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CHAIR'S MESSAGE
by Jim Bethke

Welcome to those who are new to the section and special thanks to the sustaining members. The Council welcomes Brian Fischer (Houston), Howard Hickman (Austin), and Maxine Longoria (Harlingen) as its newest members replacing Emily Helm, Arthur Washington, and the Honorable Juan Jose Martinez. The Council and Section wish to thank Emily, Arthur, and Judge Martinez for their tireless service, insights, and leadership to the Section. Last year, under the solid leadership of the Honorable Darlene Whitten and the hard work of many past and present section member volunteers much was accomplished to promote and facilitate the practice of juvenile law.

The Council and I intend to continue making progress and improving the resources available to those interested in the betterment of juvenile justice. To this end, the Council at the June annual meeting voted to approve changes to the by-laws, revamp the section web page, and to make the *Juvenile Forms Book* a priority project this year.

Kristy Carr of the Texas Juvenile Probation Commission was selected to serve as the Section Webmaster. Kristy has worked with the Section for many years. Her contributions have been invaluable. A new design will be rolled-out early August. We encourage all Section members to visit the site and make use of the information available. We believe that the Council must be proactive to attain greater member involvement in Section activities and publications. In addition to the current resources, the enhanced site will include: 1) contact information of all Council members; 2) an overview and history of the Juvenile Law Section; 3) how to join the Section; 4) current by-laws; 5) council meeting minutes; 6) information relating to TBLS specialization; and, 7) future training events and opportunities pertinent to juvenile justice practitioners.

It is an honor to serve as your Chair. I am fortunate to have the support of an excellent Council and the tremendous effort, energy, and knowledge of the Section's anchor and champion—Professor Robert O. Dawson. The Council and I look forward to meeting some of you and hearing from all of you with any ideas, concerns or comments you may wish to share. Visit us at www.juvenilelaw.org and please e-mail your comments and suggestions to me at jim.bethke@courts.state.tx.us.

Enjoy this excellent Special Legislative Issue analyzing the significant juvenile justice changes made by the 77th Legislature.

My best,
James D. Bethke

EDITOR'S FOREWORD
by Robert Dawson

Special Legislative Issue. This is the fourth special legislative issue of the juvenile law newsletter. This is one of the longer issues—necessary to take account of the numerous changes that the legislature made in Texas juvenile law in its 77th session. This is a bonus issue. The September and December issues will be published as usual.

Special Recognitions. This was an excellent legislative session for juvenile justice. On the regulatory side, many important provisions were enacted, including some major changes in juvenile records and sex offender registration laws. As in every legislative session beginning in 1995, the lion's share of the credit belongs to Representative **Toby Goodman**, Chair of the House Juvenile Justice and Family Issues Committee and legislator extraordinary. Toby's intelligent, diligent and compassionate approach to juvenile justice is absolutely astounding. He managed to get House Bill 1118—which contains some pretty significant changes in public policy—passed without anybody in the House even questioning what he was doing. That is a measure of the respect his colleagues have for him. Toby thought the lack of debate made the project of passing HB 1118 boring, but I was grateful beyond belief to be blessed by that boredom. He now talks about retiring from the legislature, or running for the Senate, or the possibility that the Juvenile Justice and Family Issues Committee will be abolished. Of course, the juvenile justice community in Texas will enthusiastically support Representative Goodman in whatever choice he makes, except, of course, to retire from the legislature.

Special recognition also goes to Senator **Royce West**, who sponsored HB 1118 and was the author of Senate Bill 1432, a re-write of the truancy statutes. Although involved deeply in major criminal legislation, Senator West took the time to understand, critique and alter both of those bills and move them expeditiously through the Senate committee and floor processes. We owe him major thanks for doing so.

Finally, special recognition goes to Senator **Rodney Ellis**, author of Senate Bill 7, the Texas Fair Defense Act. By that Act, Texas joins the vast majority of American states that provide state standards, monitoring and financial assistance for the defense of indigents charged in criminal or juvenile courts. This is a monumental achievement—one that would have been unthinkable only one session ago. Senator Ellis and his staff worked extraordinarily long and hard on this bill, including obtaining a secure funding of about $ 1,000,000 per month for the program.

On the funding side, despite a lean state budget, juvenile justice came out well. The articles by **Vicki Spriggs**, Executive Director of the Texas Juvenile Probation Commission, **Steve Robinson,** Executive Director of the Texas Youth Commission, and **Thomas Chapmond**, Director of Prevention and Early Intervention of the Texas Department of Protective and Regulatory Services, detail the fiscal achievements of this session. A good session indeed!

Contributors to the Issue. I was aided by a very good crew of commentators for this issue. Returning from previous successful performances are **Lisa Capers**, General Counsel and Deputy Executive Director of the Texas Juvenile Probation Commission, **Neil Nichols**, General Counsel of the Texas Youth Commission, and **James Bethke**, Special Counsel to Trial Courts in the Texas Office of Court Administration. Making his first appearance is **Ryan Turner**, Program Attorney and Deputy Counsel of the Texas Municipal Courts Education Center. They were a wonderful crew to work with. Their comments are excellent and provide real insights into the legislative intention that sometimes does not appear on the surface of new legislation.

Farewells. We say goodbye to three good friends on the Juvenile Law Section Council as a result of the annual change of officers and members. **Emily Helm** steps down as Immediate Past Chair of the Council. Judge **Juan Jose Martinez** and **Arther C. Washington** step down as Council members. They contributed significantly to Texas juvenile justice. They will be missed.

Kid Art

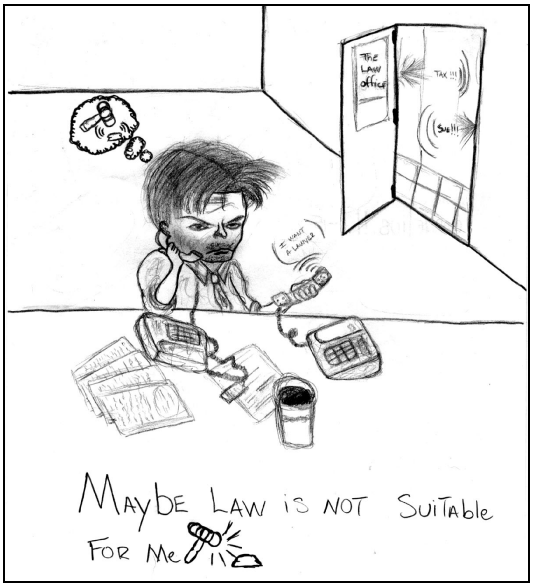
by

Robert O. Dawson

What do juveniles think of the justice system? Children in detention in Harris County were asked in May 1999 to draw pictures to express their opinions about the system and its participants. Carlos R. Garcia, Houston attorney, has generously permitted me to scan a number of those drawings. I plan to print a couple in each Newsletter for the next several issues.

The first is one view (not unanimously held) of appointed counsel:

The second provides some perhaps important career counseling advice:



77th Texas Legislature Appropriations to the Texas Juvenile Probation Commission

Vicki Spriggs
Executive Director
and
Wesley Shackelford
Senior Staff Attorney/Intergovernmental Relations

On May 28th the 77th Texas Legislature concluded its Regular Session. The legislature passed a number of substantive revisions to juvenile law, including the omnibus juvenile justice bill HB 1118, discussed elsewhere in this issue, and approved a state budget that directs significant new funding to enhance juvenile probation services.

Budget

After a lengthy legislative budget process that began last summer with the filing of TJPC's Legislative Appropriations Request, the legislature completed its work and directed generous new funding for juvenile probation services across the state. By far the largest amount was to provide a salary increase to certified juvenile probation, detention and corrections officers. The funding increases are especially significant in light of the limited new revenue available in the state's budget. The chart below illustrates the dramatic funding increases provided by the state for juvenile probation services since the creation of TJPC 20 years ago. As you can see, funding for the upcoming biennium increased nearly $22 million over FY 2000-2001 and since 1992 it has nearly quadrupled.

TJPC Funding Comparison

Biennium	Legislative Appropriations	Percent Increase in Funding
1982/1983	$7,102,883	NA
1984/1985	$24,314,345	242.32%
1986/1987	$24,627,202	1.29%
1988/1989	$27,131,608	10.17%
1990/1991	$41,272,578	52.12%
1992/1993	$63,053,760	52.77%
1994/1995	$83,317,564	32.14%
1996/1997*	$131,744,802	58.12%
1998/1999	$184,487,660	40.03%
2000/2001	$216,749,581	17.49%
2002/2003	**$238,289,360**	**9.94%**

** Does not include construction bond funds appropriated in the amount of $37.5 million.*

Narrative Summary of TJPC Fiscal Years 2002-2003 Appropriations

In the Basic Probation strategy, the legislature approved a total biennial budget of $91,770,098, which is an increase of more than $21 million. The vast majority of this increase, $20,456,596, is designated by Rider 16 to provide a salary increase to certified juvenile probation, detention, and correctional officers. The maximum amount each officer may receive is $3,000 per probation officer and $1,500 per detention or correctional officer. According to the rider, these amounts must include funding for fringe benefits associated with the raises, which TJPC calculates at approximately 15%. The increased state aid funding also provided $867,470 in additional funding for population increases.

Funding increased in the Community Corrections strategy by $2,805,472 to $101,068,807 over the

biennium. This includes increased funding for three items and a reduction in funding from the Office of the Governor's Criminal Justice Division (CJD). First, the increases include $3,668,895 for population growth. Second, there is increased funding of $1,345,577 to continue paying 25% of the operating costs of the bond construction facilities initially authorized during the 1995 legislative session. This amount will cover the operating costs for the facilities that have opened during the FY 2000-2001 biennium. All 19 of these facilities are now operational. The funding for this purpose is authorized in Rider 8.

The most exciting item funded in this strategy is $4 million for specialized caseloads for mentally impaired juveniles. This is part of a $35 million program to enhance services to mentally ill adult and juvenile offenders who are in the community by targeting funds to those populations. The concept was put forward by Dr. Tony Fabelo from the Criminal Justice Policy Council and is modeled on services the Texas Council on Offenders with Mental Impairments (TCOMI) currently provides to adult offenders paroled from the Texas Department of Criminal Justice. In addition to the $4 million in funding directed to TJPC, $10 million in funding will go to TCOMI to provide case management and other mental health services to juveniles under the jurisdiction of juvenile probation departments through contracts with local mental health authorities. Of the remaining $21 million in newly appropriated funds:

- $14 million is earmarked to provide comparable services to adult probationers;
- $2 million is designated for services to offenders in county jails; and
- $5 million is targeted at after-care mental health services for Texas Youth Commission parolees.

The increases in funding above are tempered by a partially offsetting reduction of $6.22 million in Juvenile Accountability Incentive Block Grants funding from the governor's office. The appropriations bill originally included $10.4 million in funding from that source, however the governor's office indicated that it would only have $4.18 million available from that source in FY 2002-2003. The reduction in funding was not replaced by state general revenue funding leading to an overall reduction in funding in the Community Corrections strategy. The TJPC board decided how to deal with this shortfall at its June 29th meeting after consultations with agency staff, the governor's office, and legislative leadership. To make up the shortfall in FY 2002, the board decided to use the funding appropriated for population increases in the Basic Probation and Community Corrections strategies, which totals $2,256,563. With the $3.11 million shortfall discussed earlier that leaves an additional $853,437 to make up. To make up the remaining shortfall, the TJPC board decided to use FY 2001 turn back funds that will become available during FY 2002. This method of funding the shortfall means that departments will continue to receive the same amounts they did in FY 2001 in the Basic Probation and Community Corrections allocations and no existing programs will have to be cut. Given that referrals to juvenile court are generally decreasing, in spite of overall growth in juvenile age population, this reduction should result in the least hardship to local juvenile probation departments. This method of making up the shortfall also ensures that all of the other new programs funded this session will be fully implemented (e.g. salary increases for probation personnel and specialized caseloads for mentally impaired offenders).

In the Probation Assistance strategy, the legislature appropriated an additional $1.5 million in federal Title IV-E funds to reimburse counties for qualifying foster care services. Increased funds were additionally provided to allow TJPC to hire seven more staff. An additional $639,207 was included in this strategy for that purpose with the remainder added in the Direct and Indirect Administration strategy. These two increases bring the total appropriation in this strategy to $28,593,283.

Juvenile Justice Alternative Education Program (JJAEP) funding was reduced from $20 million in the current biennium to $15 million in the FY 2002-2003 biennium. This reduction is due to better estimates of the number of mandatory students being expelled to JJAEPs and lower attendance than previously expected. Current estimates indicate the funding will be sufficient to provide educational services to the mandatory expulsion students and to fund summer school.

The last strategy, Direct and Indirect Administration strategy, was increased by $271,034 to a total of $1,749,172 to cover the remaining costs of hiring an additional seven staff at TJPC.

Although once again the juvenile justice system was not in the legislature's spotlight this session, juvenile justice practitioners were recognized for the contribution they make in the lives of Texas' children. The salary increases funded show the value the state places on this very important work and its commitment to assure that the best and brightest will continue to enter the field and experienced officers will stay in the field.

Included below is a chart comparing funding from FY 2001-2002 and 2003-2004, followed by the riders to the TJPC appropriations.

TJPC Funding Comparison
FY 2001-2002 v. FY 2003-2004

Description	FY - 2000	FY - 2001	FY - 2002	FY - 2003
State Aid				
Current Funding (Expenditures)			**34,973,016**	**34,973,016**
Recommended Increases in Base Funding:			656,133	711,337
Current Funding	35,223,016	35,223,016		
Funding for Population Growth			*406,133*	*461,337*
Funding for Increased Salary for Officers			*10,228,298*	*10,228,298*
Total			**45,857,447**	**45,912,651**
Community Corrections				
Current Funding (Expenditures)			**48,661,899**	**49,601,436**
Recommended Increases in Base Funding:			(48,661,899)	(49,601,436)
Current Funding	48,661,899	49,601,436		
Population Growth			*1,600,430*	*2,068,465*
Post Adjudication Facilities Operating Costs			*1,126,101*	*230,476*
Specialized Caseloads for Mentally Impaired Juveniles			*2,000,000*	*2,000,000*
Reduction in Juvenile Accountability Incentive Block Grants			*(3,110,000)*	*(3,110,000)*
Total			**50,278,430**	**50,790,377**
Probation Assistance				
Current Funding	13,207,038	13,247,038		
Additional Staff for TJPC			*341,257*	*297,950*
Additional Title IV-E funds			*500,000*	*1,000,000*
Total			**14,048,295**	**14,544,988**
JJAEP Funding				
Base Funding Request			**8,000,000**	**8,000,000**
LBB Recommended Decreases in Base Funding:			(845,000)	(845,000)
Current Funding	10,000,000	10,000,000		
Reduced Funding Due to Lower Enrollment			(2,500,000)	(2,500,000)
Total			**7,500,000**	**7,500,000**
Direct and Indirect Administrative				
Current Funding	793,069	793,069		
Additional Staff for TJPC			*134,205*	*136,829*
Total			**927,274**	**929,898**
			92,427,984	**93,367,521**
Total Appropriation			**118,611,446**	**119,677,914**

Appropriations Riders to TJPC Budget

1. ***Restriction, State Aid***. None of the funds appropriated above in Strategy A.1.1, 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 Texas Juvenile Probation Commission shall certify or transfer state funds to the Texas Department of Protective and Regulatory Services so that federal financial participation can be claimed for Title IV-E services provided by counties. The Texas Juvenile Probation Commission shall direct necessary general revenue funding to ensure that the federal match for the Title IV-E Social Security Act is maximized for use by participating counties. Such federal receipts are ap-

propriated to the Texas 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 2002–03 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 2002 and $25,000 in fiscal year 2003 per county.

5. ***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.

6. ***Funding for Progressive Sanctions***.

a. Out of the funds appropriated above in Strategy A.1.1, Basic Probation, $10,200,000 in fiscal year 2002 and $10,200,000 in fiscal year 2003 can be distributed only to local probation departments for funding juvenile probation services associated with sanction levels described in §§ 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 Strategy A.2.1, Community Corrections, $4,394,436 in fiscal year 2002 and $4,394,437 in fiscal year 2003 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 §§ 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 Texas Juvenile Probation Commission shall reimburse a county juvenile probation department a specified number of placements under this section, as determined by the Texas Juvenile Probation Commission, after the requirements for reimbursement as outlined herein have been met to the satisfaction of the Texas Juvenile Probation Commission.

c. The Texas Juvenile Probation Commission shall maintain procedures to ensure that only those juvenile offenders identified above are submitted for reimbursement of secure post-adjudication placements under this section. The Texas Juvenile Probation Commission shall no later than March 1 of each fiscal year submit an expenditure report for the prior fiscal year reflecting all secure post-adjudication placement costs to the Legislative Budget Board and the Governor.

7. ***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.

8. ***Local Post-adjudication Facilities***. Out of the funds appropriated above in Strategy A.2.1, Community Corrections, the amount of $8,640,462 in fiscal year 2002 and $8,640,462 in fiscal year 2003 may be used only for the purpose of funding local post-adjudication facilities.

9. ***Juvenile Justice Alternative Education Programs (JJAEP)***. Out of the funds transferred to the Texas Juvenile Probation Commission pursuant to Texas Education Agency (TEA) Rider 44 and appropriated above in Strategy A.2.3, Juvenile Justice Alternative Education Programs, the Texas 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 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 §37.011(a) Texas Education Code, at the rate of $59 per student per day of attendance in the JJAEP for students who are required to be expelled as provided under § 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 JJAEP, and are eligible for state reimbursement at the rate of $59 per student per day.

The Texas 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 2002 shall be appropriated to fiscal year 2003 for the same purposes in Strategy A.2.3.

The allocations made in this rider for the JJAEP 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 44. The amount of $59 per student per day may vary depending on the total number of students actually attending the JJAEPs.

The Texas Juvenile Probation Commission may reduce, suspend, or withhold Juvenile Justice Alternative Education Program funds to counties that do not comply with standards, accountability measures, or Texas Education Code Chapter 37.

10. ***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 § 37.007, Texas Education Code, and who are expelled from a school district in a county that does not operate a JJAEP.

11. ***Use of JJAEP Funds***. None of the funds appropriated above for the support of JJAEPs shall be used to hire a person or entity to do lobbying.

12. ***JJAEP Accountability***. Out of funds appropriated above in Strategy A.2.3, Juvenile Justice Alternative Education Programs (JJAEP), the Texas Juvenile Probation Commission and the Texas Education Agency shall ensure that Juvenile Justice Alternative Education Programs are held accountable for student academic and behavioral success. The agencies are to jointly submit a performance assessment report to the Legislative Budget Board and the Governor by May 1, 2002. The report shall include, but is not limited to, the following:

a. an assessment of the degree to which each JJAEP enhanced the academic performance and behavioral improvement of attending students;

b. a detailed discussion on the use of standard measures used to compare program formats and to identify those JJAEPs most successful with attending students;

c. the percent of eligible JJAEP students statewide and by program demonstrating academic growth in the Texas Assessment of Academic Skills (TAAS) math and reading, as measured in terms of the Texas Learning Index (TLI);

d. standardized cost reports from each JJAEP and their contracting independent school district(s) to determine differing cost factors and actual costs per each JJAEP program by
school year; and

e. inclusion of a comprehensive five year strategic plan for the continuing evaluation of JJAEPs which shall include oversight guidelines to improve: school district compliance with minimum program and accountability standards, attendance reporting, consistent collection of costs and program data, training and technical assistance needs.

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

14. ***Unexpended Balances - Hold Harmless Provision***. Any unexpended balances as of August 31, 2002 in Strategy A.1.1, Basic Probation (estimated to be $690,112), and in Strategy A.2.1, Community Corrections (estimated to be $932,196), above are hereby appropriated to the Juvenile Probation Commission in fiscal year 2003 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.

15. ***Juvenile Accountability Incentive Block Grants Funding***. Amounts appropriated above in Strategy A.2.1, Community Corrections, include $2,090,000 per fiscal year in Juvenile Accountability Incentive Block Grants funding from the Governor's Office.

16. ***Salary Increases for Juvenile Probation Department Personnel***. Out of the funds appropriated above in Strategy A.1.1, $10,228,298 per fiscal year shall be distributed to counties to be used only for the purpose of salary and associated benefits for Certified Juvenile Probation Officers (JPO) and Juvenile Detention/Correctional Officers (JD/JCO). The Juvenile Probation Commission shall insure the annual salary and benefits increases are limited to $3,000 per JPO and $1,500 per JD/JCO.

Legislative Action Will Benefit TYC And Its Youth

Steve Robinson
Executive Director

The 77th legislative session was a successful one for the delinquents under Texas Youth Commission (TYC) jurisdiction and for the 5,000 employees who carry out the agency's mission.

The Texas Youth Commission, which works to rehabilitate the state's most chronically troubled or serious juvenile offenders, was granted an appropriation of $258.8 million for FY 2002 and $282.1 million for FY 2003. This includes money for capital expenditures.

After a period of fast growth, we are seeing a slowdown in our population growth, which is allowing TYC to concentrate on fine-tuning of programs. The Criminal Justice Policy Council projects that by the end of FY 2002, TYC's population will increase to 5,782, and in FY 2003 to 5,903. That represents growth of about 2 percent a year, or 4 percent growth over the FY 2001 level.

In the 76th session two years ago, the Legislature approved construction funds for expansion at four facilities. In the most recent session, we were provided with funds to operate the upcoming expanded number of beds at those four facilities: 320 beds at the McLennan County State Juvenile Correctional Facility in Mart, 48 beds at Corsicana Residential Treatment Center, 24 beds at Gainesville State School, and 64 beds at the Sheffield Boot Camp.

With this expanded capacity, TYC will be expected to reduce the number of youth placed in contract care programs by 446.

TYC also was granted a number of new positions. We were authorized to hire 30 new juvenile correctional officers and 14 gang intervention specialists, positions that will help to improve security and safety. We also were given approval to hire five additional educational diagnosticians and five more teachers who are certified in English as a Second Language.

We were successful in obtaining a pay increase for juvenile correctional officers, which will help us offer pay that is comparable to what Texas Department of Criminal Justice correctional officers make.

There also were a number of bills that passed with impact on TYC.

- House Bill 1118 made a change in the sex offender registration process for juveniles, allowing the committing court to defer or exempt juveniles from registration. That bill also will automatically restrict access to juvenile records after su-

pervision ends, although prosecutors and law enforcement would still have access.
- House Bill 1118 made a change in commitment criteria. Now, youth can be committed to TYC for a misdemeanor if they ever had a felony adjudication, even if they had completed their probation for that felony offense. Previously, they would have had to either still be on felony probation or have two previous misdemeanor adjudications.

Also of note is Senate Bill 638, which will expand the number of TYC youth who are subject to DNA testing. Beginning in January 2002, all youth committed to TYC for a felony will be subject to DNA blood samples or other specimen. We have been required to take samples from youth who have committed murder, aggravated assault and certain burglaries.

- A legislative rider directed TYC to develop a Human Resources Management Plan to improve employee morale and retention. The idea is that through better management, we can help to reduce employee turnover. We are pursuing the possibility of contracting with a university to help us assess our employee relations.
- Another legislative rider will have us study where youth in our jurisdiction are placed, their distances from home and the size of our facilities. The idea is to determine how those factors affect our rehabilitation efforts.
- The Legislature also directed, in a last-minute bill amendment, that Jefferson County State School be renamed for former Beaumont-area state Rep. Al Price.

Texas Department of Protective and Regulatory Services— Delinquency Prevention Programs and Funding

Thomas Chapmond
Director, Division of Prevention and Early Intervention

The Department of Protective and Regulatory Services (PRS) administers several programs aimed at preventing delinquent behavior. This article provides an update on the major delinquency prevention initiatives.

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. Crisis intervention, counseling, parent training, and mentoring are the kinds of services available to families in conflict and to families with youth who have engaged in minor unadjudicated delinquent conduct, truancy, running away, etc. The program serves all 254 Texas counties. The 77th Texas Legislature appropriated $22.1 million per year for Fiscal Years 2002 and 2003.

Community Youth Development (CYD)

The CYD program was implemented by the 74th Texas Legislature to target neighborhoods with high rates of juvenile delinquency. Grants of $500,000 per year are made available to each of 15 ZIP code areas across the state. These ZIP code areas were selected using juvenile delinquency data. Local steering committees determine how to best use the funding to address delinquency issues in their areas. Emphasis is placed on developing positive opportunities for young people (e.g., after school programs, tutoring, mentoring, cultural enrichment, etc.). The 77th Texas Legislature appropriated $8.2 million per year for Fiscal Years 2002 and 2003.

Communities In Schools (CIS)

CIS develops and coordinates school-based programs to assist youths in at-risk situations. CIS utilizes a case management approach to link youths with services and resources within the school and the community. CIS strives to decrease dropping out and delinquency by improving attendance, academic performance, and behavior. The 77th Texas Legislature appropriated $17.6 million per year for Fiscal Years 2002 and 2003.

At-Risk Mentoring

The 76th Texas Legislature appropriated approximately $3 million per year for an at-risk mentoring program. This PRS program links adult mentors with youths in at-risk situations. The 77th Texas Legislature continued this level of funding for Fiscal Years 2002 and 2003. A funding increase was also

appropriated contingent on increases in federal Title XX funding.

New Initiatives

With passage of House Concurrent Resolution 254, the 77th Legislature directed PRS to assist seven, specific non-urban counties (i.e., Hunt, Gray, Duval, Wichita, Titus, Williamson, and Blanco) in performing needs assessments and developing plans to implement delinquency prevention efforts. PRS will collaborate with the United Way of Texas and other entities on this initiative.

