Independent School District;

(6) one person [~~three members~~] appointed by the Mitchell County Commissioners Court; [~~and~~]

(7) one person [~~two members~~] appointed by the Fisher County Commissioners Court;

(8) the county attorney of Fisher, Mitchell, or Nolan County selected by a majority vote of the county judges of those counties; and

(9) one person selected by majority vote of the county judges of Fisher, Mitchell, and Nolan counties, subject to confirmation by a vote of the commissioners courts of each of those counties.

(b) The chairman of the board is the county judge appointed under Subsection (a)(1) [~~by majority vote shall annually elect one of its members as chairman~~]. The chairman presides at meetings scheduled by the board.

(c) The appointed members serve without compensation. Each member serves a two-year term.

(f) The board member appointed by the Sweetwater City Commission under Subsection (a)(4) may be appointed only if the City of Sweetwater agrees to provide funds for the salaries of the personnel assigned to Nolan County and other expenses the board chairman certifies as necessary to provide adequate juvenile services to Nolan County as provided by Section 152.1831(d).

(g) The board member appointed by the Sweetwater Independent School District under Subsection (a)(5) may be appointed only if that school district agrees to provide funds for the salaries of the personnel assigned to Nolan County and other expenses the board chairman certifies as necessary to provide adequate juvenile services to Nolan County as provided by Section 152.1831(d).

Commentary by Lisa Capers

Source: HB 774

Effective Date: September 1, 1999

Applicability: Board membership on or after effective date.

Summary of Changes: Fisher, Mitchell, and Nolan counties operate a joint juvenile board for the three counties. Each county has a specific statute creating their juvenile board found in Chapter 152 of the Human Resources Code. In 1995 during the 74th Texas Legislature, the Mitchell County statute was amended to clarify the composition and selection procedures for membership on the combined, joint juvenile board. House Bill 774 now changes Fisher County's statute to conform exactly to the Mitchell County statute.

Human Resources Code § 152.1831. Nolan County.

(a) Nolan County is included in the Fisher, Mitchell, and Nolan counties juvenile board. The juvenile board is composed of:

(1) a [~~the~~] county judge from [~~judges and the district judges in~~] Fisher, Mitchell, or [~~and~~] Nolan County elected by a majority vote of the county judges from those counties;

(2) the 32nd Judicial District judge or the judge of the county court at law in Nolan County who is selected by agreement between those two judges;

(3) one person [~~two persons~~] appointed by the Nolan County Commissioners Court;

(4) subject to Subsection (f), the city manager of Sweetwater or another person [~~two persons~~] appointed by the Sweetwater City Commission;

(5) subject to Subsection (g), the superintendent of the Sweetwater Independent School District or another person [~~two persons~~] appointed by the board of trustees of the Sweetwater Independent School District;

(6) one person [~~three members~~] appointed by the Mitchell County Commissioners Court; [~~and~~]

(7) one person [~~two members~~] appointed by the Fisher County Commissioners Court;

(8) the county attorney of Fisher, Mitchell, or Nolan County selected by a majority vote of the county judges of those counties; and

(9) one person selected by majority vote of the county judges of Fisher, Mitchell, and Nolan counties, subject to confirmation by a vote of the commissioners courts of each of those counties.

(b) The chairman of the board is the county judge appointed under Subsection (a)(1) [~~by majority vote shall annually elect one of its members as chairman~~]. The chairman presides at meetings scheduled by the board.

(c) The appointed members serve without compensation. Each member serves a two-year term.

(f) The board member appointed by the Sweetwater City Commission under Subsection (a)(4) may be appointed only if the City of Sweetwater agrees to provide funds for the salaries of the personnel assigned to Nolan County and other expenses the board chairman certifies as necessary to provide adequate juvenile services to Nolan County as provided by Subsection (d).

(g) The board member appointed by the Sweetwater Independent School District under Subsection (a)(5) may be appointed only if that school district agrees to provide funds for the salaries of the personnel assigned to Nolan County and other expenses the board chairman certifies as necessary to provide adequate juvenile services to Nolan County as provided by Subsection (d).

Commentary by Lisa Capers

Source: HB 774

Effective Date: September 1, 1999

Applicability: Board membership on or after effective date.

Summary of Changes: As stated above, Fisher, Mitchell, and Nolan counties operate a joint juvenile board for the three counties. Each county has a specific statute creating its juvenile board found in Chapter 152 of the Human Resources Code. In 1995 during the 74th Texas Legislature, the Mitchell

County statute was amended to clarify the composition and selection procedures for membership on the combined, joint juvenile board. House Bill 774 changes Fisher County's statute and in this case also changes Nolan County's statute to conform exactly to the Mitchell County statute.

Human Resources Code § 152.1071. Harris County.

(a) The juvenile board of Harris County is composed of:

(1) the county judge;

(2) the juvenile court judges;

(3) one judge of a district court that primarily hears family law matters, selected by those judges;

(4) one judge of a district court that primarily hears criminal law cases, selected by those judges; [~~and~~]

(5) one judge of a district court that primarily hears civil cases, selected by those judges; and

(6) a justice of the peace in Harris County, selected by majority vote of all of the justices of the peace in the county.

Commentary by Lisa Capers

Source: HB 1082

Effective Date: September 1, 1999

Applicability: None stated.

Summary of Changes: This amendment adds a justice of the peace in Harris County to the membership list composing the Harris County Juvenile Board. The JP must be selected by a majority vote of all the justices of the peace in the county.

8. Selected Department of Protective & Regulatory Services Provisions

FAMILY CODE CHAPTER 265. PREVENTION AND EARLY INTERVENTION SERVICES

§ 265.001. DEFINITIONS.