The 77th Legislature Appropriations Bill contained a contingency rider appropriating $2.5 million per year for expansion of At Risk Mentoring program and Facility Based Youth Enrichment Activities program. The appropriation is contingent on increased federal Title XX appropriations.

How to Find Out More

Anyone interested in accessing services funded by the PRS Division of Prevention and Early Intervention may locate services in their community by going to the PRS web site: www.tdprs.state.tx.us

Community-based service providers interested in PEI funding should routinely visit the Texas Department of Economic Development's Electronic State Business Daily at: www.marketplace.state.tx.us

Juvenile Justice in the 77th Texas Legislature

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The 77th legislature passed 20 bills that deal with juvenile justice. By far the most important was **House Bill 1118** authored by **Toby Goodman** and sponsored by **Royce West**. It is the juvenile cleanup bill (when are we going to get it right?) and makes extensive changes in Texas juvenile justice, particularly in the area of juvenile records and sex offender registration.

Senate Bill 1432, authored by **Royce West** and sponsored by **Art Reyna**, is a re-write of the truancy laws, which arose from a workgroup of the Senate Education Committee. **Senate Bill 7**, authored by **Rodney Ellis** and sponsored by **Juan Hinojosa**, is the Texas Fair Defense Act, which provides for state standards and financial assistance for indigent criminal and juvenile defense.

Juvenile Justice House Bills. HB 121, authored by **Buddy West** and sponsored by **Todd Staples**, relates to sex offender registration information. **HB 457**, authored by **Ron Clark** and sponsored by **Robert Duncan**, relates to the computation of dropout rates for purposes of public school accountability. **HB 653**, authored by **Manny Najera** and sponsored by **David Cain**, relates to the offense of cruelty to animals. **HB 822**, authored by **Helen Giddings** and sponsored by **Royce West**, relates to time limits for completing dispositions ordered by teen courts. **HB 920**, authored by **Toby Goodman** and sponsored by **Royce West**, enacts the Uniform Parentage Act. **HB 1071**, authored by **David Farabee** and sponsored by **Ken Armbrister**, relates to children in the juvenile process who may have mental illness or mental retardation. **HB 1088**, authored by **Kent Grusendorf** and sponsored by **Florence Shapiro**, relates to expulsion for making a false alarm in a school. **HB 1572**, authored by **Pat Haggerty** and sponsored by **Todd Staples**, relates to the rights of crime victims. **HB 1790**, authored by **Ron Clark** and sponsored by **Tom Haywood**, relates to notifying parents when a child is referred to the juvenile court while not in custody. **HB 1881**, authored by **Harvey Hilderbran** and sponsored by **Jeff Wentworth**, relates to the juvenile board of Kendall County. **HB 1901**, authored by **Sylvester Turner** and sponsored by **John Whitmire**, relates to juveniles with mental health and substance abuse disorders. **HB 2663**, authored by **Kent Grusendorf** and sponsored by **Ken Armbrister**, relates to licenses for sex offenders to operate motor vehicles.

Juvenile Justice Senate Bills. SB 189, authored by **Jon Lindsay** and sponsored by **Harold Dutton**, relates to removal and expulsion of special education students. **SB 486**, authored by **Buster Brown** and sponsored by **Joe Nixon**, relates to indemnification of juvenile board members for judgments arising out of official conduct. **SB 654**, authored by **Todd Staples** and sponsored by **Ruben Hope**, relates to sex offender registration information. **SB 1206**, authored by **Mike Jackson** and sponsored by **Ray Allen**, relates to risk assessment procedures under the sex offender registration laws. **SB 1380**, authored by **Ken Armbrister** and sponsored by **Ray Allen**, relates to sex offender registration.

1. Title 3 and Related Provisions

Title 3. Juvenile Justice Code

Chapter 51. General Provisions

§ 51.02. Definitions.

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

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

Commentary by Robert Dawson

Source: (9) HB 920; (12) HB 1118
Effective Date: Immediate effect; September 1, 2001
Applicability: HB 920 none applicable to Title 3 proceedings; HB 1118 conduct occurring on or after effective date
Summary of Changes: The amendment in subsection (9) was made by the Uniform Parentage Act. No substantive change was intended, only simplification of the definition.

The amendment in subsection (12) is the first of numerous similar amendments that place the responsibility for making certain designations on the juvenile board, instead of the juvenile court. Under current conditions, the term "juvenile court" is uncertain because of the practice of designating multiple courts as juvenile courts in most counties. To which court does "juvenile court" refer in a context without a specific lawsuit? All the designated courts? Only those that actually hear juvenile cases? What of courts that hear juvenile cases in a relief capacity? The term "juvenile board" is definite because by statute each county has a juvenile board (but only one) and its membership is fixed by law.

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

(a) Delinquent conduct is:

(1) conduct, other than a traffic offense, that violates a penal law of this state or of the United States punishable by imprisonment or by confinement in jail;

(2) [~~conduct that violates a reasonable and lawful order of a juvenile court entered under Section 54.04 or 54.05 of this code, except an order prohibiting the following conduct:~~

[~~(A) a violation of the penal laws of this state of the grade of misdemeanor that is punishable by fine only or a violation of the penal ordinances of any political subdivision of this state;~~

[~~(B) the unexcused voluntary absence of a child from school; or~~

[~~(C) the voluntary absence of a child from his home without the consent of his parent or guardian for a substantial length of time or without intent to return;~~

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

(3) [~~(4)~~] conduct that violates Section 49.04, 49.05, 49.06, 49.07, or 49.08, Penal Code; or

(4) [~~(5)~~] conduct that violates Section 106.041, Alcoholic Beverage Code, relating to driving under the influence of alcohol by a minor (third or subsequent offense).

Commentary by Robert Dawson

Source: HB 1118
Effective Date: September 1, 2001
Applicability: Conduct occurring on or after effective date
Summary of Changes: When Title 3 was originally enacted in 1973, subsection (a)(2) was included to give enforcement powers for CINS probation. One adjudicated for a CINS offense cannot be committed to the TYC, but must be placed on probation. If CINS probation is violated, revocation and commitment to TYC was not a lawful option.

Subsection (a)(2) enabled the prosecutor to charge the probation violation as delinquent conduct. If the juvenile were adjudicated for that conduct, then the court could commit him or her to the TYC. The difference between an (a)(2) proceeding and revocation of probation is that a jury trial right (and all the other procedural protections of adjudication proceedings, such as proof beyond a reasonable doubt) attaches to an (a)(2) proceeding but not to probation revocation proceedings.

In 1999, the legislature restricted commitments to the TYC even further to permit it only for felony adjudications or misdemeanor adjudications with proof of two prior misdemeanor adjudications. As a result of that amendment, subsection (a)(2) no longer has a function in the juvenile justice system. It has always been a confusion to practitioners and caused some mischief. R.I.P subsection (a)(2).

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

(b) Conduct indicating a need for supervision is:

(1) subject to Subsection (f) [~~of this section~~], conduct, other than a traffic offense, that violates:

(A) the penal laws of this state of the grade of misdemeanor that are punishable by fine only; or

(B) the penal ordinances of any political subdivision of this state;

(2) the [~~unexcused voluntary~~] absence of a child on 10 or more days or parts of days within a six-month period in the same school year or on three or more days or parts of days within a four-week period from school [~~without the consent of his parents~~];

(3) the voluntary absence of a child from the child's [~~his~~] home without the consent of the child's [~~his~~] parent or guardian for a substantial length of time or without intent to return;

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

(5) an act that violates a school district's previously communicated written standards of student conduct for which the child has been expelled under Section 37.007(c), Education Code; or

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

(d) It is an affirmative defense to an allegation of conduct under Subsection (b)(2) that one or more of the absences required to be proven under that subsection have been excused by a school official or should be excused by the court or that one of the absences was involuntary. The burden is on the respondent to show by a preponderance of the evidence that the absence has been or should be excused or that the absence was involuntary. A decision by the court to excuse an absence for purposes of this subsection does not affect the ability of the school district to determine whether to excuse the absence for another purpose. [~~For the purpose of Subsection (b)(2) of this section an absence is excused when the absence results from:~~

[~~(1) illness of the child;~~

[~~(2) illness or death in the family of the child;~~

[~~(3) quarantine of the child and family;~~

[~~(4) weather or road conditions making travel dangerous;~~

[~~(5) an absence approved by a teacher, principal, or superintendent of the school in which the child is enrolled; or~~

[~~(6) circumstances found reasonable and proper.~~]

(e) For the purposes of [~~Subdivisions (2) and (3) of~~] Subsection (b)(3) [~~(b) of this section~~], "child" does not include a person who is married, divorced, or widowed.

(f) Except as provided by Subsection (g), conduct [~~Conduct~~] described under Subsection (b)(1) [~~of this section~~], other than conduct that violates Section 49.02, Penal Code, prohibiting public intoxication, does not constitute conduct indicating a need for supervision unless the child has been referred to the juvenile court under Section 51.08(b) [~~of this code~~].

(g) In a county with a population of less than 100,000, conduct described by Subsection (b)(1)(A) that violates Section 25.094, Education Code, is conduct indicating a need for supervision.

Commentary by Robert Dawson

Source: SB 1432.

Effective Date: September 1, 2001.

Applicability: Conduct occurring on or after effective date.

Summary of Changes: These changes were made by the truancy bill. The amendment in subsection (b)(2) eliminates from the definition of truancy the elements that the absence from school be unexcused, voluntary and without the consent of the parents.

The addition of the requirement that the absences must be during the same school year is intended to prevent schools from tacking absences at the beginning of a school year to those that occurred at the end of the previous year. All kids, even truants, deserve a fresh start from time to time.

Subsection (d) makes it an affirmative defense to truancy charges that a critical absence was excused by school officials or should be excused in the discretion of the juvenile court. It also made it an affirmative defense that the absence was involuntary, for example, when the parent keeps the child home from school or takes the child on a trip. In such cases, the proper remedy is criminal proceedings against the parent in justice or municipal court. The fact that a court may excuse an absence in judicial proceedings does not prevent the school from refusing under its own standards to excuse an absence for purpose of determining course credit.

The list of excuses in subsection (d) is repealed because it was not particularly helpful in view of the all encompassing provision regarding "circumstances found reasonable and proper."

The amendment in subsection (e) eliminates the defense to truancy that the child has ever been married. That defense seems inappropriate in modern society in which education is critical to the ability of persons to support families. On the other hand, the marriage defense is preserved for the CINS offense of

running away from home since a married person should have the right to determine his or her own place of residence.

The addition of (g) is most unfortunate because it will cause untold confusion and mischief. It was added by the House. It states what is already the law and is based on a fundamental misunderstanding of juvenile law. Failure to attend school under the Education Code Section 25.094 and truancy under Family Code Section 51.03(b)(2) have identical elements. Under law prior to the addition of subsection (g), a peace office or attendance officer in any county can file any school absence in justice or municipal court as failure to attend school under 25.094 or in the juvenile court as truancy under Section 51.03(b)(2). That is true in a county of any population, not just one under 100,000 population. This amendment does nothing to change the law and causes only confusion. Best for all concerned to pretend it does not exist.

Other changes made by SB 1432 are discussed in the section on Education and Juvenile Justice.

§ 51.04. Jurisdiction.

(a) This title covers the proceedings in all cases involving the delinquent conduct or conduct indicating a need for supervision engaged in by a person who was a child within the meaning of this title at the time the person [~~he~~] engaged in the conduct, and, except as provided by Subsection (h), the juvenile court has exclusive original jurisdiction over proceedings under this title.

(h) In a county with a population of less than 100,000, the juvenile court has concurrent jurisdiction with the justice and municipal courts over conduct engaged in by a child that violates Section 25.094, Education Code.

Commentary by Robert Dawson

Source: SB 1432.
Effective Date: September 1, 2001.
Applicability: Conduct occurring on or after effective date.
Summary of Changes: This totally unnecessary and mischievous amendment adds nothing to juvenile law. The juvenile court in counties of all sizes already has concurrent jurisdiction over such cases, only it is called truancy rather than failure to attend school. The offense elements are the same--only the offense titles are different.

§ 51.04. Jurisdiction.

(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. 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 Lisa A. Capers

Source: HB 1118
Effective Date: September 1, 2001
Applicability: Conduct occurring on or after effective date
Summary of Changes: This section is the first of many changes found in HB 1118 related to the duties and responsibilities of juvenile courts and juvenile boards. In the spring of 2000, the Texas Juvenile Probation Commission (TJPC) sponsored a workgroup of juvenile justice practitioners from around the state, which included juvenile court judges, juvenile board members, prosecutors, defense attorneys, and probation personnel. This workgroup's task was to systematically and comprehensively review the law concerning the roles and responsibilities of juvenile boards and juvenile courts in Texas and make recommendations to the 77th Texas Legislature for updates to the statutes that more closely reflect the efficient division of duties between juvenile courts and juvenile boards.

When Title 3 of the Texas Family Code was originally written in 1973, not all counties in Texas actually had juvenile boards. Thus, the now stricken language in 51.04(g) was necessary to assign duties in counties without a juvenile board. In 1977, the legislature passed the Family District Court Act that created juvenile boards in counties where family district courts were created. By 1983, many counties had juvenile boards, but some still did not. That year, the legislature created a juvenile board in every Texas county that did not already have one. These statutes are found in the Texas Human Resources Code Chapter 152.

The TJPC workgroup focused on the statutes that originally assigned duties to juvenile courts to analyze whether these roles were still necessary or desirable given the fact that all counties now have juvenile boards. The workgroup found many duties that more appropriately belong to juvenile boards and made recommendations to that effect.

The language in (g) is stricken because there is a juvenile board now serving every county in Texas as discussed above. The deleted language is now obsolete.

§ 51.041. Jurisdiction After Appeal.

(a) The court retains jurisdiction over a person, without regard to the age of the person, for conduct engaged in by the person before becoming 17 years of age if, as a result of an appeal by the person under Chapter 56 or under Article 44.47, Code of

Criminal Procedure, of an order of the court, the order is reversed or modified and the case remanded to the court by the appellate court.

(b) If the respondent is at least 18 years of age when the order of remand from the appellate court is received by the juvenile court, the juvenile court shall proceed as provided by Sections 54.02(o)-(r) for the detention of a person at least 18 years of age in discretionary transfer proceedings. Pending retrial of the adjudication or transfer proceeding, the juvenile court may:

(1) order the respondent released from custody;

(2) order the respondent detained in a juvenile detention facility; or

(3) set bond and order the respondent detained in a county adult facility if bond is not made.

Commentary by Neil Nichols

Source: HB 1118
Effective Date: September 1, 2001
Applicability: Conduct occurring on or after effective date
Summary of Changes: The juvenile court retains jurisdiction over a person whose case is remanded to the court by an appellate court, even if the person is 18 years of age or older at the time. This has applied to cases appealed under Chapter 56 of the Family Code (adjudications, dispositions, commitments to facilities for the mentally ill or retarded, and transfers of determinate sentence youth to prison). Now explicit provision is made also for appeals of orders certifying youth to stand trial as an adult and transferring them to criminal court (Art. 44.47, Code of Criminal Procedure). Pending retrial of the case, persons 18 years of age or older may be detained in either a juvenile or adult detention facility (in the event of the latter, the court must also set or deny bond) according to the same provisions that apply to detention of persons 18 years of age or older pending discretionary transfer proceedings, § 54.02(o)-(r), Family Code.

§ 51.0412. Jurisdiction Over Incomplete Proceedings.

The court retains jurisdiction over a person, without regard to the age of the person, who is a respondent in an adjudication proceeding, a disposition proceeding, or a proceeding to modify disposition if:

(1) the petition or motion to modify was filed while the respondent was younger than 18 years of age;

(2) the proceeding is not complete before the respondent becomes 18 years of age; and

(3) the court enters a finding in the proceeding that the prosecuting attorney exercised due diligence in an attempt to complete the proceeding before the respondent became 18 years of age.

Commentary by Neil Nichols

Source: HB 1118
Effective Date: September 1, 2001
Applicability: Conduct occurring on or after effective date
Summary of Changes: The juvenile court retains jurisdiction over a person whose adjudication, disposition or modification of disposition is incomplete before the person becomes age 18, as long as the petition or motion to modify is filed while the person was younger than age 18 and the court finds that the prosecuting attorney exercised due diligence in the case. This means that what had been implicitly understood before is now explicitly provided for in the law -- with due diligence, youth can be held accountable for all probation violations, including those they may commit shortly before their probation period ends at age 18.

§ 51.08. Transfer from Criminal Court.

(b) A court in which there is pending a complaint against a child alleging a violation of a misdemeanor offense punishable by fine only other than a traffic offense or public intoxication or a violation of a penal ordinance of a political subdivision other than a traffic offense:

(1) except as provided by Subsection (d), shall waive its original jurisdiction and refer a child to juvenile court if the child has previously been convicted of:

(A) two or more misdemeanors punishable by fine only other than a traffic offense or public intoxication;

(B) two or more violations of a penal ordinance of a political subdivision other than a traffic offense; or

(C) one or more of each of the types of misdemeanors described in Paragraph (A) or (B) of this subdivision; and

(2) may waive its original jurisdiction and refer a child to juvenile court if the child:

(A) has not previously been convicted of a misdemeanor punishable by fine only other than a traffic offense or public intoxication or a violation of a penal ordinance of a political subdivision other than a traffic offense; or

(B) has previously been convicted of fewer than two misdemeanors punishable by fine only other than a traffic offense or public intoxication or two violations of a penal ordinance of a political subdivision other than a traffic offense.

(d) A court that has implemented a juvenile case manager program under Article 45.054, Code of

Criminal Procedure, may, but is not required to, waive its original jurisdiction under Subsection (b)(1).

Commentary by Robert Dawson

Source: HB 1118
Effective Date: September 1, 2001
Applicability: Conduct occurring on or after effective date
Summary of Changes: The addition of subsection (d) excuses a justice or municipal court that has employed a juvenile case manager from the obligation to transfer the third fineable offense to juvenile court. Justice and municipal courts should be more able to handle effectively persistent cases of juvenile misconduct with the assistance of a juvenile case manager. There is, therefore, less need for the mandatory transfer to juvenile court under those circumstances.

§ 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:

***

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

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Commentary by Neil Nichols

Source: HB 1118
Effective Date: September 1, 2001
Applicability: Conduct occurring on or after effective date
Summary of Changes: When determining the admissibility of a child's oral statement, what is it that must tend to establish the child's guilt -- the "facts and circumstances" of which the child speaks or the child's conduct of making the statement? The legislature clarified its intent, grammatically speaking.

§ 51.10. Right to Assistance of Counsel; Compensation.

(e) The court may enforce orders under Subsection (d) [~~(c) of this section~~] by proceedings under Section 54.07 [~~of this code~~] or by appointing counsel and ordering the parent or other person responsible for support of the child to pay a reasonable attorney's fee set by the court. The order may be enforced under Section 54.07 [~~of this code~~].

Commentary by Neil Nichols

Source: HB 1118
Effective Date: September 1, 2001
Applicability: Conduct occurring on or after effective date
Summary of Changes: The amendment corrects the reference to the subsection related to court orders for the employment of defense counsel.

§ 51.101. Appointment of Attorney and Continuation of Representation.

(a) If an attorney is appointed at the initial detention hearing and the child is detained, the attorney shall continue to represent the child until the case is terminated, the family retains an attorney, or a new attorney is appointed by the juvenile court. Release of the child from detention does not terminate the attorney's representation.

(b) If there is an initial detention hearing without an attorney and the child is detained, the attorney appointed under Section 51.10(c) shall continue to represent the child until the case is terminated, the family retains an attorney, or a new attorney is appointed by the juvenile court. Release of the child from detention does not terminate the attorney's representation.

(c) The juvenile court shall determine, on the filing of a petition, whether the child's family is indigent if:

(1) the child is released by intake;

(2) the child is released at the initial detention hearing; or

(3) the case was referred to the court without the child in custody.

(d) A juvenile court that makes a finding of indigence under Subsection (c) shall appoint an attorney to represent the child on or before the fifth working day after the date the petition for adjudication or discretionary transfer hearing was served on the child. An attorney appointed under this subsection shall continue to represent the child until the case is terminated, the family retains an attorney, or a new attorney is appointed by the juvenile court.

(e) The juvenile court shall determine whether the child's family is indigent if a motion or petition is filed under Section 54.05 seeking to modify disposition by committing the child to the Texas Youth Commission or placing the child in a secure correctional facility. A court that makes a finding of indigence shall appoint an attorney to represent the child on or before the fifth working day after the date the petition or motion has been filed. An attorney appointed under this subsection shall continue to represent the child until the court rules on the motion or petition, the family retains an attorney, or a new attorney is appointed.

Commentary by Robert Dawson

Source: HB 1118
Effective Date: September 1, 2001
Applicability: Conduct occurring on or after effective date
Summary of Changes: Section 51.10 gives a juvenile the right to assistance of counsel at all stages of proceedings under Title 3. Nevertheless, some juvenile courts have interpreted that language in a less generous way than it was intended. In some counties, the court provides an attorney to represent the child at a detention hearing, but representation is limited to the hearing. The child does not receive attorney representation unless and until a formal court petition is filed, which can be several weeks later.

This section provides that if counsel is appointed to represent the child at the initial detention hearing and the child is detained, that same attorney continues to represent the child until trial or replacement by another attorney. If the child is detained, he or she has an attorney working on the case on the merits. If that attorney later obtained release of the child from detention, that does not terminate the representation.

On the other hand if the child was released by police or intake or by the judge at the initial detention hearing, then Section 51.101 does not require appointment of counsel until after a formal petition has been filed. While that is not desirable if a formal petition is filed, in the majority of cases in which the child is not in custody, a formal petition will not be filed. The case will be handled nonjudicially. Because under Texas law, nonjudicial handling cannot prejudice the respondent's case and because it is so common, it is better to forego foisting upon the counties the expenses of providing counsel in such cases. If a petition is filed, then appointment of counsel, if indigency is found, is required. Of course, there is nothing in Texas law that prevents a county from providing appointed counsel for a child not in custody earlier than the filing of the petition.

§ 51.101. Appointment of Counsel Plan.

(a) The juvenile board in each county shall adopt a plan that:

(1) specifies the qualifications necessary for an attorney to be included on an appointment list from which attorneys are appointed to represent children in proceedings under this title; and

(2) establishes procedures for:

(A) including attorneys on the appointment list and removing attorneys from the list; and

(B) appointing attorneys from the appointment list to individual cases.

(b) A plan adopted under Subsection (a) must:

(1) to the extent practicable, comply with the requirements of Article 26.04, Code of Criminal Procedure, except that:

(A) the income and assets of the child's parent or other person responsible for the child's support must be used in determining whether the child is indigent; and

(B) any alternative plan for appointing counsel is established by the juvenile board in the county; and

(2) recognize the differences in qualifications and experience necessary for appointments to cases in which:

(A) the allegation is:

(i) conduct indicating a need for supervision;

(ii) delinquent conduct, and commitment to the Texas Youth Commission is not an authorized disposition; or

(iii) delinquent conduct, and commitment to the Texas Youth Commission without a determinate sentence is an authorized disposition;

(B) determinate sentence proceedings have been initiated; or

(C) proceedings for discretionary transfer to criminal court have been initiated.

Commentary by Robert Dawson

Source: SB 7
Effective Date: January 1, 2002
Applicability: Conduct occurring on or after effective date
Summary of Changes: This section was added by the Texas Fair Defense Act, which provides for prompt appointment of counsel in criminal and juvenile cases, for the establishment of state standards for qualification and performance by counsel and for state contributions to the counties for payment for indigent defense, including costs of investigation and expert assistance.

Criminal court judges are required to establish a plan for the appointment of counsel in their counties. The purpose of this requirement is to impose a condition of transparency on the appointment process--to expose its inner workings to public scrutiny. This section imposes a similar requirement on the juvenile board of each county. The board must establishing a plan for appointing counsel for the indigent.

The plan must to the extent feasible comply with the requirements of Code of Criminal Procedure article 26.04.

Subsection (b)(2) requires the plan to recognize differences in experience and skills necessary to represent children in the five different levels of seriousness of cases in juvenile court: (1) CINS cases, in which no secure disposition is usually permitted, (2) delinquency cases in which commitment to TYC is

not possible but in which a secure local disposition is possible, (3) delinquency cases in which commitment to the TYC is possible, (4) determinate sentence cases and (5) discretionary transfer to criminal court cases.

The other aspects of SB 7 are discussed in segment 2 "Texas Fair Defense Act."

§ 51.12. Place and Conditions of Detention.

(b) The proper authorities in each county shall provide a suitable place of detention for children who are parties to proceedings under this title, but the juvenile board [~~court~~] shall control the conditions and terms of detention and detention supervision and shall permit visitation with the child at all reasonable times.

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

(1) the requirements of Subsections (a), (f), and (g); and

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

(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 a majority of 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 Lisa A. Capers

Source: HB 1118
Effective Date: September 1, 2001
Applicability: Conduct occurring on or after effective date
Summary of Changes: The two changes to Section 51.12 are part of a comprehensive package of statutory changes related to the duties of juvenile boards and juvenile courts found in HB 1118, which were recommended to the legislature by a TJPC interim workgroup of juvenile justice practitioners. See the commentary to Section 51.04 for a discussion of the background and purpose of this workgroup.

Section 51.12(b) previously gave the juvenile court control over the terms and conditions of detention in juvenile detention facilities. This section was originally written in the Family Code at a time when some counties did not have juvenile boards. However, because all Texas counties now have a juvenile board, the duty of designating and controlling the conditions in the county juvenile detention facility more appropriately belongs to the juvenile board. The rationale for this switch is the fact that many large counties have numerous juvenile courts. It is clearly more efficient and workable for one juvenile board to control the conditions and terms of detention in the county juvenile detention facility as opposed to multiple juvenile courts imposing various conditions and terms that might be inconsistent or conflict.

The changes in 51.12(c) and (l)(6) provide that a majority of the juvenile board is sufficient for taking legal actions and therefore is sufficient for the required inspection and certification of juvenile pre- and post-adjudication facilities in the county. This change basically codifies the San Antonio appellate court's opinion that a majority of the board may act to make this certification. *In the Matter of M.C.*, 915 S.W.2d 118 (Tex.App.—San Antonio 1996) (based on Government Code Section 311.013).

§ 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 Article 45.058, Code of Criminal Procedure [~~Section 52.027~~];

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

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

(5) county jail or other facility as provided by Subsection (l).

Commentary by Neil Nichols

Source: SB 1432.
Effective Date: September 1, 2001.
Applicability: Conduct that occurs on or after effective date.
Summary of Changes: The current § 52.027 ("Children Taken into Custody for Traffic Offenses, Other Fineable Only Offenses, or as a Status Offender") has been repealed and, with regard to provisions relating to nonsecure custody, has been recodified with no substantive change in Article 45.058, Code of Criminal Procedure. This recodification permits all the procedures related to justice and municipal courts to be organized under the same subchapter in that Code.

§ 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 the local mental health or mental retardation authority or another [~~an~~] appropriate expert, including a physician, psychiatrist, or psychologist.

Commentary by Robert Dawson

Source: HB 1071
Effective Date: September 1, 2001.
Applicability: Examinations on or after effective date regardless of when child was referred to the juvenile court.
Summary of Changes: This amendment includes among those who may conduct an examination the local mental health or mental retardation authority.

Chapter 52. Proceedings Before and Including Referral to Juvenile Court

§ 52.01. Taking into Custody; Issuance of Warning Notice.

(c) A law-enforcement officer authorized to take a child into custody under Subdivisions (2) and (3) of Subsection (a) of this section may issue a warning notice to the child in lieu of taking the child [~~him~~] into custody if:

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

(2) the guidelines have been approved by the juvenile court of the county in which the disposition is made;

(3) the disposition is authorized by the guidelines;

(4) the warning notice identifies the child and describes the child's [~~his~~] alleged conduct;

(5) a copy of the warning notice is sent to the child's parent, guardian, or custodian as soon as practicable after disposition; and

(6) a copy of the warning notice is filed with the law-enforcement agency and the office or official designated by the juvenile board [~~court~~].

(d) A warning notice filed with the office or official designated by the juvenile board [~~court~~] may be used as the basis of further action if necessary.

Commentary by Lisa A. Capers

Source: HB 1118
Effective Date: September 1, 2001
Applicability: Conduct occurring on or after effective date
Summary of Changes: The changes in subsections (c) and (c)(4) replace the male gender pronouns (him and his) with the word “child” and “child’s”. Similar changes are found throughout HB 1118 in addition to all other bills as part of the Texas Legislative Council’s efforts every session to rid the codes of gender specific references by replacing them with gender-neutral references. No substantive change was made to these sections.

The changes in subsections (c)(6) and (d) replace juvenile “court” with juvenile “board” to reflect the fact that all Texas counties now have juvenile boards in place to carry out administrative functions such as designating the intake office or official for the processing of juvenile offenders. The rationale for this change is that many counties have multiple juvenile courts and it is impractical for each court to individually make this designation. A designation by the juvenile board is a more efficient administrative mechanism for handling these types of responsibilities. See the commentary to Section 51.04 for a detailed discussion of the history of these changes.

§ 52.02. Release or Delivery to Court.

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

(1) release the child to a parent, guardian, custodian of the child, or other responsible adult upon that person's promise to bring the child before the juvenile court as requested by the court;

(2) bring the child before the office or official designated by the juvenile board [~~court~~] if there is probable cause to believe that the child engaged in delinquent conduct or conduct indicating a need for supervision;

(3) bring the child to a detention facility designated by the juvenile board [~~court~~];

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

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

(6) dispose of the case under Section 52.03.

(b) A person taking a child into custody shall promptly give notice of the person's [~~his~~] action and a statement of the reason for taking the child into custody, to:

(1) the child's parent, guardian, or custodian; and

(2) the office or official designated by the juvenile board [~~court~~].

Commentary by Lisa A. Capers

Source: HB 1118
Effective Date: September 1, 2001
Applicability: Conduct occurring on or after effective date
Summary of Changes: This section contains several changes made by the Texas Legislative Council in an effort to make all Texas statutes gender neutral as discussed in the commentary to Section 52.01.

Juvenile court references have been changed to juvenile "board" throughout Section 52.02 since all Texas counties currently have juvenile boards. See commentary to Section 51.04 and 52.01 for more background on these changes.

Deletion of the language "of this code" is another of the technical clean-ups by the Texas Legislative Council that is made when any section of prior law is amended. It is intended to make the code less wordy, which is refreshing!

§ 52.025. Juvenile Processing Office.

(a) The juvenile board [~~court~~] may designate an office or a room, which may be located in a police facility or sheriff's offices, as the juvenile processing office for the temporary detention of a child taken into custody under Section 52.01 [~~of this code~~]. The office may not be a cell or holding facility used for detentions other than detentions under this section. The juvenile board [~~court~~] by written order may prescribe the conditions of the designation and limit the activities that may occur in the office during the temporary detention.

Commentary by Lisa A. Capers

Source: HB 1118
Effective Date: September 1, 2001
Applicability: Conduct occurring on or after effective date
Summary of Changes: The juvenile court reference has been changed to juvenile "board" in Section 52.03 since all Texas counties currently have juvenile boards. See commentary to Section 51.04 and 52.01 for more background on these changes.

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

(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, other than public intoxication, may be presented or detained in a detention facility designated by the juvenile board [~~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).

(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[~~; or~~

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

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

Commentary by Neil Nichols

Source: SB 1432; HB 1118
Effective Date: September 1, 2001
Applicability: Conduct occurring on or after effective date
Summary of Changes: This section has been repealed by SB 1432. That bill recodified the section with no substantive change as article 45.058, Code of Criminal Procedure. This allows all the procedures related to justice and municipal courts to be organized under the same subchapter in that Code.

The amendment in subparagraph (f) was not part of the SB 1432 recodification. It was part of the overall effort in HB 1118 to distinguish the policy making and administrative duties of the juvenile board from the judicial duties of the juvenile court. The change making it the juvenile board's duty to designate detention facilities is reflected in § 52.02(a)(3). The deleted provision in subsection (i) was also deleted in the recodification. It had caused confusion and was unnecessary.

Since there is no inconsistency between the provisions of section 52.027 that were modified and re-enacted in the Code of Criminal Procedure and the amendments in this section that were enacted by HB 1118, they must be harmonized and effect given to both changes. Government Code § 311.025 (Code Construction Act).

§ 52.03. Disposition Without Referral to Court.

(d) Statistics indicating the number and kind of dispositions made by a law-enforcement agency under the authority of this section shall be reported at least annually to the office or official designated by the juvenile board [~~court~~], as ordered by the court.

Commentary by Lisa A. Capers

Source: HB 1118
Effective Date: September 1, 2001
Applicability: Conduct occurring on or after effective date
Summary of Changes: The juvenile court reference has been changed to juvenile "board" in Section 52.03 since all Texas counties currently have juvenile boards. See commentary to Section 51.04 and 52.01 for more background on these changes.

§ 52.04. Referral to Juvenile Court.

(a) The following shall accompany referral of a child or a child's case to the office or official designated by the juvenile board [~~court~~] or be provided as quickly as possible after referral:

(1) all information in the possession of the person or agency making the referral pertaining to the identity of the child and the child's [~~his~~] address, the name and address of the child's parent, guardian, or custodian, the names and addresses of any witnesses, and the child's present whereabouts;

(2) a complete statement of the circumstances of the alleged delinquent conduct or conduct indicating a need for supervision;

(3) when applicable, a complete statement of the circumstances of taking the child into custody; and

(4) when referral is by an officer of a law-enforcement agency, a complete statement of all prior contacts with the child by officers of that law-enforcement agency.

(b) The office or official designated by the juvenile board [~~court~~] may refer the case to a law-enforcement agency for the purpose of conducting an investigation to obtain necessary information.

Commentary by Lisa A. Capers

Source: HB 1118
Effective Date: September 1, 2001
Applicability: Conduct occurring on or after effective date
Summary of Changes: The juvenile court reference has been changed to juvenile "board" in subsection (b), since all Texas counties currently have juvenile boards. See commentary to Section 51.04 and 52.01 for more background on these changes.

§ 52.04. Referral to Juvenile Court.

(d) On referral of the case of a child who has not been taken into custody to the office or official designated by the juvenile court, the office or official designated by the juvenile court shall promptly give notice of the referral and a statement of the reason for the referral to the child's parent, guardian, or custodian.

Commentary by Robert Dawson

Source: HB 1790
Effective Date: September 1, 2001
Applicability: Conduct occurring on or after effective date
Summary of Changes: This provision requires the juvenile court to notify parents that a case has been referred to the juvenile court when the child who is the subject of the referral is not in custody. This complements the notice requirement of Section 52.02(b) when the child is in custody.

§ 52.041. Referral of Child to Juvenile Court After Expulsion.

(c) Within five working days of receipt of an expulsion notice under this section by the office or

official designated by the juvenile board [~~court~~], a preliminary investigation and determination shall be conducted as required by Section 53.01.

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

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

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

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

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

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

Commentary by Lisa A. Capers

Source: HB 1118
Effective Date: September 1, 2001
Applicability: Conduct occurring on or after effective date
Summary of Changes: Juvenile court references have been changed to juvenile "board" throughout Section 52.041 since all Texas counties currently have juvenile boards. See commentary to Section 51.04 and 52.01 for more background on these changes.

Chapter 53. Proceedings Prior to Judicial Proceedings

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

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

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

(2) there is probable cause to believe the person engaged in delinquent conduct or conduct indicating a need for supervision.

(c) When custody of a child is given to the office or official designated by the juvenile board [~~court~~], the intake officer, probation officer, or other person authorized by the court shall promptly give notice of the whereabouts of the child and a statement of the reason the child [~~he~~] was taken into custody to the child's parent, guardian, or custodian unless the notice given under Section 52.02(b) [~~of this code~~] provided fair notice of the child's present whereabouts.

Commentary by Lisa A. Capers

Source: HB 1118
Effective Date: September 1, 2001
Applicability: Conduct occurring on or after effective date
Summary of Changes: Juvenile court references have been changed to juvenile "board" throughout Section 53.01 since all Texas counties currently have juvenile boards. See commentary to Section 51.04 and 52.01 for more background on these changes.

§ 53.045. Violent or Habitual Offenders.

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

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

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

(3) Section 19.04, Penal Code (manslaughter);

(4) Section 20.04, Penal Code (aggravated kidnapping);

(5) [~~(4)~~] Section 22.011, Penal Code (sexual assault) or Section 22.021, Penal Code (aggravated sexual assault);

(6) [~~(5)~~] Section 22.02, Penal Code (aggravated assault);

(7) [~~(6)~~] Section 29.03, Penal Code (aggravated robbery);

(8) [~~(7)~~] Section 22.04, Penal Code (injury to a child, elderly individual, or disabled individual), if the offense is punishable as a felony, other than a state jail felony;

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

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

(11) [~~(10)~~] Section 15.03, Penal Code (criminal solicitation);

(12) [~~(11)~~] Section 21.11(a)(1), Penal Code (indecency with a child);

(13) [~~(12)~~] Section 15.031, Penal Code (criminal solicitation of a minor);

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

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

(16) Section 49.08, Penal Code (intoxication manslaughter).

Commentary by Neil Nichols

Source: HB 1118
Effective Date: September 1, 2001
Applicability: Conduct occurring on or after effective date
Summary of Changes: The amendment adds manslaughter and intoxication manslaughter to the list of offenses for which a child may receive a determinate sentence. Since both offenses are second degree felonies, they carry a minimum confinement period in the Texas Youth Commission of two years (the period during which court approval of parole release is required) and a sentence of up to 20 years. In the past, these offenses have accounted for only one or two indeterminate commitments a year.

Chapter 54. Judicial Proceedings

§ 54.01. Detention Hearing.

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

Commentary by Lisa A. Capers

Source: HB 1118
Effective Date: September 1, 2001
Applicability: Conduct occurring on or after effective date
Summary of Changes: The language being deleted in the first line of Subsection (l) is unnecessary now because every county in Texas currently has a statutorily created juvenile board. See the commentary to Section 51.04 and 51.02 for a more detailed discussion of similar changes.

§ 54.021. Justice or Municipal Court Truancy.

(b) A justice or municipal court may exercise jurisdiction over a person alleged to have engaged in conduct indicating a need for supervision by engaging in conduct described in Section 51.03(b)(2) in a case where:

(1) the juvenile court has waived its original jurisdiction under this section; and

(2) a complaint is filed by the appropriate authority in the justice or municipal court charging an offense under Section 25.094, Education Code.

(c) A proceeding in a justice or municipal court on a complaint charging an offense under Section 25.094, Education Code, is governed by Chapter 45, Code of Criminal Procedure. [~~A justice or municipal court may exercise jurisdiction under this section without regard to whether the justice of the peace or municipal judge for the court is a licensed attorney or the hearing for a case is before a jury consisting of six persons.~~]

Commentary by Robert Dawson

Source: SB 1432.
Effective Date: September 1, 2001.
Applicability: Conduct that occurs on or after effective date.
Summary of Changes: Under prior law, the juvenile court could transfer a truancy case to a justice or municipal court, which would then act as some sort of agent of the juvenile court in adjudicating that case. That system caused great confusion as to what procedures and rights were applicable in those proceedings. This amendment makes it clear that when a juvenile court transfers a truancy case to a justice or municipal court, the court to which the case is transferred handles the case under a complaint for Failure to Attend School filed under the Education Code. Thus, once the complaint is filed, the proceedings in justice or

municipal court should be the same as in any other Failure to Attend School case.

HB 1118. Section 71.

The following are repealed:

(2) Section 54.022(e), Family Code;

SB 1432. Section 19

Section 54.022, Family Code, is repealed.

Commentary by Robert Dawson

Source: HB 1118; SB 1432
Effective Date: September 1, 2001
Applicability: Conduct occurring on or after effective date
Summary of Changes: Family Code § 54.022 deals with justice and municipal court proceedings involving juveniles. Subsection (e), authorizing enforcement by juvenile court contempt proceedings, was repealed because justice and municipal court contempt proceeding were consolidated as article 45.050 of the Code of Criminal Procedure by HB 1118.

SB 1432 repealed § 54.022, modified it, and re-enacted it as article 45.057 of the Code of Criminal Procedure. That re-enactment is discussed in the segment 5 "Municipal and Justice Court Proceedings."

There is no inconsistency between the changes in this section made by either bill, so both are to be given effect.

§ 54.023. Justice or Municipal Court; Enforcement.

(a) If a child intentionally or knowingly fails 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 justice or municipal court may:

(1) refer the child to the appropriate juvenile court for delinquent conduct for contempt of the justice or municipal court order; or

(2) retain jurisdiction of the case and:

(A) hold the child in contempt of the justice or municipal court order and impose a fine not to exceed $500;

(B) order the child to be held in a place of nonsecure custody designated under Section 52.027 for a single period not to exceed six hours; or

(C) order the Department of Public Safety to suspend the driver's license or permit of the child or, if the child does not have a license or permit, to deny the issuance of a license or permit to the child and, if the child has a continuing obligation under the court's order, require that the suspension or denial be effective until the child fully discharges the obligation.

(b) A court that orders suspension or denial of a child's driver's license or permit shall notify the Department of Public Safety on receiving proof that the child has fully complied with the orders of the court.

(c) A justice or municipal court may hold a person in contempt and impose a remedy authorized by Subsection (a)(2) if:

(1) the person as a child was placed under an order of the justice or municipal court;

(2) the person failed to obey the order while the person was 17 years of age or older; and

(3) the failure to obey occurred under circumstances that constitute contempt of court.

(d) A justice or municipal court may hold a person in contempt and impose a remedy authorized by Subsection (a)(2) if the person, while younger than 17 years of age, engaged in conduct in contempt of an order of the justice or municipal court but contempt proceedings could not be held before the child's 17th birthday.

(e) A justice or municipal court may not order a child to a term of confinement or imprisonment for contempt of a justice or municipal court order under this section.

(f) A justice or municipal court may not refer a child who violates a court order while 17 years of age or older to a juvenile court for delinquency proceedings for contempt of court.

Commentary by Robert Dawson

Source: HB 1118
Effective Date: September 1, 2001
Applicability: Conduct occurring on or after effective date
Summary of Changes: This new section attempts to provide more effective powers to enforce dispositional orders over juveniles for justice and municipal courts.

It provides in subsection (a) that the justice or municipal court has a choice to make: refer the contempt case to the juvenile court for handling as a delinquent conduct case or keep the contempt proceedings and impose its own sanctions. It cannot do both.

If the justice or municipal court chooses to keep the contempt proceedings, subsection (a) sets out three mutually exclusive sanctions: (1) impose a fine of up to $500, (2) order a period of day detention in a place of nonsecure custody for a single period not to exceed six hours, or (3) order the DPS to suspend or deny issuance of a driver's license until the child complies with any of the court's orders that are still outstanding. The second and third are new sanction authorizations.

Subsection (b) requires a justice or municipal court that has ordered license suspension or denial to notify DPS when the child complies with the court's orders. This provision impliedly limits the ability to use the license suspension provision (which results in a suspension of indefinite duration) to situations in which the child can still comply with the court's orders by future conduct. Otherwise, a suspension order would be lifetime and therefore totally disproportionate to the contempt committed.

Subsection (c) addresses the situation in which a child was placed under a justice or municipal court order and violates that order by conduct occurring while the child is 17 years of age. The defendant cannot be referred to juvenile court for contempt since the contempt conduct occurred when the person was 17 and the juvenile court for that reason has no jurisdiction over the offense. This subsection gives justice and municipal courts jurisdiction to handle such cases of contempt themselves.

Subsection (d) is identical to (c) except it deals with the situation in which the contempt conduct occurred before the person became 17, but the proceedings could not be initiated until after the person's 17th birthday. Of course, in that situation the justice or municipal court also has the option of referral to the juvenile court for contempt so long as the referral is made before the person's 18th birthday.

Subsection (e) retains the provision prohibiting confinement as a punishment for contempt of a justice or municipal court. Such confinement would be prohibited by federal law and by other Texas laws.

Subsection (f) makes it clear that the remedy provided by subsection (c) when contempt conduct occurs after the person's 17th birthday is the exclusive remedy; referral to the juvenile court for contempt proceedings is not permitted.

Senate Bill 1432 enacted article 45.050 of the Code of Criminal Procedure which deals with the same subject matter as Family Code § 54.023. See the discussion of that article in segment 5 "Municipal and Justice Court Proceedings." There are some differences in the provisions, but only one inconsistency. Subsection (a)(2) of 54.023 authorizes a justice or municipal court to impose any of three contempt sanctions, including six hours detention in a place of nonsecure custody. Section (c)(2) of article 45.050 omits that sanction from the list of possible sanctions. SB 1432 as filed contained the provision authorizing six hours detention, but it was deleted by the author, thereby evidencing clear intent that it not be authorized. That presents an inconsistency. When such an inconsistency occurs, the Government Code § 311.025 requires that the amendment made in the bill enacted last be given effect. The House concurred in Senate amendments to HB 1118 on May 24, 2001. The Senate accepted the Conference Report on Senate Bill 1432 on May 27, 2001. Therefore, SB 1432 controls and the provision authorizing six hours' confinement in a place of nonsecure custody is not law.

§ 54.03. Adjudication Hearing.

(c) Trial shall be by jury unless jury is waived in accordance with Section 51.09 [~~of this code~~]. If the hearing is on a petition that has been approved by the grand jury under Section 53.045 [~~of this code~~], the jury must consist of 12 persons and be selected in accordance with the requirements in criminal cases. Jury verdicts under this title must be unanimous.

Commentary by Neil Nichols

Source: HB 1118
Effective Date: September 1, 2001
Applicability: Conduct occurring on or after effective date
Summary of Changes: This amendment is in keeping with the legislature's intent that youth handled under determinate sentencing provisions be granted all the rights the youth would have enjoyed had the case been handled in the criminal court. In this instance, with regard to jury selection procedures, it explicitly resolved the matter whether the juvenile court should award each party six strikes as provided in the Texas Rules of Civil Procedure or ten strikes as provided in the Code of Criminal Procedure [Article 35.15(b)]. The latter has been the usual practice and is now the legal requirement.

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

(a) A juvenile court may defer adjudication proceedings under Section 54.03 [~~of this code~~] for not more than 180 [~~90~~] days if the child:

(1) is alleged to have engaged in conduct indicating a need for supervision that violated a penal law of this state of the grade of misdemeanor that is punishable by fine only or a penal ordinance of a political subdivision of this state;

(2) waives, under Section 51.09 [~~of this code~~], the privilege against self-incrimination and testifies under oath that the allegations are true;

(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 for the violation of the same penal law or ordinance in the two years preceding the date that the alleged conduct occurred.

(c) A child for whom adjudication proceedings are deferred under Subsection (a) shall complete the teen court program not later than the 90th day after the date the teen court hearing to determine pun-

ishment is held or the last day of the deferral period, whichever date is earlier. The court shall dismiss the case with prejudice at the time [~~conclusion of the deferral period if~~] the child presents satisfactory evidence that the child has successfully completed the teen court program.

Commentary by Lisa A. Capers

Source: HB 822
Effective Date: September 1, 2001.
Applicability: Conduct occurring on or after effective date.
Summary of Changes: Under current law, a juvenile court is authorized to defer adjudication proceedings against certain juveniles for a period of 90 days to allow the juvenile to attend a teen court program. This change extends the period of deferral to 180 days. The bill requires the juvenile to complete the teen court program not later than the 90th day after the date the teen court hearing to determine punishment is held or the last day of the deferral period, whichever is earlier. When the juvenile presents proof of successful completion of the teen court program, the juvenile court must dismiss the case with prejudice.

§ 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 the child's [~~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 (s) or (t) [~~(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).

(i) If the court places the child on probation outside the child's home or commits the child to the Texas Youth Commission, the court:

(1) shall include in its order its determination that:

(A) [~~(1)~~] it is in the child's best interests to be placed outside the child's home;

(B) [~~(2)~~] reasonable efforts were made to prevent or eliminate the need for the child's removal from the home and to make it possible for the child to return to the child's home; and

(C) [~~(3)~~] the child, in the child's home, cannot be provided the quality of care and level of support and supervision that the child needs to meet the conditions of probation; and

(2) may approve an administrative body to conduct permanency hearings pursuant to 42 U.S.C. Section 675 if required during the placement or commitment of the child.

(j) If the court or jury found that the child engaged in delinquent conduct that included a violation of a penal law of the grade of felony or jailable misdemeanor, the court:

(1) shall require that the child's thumbprint be affixed to the order; and

(2) may require that a photograph of the child be attached to the order.

(o) In a disposition under this title:

(1) a [~~A~~] status offender may not, under any circumstances, be committed to the Texas Youth Commission for engaging in conduct that would not, under state or local law, be a crime if committed by an adult;

(2) a status offender may not, under any circumstances other than as provided under Subsection (n), be placed in a post-adjudication secure correctional facility; and

(3) a child adjudicated for contempt of a justice or municipal court order may not, under any circumstances, be placed in a post-adjudication secure correctional facility or committed to the Texas Youth Commission for that conduct.

(r) [~~(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.

(s) [~~(q)~~] 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.

(t) 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 on at least one previous occasion; and

(2) the conduct that is the basis of the current adjudication occurred after the date of that previous adjudication.

(u) For the purposes of disposition under Subsection (d)(2), delinquent conduct that violates a penal law of this state of the grade of felony or misdemeanor does not include conduct that violates a lawful order of a municipal, justice, or juvenile court under circumstances that would constitute contempt of that court.

Commentary by Neil Nichols

Source: HB 1118
Effective Date: September 1, 2001
Applicability: Applies only to a disposition by a court made on or after the effective date of this Act without regard to whether previous adjudications of delinquent conduct on which the disposition is based occurred before, on, or after the effective date.
Summary of Changes: Other than the relettering of subparagraphs, there are four substantive amendments in this section.

This first is in subsection (i)(2). For a number of years, Texas Youth Commission hearings examiners have conducted "permanency hearings" for TYC youth who have been placed outside an institution (usually because they have no home to which to return) and for whom the agency is receiving Title IV-E federal funds to help pay the cost of placement. These hearings are required every 12 months to determine whether there is a viable plan for the youth to either return to the youth's parents, be placed for adoption, be placed with a relative, or be placed in an independent living or other situation.

In the usual foster care situation, these permanency hearings are conducted by the court that places the youth outside the home. Courts are authorized under federal law, however, to approve the conduct of the hearings by an administrative agency and have done so for the hearings conducted by TYC hearings examiners. Recently, federal authorities requested that the state statute explicitly authorize this practice and that the TYC hearings be conducted by an administrative body not associated with the agency. This amendment addresses the request that specific provision for the appointment be included in the statute. TYC has contracted with the State Office of Administrative Hearings to conduct these hearings in the future for TYC youth.

The second amendment is in subsection (j). It requires that a thumbprint (and permits a photograph) be affixed to the order in Class A or B misdemeanor cases just as is currently required in felony cases. Both felony and jailable misdemeanor adjudications can be used in the punishment phase of adult proceedings (Article 37.07, Sec.3(a), Code of Criminal Procedure) and the print confirms identification.