In this chapter:

(1) "Department" means the Department of Protective and Regulatory Services.

(2) "Division" means the prevention and early intervention services division within the department.

(3) "Prevention and early intervention services" means programs intended to provide early intervention or prevent at-risk behaviors that lead to child abuse, delinquency, running away, truancy, and dropping out of school.

Commentary by Charles Childress

Source: SB 1574

Effective Date: September 1, 1999

Applicability: None stated

Summary of Changes: This new chapter establishes within the Department of Protective and Regulatory Services a specialized division to coordinate prevention and early intervention programs aimed at preventing child abuse, delinquency, running away, truancy, and dropping out of school. The department was already responsible for managing the Services to At-Risk Youth program under Subchapter D, Chapter 264, Family Code. Senate Bill 1574 transfers three other prevention and early intervention programs to the department, "Communities in Schools" from the Texas Education Agency and Texas Workforce Commission, the "Parents as Teachers" program from the Department of Mental Health and Mental Retardation, and the Buffalo Soldier Heritage program from the Juvenile Probation Commission.

§ 265.002. PREVENTION AND EARLY INTERVENTION SERVICES DIVISION.

The department shall operate a division to provide services for children in at-risk situations and for the families of those children and to achieve the consolidation of prevention and early intervention services within the jurisdiction of a single agency in order to avoid fragmentation and duplication of services and to increase the accountability for the delivery and administration of these services. The division shall be called the prevention and early intervention services division and shall have the following duties:

(1) to plan, develop, and administer a comprehensive and unified delivery system of prevention and early intervention services to children and their families in at-risk situations;

(2) to improve the responsiveness of services for at-risk children and their families by facilitating greater coordination and flexibility in the use of funds by state and local service providers;

(3) to provide greater accountability for prevention and early intervention services in order to demonstrate the impact or public benefit of a program by adopting outcome measures; and

(4) to assist local communities in the coordination and development of prevention and early intervention services in order to maximize federal, state, and local resources.

Commentary by Charles Childress
Source: SB 1574
Effective Date: September 1, 1999
Applicability: None stated
Summary of Changes: The duties of the new DPRS division stated in this section summarize the objectives of the program. Several uncoordinated prevention programs have been created in the past few years in an attempt to address child abuse, delinquency, truancy and school drop out rates, and missing children. The new division is intended to improve coordination, maximize the impact of funding, develop accountability systems, and ensure that the State of Texas obtains its share of federal funding.

§ 265.003. CONSOLIDATION OF PROGRAMS.

(a) In order to implement the duties provided in Section 265.002, the department shall consolidate into the division programs with the goal of providing early intervention or prevention of at-risk behavior that leads to child abuse, delinquency, running away, truancy, and dropping out of school.

(b) The division may provide additional prevention and early intervention services in accordance with Section 265.002.

Commentary by Charles Childress
Source: SB 1574
Effective Date: September 1, 1999
Applicability: None stated
Summary of Changes: This section provides DPRS with a broad grant of authority to consolidate prevention and early intervention services that already exist within the agency, as well as those programs being transferred to the agency, and to add services to the extent existing resources allow.

Human Resources Code § 40.002. Department of Protective and Regulatory Services; Responsibility

(b) The department is the state agency with primary responsibility for:

(1) providing protective services for children and elderly and disabled persons, including investigations of alleged abuse, neglect, or exploitation in facilities of the Texas Department of Mental Health and Mental Retardation;

(2) providing family support and family preservation services which respect the fundamental right of parents to control the education and upbringing of their children; [~~and~~]

(3) regulating child-care facilities and child-care administrators; and

(4) implementing and managing programs intended to provide early intervention or prevent at-risk behaviors that lead to child abuse, delinquency, running away, truancy, and dropping out of school.

Commentary by Charles Childress
Source: SB 1574
Effective Date: September 1, 1999
Applicability: None stated
Summary of Changes: The amendment to this section makes early intervention and prevention services one of the four primary assignments of DPRS.

SB 1574. SECTION 6. [uncodified]

(a) On the effective date of this Act, the following programs are transferred from the agencies indicated to the Department of Protective and Regulatory Services to be administered by the prevention and early intervention services division of the department as provided by Chapter 265, Family Code, as added by this Act:

(1) from the Texas Department of Mental Health and Mental Retardation: the Parents as Teachers program;

(2) from the Texas Education Agency and the Texas Workforce Commission: the Communities In Schools program; and

(3) from the Texas Juvenile Probation Commission: the Buffalo Soldier Heritage program.

(b) On September 1, 1999, any powers, duties, obligations, rights, contracts, records, employees, property, funds, and appropriations of an agency program listed under Subsection (a) of this section are transferred to the Department of Protective and Regulatory Services.

(c) The employees of the services for at-risk youth program and the community youth development grant program administered by the Department

of Protective and Regulatory Services are transferred to the prevention and early intervention services division of the Department of Protective and Regulatory Services.

(d) through (h) omitted.

Commentary by Charles Childress

Source: SB 1574

Effective Date: September 1, 1999

Applicability: None stated

Summary of Changes: This section of the bill transfers three programs to DPRS. By far the largest of the programs is the Communities in Schools program, which is now operating in 25 Texas Workforce Commission local workforce areas, with 16 full time employees and a $35 million budget. The Parents as Teachers program, operating at 5 sites, serves parents of children under age 6, teaching school preparation skills and will be transferred with $750,00 in funding, but no additional staff authorization. The Buffalo Soldier Heritage program serves minority and at-risk youth between ages 10-17 at five sites through mentoring, skills training, character development and community service projects. It will be transferred with $500,000 in funding and no additional staff for DPRS.