The third amendment in subsections (o) and (u) should finally resolve any question of the legislature's intent regarding the proper disposition of status offenders or of youth held in contempt of a justice or municipal court. These youth may never be committed to TYC under any circumstance and, except for repeat status offenders after all other dispositions "have been exhausted or are clearly inappropriate" [subsection (n)], they may never be placed in a post-adjudication secure correctional facility.

Finally, the amendment in subsections (s) and (t) adds another circumstance by which youth adjudicated for a Class A or B misdemeanor may be committed to TYC: if the youth has at least one previous felony adjudication and the conduct that is the basis for the current misdemeanor adjudication occurred after it, the youth may be committed to TYC [subsection (t)]. Otherwise, if there are no previous felony adjudications, two previous misdemeanor adjudications are required for commitment as provided under current law [subsection (s)]. The legislature made it clear that with a felony adjudication on the youth's

record, the youth is eligible for commitment to TYC. If the youth is granted a second chance and fails to live up to it, either by violating a condition of probation or by committing a jailable misdemeanor, no more is required for commitment.

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

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

(1) may require as a condition of probation that the child:

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

(B) [~~(2)~~] submit to a polygraph examination as provided by Subsection (f) for purposes of evaluating the child's treatment progress; and

(2) shall require as a condition of probation that the child:

(A) register under Chapter 62, Code of Criminal Procedure; and

(B) submit a blood sample or other specimen to the Department of Public Safety under Subchapter G, Chapter 411, Government Code, for the purpose of creating a DNA record of the child, unless the child has already submitted the required specimen under other state law.

(b) This section applies to a child placed on probation for conduct constituting an offense for which the child is required to register as a sex offender under Chapter 62, Code of Criminal Procedure[~~:~~

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

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

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

Commentary by Robert Dawson

Source: SB 1380
Effective Date: September 1, 2001
Applicability: Applies to an offense committed or conduct engaged in before, on, or after the effective date.
Summary of Changes: These amendments, added by SB 1380, strengthen this section providing for sex offender probation by authorizing the court to impose sex offender treatment in any case in which registration has been ordered under the sex offender registration statute. Of course, the court under its authority to impose any reasonable and lawful conduct of probation could require sex offender treatment in any appropriate case, even one in which registration has been excused under article 62.13 of the Code of Criminal Procedure.

It also mandates sex offender registration and providing a sample for DNA analysis as a condition of probation for any child required to register as a sex offender.

Note that under subsection (b), this section applies only to a child required to register as a sex offender. It would, therefore, not apply to a child for whom sex offender registration has been excused by the juvenile court pursuant to new article 62.13 of the Code of Criminal Procedure.

§ 54.0407. Cruelty to Animals: Counseling Required.

If a child is found to have engaged in delinquent conduct constituting an offense under Section 42.09, Penal Code, the juvenile court shall order the child to participate in psychological counseling for a period to be determined by the court.

Commentary by Robert Dawson

Source: HB 653
Effective Date: September 1, 2001
Applicability: Applies to an offense committed or after the effective date.
Summary of Changes: This new section was part of a revision of the Texas cruelty to animals statute. It mandates counseling as a condition of probation for a child adjudicated of that offense.

§ 54.041. Orders Affecting Parents and Others.

(b) If a child is found to have engaged in delinquent conduct or conduct indicating a need for supervision arising from the commission of an offense in which property damage or loss or personal injury occurred, the juvenile court, on notice to all persons affected and on hearing, may order the child or a parent to make full or partial restitution to the victim of the offense. The program of restitution must promote the rehabilitation of the child, be appropriate to the age and physical, emotional, and mental abilities of the child, and not conflict with the child's schooling. When practicable and subject to court supervision, the court may approve a restitution program based on a settlement between the child and the victim of the offense. An order under this subsection may provide for periodic payments by the child or a parent of the child for the period specified in the

order but except as provided by Subsection (h), that period may not extend past the date of the 18th birthday of the child or past the date the child is no longer enrolled in an accredited secondary school in a program leading toward a high school diploma, whichever date is later.

(h) If the juvenile court places the child on probation in a determinate sentence proceeding initiated under Section 53.045 and transfers supervision on the child's 18th birthday to a district court for placement on community supervision, the district court shall require the payment of any unpaid restitution as a condition of the community supervision. The liability of the child's parent for restitution may not be extended by transfer to a district court for supervision.

Commentary by Lisa A. Capers

Source: HB 1118
Effective Date: September 1, 2001
Applicability: Conduct occurring on or after effective date
Summary of Changes: This amendment permits restitution obligations to follow the child from juvenile to criminal court supervision (i.e., adult community supervision) when probation is transferred in a determinate sentence case. Under current law, that obligation ends at age 18 even when probation is transferred. This will be particularly useful for those juveniles who have failed to complete (or even begin) their restitution obligations by age 18. However, under the amendment, the legal obligation of a parent to make restitution still ends when the parental obligation to support ends—at age 18.

§ 54.041. Orders Affecting Parents and Others.

(f) If a child is found to have engaged in conduct indicating a need for supervision described under Section 51.03(b)(2) or (g) [~~of this code~~], the court may order the child's parents or guardians to attend a program [~~class~~] described by Section 25.093(f) [~~25.093(h)~~], Education Code, if a program is available [~~the school district in which the child's parents or guardians reside offers a class under that section~~].

Commentary by Lisa A. Capers

Source: SB 1432.
Effective Date: September 1, 2001.
Applicability: Conduct that occurs on or after effective date.
Summary of Changes: This amendment makes conforming changes to a new subsection (g) that relates to making the offense of *Failure to Attend School* under Section 25.094 of the Texas Education Code a CINS offense in counties with a population under 100,000. This change was made for small counties whose juvenile courts want to process truancy cases filed under Education Code Section 25.094 as juvenile court CINS cases.

The remaining changes affect the parents or guardians of a child adjudicated for the CINS offense of truancy. This amendment increases the scope and duration of parental rehabilitation by changing "class" to "program." Furthermore, it allows courts to order parents to attend available programs offered by entities other than the school district. Section 25.093(f) of the Education Code describes these programs as providing instruction "designed to assist those parents in identifying problems that contribute to the students' unexcused absences and in developing strategies for resolving those problems."

§ 54.044. Community Service.

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

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

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

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

Commentary by Lisa A. Capers

Source: HB 1118
Effective Date: September 1, 2001
Applicability: Conduct occurring on or after effective date
Summary of Changes: Section 54.044 mandates community service restitution (CSR) for probationers. Under current law, the juvenile board is required to designate acceptable CSR projects. The amendment was needed because, as a practical matter, the probation department needs to designate the CSR sites because juvenile boards do not typically meet often enough to keep up with unexpected changes in projects. Realistically, the current requirement for juvenile board designation is unworkable and burdensome to juvenile boards and it is more efficient for probation departments to administer CSR site selection. Probation departments may want to provide the juvenile board annual reports on the CSR selection just as an informational item.

§ 54.048. Restitution.

(a) A juvenile court, in a disposition hearing under Section 54.04, may order restitution to be made by the child and the child's parents.

(b) This section applies without regard to whether the petition in the case contains a plea for restitution.

Commentary by Lisa A. Capers

Source: HB 1118
Effective Date: September 1, 2001
Applicability: Conduct occurring on or after effective date
Summary of Changes: This new section clarifies that a restitution order may apply whether or not the petition included a plea for restitution. Under current law, the issue had been raised in some counties that the prosecutor must plead for restitution in the petition to authorize the juvenile court to order it. The new section makes clear that this is not the case.

§ 54.05. Hearing to Modify Disposition.

(d) A hearing to modify disposition shall be held on the petition of the child and his parent, guardian, guardian ad litem, or attorney, or on the petition of the state, a probation officer, or the court itself. Reasonable notice of a hearing to modify disposition shall be given to all parties. [~~When the petition to modify is filed under Section 51.03(a)(2) of this code, the court must hold an adjudication hearing and make an affirmative finding prior to considering any written reports under Subsection (e) of this section.~~]

(h) A hearing shall be held prior to placement in a post-adjudication secure correctional facility for a period longer than 30 days or commitment to the Texas Youth Commission as a modified disposition. In other disposition modifications, the child and the child's parent, guardian, guardian ad litem, or attorney may waive hearing in accordance with Section 51.09.

(k) [~~(i)~~] 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 one of the adjudications occurred after the date of another previous adjudication.

Commentary by Lisa A. Capers

Source: HB 1118
Effective Date: September 1, 2001
Applicability: Conduct occurring on or after effective date
Summary of Changes: The deletion of the text in subsection (d) is a conforming change made necessary by the deletion of 51.03(a)(2) earlier in HB 1118. Section 51.03(a)(2) is the section that defines "violation of a court order" of a juvenile court. In light of the new misdemeanor commitment law which was passed during the 1999 session, Section 51.03(a)(2) has no practical consequence any longer, is confusing to practitioners and was ultimately deleted by HB 1118.

Current law permits the waiver of a hearing to modify any disposition of the juvenile court with the exception of a modification that may result in a commitment to the Texas Youth Commission (TYC). The amendment to subsection (h) is intended to require a hearing in all modifications that might result in the placement of a child in a post-adjudication secure correctional facility for 30 days or more. The rationale behind this change is the fact that many post-adjudication secure correctional facilities are just as correctional in nature as TYC in terms of restricting a child's liberty to leave. In reality, TYC contracts to house many of their committed youth in post-adjudication secure correctional facilities along side offenders who are on probation in the community. For these reasons, it is not logical to require a hearing before committing a child to TYC, but not require it for a child going to one of these secure correctional settings. However, a compromise was put in this section that requires the hearing only if the child will be in the secure correctional facility 30 days or more. This was intended to capture long term placements in secure settings without imposing an undue hardship on those counties using relatively short-term placements.

§ 54.11. Release or Transfer Hearing.

(d) At a hearing under this section the court may consider written reports from probation officers, professional court employees, [~~or~~] professional consultants, or employees of the Texas Youth Commission, in addition to the testimony of witnesses. At least one day before the hearing, the court shall provide the attorney for the person to be transferred or released under supervision with access to all written matter to be considered by the court.

Commentary by Neil Nichols

Source: HB 1118
Effective Date: September 1, 2001
Applicability: Conduct occurring on or after effective date
Summary of Changes: This amendment clarifies that among the written reports the juvenile court may con-

sider in deciding whether to grant the Texas Youth Commission's request to either transfer a determinate sentence youth to prison or to release a determinate sentence youth early under parole supervision are the written reports of TYC employees. They do not need to be qualified as the reports of "professional consultants."

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

§ 55.41. Commitment Proceedings in Juvenile Court for Mental Retardation.

(c) On receipt of the court's order, the Texas Department of Mental Health and Mental Retardation or the appropriate community center shall admit the child to a residential care facility.

Commentary by Lisa A. Capers

Source: HB 1118
Effective Date: September 1, 2001
Applicability: Conduct occurring on or after effective date
Summary of Changes: This addition reinstates a provision contained in Chapter 55 prior to the 1999 revisions that was accidentally not carried forward. The provision applies to a commitment of a juvenile following a court's finding of unfitness to proceed. It requires the Texas Department of Mental Health and Mental Retardation (TDMHMR) or the appropriate community center to admit the child to a residential care facility upon receipt of the court's order.

§ 55.45. Standards of Care, Notice of Release or Furlough.

(a) If the juvenile court or a court to which the child's case is referred under Section 55.37(2) orders mental health services for the child, the child shall be cared for, treated, and released in accordance with Subtitle C, Title 7, Health and Safety Code, except that 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 that referred the case to a court that ordered mental health services of the intent to discharge the child on or before the 10th day before the date of discharge.

(b) If the juvenile court or a court to which the child's case is referred under Section 55.40(2) orders the commitment of the child to a residential care facility, the child shall be cared for, treated, and released in accordance with Subtitle D, Title 7, Health and Safety Code, except that the administrator of the residential care facility shall notify, in writing, by certified mail, return receipt requested, the juvenile court that ordered commitment of the child or that referred the case to a court that ordered commitment of the child of the intent to discharge or furlough the child on or before the 20th day before the date of discharge or furlough.

Commentary by Lisa A. Capers

Source: HB 1118
Effective Date: September 1, 2001
Applicability: Conduct occurring on or after effective date
Summary of Changes: This new section is an addition that corrects an oversight in the 1999 revisions to Chapter 55 by providing care standards and notice to the juvenile court that committed a child to TDMHMR when a child is to be released. This provision is needed to apply in cases where a child is committed after a finding of unfitness to proceed.

§ 55.60. Commitment Proceedings in Juvenile Court for Mental Retardation.

(c) On receipt of the court's order, the Texas Department of Mental Health and Mental Retardation or the appropriate community center shall admit the child to a residential care facility.

Commentary by Lisa A. Capers

Source: HB 1118
Effective Date: September 1, 2001
Applicability: Conduct occurring on or after effective date
Summary of Changes: This addition reinstates a provision contained in Chapter 55 prior to the 1999 revisions that was accidentally not carried forward. This provision applies to a commitment of a juvenile following a finding by a court of lack of responsibility for conduct. It requires TDMHMR or the appropriate community center to admit the child to a residential care facility upon receipt of the court's order.

Chapter 56. Appeal

§ 56.01. Right to Appeal.

(o) This section does not limit a child's right to obtain a writ of habeas corpus.

Commentary by Robert Dawson

Source: HB 1118
Effective Date: September 1, 2001
Applicability: Conduct occurring on or after effective date
Summary of Changes: This subsection states current law--that the child has a Texas Constitutional and statutory right to bring a petition for writ of habeas

corpus even in situations in which there may be no right to appeal.

Chapter 57. Rights of Victims

§ 57.002. Victim's Rights.

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

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

(b) In notifying a victim of the release or escape of a person, the Texas Youth Commission shall use the same procedure established for the notification of the release or escape of an adult offender under Article 56.11, Code of Criminal Procedure.

Commentary by Neil Nichols

Source: HB 1572
Effective Date: September 1, 2001
Applicability: None stated
Summary of Changes: Under current law a victim may request to be notified by the Texas Youth Commission of a youth's release under parole supervision. The amendment extends that right to include a request to be notified also of escapes. The procedure provided in Article 56.11, Code of Criminal Procedure, requires that a reasonable attempt be made to give this notice to the victim at the victim's last known address not later than the 30th day before the person is released under parole supervision and immediately in the event of escape.

Chapter 58. Records; Juvenile Justice Information System

§ 58.002. Photographs and Fingerprints of Children.

(a) Except as provided by Chapter 63, Code of Criminal Procedure [~~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.

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

(e) This section does not prohibit a law enforcement officer from fingerprinting or photographing a child as provided by Section 58.0021.

Commentary by Robert Dawson

Source: HB 1118
Effective Date: September 1, 2001
Applicability: Conduct occurring on or after effective date
Summary of Changes: The amendment in subsection (a) simply corrects the reference to the chapter on missing children from the Human Resources Code to the Code of Criminal Procedure, where that chapter now resides.

The addition of (e) is intended to make it clear that restrictions on fingerprinting and photographing imposed by this section do not apply to section 58.0021, which creates an additional method by which fingerprints or photographs of juveniles can be obtained.

§ 58.0021. Fingerprints or Photographs for Comparison in Investigation.

(a) A law enforcement officer may take temporary custody of a child to take the child's fingerprints if:

(1) the officer has probable cause to believe that the child has engaged in delinquent conduct;

(2) the officer has investigated that conduct and has found other fingerprints during the investigation; and

(3) the officer has probable cause to believe that the child's fingerprints will match the other fingerprints.

(b) A law enforcement officer may take temporary custody of a child to take the child's photograph if:

(1) the officer has probable cause to believe that the child has engaged in delinquent conduct; and

(2) the officer has probable cause to believe that the child's photograph will be of material assistance in the investigation of that conduct.

(c) Temporary custody for the purpose described by Subsection (a) or (b):

(1) is not a taking into custody under Section 52.01; and

(2) may not be reported to the juvenile justice information system under Subchapter B.

(d) If a law enforcement officer does not take the child into custody under Section 52.01, the child shall be released from temporary custody authorized under this section as soon as the fingerprints or photographs are obtained.

(e) A law enforcement officer who under this section obtains fingerprints or photographs from a child shall:

(1) immediately destroy them if they do not lead to a positive comparison or identification; and

(2) make a reasonable effort to notify the child's parent, guardian, or custodian of the action taken.

(f) A law enforcement officer may under this section obtain fingerprints or photographs from a child at:

(1) a juvenile processing office; or

(2) a location that affords reasonable privacy to the child.

Commentary by Robert Dawson

Source: HB 1118
Effective Date: September 1, 2001
Applicability: Conduct occurring on or after effective date
Summary of Changes: This new section creates a less intrusive way of obtaining fingerprints and photographs of a child than by taking the child into custody under Section 52.01. While an officer with probable cause may take a child into custody under 52.01 and subject the child to fingerprinting and photographing as part of the booking process, that event can create a permanent record for the child in the state-wide Juvenile Justice Information System. This section permits an officer with probable cause to fingerprint or photograph without taking the child into custody and without creating such a record.

This section is limited to delinquent conduct--it does not include CINS. The officer may take the fingerprints or photographs in a juvenile processing office or at any other location that affords reasonable privacy for the child. The idea is to use the means least intrusive and embarrassing to the child and the child's family.

If the fingerprint comparison is positive or a photographic identification is made, the officer may take the child into custody for processing and referral to the juvenile court. Otherwise, the officer must release the child immediately and destroy the fingerprint records and photographs.

§ 58.0022. Fingerprints or Photographs to Identify Runaways.

A law enforcement officer who takes a child into custody with probable cause to believe that the child has engaged in conduct indicating a need for supervision as described by Section 51.03(b)(3) and who after reasonable effort is unable to determine the identity of the child, may fingerprint or photograph the child to establish the child's identity. On determination of the child's identity or that the child cannot be identified by the fingerprints or photographs, the law enforcement officer shall immediately destroy all copies of the fingerprint records or photographs of the child.

Commentary by Robert Dawson

Source: HB 1118
Effective Date: September 1, 2001
Applicability: Conduct occurring on or after effective date
Summary of Changes: A child taken into custody for running away from home may not be routinely fingerprinted or photographed as part of a booking process. That procedure is restricted to criminal violations of Class B misdemeanor or above in seriousness. An officer who has taken a runaway into custody may need to fingerprint or photograph the child in order to identify the child. Under current law, an order of the juvenile court is necessary to authorize that step. Under this section, the officer may fingerprint or photograph without obtaining a court order. Once their use for identification has been exhausted, the records and photographs must be destroyed.

§ 58.007. Physical Files and Records.

(i) In addition to the authority to release information under Subsection (b)(5), a juvenile probation department may release information contained in its records without leave of the juvenile court pursuant to guidelines adopted by the juvenile board.

Commentary by Robert Dawson

Source: HB 1118
Effective Date: September 1, 2001
Applicability: Conduct occurring on or after effective date
Summary of Changes: This amendment authorizes a probation department to release confidential informa-

tion to requestors under guidelines adopted by the juvenile board. This conforms to current practices in many counties and frees the probation department from the necessity of obtaining an order of a juvenile court in each case to authorize routine release of information.

§ 58.0071. Destruction of Certain Physical Records and Files.

(a) In this section:

(1) "Juvenile case" means:

(A) a referral for conduct indicating a need for supervision or delinquent conduct; or

(B) if a petition was filed, all charges made in the petition.

(2) "Physical records and files" include entries in a computer file or information on microfilm, microfiche, or any other electronic storage media.

(b) The custodian of physical records and files in a juvenile case may destroy the records and files if the custodian duplicates the information in the records and files in a computer file or information on microfilm, microfiche, or any other electronic storage media.

(c) The following persons may authorize, subject to Subsections (d) and (e) and any other restriction the person may impose, the destruction of the physical records and files relating to a closed juvenile case:

(1) a juvenile board in relation to the records and files in the possession of the juvenile probation department;

(2) the head of a law enforcement agency in relation to the records and files in the possession of the agency; and

(3) a prosecuting attorney in relation to the records and files in the possession of the prosecuting attorney's office.

(d) The physical records and files of a juvenile case may only be destroyed if the child who is the respondent in the case:

(1) is at least 18 years of age and:

(A) the most serious allegation adjudicated was conduct indicating a need for supervision;

(B) the most serious allegation was conduct indicating a need for supervision and there was not an adjudication; or

(C) the referral or information did not relate to conduct indicating a need for supervision or delinquent conduct and the juvenile court or the court's staff did not take action on the referral or information for that reason;

(2) is at least 21 years of age and:

(A) the most serious allegation adjudicated was delinquent conduct that violated a penal law of the grade of misdemeanor; or

(B) the most serious allegation was delinquent conduct that violated a penal law of the grade of misdemeanor or felony and there was not an adjudication; or

(3) is at least 31 years of age and the most serious allegation adjudicated was delinquent conduct that violated a penal law of the grade of felony.

(e) If a record or file contains information relating to more than one juvenile case, information relating to each case may only be destroyed if:

(1) the destruction of the information is authorized under this section; and

(2) the information can be separated from information that is not authorized to be destroyed under this section.

(f) This section does not affect the destruction of physical records and files authorized by the Texas State Library Records Retention Schedule.

Commentary by Robert Dawson

Source: HB 1118

Effective Date: September 1, 2001

Applicability: Applies to the destruction of records and files in a juvenile case on or after the effective date of this Act, without regard to whether the records or files destroyed were in existence before, on, or after the effective date.

Summary of Changes: This new section authorizes, but does not require, agency heads to permit record custodians to destroy old juvenile records that are no longer needed. Keeping unnecessary records is expensive and their presence as clutter often inhibits the ability of custodians to find needed records. This section authorizes a "spring cleaning" of records. This is not a sealing statute, nor does it authorize the respondent to file a request for destruction.

Three classes of records are included: probation department, prosecutor, and law enforcement. Only the juvenile board, elected prosecutor or head of the law enforcement agency may authorize destruction of records in their respective jurisdictions.

Clerk of court records are not included in this process, but those physical records may be destroyed under subsection (b) at any time after a copy of them has been made in more economical form, such as microfilm, CDROM, etc.

Records may be destroyed only if specifically authorized. For CINS or referrals for which the court lacks jurisdiction, the person referred must be 18, for delinquency cases not resulting in a felony adjudication, the person must be 21; and for delinquency cases involving a felony adjudication, the person must be 31. Records may be destroyed earlier if electronic or microfilm copies are made.

§ 58.101. Definitions.

(4) "Incident number" means a unique number assigned to a child during a specific custodial or detention period or for a specific referral to the office or official designated by the juvenile board [~~court~~], if the juvenile offender was not taken into custody before the referral.

Commentary by Lisa A. Capers

Source: HB 1118
Effective Date: September 1, 2001
Applicability: Conduct occurring on or after effective date
Summary of Changes: The juvenile court reference has been changed to juvenile "board" in Section 58.101 since all Texas counties currently have juvenile boards. See commentary to Section 51.04 and 52.01 for more background on these changes.

§ 58.112. Report to Legislature.

Not later than August [~~January~~] 15 of each year, the Texas Juvenile Probation Commission [~~Criminal Justice Policy Council~~] shall submit to the lieutenant governor, the speaker of the house of representatives, and the governor a report that contains the following statistical information relating to children referred to a juvenile court during the preceding year:

(1) the ages, races, and counties of residence of the children transferred to a district court or criminal district court for criminal proceedings; and

(2) the ages, races, and counties of residence of the children committed to the Texas Youth Commission, placed on probation, or discharged without any disposition.

Commentary by Lisa A. Capers

Source: HB 1118
Effective Date: September 1, 2001
Applicability: Conduct occurring on or after effective date
Summary of Changes: The change to this section shifts the responsibility for compiling juvenile justice data for an annual statistical report from the Texas Criminal Justice Policy Council (CJPC) to the Texas Juvenile Probation Commission (TJPC). Additionally, the due date for the report to be submitted to legislative leadership was moved from January 15 of each year to August 15. A data reporting system was not in place when this original section was adopted during the 1995 legislature. For several years, TJPC has been refining its electronic data collection system which was implemented in January 1999. With this new system, TJPC will be able to collect and fully report on the ages, races, and counties of residence of the children transferred to a district court or criminal district court for criminal proceedings as well as the ages, races and counties of residence of the children committed to the Texas Youth Commission (TYC), placed on probation, or discharged without any disposition. TYC currently reports these characteristics for new commitments annually in its statistical report. There is no need for the CJPC to re-report this information when it has originally been collected and compiled by TJPC and TYC, so the legislature removed this requirement in this amendment.

Subchapter C. Automatic Restriction of Access to Records.

This subchapter creates a new concept in Texas juvenile law--automatic restriction of access to juvenile records. Under current law, in most cases a juvenile may file a petition requesting sealing of records two years after existing the system. Studies have shown, however, that only a small percentage of eligible juveniles avail themselves of this opportunity. The reason is economic: many juveniles and their families lack the means to employ an attorney to pursue their rights to sealing. As a result, although eligible for sealing, those records remain viable indefinitely. In addition, in limited circumstances under current law, juvenile records must be destroyed, not just sealed.

This subchapter is in addition to destroying or sealing records and does not replace those procedures. Records are not destroyed or sealed. They remain in place, but under restricted access. They are available only to criminal justice agencies for a criminal justice purpose. For all other purposes--employment, education, etc.--the records cease to exist and the respondent, like the juvenile whose records are sealed, is authorized to deny that the events that gave rise to the restricted record every occurred.

The system is designed to operate totally independently of the juvenile or the juvenile's family and without regard to their economic status. It is based on the state-wide Juvenile Justice Information System created by the legislature in 1995. The system operates without any official exercising discretion—simply on the basis of statutory mandates.

§ 58.201. Definition.

In this subchapter, "department" means the Department of Public Safety of the State of Texas.

Commentary by Robert Dawson

Source: HB 1118
Effective Date: September 1, 2001
Applicability: Applies to records relating to a juvenile case without regard to whether those records existed

or were maintained before, on, or after the effective date.

Summary of Changes: The state-wide Juvenile Justice Information System is maintained by the Texas Department of Public Safety.

§ 58.202. Exempted Records.

The following records are exempt from this subchapter:

(1) sex offender registration records maintained by the department or a local law enforcement agency under Chapter 62, Code of Criminal Procedure; and

(2) records relating to a criminal combination or criminal street gang maintained by the department or a local law enforcement agency under Chapter 61, Code of Criminal Procedure.

Commentary by Robert Dawson

Source: HB 1118

Effective Date: September 1, 2001

Applicability: Applies to records relating to a juvenile case without regard to whether those records existed or were maintained before, on, or after the effective date.

Summary of Changes: Two classes of records are exempted from the restricted access system. Sex offender registration records are exempted because a major purpose of those records is to make the information they contain available to the public generally, a purpose that restricted access would totally frustrate. However, those records are subject to sealing once the obligation to register expires (see Family Code Section 58.03) and are subject to de-registration provisions enacted by the legislature in 2001 (see Code of Criminal Procedure article 62.13) in segment 3 "Sex Offender Legislation." Gang book records maintained by the DPS under chapter 61 of the Code of Criminal Procedure are exempt because access to them is always restricted to a criminal justice agency for a criminal justice purpose so restricting access under these provisions would add nothing to those protections except confusion.

§ 58.203. Certification.

The department shall certify to the juvenile court or the juvenile probation department to which a referral was made that resulted in information being submitted to the juvenile justice information system that the records relating to a person's juvenile case are subject to automatic restriction of access if:

(1) the person is at least 21 years of age;

(2) the juvenile case did not include violent or habitual felony conduct resulting in proceedings in the juvenile court under Section 53.045;

(3) the juvenile case was not certified for trial in criminal court under Section 54.02; and

(4) the department has not received a report in its criminal history system that the person was granted deferred adjudication for or convicted of a felony or a misdemeanor punishable by confinement in jail for an offense committed after the person became 17 years of age.

Commentary by Robert Dawson

Source: HB 1118

Effective Date: September 1, 2001

Applicability: Applies to records relating to a juvenile case without regard to whether those records existed or were maintained before, on, or after the effective date.

Summary of Changes: The key to the operation of the restricted access system is the Department of Public Safety. It maintains the computerized Juvenile Justice Information System established by the legislature in 1995. Because that system is integrated into the DPS adult Computerized Criminal History system (See chapter 60 of the Code of Criminal Procedure), it is possible to determine whether the subject of a juvenile entry has been handled as an adult. That feature enables the entire restricted access system to operate.

The restricted access process begins with a search by the DPS of its own computerized information system to identify qualified records. No specific deadlines for conducting those searches are set out by the legislature. Instead, it preferred to delegate this matter initially to the discretion of the DPS in confidence it will do its duty under the statute and make sufficiently frequent computer searches so that more specific statutory directions do not become necessary.

DPS makes its certification to the juvenile court that handled the petitioned case or, if the case was not filed in a juvenile court, to the juvenile probation department to which the case was initially referred.

To be eligible for certification, the person must be at least 21 years of age. Because the restricted access system applies to juvenile records created before, on, or after September 1, 2001, DPS will initially be required to search all the records in the Juvenile Justice Information System of persons 21 or older to determine eligibility. That search will produce a first wave in certifications that will level off after the wave has passed.

Two categories of juvenile cases are excluded: determinate sentence cases and cases certified to criminal court for prosecution as an adult. Only a determinate sentence case "resulting in proceedings in the juvenile court under Section 53.045" are excluded. Merely because a determinate sentence offense was referred to the court does not exclude it.

Nor is it excluded if the case is handled by the juvenile court but not as a determinate sentence case. Only if the prosecutor obtained grand jury approval of a petition under Section 53.045 does the charge become one excluded from restricted access. The certification exclusion applies only to cases actually certified to criminal court by the juvenile court. A record is not excluded merely because a prosecutor has filed a certification motion or petition, even if a hearing was conducted.

The fourth and final qualification is that the person has not been convicted of or received deferred adjudication for a felony or jailable misdemeanor committed after the person became 17. In this context, a conviction includes an offense resulting in probation as well as one resulting in a prison or jail sentence. It would make no sense to provide that adult deferred adjudication makes one ineligible for restricted access but that regular community supervision does not. Eligibility for restricted access does not depend upon whether the person has a conviction or deferred adjudication but solely upon whether the DPS has a computerized record of such an event. If a conviction or deferred adjudication occurred that was not reported to DPS, it does not exist as far as restricted access is concerned. This feature is essential if the restricted access process is to be automatic.

§ 58.204. Restricted Access on Certification.

(a) On certification of records in a case under Section 58.203, the department, except as provided by Subsection (b):

(1) may not disclose the existence of the records or any information from the records in response to an inquiry from:

(A) a law enforcement agency;

(B) a criminal or juvenile justice agency;

(C) a governmental or other agency given access to information under Chapter 411, Government Code; or

(D) any other person, agency, organization, or entity; and

(2) shall respond to a request for information about the records by stating that the records do not exist.

(b) On certification of records in a case under Section 58.203, the department may permit access to the information in the juvenile justice information system relating to the case of an individual only:

(1) by a criminal justice agency for a criminal justice purpose, as those terms are defined by Section 411.082, Government Code; or

(2) for research purposes, by the Texas Juvenile Probation Commission, the Texas Youth Commission, or the Criminal Justice Policy Council.

Commentary by Robert Dawson

Source: HB 1118

Effective Date: September 1, 2001

Applicability: Applies to records relating to a juvenile case without regard to whether those records existed or were maintained before, on, or after the effective date.

Summary of Changes: This section spells out the meaning of restricted access. Subsection (a) prohibits any disclosure of those records except as specifically authorized by subsection (b). It requires DPS to respond to a request outside the scope of subsection (b) by stating that the records do not exist. That is the same response DPS would make if it had no record at all concerning the person.

Subsection (b) permits access for research purposes by TJPC, TYC and CJPC. There is no reason why such access should be restricted since the research will not identify the subject of the records and such research is valuable to the state.

Subsection (b) also permits access by a criminal justice agency for a criminal justice purpose. Government Code section 411.082 defines a criminal justice agency as a "federal or state agency that is engaged in the administration of criminal justice under a statute *** and that allocates a substantial portion of its annual budget to the administration of criminal justice." It includes a nongovernmental campus police department. "Administration of criminal justice" is defined by section 411.082 by cross reference to article 60.01 of the Code of Criminal Procedure. Code of Criminal Procedure article 60.01(1) defines administration of criminal justice in terms sufficiently broad to include the administration of juvenile justice. Section 411.082(4) defines a criminal justice purpose as "an activity that is included in the administration of criminal justice" or "screening of applicants for employment with a criminal justice agency." So, access to restricted records is limited to criminal or juvenile justice agencies for purposes of crime investigation, prosecution, adjudication or sanctioning and for purposes of screening of its own applicants—for employment.

§ 58.205. Request to the Federal Bureau of Investigation on Certification.

On certification of records in a case under Section 58.203, the department shall request the Federal Bureau of Investigation to:

(1) place the information in its files on restricted status, with access only by a criminal justice agency for a criminal justice purpose, as those terms are defined by Section 411.082, Government Code; or

(2) if the action described in Subdivision (1) is not feasible, delete all information in its database concerning the case.

Commentary by Robert Dawson

Source: HB 1118
Effective Date: September 1, 2001
Applicability: Applies to records relating to a juvenile case without regard to whether those records existed or were maintained before, on, or after the effective date.
Summary of Changes: When the DPS receives information for the Juvenile Justice Information System, it forwards that information to the F.B.I., which includes it in its own nation-wide computerized criminal history database. Therefore, the question arises what to do about juvenile records in the F.B.I. database that have been certified for restricted access.

The F.B.I. marches to the sound of its own celestial drummer. It takes a dim view of efforts by mere mortals in state government to tell it what to do. It does assert, however, that it will delete any information submitted to its criminal history database by the state agency that submitted the information upon request by that state agency.

We do not know whether the bureau will or can honor a restricted access certification by the DPS. If it will do so, then that is the preference of the State of Texas. If it will not or cannot do so, then the DPS will request deletion of the record entirely. The DPS is required to submit its request in the alternative. Whether the record is restricted or deleted is up to the bureau.

§ 58.206. Effect of Certification in Relating to the Protected Person.

(a) On certification of records in a case under Section 58.203:

(1) the person who is the subject of the records is not required to state in any proceeding, except as otherwise authorized by law in a criminal proceeding in which the person is testifying as a defendant, or in any application for employment, licensing, or other public or private benefit that the person has been a respondent in a case under this title and may not be punished, by perjury prosecution or otherwise, for denying:

(A) the existence of the records; or

(B) the person's participation in a juvenile proceeding related to the records; and

(2) information from the records may not be admitted against the person who is the subject of the records in a civil or criminal proceeding except a proceeding in which a juvenile adjudication was admitted under:

(A) Section 12.42, Penal Code;

(B) Article 37.07, Code of Criminal Procedure; or

(C) as otherwise authorized by criminal procedural law.

(b) A person who is the subject of records certified under this subchapter may not waive the restricted status of the records or the consequences of the restricted status.

Commentary by Robert Dawson

Source: HB 1118
Effective Date: September 1, 2001
Applicability: Applies to records relating to a juvenile case without regard to whether those records existed or were maintained before, on, or after the effective date.
Summary of Changes: This section states the major legal consequences of a restricted access certification by DPS. Subsection (a)(1) authorizes the subject of the records to deny the existence of the record and the events (arrest, prosecution and adjudication) that gave rise to it. This is the same right persons have regarding sealing of juvenile records under Section 58.003 and that persons who have had criminal records expunged have under Chapter 55 of the Code of Criminal Procedure. The right to deny exists in all situations except when the subject of the records is testifying as a defendant in a criminal trial. In that situation he or she may not deny with impunity that he or she has ever been handled in a juvenile case. Note, however, that under Rule 609 of the Texas Rules of Evidence a juvenile adjudication is not admissible in non-juvenile proceedings to impeach testimony. What this exception to the right to deny does is to disable the defendant-witness from volunteering that he or she has ever been in trouble with the law and then to preclude contradiction of that testimony with a restricted access juvenile record.

Importantly, the right to deny reaches non-judicial events, such as applications for employment, educational programs, and occupational licensing. The purpose of this provision is to move the fresh-start-in-life that is the promise of the juvenile justice system closer to reality for juveniles who have not been involved in adult criminality.

Subsection (a)(2) permits restricted access juvenile records to be used when otherwise permitted in criminal proceedings. The purpose of restricted access is to deny access for all purposes except for subsequent use in criminal investigations, prosecutions and court proceedings. The record still exists for those purposes. This section assures that a person with restricted access records will be fully accountable for subsequent criminal conduct. The reference to Section 12.42 of the Penal Code is to the provision that permits a criminal sentence to be enhanced by proof of a juvenile felony adjudication with TYC

commitment. The reference to article 37.07 of the Code of Criminal Procedure is to provisions that permit the admission of juvenile felony or jailable misdemeanor adjudications in criminal penalty proceedings and that under some circumstances authorize the admission in penalty proceedings of unadjudicated juvenile offenses.

Subsection (b) prohibits the juvenile who is the subject of restricted access records to waive the protections of the system. If waiver were permitted, much of the benefits of the system would be destroyed because prospective employers and others could obtain access by requiring waiver as a condition of the application.

§ 58.207. Juvenile Court Orders on Certification.

(a) On certification of records in a case under Section 58.203, the juvenile court shall order:

(1) that the following records relating to the case may be accessed only as provided by Section 58.204(b):

(A) if the respondent was committed to the Texas Youth Commission, records maintained by the commission;

(B) records maintained by the juvenile probation department and by any agency that provided care or custody of the child under order or arrangement of the juvenile court;

(C) records maintained by the clerk of the court;

(D) records maintained by the prosecutor's office; and

(E) records maintained by a law enforcement agency; and

(2) the juvenile probation department to make a reasonable effort to notify the person who is the subject of records for which access has been restricted of the action restricting access and the legal significance of the action for the person.

(b) On receipt of an order under Subsection (a)(1), the agency maintaining the records:

(1) may allow access only as provided by Section 58.204(b); and

(2) shall respond to a request for information about the records by stating that the records do not exist.

Commentary by Robert Dawson

Source: HB 1118
Effective Date: September 1, 2001
Applicability: Applies to records relating to a juvenile case without regard to whether those records existed or were maintained before, on, or after the effective date.
Summary of Changes: The DPS certifies restricted access to the juvenile court (or the juvenile probation department if no court case was filed). The court under subsection (a)(1) then assures that all agencies that have records about the certified case(s) are notified. Probably, the court will ask the probation department to identify those agencies for it. Then the court forwards the DPS restricted access notification to the appropriate agencies.

The juvenile court forwards the certification even if the probation department received the DPS certification. When a probation department receives a DPS certification, it should identify the relevant agencies and then request that the juvenile court forward the certification to those agencies. A simple written request suffices; it is not necessary to file a motion or other formal legal document with the court.

The probation department is required by subsection (a)(2) to attempt to locate the subject of the records to inform him or her of the restricted access certification and what it means.

An agency that receives a restricted access certification from a juvenile court is required by subsection (b) to place the records on restricted access and to respond to a request--except by a criminal justice agency for a criminal justice purpose--that no such record exists.

§ 58.208. Information to Child on Discharge.

On the final discharge of a child from the juvenile system or on the last official action in the case, if there is no adjudication, the appropriate juvenile justice official shall provide to the child:

(1) a written explanation of how automatic restricted access under this subchapter works; and

(2) a copy of this subchapter.

Commentary by Robert Dawson

Source: HB 1118
Effective Date: September 1, 2001
Applicability: Applies to records relating to a juvenile case without regard to whether those records existed or were maintained before, on, or after the effective date.
Summary of Changes: This section requires notification to the child upon discharge from the juvenile justice system of the restricted access system. One of the purposes of restricted access is to motivate a juvenile not to re-offend because re-offending as an adult before age 21 precludes restricted access certification.

While the typical discharged juvenile may not read the information provided or care much about it, in some cases parents or other adults may do so and consequently seek to influence behavior to bring the juvenile within the scope of restricted access.

The information mandated by this section to be communicated reinforces at the discharge stage the information required by the next section to be provided by custody and treatment officials at the outset of the dispositional process.

§ 58.209. Information to Child by Probation Officer or Texas Youth Commission.

(a) When a child is placed on probation for an offense that may be eligible for automatic restricted access at age 21 or when a child is received by the Texas Youth Commission on an indeterminate commitment, a probation officer or an official at the Texas Youth Commission reception center, as soon as practicable, shall explain the substance of the following information to the child:

(1) if the child was adjudicated as having committed delinquent conduct for a felony or jailable misdemeanor, that the child probably has a juvenile record with the department and the Federal Bureau of Investigation;

(2) that the child's juvenile record is a permanent record that is not destroyed or erased unless the record is eligible for sealing and the child or the child's family hires a lawyer and files a petition in court to have the record sealed;

(3) that the child's juvenile record, other than treatment records made confidential by law, can be accessed by police, sheriff's officers, prosecutors, probation officers, correctional officers, and other criminal and juvenile justice officials in this state and elsewhere;

(4) that the child's juvenile record, other than treatment records made confidential by law, can be accessed by employers, educational institutions, licensing agencies, and other organizations when the child applies for employment or educational programs;

(5) if the child's juvenile record is placed on restricted access when the child becomes 21 years of age, that access will be denied to employers, educational institutions, and others except for criminal justice agencies;

(6) that to have the child's juvenile record placed on restricted access at age 21, the child must not:

(A) commit a felony or jailable misdemeanor; and

(B) receive deferred adjudication for or be convicted in adult court of a felony or jailable misdemeanor; and

(7) that restricted access does not require any action by the child or the child's family, including the filing of a petition or hiring of a lawyer, but occurs automatically at age 21 if the child does not commit a criminal offense in the future.

(b) The probation officer or Texas Youth Commission official shall:

(1) give the child a written copy of the explanation provided; and

(2) communicate the same information to at least one of the child's parents or, if none can be found, to the child's guardian or custodian.

(c) The Texas Juvenile Probation Commission and the Texas Youth Commission shall adopt rules to implement this section and to facilitate the effective explanation of the information required to be communicated by this section.

Commentary by Robert Dawson

Source: HB 1118
Effective Date: September 1, 2001
Applicability: Applies to records relating to a juvenile case without regard to whether those records existed or were maintained before, on, or after the effective date.
Summary of Changes: One of the purposes of restricted access is to influence the juvenile's behavior. For that reason, this section requires that information about juvenile records and restricted access must be communicated to the child at the outset of the dispositional process. The appropriate officials are also required to provide that information to a parent or other adult in the child's life.

§ 58.210. Sealing or Destruction of Records Not Affected.

(a) This subchapter does not prevent or restrict the sealing or destruction of juvenile records as authorized by law.

(b) Restricted access provided under this subchapter is in addition to sealing or destruction of juvenile records.

(c) A person who is the subject of records certified under this subchapter is entitled to access to the records for the purpose of preparing and presenting a motion to seal or destroy the records.

Commentary by Robert Dawson

Source: HB 1118
Effective Date: September 1, 2001
Applicability: Applies to records relating to a juvenile case without regard to whether those records existed or were maintained before, on, or after the effective date.
Summary of Changes: Restricted access does not affect any rights of a juvenile to have records destroyed or sealed. Subsection (c) permits the juvenile to have access to records on a restricted status in order to file a motion for sealing or destruction of records when that step is otherwise authorized by law.

Subchapter D. Local Juvenile Justice Information System

§ 58.301. Definitions.

In this subchapter:

(1) "County juvenile board" means a juvenile board created under Chapter 152, Human Resources Code.

(2) "Governmental placement facility" means a juvenile residential placement facility operated by a unit of government.

(3) "Governmental service provider" means a juvenile justice service provider operated by a unit of government.

(4) "Local juvenile justice information system" means a county or multicounty computerized database of information concerning children, with data entry and access by the partner agencies that are members of the system.

(5) "Partner agency" means a governmental service provider or governmental placement facility that is required by this subchapter to be a member of a local juvenile justice information system or that has applied to be a member of a local juvenile justice information system and has been approved by the county juvenile board or regional juvenile board committee as a member of the system.

(6) "Regional juvenile board committee" means a committee that is composed of two members from each county juvenile board in a region that comprises a multicounty local juvenile information system.

Commentary by Neil Nichols

Source: HB 1118
Effective Date: September 1, 2001
Applicability: Conduct occurring on or after effective date
Summary of Changes: This new subchapter provides for the electronic sharing of juvenile justice information between public entities that are involved in the administration of juvenile justice at a local or multicounty regional level. The provisions do not authorize collection or exchange of information that is not already required or authorized by law. The system is overseen by the juvenile board or, for regional systems, by representatives of participating juvenile boards (a committee made up of two members from each county juvenile board). A model of this system is currently being built in Dallas County.

§ 58.302. Purposes of System.

The purposes of a local juvenile justice information system are to:

(1) provide accurate information at the county or regional level relating to children who come into contact with the juvenile justice system;

(2) assist in the development and delivery of services to children in the juvenile justice system;

(3) assist in the development and delivery of services to children:

(A) who school officials have reasonable cause to believe have committed an offense for which a report is required under Section 37.015, Education Code; or

(B) who have been expelled, the expulsion of which school officials are required to report under Section 52.041;

(4) provide for an efficient transmission of juvenile records from justice and municipal courts to county juvenile probation departments and the juvenile court and from county juvenile probation departments and juvenile court to the state juvenile justice information system created by Subchapter B;

(5) provide efficient computerized case management resources to juvenile courts, county juvenile probation departments, and partner agencies authorized by this subchapter;

(6) provide a directory of services available to children to the partner agencies to facilitate the delivery of services to children;

(7) provide an efficient means for municipal and justice courts to report filing of charges, adjudications, and dispositions of juveniles to the juvenile court as required by Section 51.08; and

(8) provide a method for agencies to fulfill their duties under Section 58.108, including the electronic transmission of information required to be sent to the Department of Public Safety by Section 58.110(f).

Commentary by Neil Nichols

Source: HB 1118
Effective Date: September 1, 2001
Applicability: Conduct occurring on or after effective date
Summary of Changes: The purpose of the system is to provide accurate information, assist in the development and delivery of services to children named in the system, provide efficient transfer of juvenile records through the various agencies to the juvenile court and then to the state juvenile justice information system, and provide for efficient case management resources to and efficient report filing between member agencies.

§ 58.303. Local Juvenile Justice Information System.

(a) Juvenile justice agencies in a county or region of this state may jointly create and maintain a

local juvenile justice information system to aid in processing the cases of children under this code, to facilitate the delivery of services to children in the juvenile justice system, and to aid in the early identification of at-risk and delinquent children.

(b) A local juvenile justice information system must contain the following components:

(1) case management resources for juvenile courts, prosecuting attorneys, and county juvenile probation departments;

(2) reporting systems to fulfill statutory requirements for reporting in the juvenile justice system;

(3) service provider directories and indexes of agencies providing services to children; and

(4) victim-witness notices required under Chapter 57.

(c) A local juvenile justice information system may contain the following components:

(1) electronic filing of complaints or petitions;

(2) electronic offense and intake processing;

(3) case docket management and calendaring;

(4) communications by email or other electronic communications between partner agencies;

(5) reporting of charges filed, adjudications and dispositions of juveniles by municipal and justice courts and the juvenile court, and transfers of cases to the juvenile court as authorized or required by Section 51.08;

(6) reporting to schools under Article 15.27, Code of Criminal Procedure, by law enforcement agencies, prosecuting attorneys, and juvenile courts;

(7) records of adjudications and dispositions, including probation conditions ordered by the juvenile court; and

(8) warrant management and confirmation capabilities.

(d) Membership in a local juvenile justice information system is determined by this subchapter. Membership in a regional juvenile justice information system is determined by the regional juvenile board committee from among partner agencies that have applied for membership.

Commentary by Neil Nichols

Source: HB 1118
Effective Date: September 1, 2001
Applicability: Conduct occurring on or after effective date
Summary of Changes: A local juvenile justice information system must include the following components: case management resources; reporting systems to fulfill statutory reporting requirements; service provider directories; and victim-witness notices. The system may have components for electronic filing of complaints or petitions; electronic offense and intake processing; case docket management; email between partner agencies; court reporting of charges, adjudications and dispositions; reporting felony referrals and dispositions to schools; records of probation conditions; and warrant management and confirmation.

§ 58.304. Types of Information Contained in a Local Juvenile Information System.

(a) Subject to Subsection (d), a local juvenile justice information system must consist of:

(1) information relating to all referrals to the juvenile court of any type, including referrals for conduct indicating a need for supervision and delinquent conduct; and

(2) information relating to:

(A) the juvenile;

(B) the intake or referral of the juvenile into the juvenile justice system for any offense or conduct;

(C) the detention of the juvenile;

(D) the prosecution of the juvenile;

(E) the disposition of the juvenile's case, including the name and description of any program to which the juvenile is referred; and

(F) the probation, placement, or commitment of the juvenile.

(b) To the extent possible and subject to Subsections (a) and (d), the local juvenile justice information system may include the following information for each juvenile taken into custody, detained, or referred under this title:

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

(2) the juvenile's date and place of birth;

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

(4) the juvenile's state identification number and other identifying information;

(5) the juvenile's fingerprints and photograph;

(6) the juvenile's last known residential address, including the census tract number designation for the address;

(7) the name, address, and phone number of the juvenile's parent, guardian, or custodian;

(8) the name and identifying number of the agency that took into custody or detained the juvenile;

(9) each date of custody or detention;

(10) a detailed description of the conduct for which the juvenile was taken into custody, de-

tained, or referred, including the level and degree of the alleged offense;

(11) the name and identifying number of the juvenile intake agency or juvenile probation office;

(12) each disposition by the juvenile intake agency or juvenile probation office;

(13) the date of disposition by the juvenile intake agency or juvenile probation office;

(14) the name and identifying number of the prosecutor's office;

(15) each disposition by the prosecutor;

(16) the date of disposition by the prosecutor;

(17) the name and identifying number of the court;

(18) each disposition by the court, including information concerning custody of a juvenile by a juvenile justice agency or county juvenile probation department;

(19) the date of disposition by the court;

(20) any commitment or release under supervision by the Texas Youth Commission, including the date of the commitment or release; and

(21) information concerning each appellate proceeding.

(c) If the Department of Public Safety assigns a state identification number for the juvenile, the identification number shall be entered in the local juvenile information system.

(d) Information obtained for the purpose of diagnosis, examination, evaluation, or treatment or for making a referral for treatment of a child by a public or private agency or institution providing supervision of a child by arrangement of the juvenile court or having custody of the child under order of the juvenile court may not be collected under Subsection (a) or (b).

Commentary by Neil Nichols

Source: HB 1118
Effective Date: September 1, 2001
Applicability: Conduct occurring on or after effective date
Summary of Changes: The type of information that may be contained in the computerized database is largely the same as that authorized for the juvenile justice information system maintained by the Department of Public Safety (§ 58.104). Specifically excluded from the local database is certain diagnostic and treatment information that is provided special protection in order to help encourage openness in treatment settings. This information may be disclosed only according to the provisions in § 58.005.

§ 58.305. Partner Agencies.

(a) A local juvenile justice information system for a single county shall include the following partner agencies within that county:

(1) the juvenile court;

(2) justice of the peace and municipal courts;

(3) the county juvenile probation department;

(4) the prosecuting attorneys who prosecute juvenile cases in juvenile court, municipal court, or justice court;

(5) law enforcement agencies;

(6) each public school district in the county;

(7) governmental service providers approved by the county juvenile board; and

(8) governmental placement facilities approved by the county juvenile board.

(b) A local juvenile justice information system for a multicounty region shall include the partner agencies listed in Subsections (a)(1)-(6) for each county in the region and the following partner agencies from within the multicounty region that have applied for membership in the system and have been approved by the regional juvenile board committee:

(1) governmental service providers; and

(2) governmental placement facilities.

Commentary by Neil Nichols

Source: HB 1118
Effective Date: September 1, 2001
Applicability: Conduct occurring on or after effective date
Summary of Changes: A local juvenile justice information system can be established only if all the listed agencies participate. Governmental service providers and placement facilities may participate with the approval of the juvenile board or regional juvenile board committee.

§ 58.306. Access to Information; Levels.

(a) This section describes the level of access to information to which each partner agency in a local juvenile justice information system is entitled.

(b) Information is at Access Level 1 if the information relates to a child:

(1) who:

(A) a school official has reasonable grounds to believe has committed an offense for which a report is required under Section 37.015, Education Code; or

(B) has been expelled, the expulsion of which is required to be reported under Section 52.041; and

(2) who has not been charged with a fineable only offense, a status offense, or delinquent conduct.

(c) Information is at Access Level 2 if the information relates to a child who:

(1) is alleged in a justice or municipal court to have committed a fineable only offense, municipal ordinance violation, or status offense; and

(2) has not been charged with delinquent conduct or conduct indicating a need for supervision.

(d) Information is at Access Level 3 if the information relates to a child who is alleged to have engaged in delinquent conduct or conduct indicating a need for supervision.

(e) Level 1 Access is by public school districts in the county or region served by the local juvenile justice information system.

(f) Level 2 Access is by:

(1) justice of the peace courts that process juvenile cases; and

(2) municipal courts that process juvenile cases.

(g) Level 3 Access is by:

(1) the juvenile court;

(2) the prosecuting attorney;

(3) the county juvenile probation department;

(4) law enforcement agencies;

(5) governmental service providers that are partner agencies; and

(6) governmental placement facilities that are partner agencies.

(h) Access for Level 1 agencies is only to information at Level 1. Access for Level 2 agencies is only to information at Levels 1 and 2. Access for Level 3 agencies is to information at Levels 1, 2, and 3.

Commentary by Neil Nichols

Source: HB 1118
Effective Date: September 1, 2001
Applicability: Conduct occurring on or after effective date
Summary of Changes: All member agencies have access to all information in the system (Level 3 Access) except for: justice and municipal courts that have access only to information related to youth who are alleged to have committed a fine only or status offense and to information that is accessible by a public school district (Level 2 Access); and public school districts that have access only to information related to a youth who is suspected of an offense that must be reported under Section 37.015 Education Code or who has a reportable expulsion, but has not been charged with a fine only or status offense or delinquent conduct (Level 1 Access).

§ 58.307. Confidentiality of Information.

(a) Information that is part of a local juvenile justice system is not public information and may not be released to the public, except as authorized by law.

(b) Information that is part of a local juvenile justice information system is for the professional use of the partner agencies that are members of the system and may be used only by authorized employees of those agencies to discharge duties of those agencies.

(c) Information from a local juvenile justice information system may not be disclosed to persons, agencies, or organizations that are not members of the system except to the extent disclosure is authorized or mandated by this title.

(d) Information in a local juvenile justice information system is subject to destruction, sealing, or restricted access as provided by this title.

(e) Information in a local juvenile justice information system shall be protected from unauthorized access by a system of access security and any access to information in a local juvenile information system performed by browser software shall be at the level of at least 128-bit encryption. A juvenile board or a regional juvenile board committee shall require all partner agencies to maintain security and restrict access in accordance with the requirements of this title.

Commentary by Neil Nichols

Source: HB 1118
Effective Date: September 1, 2001
Applicability: Conduct occurring on or after effective date
Summary of Changes: Information in the local juvenile justice information system is solely for the professional use of authorized employees of the member agencies, is not public information, and may not be disclosed to non-members except where authorized by law. The information is subject to destruction, sealing and restricted access provisions. Provision is made for system access security.

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) 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) 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.

(c) Subject to Subsection (e), if the child's subsequent commission of delinquent conduct or conduct indicating a need for supervision involves a violation of a penal law of a classification that is the same as or greater than the classification of the child's previous conduct, the juvenile court may assign the child a sanction level <u>authorized by law</u> that is one level higher than the previously assigned sanction level[~~, unless:~~

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

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

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

(e) <u>Except as otherwise provided by this subsection, a</u> [~~A~~] juvenile court or probation department that deviates from the guidelines under this section shall state in writing its reasons for the deviation and submit the statement to the juvenile board regardless of whether a progressive sanctions program has been adopted by the juvenile board. Nothing in this chapter prohibits the imposition of appropriate sanctions that are different from those provided at any sanction level. <u>A juvenile court that makes a disposition required by this title that deviates from the guidelines under this section is not required to report the disposition as a deviation.</u>

Commentary by Lisa A. Capers

Source: HB 1118
Effective Date: September 1, 2001
Applicability: Conduct occurring on or after effective date
Summary of Changes: These changes clarify that if another section or sections of the Family Code require or prohibit a specific disposition and that disposition deviates from the Progressive Sanction Guidelines, this is not a deviation. Further it is not reported as a deviation from the guidelines. For example, a sex offender being placed on probation is required to be given a 2-year period of probation for the third degree felony offense of Indecency with a Child under Section 54.04(p) and 54.0405 even though the progressive sanction guidelines require only a 6-12 month period of probation for the same offense. Similarly, the new 3-misdemeanor TYC commitment rule may prohibit a child from being committed to TYC even though the kid has worked his or her way up the levels to Level 6. Prior to this amendment, there was confusion of whether these situations were deviations from the guidelines or not. The amendment in (c) makes clear that dispositions required by law are not deviations from the guidelines and (e) clarifies that these situations are not reported as deviations. This general provision alleviates the need to modify this section continually when new mandatory provisions in the Family Code are enacted that may conflict with the guidelines.

§ 59.007. Sanction Level Four.

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

(1) require the child to participate as a condition of probation for not less than three months or more than 12 months in <u>an</u> [~~a highly~~] <u>intensive services probation</u> [~~and regimented~~] program that emphasizes <u>frequent contact and reporting with a probation officer,</u> discipline, <u>intensive supervision services</u> [~~physical fitness~~], social responsibility, and productive work;

(2) after release from the program described by Subdivision (1), continue the child on probation supervision for not less than six months or more than 12 months;

(3) require the child to make restitution to the victim of the child's conduct or perform community service restitution appropriate to the nature and

degree of harm caused and according to the child's ability;

(4) impose highly structured restrictions on the child's activities and requirements for behavior of the child as conditions of probation;

(5) require a probation officer to closely monitor the child;

(6) require the child or the child's parents or guardians to participate in programs or services designed to address their particular needs and circumstances; and

(7) if appropriate, impose additional sanctions.

Commentary by Lisa A. Capers

Source: HB 1118
Effective Date: September 1, 2001
Applicability: Conduct occurring on or after effective date
Summary of Changes: This change clarifies that Level 4 of Progressive Sanctions is Intensive Services Probation or "ISP" for short. There has been some confusion in practice because the language of the current statute has been read by some to say that Progressive Sanctions Level 4 refers to a boot camp/secure correctional component when in fact those dispositions are considered Level 5 outcomes. Non-secure placement is available at Level 4 of Progressive Sanctions, but a secure correctional placement is a deviation from the Level 4 recommended sanctions. The new language of the amendment brings the code into compliance with the original intent of the section.

§ 59.011. Duty of Juvenile Board.

A juvenile board shall require the juvenile probation department to [~~prepare a~~] report progressive sanction data electronically to the Texas Juvenile Probation Commission in the format and time frames specified by the commission [~~, at least quarterly on forms provided by the commission, showing the referrals, probation or progressive sanctions violations, and commitments to the Texas Youth Commission administered under this chapter according to the progressive sanctions guidelines and the reasons for any deviations from the guidelines~~].

Commentary by Lisa A. Capers

Source: HB 1118
Effective Date: September 1, 2001
Applicability: Conduct occurring on or after effective date
Summary of Changes: This change is intended to reflect the new electronic data reporting system currently being used by the Texas Juvenile Probation Commission (TJPC) and the county probation departments to report progressive sanction data. When this section was originally written in 1995, TJPC had only a manual data reporting system in place. However, in January 1999 an electronic system was implemented to replace the paper data submissions.

§ 59.012. Reports by Criminal Justice Policy Council.

(a) [~~The Texas Youth Commission shall compile information, at least quarterly, showing the commitments, placements, parole releases, and revocations administered under this chapter according to the progressive sanctions guidelines and the reasons for any deviation from the guidelines.~~

[~~(b) The Texas Juvenile Probation Commission and the Texas Youth Commission shall compile the information obtained under this section and Section 59.011 and submit this information to the Criminal Justice Policy Council.~~

[~~(c)~~] The Criminal Justice Policy Council shall analyze trends related to juvenile referrals, compliance with the progressive sanctions guidelines, and the impact of the guidelines and related reforms on recidivism rates using standard scientific sampling or appropriate scientific methodologies to represent statewide patterns. The council shall compile other policy studies as determined by the executive director of the council or as requested by the governor, lieutenant governor, or speaker of the house of representatives to assist in policy development.

(b) The Criminal Justice Policy Council shall report its findings and related recommendations to improve juvenile justice policies to the governor and the members of the legislature on or before January 15 of each odd-numbered year.

(c) The Criminal Justice Policy Council may incorporate its findings and recommendations under this section into its report required under Section 413.013, Government Code [~~the information compiled by the Texas Juvenile Probation Commission and the Texas Youth Commission under this section and submit the council's findings and recommendations at least annually to the governor and both houses of the legislature showing the primary reasons for any deviation and the effect of the implementation of the sanctions guidelines on recidivism rates~~].

Commentary by Lisa A. Capers

Source: HB 1118
Effective Date: September 1, 2001
Applicability: Conduct occurring on or after effective date
Summary of Changes: The Texas Youth Commission (TYC) does not currently administer dispositions under the guidelines or report deviations; therefore subsection (a) is unnecessary and has been deleted.

Subsection (b) was deleted because the Criminal Justice Policy Council (CJPC) receives and analyzes deviation data received directly by CJPC from the study counties. Thus, there is no need for the Texas Juvenile Probation Commission (TJPC) to compile and submit this data to CJPC. Finally, this amendment more accurately describes the research and analysis responsibilities currently performed by CJPC and charges the agency with reporting its findings and recommendations for improving juvenile justice policies to legislative leadership prior to each legislative session.

Government Code § 499.053. Transfers from Texas Youth Commission.

(d) A person transferred from the Texas Youth Commission for the offense of capital murder shall become eligible for parole as provided in Section 508.145(d) for an offense listed in Section 3g, Article 42.12, Code of Criminal Procedure, or an offense for which a deadly weapon finding has been made.

Commentary by Neil Nichols

Source: HB 1118
Effective Date: September 1, 2001
Applicability: Conduct occurring on or after effective date
Summary of Changes: This amendment corrects an anomaly in which a person who has been sentenced to commitment to the Texas Youth Commission for capital murder (without a deadly weapon finding) after transfer to TDCJ becomes eligible for adult parole earlier than a person with the same sentence for murder. § 508.145(d), Government Code, makes provision for inmates serving a life sentence for capital murder, but that provision does not apply to juvenile determinate sentence offenders serving a maximum sentence of 40 years for capital murder.

Penal Code § 8.07. Age Affecting Criminal Responsibility.

(a) A person may not be prosecuted for or convicted of any offense that the person [~~he~~] committed when younger than 15 years of age except:

(1) perjury and aggravated perjury when it appears by proof that the person [~~he~~] had sufficient discretion to understand the nature and obligation of an oath;

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

(A) an offense under Section 550.021, Transportation Code;

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

(C) an offense punishable as a Class B misdemeanor under Section 550.024, Transportation Code;

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

(4) a misdemeanor punishable by fine only other than public intoxication;

(5) a violation of a penal ordinance of a political subdivision; [~~or~~]

(6) a violation of a penal statute that is, or is a lesser included offense of, a capital felony, an aggravated controlled substance felony, or a felony of the first degree for which the person is transferred to the court under Section 54.02, Family Code, for prosecution if the person committed the offense when 14 years of age or older; or

(7) a capital felony or an offense under Section 19.02 for which the person is transferred to the court under Section 54.02(j)(2)(A), Family Code.

Commentary by Robert Dawson

Source: HB 1118
Effective Date: September 1, 2001
Applicability: Conduct occurring on or after effective date
Summary of Changes: This amendment completes a process that was begun when the legislature in 1999 amended section 54.02(j) of the Family Code to authorize juvenile courts to certify to criminal court persons 18 or older who are charged with having committed a murder or capital murder while between the ages of 10 and 14. To qualify for this special treatment, the State must show that it used due diligence but was unable to proceed in juvenile court before the person's 18th birthday. This amendment to the Penal Code provides that the criminal court has jurisdiction to proceed with cases certified under that special provision.

2. Texas Fair Defense Act

Introductory Comments

This act, Senate Bill 7 by Senator Rodney Ellis, is a major piece of legislation affecting both juvenile and criminal justice. It sets standards and procedures for the provision of counsel for the indigent in juvenile and criminal courts, provides for information-gathering to enable intelligent policy choices to be made in the future, creates a state agency to set standards for indigent defense, and provides for the first time in Texas state financial aid to counties to assist in payment of the cost of indigent defense.

Code of Criminal Procedure article 1.051. Right to Representation by Counsel.

(c) An indigent defendant is entitled to have an attorney appointed to represent him in any adversary judicial proceeding that may result in punishment by confinement and in any other criminal proceeding if the court concludes that the interests of justice require representation. Except as otherwise provided by this subsection, if [~~If~~] an indigent defendant is entitled to and requests appointed counsel and if adversarial judicial proceedings have been initiated against the defendant, a [~~the~~] court or the courts' designee authorized under Article 26.04 to appoint counsel for indigent defendants in the county shall appoint counsel [~~to represent the defendant~~] as soon as possible, but not later than the end of the third working day after the date on which the court or the courts' designee receives the defendant's request for appointment of counsel. In a county with a population of 250,000 or more, the court or the courts' designee shall appoint counsel as required by this subsection as soon as possible, but not later than the end of the first working day after the date on which the court or the courts' designee receives the defendant's request for appointment of counsel.

(i) Except as otherwise provided by this subsection, if an indigent defendant is entitled to and requests appointed counsel and if adversarial judicial proceedings have not been initiated against the defendant, a court or the courts' designee authorized under Article 26.04 to appoint counsel for indigent defendants in the county shall appoint counsel immediately following the expiration of three working days after the date on which the court or the courts' designee receives the defendant's request for appointment of counsel. If adversarial judicial proceedings are initiated against the defendant before the expiration of the three working days, the court or the courts' designee shall appoint counsel as provided by Subsection (c). In a county with a population of 250,000 or more, the court or the courts' designee shall appoint counsel as required by this subsection immediately following the expiration of one working day after the date on which the court or the courts' designee receives the defendant's request for appointment of counsel. If adversarial judicial proceedings are initiated against the defendant before the expiration of the one working day, the court or the courts' designee shall appoint counsel as provided by Subsection (c).

(j) Notwithstanding any other provision of this section, if an indigent defendant is released from custody prior to the appointment of counsel under this section, appointment of counsel is not required until the defendant's first court appearance or when adversarial judicial proceedings are initiated, whichever comes first.

(k) A court or the courts' designee may without unnecessary delay appoint new counsel to represent an indigent defendant for whom counsel is appointed under Subsection (c) or (i) if:

(1) the defendant is subsequently charged in the case with an offense different from the offense with which the defendant was initially charged; and

(2) good cause to appoint new counsel is stated on the record as required by Article 26.04(j)(2).

Commentary by Robert Dawson

Source: SB 7
Effective Date: January 1, 2002
Applicability: Conduct occurring on or after effective date
Summary of Changes: This article applies only in criminal cases It specifies when counsel must be appointed for the indigent--within either three working days or one working day after request is received by the appointing authority, depending upon the population of the county. In juvenile case, Section 51.10 of the Family Code provides for appointment of counsel at the initial detention hearing, which is required to be held within two working days after the juvenile was taken into custody

Code of Criminal Procedure article 14.06. Must Take Offenders Before Magistrate.

(a) Except as provided by Subsection (b), in each case enumerated in this Code, the person making the arrest or the person having custody of the person arrested shall take the person arrested or have him taken without unnecessary delay, but not later than 48 hours after the person is arrested, before the magistrate who may have ordered the arrest, before some magistrate of the county where the arrest was made without an order, or, if necessary to provide more expeditiously to the person arrested the warnings described by Article 15.17 of this Code, before a magis-

trate in a county bordering the county in which the arrest was made. The magistrate shall immediately perform the duties described in Article 15.17 of this Code.

Commentary by Robert Dawson

Source: SB 7
Effective Date: January 1, 2002
Applicability: Conduct occurring on or after effective date
Summary of Changes: This article applies only in criminal cases It specifies a 48 hour period to bring an arrested person before a magistrate. That is where appointed counsel is requested. If requested, it must be provided within an additional one to three working days after the request is received by the appointing authority.

In juvenile cases counsel is provided more quickly. A child may be detained in a juvenile processing office for only 6 hours and then must be released or taken to a juvenile detention facility, where he or she is promptly processed by intake and often released at that stage If not released by intake, a detention hearing not later than the second working day must be conducted, where counsel will be appointed.

Code of Criminal Procedure article 15.17. Duties of Arresting Officer and Magistrate.

(a) In each case enumerated in this Code, the person making the arrest or the person having custody of the person arrested shall without unnecessary delay, but not later than 48 hours after the person is arrested, take the person arrested or have him taken before some magistrate of the county where the accused was arrested or, if necessary to provide more expeditiously to the person arrested the warnings described by this article, before a magistrate in a county bordering the county in which the arrest was made. The arrested person may be taken before the magistrate in person or the image of the arrested person may be broadcast by closed circuit television to the magistrate. The magistrate shall inform in clear language the person arrested, either in person or by closed circuit television, of the accusation against him and of any affidavit filed therewith, of his right to retain counsel, of his right to remain silent, of his right to have an attorney present during any interview with peace officers or attorneys representing the state, of his right to terminate the interview at any time, [~~of his right to request the appointment of counsel if he is indigent and cannot afford counsel,~~] and of his right to have an examining trial. The magistrate shall also inform the person arrested of the person's right to request the appointment of counsel if the person cannot afford counsel. The magistrate shall inform the person arrested of the procedures for requesting appointment of counsel. If the person does not speak and understand the English language or is deaf, the magistrate shall inform the person in a manner consistent with Articles 38.30 and 38.31, as appropriate. The magistrate shall ensure that reasonable assistance in completing the necessary forms for requesting appointment of counsel is provided to the person at the same time. If the person arrested is indigent and requests appointment of counsel and if the magistrate is authorized under Article 26.04 to appoint counsel for indigent defendants in the county, the magistrate shall appoint counsel in accordance with Article 1.051. If the magistrate is not authorized to appoint counsel, the magistrate shall without unnecessary delay, but not later than 24 hours after the person arrested requests appointment of counsel, transmit, or cause to be transmitted to the court or to the courts' designee authorized under Article 26.04 to appoint counsel in the county, the forms requesting the appointment of counsel. The magistrate [~~He~~] shall also inform the person arrested that he is not required to make a statement and that any statement made by him may be used against him. The magistrate shall allow the person arrested reasonable time and opportunity to consult counsel and shall admit the person arrested to bail if allowed by law. A closed circuit television system may not be used under this subsection unless the system provides for a two-way communication of image and sound between the arrested person and the magistrate. A recording of the communication between the arrested person and the magistrate shall be made. The recording shall be preserved until the earlier of the following dates: (1) the date on which the pretrial hearing ends; or (2) the 91st day after the date on which the recording is made if the person is charged with a misdemeanor or the 120th day after the date on which the recording is made if the person is charged with a felony. The counsel for the defendant may obtain a copy of the recording on payment of a reasonable amount to cover costs of reproduction.

(e) In each case in which a person arrested is taken before a magistrate as required by Subsection (a), a record shall be made of:

(1) the magistrate informing the person of the person's right to request appointment of counsel;

(2) the magistrate asking the person whether the person wants to request appointment of counsel; and

(3) whether the person requested appointment of counsel.

(f) A record required under Subsection (e) may consist of written forms, electronic recordings, or other documentation as authorized by procedures adopted in the county under Article 26.04(a).

Commentary by Robert Dawson

Source: SB 7
Effective Date: January 1, 2002
Applicability: Conduct occurring on or after effective date
Summary of Changes: This article applies only in criminal cases It spells out the steps involved in the process of notifying an arrestee of the right to counsel, obtaining applications for appointment and processing those applications.

In juvenile cases, this process is normally conducted by a probation department official or by a judge or referee conducting the initial detention hearing.

Code of Criminal Procedure article 17.033. Release on Bond of Certain Persons Arrested Without a Warrant.

(a) Except as provided by Subsection (c), a person who is arrested without a warrant and who is detained in jail must be released on bond, in an amount not to exceed $5,000, not later than the 24th hour after the person's arrest if the person was arrested for a misdemeanor and a magistrate has not determined whether probable cause exists to believe that the person committed the offense. If the person is unable to obtain a surety for the bond or unable to deposit money in the amount of the bond, the person must be released on personal bond.

(b) Except as provided by Subsection (c), a person who is arrested without a warrant and who is detained in jail must be released on bond, in an amount not to exceed $10,000, not later than the 48th hour after the person's arrest if the person was arrested for a felony and a magistrate has not determined whether probable cause exists to believe that the person committed the offense. If the person is unable to obtain a surety for the bond or unable to deposit money in the amount of the bond, the person must be released on personal bond.

(c) On the filing of an application by the attorney representing the state, a magistrate may postpone the release of a person under Subsection (a) or (b) for not more than 72 hours after the person's arrest. An application filed under this subsection must state the reason a magistrate has not determined whether probable cause exists to believe that the person committed the offense for which the person was arrested.

Commentary by Robert Dawson

Source: SB 7
Effective Date: January 1, 2002
Applicability: Conduct occurring on or after effective date
Summary of Changes: This article applies only in criminal cases. It codifies the rule of Gerstein v Pugh, 420 U.S. 103, 95 S.Ct. 854, 43 L.Ed.2d 54 (1975) and County of Riverside v. McLaughlin, 500 U.S. 44, 111 S.Ct. 1661, 114 L.Ed.2d 49 (1991) which together require a judicial determination of probable cause within 48 hours after a person is arrested without an arrest warrant. If probable cause is not found during the applicable time limits, this article requires release on personal bond.

In juvenile cases, Section 54.01(o) of the Family Code requires a judicial determination of probable cause within 48 hours, including weekends and holidays, of taking the child into custody. Failure to make that finding in a timely fashion requires release from detention.

Unlike in criminal cases, a 72 hour extension is not permitted in juvenile cases--the 48 hour rule is absolute.

Code of Criminal Procedure article 26.04. Procedures for Appointing [~~Court Shall Appoint~~] Counsel.

(a) The judges of the county courts, statutory county courts, and district courts trying criminal cases in each county, by local rule, shall adopt and publish written countywide procedures for timely and fairly appointing counsel for an indigent defendant in the county arrested for or charged with a misdemeanor punishable by confinement or a felony. The procedures must be consistent with this article and Articles 1.051, 15.17, 26.05, and 26.052. A court shall appoint an attorney from a public appointment list using a system of rotation, unless the court appoints an attorney under Subsection (f), (h), or (i). The court shall appoint attorneys from among the next five names on the appointment list in the order in which the attorneys' names appear on the list, unless the court makes a finding of good cause on the record for appointing an attorney out of order. An attorney who is not appointed in the order in which the attorney's name appears on the list shall remain next in order on the list.

(b) Procedures adopted under Subsection (a) shall:

(1) authorize only the judges of the county courts, statutory county courts, and district courts trying criminal cases in the county, or the judges' designee, to appoint counsel for indigent defendants in the county;

(2) apply to each appointment of counsel made by a judge or the judges' designee in the county;

(3) ensure that each indigent defendant in the county who is charged with a misdemeanor punishable by confinement or with a felony and who appears in court without counsel has an opportunity to confer with appointed counsel before the commencement of judicial proceedings;

(4) require appointments for defendants in capital cases in which the death penalty is sought to comply with the requirements under Article 26.052;

(5) ensure that each attorney appointed from a public appointment list to represent an indigent defendant perform the attorney's duty owed to the defendant in accordance with the adopted procedures, the requirements of this code, and applicable rules of ethics; and

(6) ensure that appointments are allocated among qualified attorneys in a manner that is fair, neutral, and nondiscriminatory.

(c) Whenever a [~~the~~] court or the courts' designee authorized under Subsection (b) to appoint counsel for indigent defendants in the county determines that a defendant charged with a felony or a misdemeanor punishable by confinement [~~imprisonment~~] is indigent or that the interests of justice require representation of a defendant in a criminal proceeding, the court or the courts' designee shall appoint one or more practicing attorneys to defend the defendant in accordance with this subsection and the procedures adopted under Subsection (a). If the court or the courts' designee determines that the defendant does not speak and understand the English language or that the defendant is deaf, the court or the courts' designee shall make an effort to appoint an attorney who is capable of communicating in a language understood by the defendant [~~him~~].

(d) A public appointment list from which an attorney is appointed as required by Subsection (a) shall contain the names of qualified attorneys, each of whom:

(1) applies to be included on the list;

(2) meets the objective qualifications specified by the judges under Subsection (e);

(3) meets any applicable qualifications specified by the Task Force on Indigent Defense; and

(4) is approved by a majority of the judges who established the appointment list under Subsection (e).

(e) In a county in which a court is required under Subsection (a) to appoint an attorney from a public appointment list:

(1) the judges of the county courts and statutory county courts trying misdemeanor cases in the county, by formal action:

(A) shall:

(i) establish a public appointment list of attorneys qualified to provide representation in the county in misdemeanor cases punishable by confinement; and

(ii) specify the objective qualifications necessary for an attorney to be included on the list; and

(B) may establish, if determined by the judges to be appropriate, more than one appointment list graduated according to the degree of seriousness of the offense and the attorneys' qualifications; and

(2) the judges of the district courts trying felony cases in the county, by formal action:

(A) shall:

(i) establish a public appointment list of attorneys qualified to provide representation in felony cases in the county; and

(ii) specify the objective qualifications necessary for an attorney to be included on the list; and

(B) may establish, if determined by the judges to be appropriate, more than one appointment list graduated according to the degree of seriousness of the offense and the attorneys' qualifications.

(f) In a county in which a public defender is appointed under Article 26.044, the court or the courts' designee may appoint the public defender to represent the defendant in accordance with guidelines established for the public defender.

(g) A countywide alternative program for appointing counsel for indigent defendants in criminal cases is established by a formal action in which two-thirds of the judges of the courts designated under this subsection vote to establish the alternative program. An alternative program for appointing counsel in misdemeanor and felony cases may be established in the manner provided by this subsection by the judges of the county courts, statutory county courts, and district courts trying criminal cases in the county. An alternative program for appointing counsel in misdemeanor cases may be established in the manner provided by this subsection by the judges of the county courts and statutory county courts trying criminal cases in the county. An alternative program for appointing counsel in felony cases may be established in the manner provided by this subsection by the judges of the district courts trying criminal cases in the county. In a county in which an alternative program is established:

(1) the alternative program may:

(A) use a single method for appointing counsel or a combination of methods; and

(B) use a multicounty appointment list using a system of rotation; and

(2) the procedures adopted under Subsection (a) must ensure that:

(A) attorneys appointed using the alternative program to represent defendants in misdemeanor cases punishable by confinement:

(i) meet specified objective qualifications, which may be graduated according to the degree of seriousness of the offense, for providing representation in misdemeanor cases punishable by confinement; and

(ii) are approved by a majority of the judges of the county courts and statutory county courts trying misdemeanor cases in the county;

(B) attorneys appointed using the alternative program to represent defendants in felony cases:

(i) meet specified objective qualifications, which may be graduated according to the degree of seriousness of the offense, for providing representation in felony cases; and

(ii) are approved by a majority of the judges of the district courts trying felony cases in the county;

(C) appointments for defendants in capital cases in which the death penalty is sought comply with the requirements of Article 26.052; and

(D) appointments are reasonably and impartially allocated among qualified attorneys.

(h) In a county in which an alternative program for appointing counsel is established as provided by Subsection (g) and is approved by the presiding judge of the administrative judicial region, a court or the courts' designee may appoint an attorney to represent an indigent defendant by using the alternative program. In establishing an alternative program under Subsection (g), the judges of the courts establishing the program may not, without the approval of the commissioners court, obligate the county by contract or by the creation of new positions that cause an increase in expenditure of county funds.

(i) A court or the courts' designee required under Subsection (c) to appoint an attorney to represent a defendant accused of a felony may appoint an attorney from any county located in the court's administrative judicial region.

(j) An attorney appointed under this article [~~subsection~~] shall:

(1) make every reasonable effort to contact the defendant not later than the end of the first working day after the date on which the attorney is appointed and to interview the defendant as soon as practicable after the attorney is appointed; and

(2) represent the defendant until charges are dismissed, the defendant is acquitted, appeals are exhausted, or the attorney is relieved of his duties by the court or replaced by other counsel after a finding of good cause is entered on the record.

(k) A court may replace an attorney who violates Subsection (j)(1) with other counsel. A majority of the judges of the county courts and statutory county courts or the district courts, as appropriate, trying criminal cases in the county may remove from consideration for appointment an attorney who intentionally or repeatedly violates Subsection (j)(1).

(l) Procedures adopted under Subsection (a) must include procedures and financial standards for determining whether a defendant is indigent. The procedures and standards shall apply to each defendant in the county equally, regardless of whether the defendant is in custody or has been released on bail.

(m) [~~(b)~~] In determining whether a defendant is indigent, the court or the courts' designee may [~~shall~~] consider [~~such factors as~~] the defendant's income, source of income, assets, property owned, outstanding obligations, necessary expenses, the number and ages of dependents, and spousal income that is available to the defendant[~~, and whether the defendant has posted or is capable of posting bail~~]. The court or the courts' designee may not consider whether [~~deny appointed counsel to a defendant solely because~~] the defendant has posted or is capable of posting bail, except to the extent that it reflects the defendant's financial circumstances as measured by the considerations listed in this subsection.

(n) [~~(c)~~] A defendant who requests a determination of indigency and appointment of counsel shall:

(1) complete under oath a questionnaire concerning his financial resources;

(2) respond under oath to an examination regarding his financial resources by the judge or magistrate responsible for determining whether the defendant is indigent; or

(3) complete the questionnaire and respond to examination by the judge or magistrate.

(o) [~~(d)~~] Before making a determination of whether a defendant is indigent, the court shall request the defendant to sign under oath a statement substantially in the following form:

"On this _____ day of _____, 20 [~~19~~]___, I have been advised by the (name of the court) Court of my right to representation by counsel in the trial of the charge pending against me. I certify that I am without means to employ counsel of my own choosing and I hereby request the court to appoint counsel for me. (signature of the defendant)"

(p) A defendant who is determined by the court to be indigent is presumed to remain indigent for the remainder of the proceedings in the case unless a material change in the defendant's financial circumstances occurs. [~~(e)~~] If there is a material change in financial circumstances after a determination of indigency or nonindigency is made, the defendant, the defendant's counsel, or the attorney representing the state may move for reconsideration of the determination.

(q) [~~(f)~~] A written or oral statement elicited under this article or evidence derived from the statement may not be used for any purpose, except to determine the defendant's indigency or to impeach the direct testimony of the defendant. This subsection does not prohibit prosecution of the defendant under Chapter 37, Penal Code.

(r) A court may not threaten to arrest or incarcerate a person solely because the person requests the assistance of counsel.

Commentary by Robert Dawson

Source: SB 7
Effective Date: January 1, 2021
Applicability: Conduct occurring on or after effective date
Summary of Changes: This article by its terms applies only in criminal cases. However, the juvenile board is directed by Family Code Section 51.101 (discussed later in this segment) to create a county appointment plan that "to the extent practicable" complies with the requirements of this article.

Subsection (a) requires the judges in a county hearing criminal cases to create an appointment system and requires that appointments be made in rotation from the names on that list, with some exceptions, unless a record finding of good cause is made.

Subsection (b) sets out the major characteristic of the appointment plan.

Subsection (c) requires appointment of counsel in felony and jailable misdemeanor cases in which the defendant is indigent.

Subsection (d) sets out the qualifications of the attorneys placed on the county appointment list. Attorneys on the list are limited to qualified volunteers who are approved by a majority of the judges who established the list.

Subsection (e) provides for separate lists for felony and for jailable misdemeanor cases.

Subsection (f) permits a public defender to be appointed in those counties with public defender offices.

Subsection (g) authorizes alternative appointment plans if two-thirds of the judges in the county opt for such a system. Alternative plans permit somewhat more flexibility in designing the appointment plans than the main system permits. Multi-county appointment lists are permitted under this subsection to facilitate qualified appointments in rural areas of the state.

Subsection (h) provides that an alternative plan must be approved by the presiding judge of the administrative judicial region and, if public funds are committed, by the commissioners court.

Subsection (i) authorizes a court making a felony appointment to appoint an attorney from any list in the administrative judicial region.

Subsection (j) requires an appointed attorney to contact his or her client without delay and promptly to interview the client.

Subsection (k) authorizes a judge to remove an attorney who does not promptly contact his or her client and authorizes a majority of the judges to remove from the appointment list an attorney who intentionally or repeatedly delays contacting clients.

Subsection (l) requires published standards and procedures for determining indigency that apply equally whether the accused is in jail or on bail.

Subsection (m) sets out the sources of income that may be considered in determining whether the defendant is indigent.

Subsection (n) sets out the formal requirements of the application for appointment of counsel.

Subsection (o) requires a statement under oath by the person seeking counsel that the person is indigent.

Subsection (p) presumes that a person determined to be indigent remains indigent throughout the proceedings.

Subsection (q) provides that information given by the defendant seeking appointment cannot be used against him or her except in a perjury prosecution.

Subsection (r) prohibits a court from threatening to arrest or incarcerate a person solely because the person while on bond requests the appointment of counsel.

Code of Criminal Procedure article 26.044. Public Defender [~~in County with Four County Courts and Four District Courts~~].

(a) In this chapter, "public defender" means a governmental entity or nonprofit corporation:

(1) operating under a written agreement with a governmental entity, other than an individual judge or court;

(2) using public funds; and

(3) providing legal representation and services to indigent defendants accused of a crime or juvenile offense, as those terms are defined by Section 71.001, Government Code.

(b) The commissioners court of any county, on written approval of a judge of a county court, statutory county court, or district court trying criminal cases in the county, [~~having four county courts and four district courts~~] may appoint a governmental entity or nonprofit corporation [~~one or more attorneys~~] to serve as a public defender. The commissioners courts of two or more counties may enter into a written agreement to jointly appoint and fund a regional [~~A~~] public defender [~~serves at the pleasure of the commissioners court~~]. In appointing a public defender under this subsection, the commissioners court shall specify or the commissioners courts shall jointly specify, if appointing a regional public defender:

(1) the duties of the public defender;

(2) the types of cases to which the public defender may be appointed under Article 26.04(f) and the courts in which the public defender may be required to appear;

(3) whether the public defender is appointed to serve a term or serve at the pleasure of the commissioners court or the commissioners courts; and

(4) if the public defender is appointed to serve a term, the term of appointment and the procedures for removing the public defender.

(c) Before appointing a public defender under Subsection (b), the commissioners court or commissioners courts shall solicit proposals for the public defender. A proposal must include:

(1) a budget for the public defender, including salaries;

(2) a description of each personnel position, including the chief public defender position;

(3) the maximum allowable caseloads for each attorney employed by the proponent;

(4) provisions for personnel training;

(5) a description of anticipated overhead costs for the public defender; and

(6) policies regarding the use of licensed investigators and expert witnesses by the proponent.

(d) After considering each proposal for the public defender submitted by a governmental entity or nonprofit corporation, the commissioners court or commissioners courts shall select a proposal that reasonably demonstrates that the proponent will provide adequate quality representation for indigent defendants in the county or counties.

(e) The total cost of the proposal may not be the sole consideration in selecting a proposal.

(f) [~~(b)~~] To be eligible for appointment as a public defender, the governmental entity or nonprofit corporation [~~a person~~] must be directed by a chief public defender who:

(1) is [~~be~~] a member of the State Bar of Texas;

(2) has [~~have~~] practiced law for at least three years [~~one year~~]; and

(3) has substantial [~~have~~] experience in the practice of criminal law.

(g) A [~~(c) The~~] public defender is entitled to receive funds for personnel costs and expenses incurred in operating as a public defender in amounts [~~an annual salary in an amount~~] fixed by the commissioners court and paid out of the appropriate county fund, or jointly fixed by the commissioners courts and proportionately paid out of each appropriate county fund if the public defender serves more than one county.

(h) A public defender may employ attorneys, licensed investigators, and other personnel necessary to perform the duties of the public defender as specified by the commissioners court or commissioners courts under Subsection (b)(1).

(i) [~~(d)~~] Except as authorized by this article, the chief [~~a~~] public defender or an attorney employed by a public defender may not:

(1) engage in the private practice of criminal law; or

(2) accept anything of value not authorized by this article for services rendered under this article.

(j) A public defender may refuse an appointment under Article 26.04(f) if:

(1) a conflict of interest exists;

(2) the public defender has insufficient resources to provide adequate representation for the defendant;

(3) the public defender is incapable of providing representation for the defendant in accordance with the rules of professional conduct; or

(4) the public defender shows other good cause for refusing the appointment.

(k) [~~(e)~~] The judge may remove a public defender who violates a provision of Subsection (i) [~~(d) of this article~~].

(l) [~~(f) A public defender or an attorney appointed by a court of competent jurisdiction shall represent each indigent person who is charged with a criminal offense in a county having at least four county courts and at least four district courts and each indigent minor who is a party to a juvenile delinquency proceeding in the county.~~

[~~(g)~~] A public defender may investigate the financial condition of any person the public defender is appointed to represent. The defender shall report the results of the investigation to the appointing judge. The judge may hold a hearing to determine if the person is indigent and entitled to representation under this article.

(m) [~~(h)~~] If it is necessary that an attorney other than a public defender be [~~is~~] appointed, the attorney is entitled to the compensation provided by Article 26.05 of this code.

[~~(i) At any stage of the proceeding, including appeal or other postconviction proceedings, the judge may appoint another attorney to represent the person. The substitute attorney is entitled to the compensation provided by Article 26.05 of this code.~~

[~~(j) Except for the provisions relating to daily appearance fees, Article 26.05 of this code applies to a public defender appointed under this article.~~]

Commentary by Robert Dawson

Source: SB 7

Effective Date: January 1, 2002

Applicability: Conduct occurring on or after effective date

Summary of Changes: This article applies to both criminal and juvenile cases. It sets out the requirements for establishing a county public defender sys-

tem for representation of the indigents in criminal and juvenile cases. The commissioners court of any county may with approval of a judge hearing criminal cases establish a public defender system.

Code of Criminal Procedure article 26.05. Compensation of Counsel Appointed to Defend.

(a) A counsel, other than an attorney with a public defender [~~defender's office~~], appointed to represent a defendant in a criminal proceeding, including a habeas corpus hearing, shall be [~~reimbursed for reasonable expenses incurred with prior court approval for purposes of investigation and expert testimony and shall be~~] paid a reasonable attorney's fee for performing the following services, based on the time and labor required, the complexity of the case, and the experience and ability of the appointed counsel:

(1) time spent in court making an appearance on behalf of the defendant as evidenced by a docket entry, time spent in trial, and [~~or~~] time spent in a proceeding in which sworn oral testimony is elicited;

(2) reasonable and necessary time spent out of court on the case, supported by any documentation that the court requires; [~~and~~]

(3) preparation of an appellate brief and preparation and presentation of oral argument to a court of appeals or the Court of Criminal Appeals; and

(4) preparation of a motion for rehearing.

(b) All payments made under this article shall be paid in accordance with a schedule of fees adopted by formal action of the judges of the county courts, statutory county courts, and district courts trying criminal cases in [~~county and district criminal court judges within~~] each county. On adoption of a schedule of fees as provided by this subsection, a copy of the schedule shall be sent to the commissioners court of the county[~~, except that in a county with only one judge with criminal jurisdiction the schedule will be adopted by the administrative judge for that judicial district~~].

(c) Each fee schedule adopted shall state reasonable [~~will include a~~] fixed rates or [~~rate,~~] minimum and maximum hourly rates, taking into consideration reasonable and necessary overhead costs and the availability of qualified attorneys willing to accept the stated rates, [~~and daily rates~~] and shall [~~will~~] provide a form for the appointed counsel to itemize [~~reporting~~] the types of services performed [~~in each one~~]. No payment shall be made under this article [~~section~~] until the form for itemizing [~~reporting~~] the services performed is submitted to the judge presiding over the proceedings and the judge approves the payment. If the judge disapproves the requested amount of payment, the judge shall make written findings stating the amount of payment that the judge approves and each reason for approving an amount different from the requested amount. An attorney whose request for payment is disapproved may appeal the disapproval by filing a motion with the presiding judge of the administrative judicial region. On the filing of a motion, the presiding judge of the administrative judicial region shall review the disapproval of payment and determine the appropriate amount of payment. In reviewing the disapproval, the presiding judge of the administrative judicial region may conduct a hearing. Not later than the 45th day after the date an application for payment of a fee is submitted under this article, the commissioners court shall pay to the appointed counsel the amount that is approved by the presiding judge of the administrative judicial region [~~and approved by the court~~] and that is in accordance with the fee schedule for that county.

(d) A counsel in a noncapital case, other than an attorney with a public defender, appointed to represent a defendant under this code shall be reimbursed for reasonable and necessary expenses, including expenses for investigation and for mental health and other experts. Expenses incurred with prior court approval shall be reimbursed in the same manner provided for capital cases by Articles 26.052(f) and (g), and expenses incurred without prior court approval shall be reimbursed in the manner provided for capital cases by Article 26.052(h).

(e) A majority of the judges of the county courts and statutory county courts or the district courts, as appropriate, trying criminal cases in the county may remove an attorney from consideration for appointment if, after a hearing, it is shown that the attorney submitted a claim for legal services not performed by the attorney.

(f) All payments made under this article shall be paid from the general fund of the county in which the prosecution was instituted or habeas corpus hearing held and may be included as costs of court.

(g) [~~(e)~~] If the court determines that a defendant has financial resources that enable him to offset in part or in whole the costs of the legal services provided, including any expenses and costs, the court shall order the defendant to pay during the pendency of the charges or, if convicted, as court costs the amount that it finds the defendant is able to pay.

(h) [~~(f)~~] Reimbursement of expenses incurred for purposes of investigation or expert testimony may be paid directly to a private investigator licensed under Chapter 1702, Occupations Code, [~~the Private Investigators and Private Security Agencies Act (Article 4413(29bb), Vernon's Texas Civil Statutes)~~] or to an expert witness in the manner designated by appointed counsel and approved by the court.

Commentary by Robert Dawson

Source: SB 7
Effective Date: January 1, 2002
Applicability: Conduct occurring on or after effective date
Summary of Changes: This section applies in both criminal and juvenile cases. It applies to juvenile cases by virtue of Family Code Section 51.10(i) which provides that attorneys appointed in juvenile cases shall be paid in accordance with article 26.05.

A major feature of this article is to permit an attorney whose fee voucher is cut by the judge to appeal that decision to the presiding judge of the administrative judicial region for review.

Code of Criminal Procedure article 26.052. Appointment of Counsel in Death Penalty Case, Reimbursement of Investigative Expenses.

(d)(1) The committee shall adopt standards for the qualification of attorneys to be appointed to represent indigent defendants in capital cases in which the death penalty is sought [~~for appointment to death penalty cases~~].

(2) The standards must require that an attorney appointed to a death penalty case:

(A) be a member of the State Bar of Texas;

(B) exhibit proficiency and commitment to providing quality representation to defendants in death penalty cases;

(C) have at least five years of experience in criminal litigation;

(D) have tried to a verdict as lead defense counsel a significant number of felony cases, including homicide trials and other trials for offenses punishable as second or first degree felonies or capital felonies;

(E) have trial experience in:

(i) the use of and challenges to mental health or forensic expert witnesses; and

(ii) investigating and presenting mitigating evidence at the penalty phase of a death penalty trial; and

(F) have participated in continuing legal education courses or other training relating to criminal defense in death penalty cases.

(3) The committee shall prominently post the standards in each district clerk's office in the region with a list of attorneys qualified for appointment.

(4) Not later than the second anniversary of the date an attorney is placed on the list of attorneys qualified for appointment in death penalty cases and each year following the second anniversary, the attorney must present proof to the committee that the attorney has successfully completed the minimum continuing legal education requirements of the State Bar of Texas, including a course or other form of training relating to the defense of death penalty cases. The committee shall remove the attorney's name from the list of qualified attorneys if the attorney fails to provide the committee with proof of completion of the continuing legal education requirements.

(e) The presiding judge of the district court in which a capital felony case is filed shall appoint two attorneys, at least one of whom must be qualified under this chapter, [~~counsel~~] to represent an indigent defendant as soon as practicable after charges are filed, unless the state gives notice in writing that the state will not seek the death penalty [~~if the death penalty is sought in the case. The judge shall appoint lead trial counsel from the list of attorneys qualified for appointment. The judge shall appoint a second counsel to assist in the defense of the defendant, unless reasons against the appointment of two counsel are stated in the record~~].

(m) The local selection committee shall annually review the list of attorneys posted under Subsection (d) to ensure that each listed attorney satisfies the requirements under this chapter.

Commentary by Robert Dawson

Source: SB 7
Effective Date: January 1, 2002
Applicability: Conduct occurring on or after effective date
Summary of Changes: This article, dealing with death penalty representation, applies only in criminal cases.

Code of Criminal Procedure article 102.075. Court Costs for Special Services.

(h) The comptroller shall deposit money received under this article to the credit of the following accounts in the general revenue fund according to the specified percentages:

NAME OF ACCOUNT	PERCENTAGE
Abused children's counseling	0.02%
Crime stoppers assistance	0.6%
Breath alcohol testing	1.28%
Bill Blackwood Law Enforcement Management Institute	5.04%
Law enforcement officers standards and education	11.63%
Comprehensive rehabilitation	12.37%
Operator's and chauffeur's license	25.9%
Criminal justice planning	29.18%
Fair defense account	13.98%

Commentary by Robert Dawson

Source: SB 7
Effective Date: January 1, 2002

Applicability: Conduct occurring on or after effective date

Summary of Changes: Funding of the state's contribution to indigent defense is established by this allocation of 13.98 percent of the costs specified by this article and collected in all criminal cases except for pedestrian and parking violations. The article taxes as costs $80 for felonies, $40 for jailable misdemeanors and $17 for fineable misdemeanors.

The Legislative Budget Board estimated that this allocation of court costs to the indigent defense fund will yield almost $20,000,000 over the first biennium and about $12,000,000 per fiscal year after that.

Family Code § 51.101. Appointment of Counsel Plan.

(a) The juvenile board in each county shall adopt a plan that:

(1) specifies the qualifications necessary for an attorney to be included on an appointment list from which attorneys are appointed to represent children in proceedings under this title; and

(2) establishes procedures for:

(A) including attorneys on the appointment list and removing attorneys from the list; and

(B) appointing attorneys from the appointment list to individual cases.

(b) A plan adopted under Subsection (a) must:

(1) to the extent practicable, comply with the requirements of Article 26.04, Code of Criminal Procedure, except that:

(A) the income and assets of the child's parent or other person responsible for the child's support must be used in determining whether the child is indigent; and

(B) any alternative plan for appointing counsel is established by the juvenile board in the county; and

(2) recognize the differences in qualifications and experience necessary for appointments to cases in which:

(A) the allegation is:

(i) conduct indicating a need for supervision;

(ii) delinquent conduct, and commitment to the Texas Youth Commission is not an authorized disposition; or

(iii) delinquent conduct, and commitment to the Texas Youth Commission without a determinate sentence is an authorized disposition;

(B) determinate sentence proceedings have been initiated; or

(C) proceedings for discretionary transfer to criminal court have been initiated.

Commentary by Robert Dawson

Source: SB 7

Effective Date: January 1, 2002

Applicability: Conduct occurring on or after effective date

Summary of Changes: Criminal court judges are required to establish a plan for the appointment of counsel in their counties. The purpose of this requirement is to impose a condition of transparency on the appointment process--to expose its inner workings to public scrutiny. This section imposes a similar requirement for juvenile appointments on the juvenile board of each county. The board must establishing a plan for appointing counsel for the indigent.

The plan must to the extent feasible comply with the requirements of Code of Criminal Procedure article 26.04.

Subsection (b)(2) requires the plan to recognize differences in experience and skills necessary to represent children in the five different levels of seriousness of cases in juvenile court: (1) CINS cases, in which no secure disposition is usually permitted, (2) delinquency cases in which commitment to TYC is not possible but in which a secure local disposition is possible, (3) delinquency cases in which commitment to the TYC is possible, (4) determinate sentence cases and (5) discretionary transfer to criminal court cases.

Government Code § 71.001. Definitions.

In this chapter:

(1) "Ad hoc assigned counsel program" means a system under which private attorneys, acting as independent contractors and compensated with public funds, are individually appointed to provide legal representation and services to a particular indigent defendant accused of a crime or juvenile offense.

(2) "Chair" means the chair of the council.

(3) "Contract defender program" means a system under which private attorneys, acting as independent contractors and compensated with public funds, are engaged to provide legal representation and services to a group of unspecified indigent defendants who appear before a particular court or group of courts.

(4) [~~(2)~~] "Council" means the Texas Judicial Council.

(5) "Crime" means:

(A) a misdemeanor punishable by confinement; or

(B) a felony.

(6) "Defendant" means a person accused of a crime or a juvenile offense.

(7) "Indigent defense support services" means criminal defense services that:

(A) are provided by licensed investigators, experts, or other similar specialists, including forensic experts and mental health experts; and

(B) are reasonable and necessary for appointed counsel to provide adequate representation to indigent defendants.

(8) "Juvenile offense" means conduct committed by a person while younger than 17 years of age that constitutes:

(A) a misdemeanor punishable by confinement; or

(B) a felony.

(9) "Public defender" has the meaning assigned by Article 26.044(a), Code of Criminal Procedure.

Commentary by Robert Dawson

Source: SB 7
Effective Date: January 1, 2002
Applicability: Conduct occurring on or after effective date
Summary of Changes: Chapter 71 of the Government Code establishes the state structure for financial aid to the counties for indigent defense and for setting state standards for appointment and representation. Three types of indigent representation are recognized: appointed counsel, contract counsel and public defender.

Note that the definition of juvenile offense includes only delinquent conduct, not CINS.

Government Code § 71.0351. Indigent Defense Information.

(a) Not later than January 1 of each year, in each county, a copy of all formal and informal rules and forms that describe the procedures used in the county to provide indigent defendants with counsel in accordance with the Code of Criminal Procedure, including the schedule of fees required under Article 26.05 of that code, shall be prepared and sent to the Office of Court Administration of the Texas Judicial System in the form and manner prescribed by the office. Except as provided by Subsection (b), the local administrative district judge in each county, or the person designated by the judge, shall prepare and send to the office of court administration a copy of all rules and forms adopted by the judges of the district courts trying felony cases in the county. Except as provided by Subsection (b), the local administrative statutory county court judge in each county, or the person designated by the judge, shall prepare and send to the office of court administration a copy of all rules and forms adopted by the judges of the county courts and statutory county courts trying misdemeanor cases in the county.

(b) If the judges of two or more levels of courts adopt the same formal and informal rules and forms as described by Subsection (a), the local administrative judge serving the courts having jurisdiction over offenses with the highest classification of punishment, or the person designated by the judge, shall prepare and send to the Office of Court Administration of the Texas Judicial System a copy of the rules and forms.

(c) In each county, the county auditor, or the person designated by the commissioners court if the county does not have a county auditor, shall prepare and send to the Office of Court Administration of the Texas Judicial System in the form and manner prescribed by the office and on a monthly, quarterly, or annual basis, with respect to legal services provided in the county to indigent defendants during each fiscal year, information showing the total amount expended by the county to provide indigent defense services and an analysis of the amount expended by the county:

(1) in each district, county, statutory county, and appellate court;

(2) in cases for which a private attorney is appointed for an indigent defendant;

(3) in cases for which a public defender is appointed for an indigent defendant;

(4) in cases for which counsel is appointed for an indigent juvenile under Section 51.10(f), Family Code; and

(5) for investigation expenses, expert witness expenses, or other litigation expenses.

(d) As a duty of office, each district and county clerk shall cooperate with the county auditor or the person designated by the commissioners court and the commissioners court in retrieving information required to be sent to the Office of Court Administration of the Texas Judicial System under this section and under a reporting plan developed by the Task Force on Indigent Defense under Section 71.061(a).

(e) On receipt of information required under this section, the Office of Court Administration of the Texas Judicial System shall forward the information to the Task Force on Indigent Defense.

Commentary by Robert Dawson

Source: SB 7
Effective Date: January 1, 2002
Applicability: Conduct occurring on or after effective date
Summary of Changes: This section requires the counties to send detailed information regarding appointment plans and appointments made to the Office of Court Administration. Currently, there is no centralized collection of this information, which makes policy planning very difficult.

Government Code

Subchapter D. Task Force on Indigent Defense

Government Code § 71.051. Establishment of Task Force; Composition.

The Task Force on Indigent Defense is established as a standing committee of the council and is composed of eight ex officio members and five appointive members.

Commentary by Robert Dawson

Source: SB 7
Effective Date: January 1, 2002
Applicability: Conduct occurring on or after effective date
Summary of Changes: The state agency that will set standards, establish monitoring and disperse funds from the Indigent Defense Fund consists of 13 members, eight of whom are ex officio members and five of whom are appointed by the Governor. The agency is part of the Texas Judicial Council.

Government Code § 71.052. Ex Officio Members.

The ex officio members are:

(1) the following six members of the council:

(A) the chief justice of the supreme court;

(B) the presiding judge of the court of criminal appeals;

(C) the member of the senate appointed by the lieutenant governor;

(D) the member of the house of representatives appointed by the speaker of the house;

(E) one of the courts of appeals justices serving on the council who is designated by the governor to serve on the Task Force on Indigent Defense; and

(F) one of the county court or statutory county court judges serving on the council who is designated by the governor to serve on the Task Force on Indigent Defense or, if a county court or statutory county court judge is not serving on the council, one of the statutory probate court judges serving on the council who is designated by the governor to serve on the task force;

(2) the chair of the Senate Criminal Justice Committee; and

(3) the chair of the House Criminal Jurisprudence Committee.

Commentary by Robert Dawson

Source: SB 7
Effective Date: January 1, 2002
Applicability: Conduct occurring on or after effective date
Summary of Changes: Six members of the council will serve on the Task Force plus the chairs of the relevant Senate and House committees.

Government Code § 71.053. Appointments.

(a) The governor shall appoint with the advice and consent of the senate five members of the Task Force on Indigent Defense as follows:

(1) one member who is an active district judge serving as a presiding judge of an administrative judicial region;

(2) one member who is a judge of a constitutional county court or who is a county commissioner;

(3) one member who is a practicing criminal defense attorney;

(4) one member who is a public defender or who is employed by a public defender; and

(5) one member who is a judge of a constitutional county court or who is a county commissioner of a county with a population of 250,000 or more.

(b) The members serve staggered terms of two years, with two members' terms expiring February 1 of each odd-numbered year and two members' terms expiring February 1 of each even-numbered year.

(c) In making appointments to the Task Force on Indigent Defense, the governor shall attempt to reflect the geographic and demographic diversity of the state.

(d) A person may not be appointed to the Task Force on Indigent Defense if the person is required to register as a lobbyist under Chapter 305 because of the person's activities for compensation on behalf of a profession related to the operation of the task force or the council.

Commentary by Robert Dawson

Source: SB 7
Effective Date: January 1, 2002
Applicability: Conduct occurring on or after effective date
Summary of Changes: In addition to the eight ex officio members, the Governor will appoint five members, including a district judge, two county judges or county commissioners and two criminal defense attorneys.

Government Code § 71.054. Vacancies.

A vacancy on the Task Force on Indigent Defense must be filled for the unexpired term in the same manner as the original appointment. An ap-

pointment to fill a vacancy shall be made not later than the 90th day after the date the vacancy occurs.

Commentary by Robert Dawson

Source: SB 7
Effective Date: January 1, 2002
Applicability: Conduct occurring on or after effective date
Summary of Changes: This section provides for filling vacancies in the membership of the Task Force.

Government Code § 71.055. Meetings, Quorum, Voting.

(a) The Task Force on Indigent Defense shall meet at least quarterly and at such other times as it deems necessary or convenient to perform its duties.

(b) Six members of the Task Force on Indigent Defense constitute a quorum for purposes of transacting task force business. The task force may act only on the concurrence of five task force members or a majority of the task force members present, whichever number is greater. The task force may develop policies and standards under Section 71.060 only on the concurrence of seven task force members.

(c) A Task Force on Indigent Defense member is entitled to vote on any matter before the task force, except as otherwise provided by rules adopted by the task force and ratified by the council.

Commentary by Robert Dawson

Source: SB 7
Effective Date: January 1, 2002
Applicability: Conduct occurring on or after effective date
Summary of Changes: This section sets out quorum and vote requirements for conducting the business of the Task Force.

Government Code § 71.056. Compensation.

A Task Force on Indigent Defense member may not receive compensation for services on the task force but is entitled to be reimbursed for actual and necessary expenses incurred in discharging the member's duties as a task force member. The expenses are paid from funds appropriated to the task force.

Commentary by Robert Dawson

Source: SB 7
Effective Date: January 1, 2002
Applicability: Conduct occurring on or after effective date
Summary of Changes: Members are not paid but their expenses are reimbursed.

Government Code § 71.057. Budget.

(a) The Task Force on Indigent Defense budget shall be a part of the budget for the council. In preparing a budget and presenting the budget to the legislature, the task force shall consult with the executive director of the Office of Court Administration of the Texas Judicial System.

(b) The Task Force on Indigent Defense budget may include funds for personnel who are employees of the council but who are assigned to assist the task force in performing its duties.

(c) The executive director of the Office of Court Administration of the Texas Judicial System may not reduce or modify the Task Force on Indigent Defense budget or use funds appropriated to the task force without the approval of the task force.

Commentary by Robert Dawson

Source: SB 7
Effective Date: January 1, 2002
Applicability: Conduct occurring on or after effective date
Summary of Changes: For budget purposes, the Task Force is part of the Office of Court Administration but is fiscally independent of it.

Government Code §.71.058. Fair Defense Account.

The fair defense account is an account in the general revenue fund that may be appropriated only to the Task Force on Indigent Defense for the purpose of implementing this subchapter.

Commentary by Robert Dawson

Source: SB 7
Effective Date: January 1, 2002
Applicability: Conduct occurring on or after effective date
Summary of Changes: This is the account that is created by the allocation of criminal case court costs by Code of Criminal Procedure article 102.075.

Government Code § 71.059. Acceptance of Gifts, Grants, and Other Funds; State Grants Team.

(a) The Task Force on Indigent Defense may accept gifts, grants, and other funds from any public or private source to pay expenses incurred in performing its duties under this subchapter.

(b) The State Grants Team of the Governor's Office of Budget and Planning may assist the Task Force on Indigent Defense in identifying grants and other resources available for use by the task force in performing its duties under this subchapter.

Commentary by Robert Dawson

Source: SB 7
Effective Date: January 1, 2002
Applicability: Conduct occurring on or after effective date
Summary of Changes: The Task Force can accept any gifts you care to make.

Government Code § 71.060. Policies and Standards.

(a) The Task Force on Indigent Defense shall develop policies and standards for providing legal representation and other defense services to indigent defendants at trial, on appeal, and in postconviction proceedings. The policies and standards may include:

(1) performance standards for counsel appointed to represent indigent defendants;

(2) qualification standards under which attorneys may qualify for appointment to represent indigent defendants, including:

(A) qualifications commensurate with the seriousness of the nature of the proceeding;

(B) qualifications appropriate for representation of mentally ill defendants and noncitizen defendants;

(C) successful completion of relevant continuing legal education programs approved by the council; and

(D) testing and certification standards;

(3) standards for ensuring appropriate appointed caseloads for counsel appointed to represent indigent defendants;

(4) standards for determining whether a person accused of a crime or juvenile offense is indigent;

(5) policies and standards governing the organization and operation of an ad hoc assigned counsel program;

(6) policies and standards governing the organization and operation of a public defender consistent with recognized national policies and standards;

(7) standards for providing indigent defense services under a contract defender program consistent with recognized national policies and standards;

(8) standards governing the reasonable compensation of counsel appointed to represent indigent defendants;

(9) standards governing the availability and reasonable compensation of providers of indigent defense support services for counsel appointed to represent indigent defendants;

(10) standards governing the operation of a legal clinic or program that provides legal services to indigent defendants and is sponsored by a law school approved by the supreme court;

(11) policies and standards governing the appointment of attorneys to represent children in proceedings under Title 3, Family Code; and

(12) other policies and standards for providing indigent defense services as determined by the task force to be appropriate.

(b) The Task Force on Indigent Defense shall submit policies and standards developed under Subsection (a) to the council for ratification.

(c) Any qualification standards adopted by the Task Force on Indigent Defense under Subsection (a) that relate to the appointment of counsel in a death penalty case must be consistent with the standards specified under Article 26.052(d), Code of Criminal Procedure. An attorney who is identified by the task force as not satisfying performance or qualification standards adopted by the task force under Subsection (a) may not accept an appointment in a capital case.

Commentary by Robert Dawson

Source: SB 7
Effective Date: January 1, 2002
Applicability: Conduct occurring on or after effective date
Summary of Changes: The heart of the job of the Task Force is to set and enforce standards for the effective defense of indigents accused of crime or delinquency. Whether the system of state aid is successful in improving indigent defense will depend largely on how well the Task Force performs its duties under this section.

Government Code § 71.061. County Reporting Plan; Task Force Reports.

(a) The Task Force on Indigent Defense shall develop a plan that establishes statewide requirements for counties relating to reporting indigent defense information. The plan must include provisions designed to reduce redundant reporting by counties and provisions that take into consideration the costs to counties of implementing the plan statewide. The task force shall use the information reported by a county to monitor the effectiveness of the county's indigent defense policies, standards, and procedures and to ensure compliance by the county with the requirements of state law relating to indigent defense. The task force may revise the plan as necessary to improve monitoring of indigent defense policies, standards, and procedures in this state.

(b) The Task Force on Indigent Defense shall annually submit to the governor, lieutenant governor, speaker of the house of representatives, and council and shall publish in written and electronic form a report:

(1) containing the information forwarded to the task force from the Office of Court Administration of the Texas Judicial System under Section 71.0351(e); and

(2) regarding:

(A) the quality of legal representation provided by counsel appointed to represent indigent defendants;

(B) current indigent defense practices in the state as compared to state and national standards;

(C) efforts made by the task force to improve indigent defense practices in the state; and

(D) recommendations made by the task force for improving indigent defense practices in the state.

(c) The Task Force on Indigent Defense shall annually submit to the Legislative Budget Board and council and shall publish in written and electronic form a detailed report of all expenditures made under this subchapter, including distributions under Section 71.062.

(d) The Task Force on Indigent Defense may issue other reports relating to indigent defense as determined to be appropriate by the task force.

Commentary by Robert Dawson

Source: SB 7
Effective Date: January 1, 2002
Applicability: Conduct occurring on or after effective date
Summary of Changes: The Task Force is required to obtain data from the counties, to assemble it, and to report it to state leaders.

Government Code § 71.062. Technical Support; Grants.

(a) The Task Force on Indigent Defense shall:

(1) provide technical support to:

(A) assist counties in improving their indigent defense systems; and

(B) promote compliance by counties with the requirements of state law relating to indigent defense;

(2) direct the comptroller to distribute funds, including grants, to counties to provide indigent defense services in the county; and

(3) monitor each county that receives a grant and enforce compliance by the county with the conditions of the grant, including enforcement by directing the comptroller to:

(A) withdraw grant funds; or

(B) require reimbursement of grant funds by the county.

(b) The Task Force on Indigent Defense shall direct the comptroller to distribute funds as required by Subsection (a)(2) based on a county's compliance with standards developed by the task force and the county's demonstrated commitment to compliance with the requirements of state law relating to indigent defense.

(c) The Task Force on Indigent Defense shall develop policies to ensure that funds under Subsection (a)(2) are allocated and distributed to counties in a fair manner.

(d) A county may not reduce the amount of funds provided for indigent defense services in the county because of funds provided by the Task Force on Indigent Defense under this section.

Commentary by Robert Dawson

Source: SB 7
Effective Date: January 1, 2002
Applicability: Conduct occurring on or after effective date
Summary of Changes: In addition to money, the Task Force is authorized to provide technical assistance to counties. Funds must be allocated to the counties in a fair manner. Counties that receive funds may not reduce the funds they allocate to indigent defense.

Government Code § 71.063. Immunity from Liability.

The Task Force on Indigent Defense or a member of the task force performing duties on behalf of the task force is not liable for damages arising from an act or omission within the scope of the duties of the task force.

Commentary by Robert Dawson

Source: SB 7
Effective Date: January 1, 2002
Applicability: Conduct occurring on or after effective date
Summary of Changes: Task Force members have absolute immunity from liability for acts or omissions performed as Task Force members.

SB 7 Transitional Sections.

SECTION 15. Articles 26.041, 26.042, 26.043, 26.045, 26.046, 26.047, 26.048, 26.049, 26.050, 26.053, as added by Senate Bill No. 1781, 77th Legislature, Regular Session, 2001, 26.054, as added by Senate Bill No. 1781, 77th Legislature, Regular Session, 2001, and 26.058, Code of Criminal Procedure, are repealed.

SECTION 16. The change in law made by this Act applies only to a person arrested for or charged with an offense committed or, for purposes of Title 3, Family Code, a child taken into custody for

conduct or alleged to have engaged in conduct that occurs on or after the effective date of this Act and to the appointment of counsel for that person or child. A person arrested for or charged with an offense committed or a child taken into custody for conduct or alleged to have engaged in conduct that occurs before the effective date of this Act is covered by the law in effect when the offense was committed or the conduct occurred, and the former law is continued in effect for that purpose.

SECTION 17. A county having established a public defender under a statute repealed or amended by this Act may continue the existence and operation of the public defender under the terms of the repealed or amended statute as that statute existed immediately before the effective date of this Act if the public defender is a governmental entity or nonprofit corporation described by Subsection (a), Article 26.044, Code of Criminal Procedure, as amended by this Act. The change in law made by this Act to Article 26.044, Code of Criminal Procedure, applies only to a public defender appointed on or after the effective date of this Act.

SECTION 18. A local administrative judge or other person designated under Subsection (a) or (b), Section 71.0351, Government Code, as added by this Act, shall begin sending to the Office of Court Administration of the Texas Judicial System the information required to be sent by that section on or before January 1, 2002. A county auditor or other person designated under Subsection (c), Section 71.0351, Government Code, as added by this Act, shall begin sending to the Office of Court Administration of the Texas Judicial System the information required by that section on or before September 1, 2002.

SECTION 19. The governor shall make appointments to the Task Force on Indigent Defense as soon as practicable after the effective date of this Act. In appointing the initial members of the task force, the governor shall appoint the member who is an active district judge serving as a presiding judge of an administrative judicial region and the member who is a practicing criminal defense attorney for terms expiring February 1, 2003, and the member who is a judge of a constitutional county court or who is a county commissioner and the member who is a public defender or who is employed by a public defender for terms expiring February 1, 2004.

SECTION 20. A local selection committee shall amend standards previously adopted by the committee to conform with the requirements of Subsection (d), Article 26.052, Code of Criminal Procedure, as amended by this Act, not later than April 1, 2002. An attorney appointed on or after April 1, 2002, to a death penalty case must meet the standards adopted in conformity with the amended Subsection (d), Article 26.052. An attorney appointed before April 1, 2002, to a death penalty case is covered by the law in effect when the attorney was appointed, and the former law is continued in effect for that purpose.

SECTION 21. Subsection (h), Article 102.075, Code of Criminal Procedure, as amended by this Act, applies only to a court cost collected under that article on or after the effective date of this Act. A court cost collected under Article 102.075, Code of Criminal Procedure, before the effective date of this Act is governed by the law in effect when the court cost was collected, and the former law is continued in effect for that purpose.

Commentary by Robert Dawson

Source: SB 7
Effective Date: January 1, 2002
Applicability: No restriction for transitional sections
Summary of Changes: The Fair Defense Act applies only to offenses committed or conduct engaged in on or after January 1, 2002.

The table that follows shows the case reporting requirements of the Texas Fair Defense Act. It was prepared by James Bethke.

Summary of Section 13 and 14 Reporting Requirements

Authority	*Who Reports?*	*Where*	*What is Reported?*	*When*	*How*
§ 71.0351 (a) & (b)	Local Administrative District Judge (LADJ) **OR** designee	OCA	A copy of all formal and informal rules and forms that describe indigent defense procedures (including schedule of fees)	Annually (Jan. 1)	form and manner prescribed by OCA
§ 71.0351 (a) & (b)	LADJ OR designee	OCA	A copy of all rules and forms adopted by the judges of district court trying felony cases.	Annually (Jan. 1)	form and manner prescribed by OCA
§ 71.0351 (a) & (b)	Local Administrative Statutory County Court Judge OR designee	OCA	A copy of all rules and forms adopted by the judges of the county courts and statutory county courts trying misdemeanor cases.	Annually (Jan. 1)	form and manner prescribed by OCA
§ 71.0351 (c) & (d)	County Auditor OR Designee of the Commissioners Court if no county auditor	OCA	Total amount expended for indigent support services and an analysis of the amount expended in each county. Data should minimally be categorized as follows: 1. Type of court (district, county, statutory county, or appellate); 2. Type of counsel (private or public); 3. Defendant status (juvenile or adult); and 4. Investigation expenses, expert witness expenses, and other litigation expenses.	Monthly, Quarterly, OR Annually	form & manner prescribed by OCA
§ 71.0351 (e)	OCA	Task Force	OCA forwards all information that it receives regarding Indigent Defense reporting to the Task Force on Indigent Defense	On receipt	unspecified
§ 71.061 (b)	Task Force	Governor, Lt. Gov., Speaker of House Judicial Council	Publish in written and electronic form a report regarding the information forwarded from OCA concerning the QUALITY of indigent defense legal representation, current indigent defense practices in the state compared to other states, and recommendations made by the Task Force for improving indigent defense practices in the state.	Annually	written and electronic
§ 71.061 (c)	Task Force	LBB	A detailed report of ALL expenditures made under this law, including distributions made for technical support and grants.	Annually	written and electronic

3. Sex Offender Legislation

Introductory Comment

We have included only those provisions that apply to juveniles. One bill in particular, House Bill 2987, which permits un-registration and de-registration of adult sex offenders in a restricted circumstance, does not by its own terms apply to juveniles because it would have conflicted with the much broader, similar provisions of HB 1118 that apply only to juveniles. See article Code of Criminal Procedure article 62.13 later in this segment.

Code of Criminal Procedure article 62.0101. Determination Regarding Substantially Similar Elements of Offense.

(a) The department is responsible for determining for the purposes of this chapter whether an offense under the laws of another state, federal law, or the Uniform Code of Military Justice contains elements that are substantially similar to the elements of an offense under the laws of this state.

(b) An appeal of a determination made under this article shall be brought in a district court in Travis County.

Commentary by Robert Dawson

Source: SB 1380
Effective Date: September 1, 2001
Applicability: Applies to a person required to register as a sex offender under Chapter 62, Code of Criminal Procedure, under the laws of another state, under federal law, or under the Uniform Code of Military Justice before, on, or after the effective date.
Summary of Changes: This provision gives the first responsibility for determining whether a non-Texas conviction is covered by the Texas sex offender registration statute to the DPS, followed by judicial review in Travis County.

Code of Criminal Procedure article 62.02. Registration.

(b) The department shall provide the Texas Department of Criminal Justice, the Texas Youth Commission, the Texas Juvenile Probation Commission, and each local law enforcement authority, county jail, and court with a form for registering persons required by this chapter to register. The registration form shall require:

(1) the person's full name, each alias, date of birth, sex, race, height, weight, eye color, hair color, social security number, driver's license number, shoe size, and home address;

(2) a recent color photograph or, if possible, an electronic digital image of the person and a complete set of the person's fingerprints;

(3) the type of offense the person was convicted of, the age of the victim, the date of conviction, and the punishment received;

(4) an indication as to whether the person is discharged, paroled, or released on juvenile probation, community supervision, or mandatory supervision; [~~and~~]

(5) an indication of each license, as defined by Article 62.08(f), that is held or sought by the person; and

(6) any other information required by the department.

Commentary by Robert Dawson

Source: SB 654
Effective Date: September 1, 2001
Applicability: Applies to registrations or verifications of registrations on or after the effective date.
Summary of Changes: Under subsection (b)(2), DPS is now to receive a recent color photo, or if possible, a color digital photo. Those look so much better on the Internet than do black and white photos! Under subsection (b)(5), the registration packet must include any business or occupational license that the person holds or is seeking. Under article 62.08, as amended in 2001, DPS is required directly to notify a licensing authority that a person holding one of their licenses is now registered as a sex offender; this provision is intended to facilitate that process.

Code of Criminal Procedure article 62.021. Out-of-State Registrants.

(a) This article applies to a person who:

(1) is required to register as a sex offender under:

(A) the laws of another state with which the department has entered into a reciprocal registration agreement; or

(B) federal law or the Uniform Code of Military Justice; and

(2) [~~who~~] is not otherwise required to register under this chapter because:

(A) [~~(1)~~] the person does not have a reportable conviction for an offense under the laws of the other state, federal law, or the Uniform Code of Military Justice containing elements that are substantially similar to an offense requiring registration under this chapter; or

(B) [~~(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 or federal law containing elements that are substantially similar to an offense requiring registration under this chapter.

(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 under the laws of [~~in~~] the other state had the person remained in that state, under federal law, or under the Uniform Code of Military Justice, as applicable.

Commentary by Robert Dawson

Source: SB 1380
Effective Date: September 1, 2001
Applicability: Applies to a person required to register as a sex offender under Chapter 62, Code of Criminal Procedure, under the laws of another state, under federal law, or under the Uniform Code of Military Justice before, on, or after the effective date.
Summary of Changes: This amendment requires Texas registration for a person who is required to register elsewhere for a violation of federal law or of the Uniform Code of Military Justice even though the offense may not be substantially the same as an offense covered under Texas law for a Texas conviction or adjudication.

Code of Criminal Procedure article 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, the Texas Department of Criminal Justice or the Texas Youth Commission [~~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 Article 62.035 and [~~that article,~~] assign to the person a numeric risk level of one, [~~or~~] two, or three [~~and immediately send a written notice of the risk level to the penal institution from which the person is due to be released~~]. Before releasing the person [~~On receiving notice under this subsection~~], 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;

(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.

(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, or three, 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.

Commentary by Robert Dawson

Source: SB 1206
Effective Date: September 1, 2001
Applicability: None stated.
Summary of Changes: The risk assessment test has been changed. See article 62.035. The amendments in this article reflect those changes.

Code of Criminal Procedure article 62.035. Risk Assessment Review Committee; Sex Offender Screening Tool.

(b) The risk assessment review committee functions in an oversight capacity. The committee shall:

(1) 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;

(2) ensure that staff are trained on the use of the screening tool;

(3) monitor the use of the screening tool in the state; and

(4) analyze other screening tools as they become available and revise or replace the existing screening tool if warranted.

(c) 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 (low):

[~~(A)~~] a designated range [~~number~~] of points [~~or higher~~] on the sex offender screening tool indicating that the person poses a low danger to the community and will not likely engage in criminal sexual conduct; [~~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 (moderate)[~~, either, but not both, of the following~~]:

[~~(A)~~] a designated range [~~number~~] of points [~~or higher~~] on the sex offender screening tool indicating[~~; or~~

[~~(B) a basis for concern~~] that the person poses a moderate [~~serious~~] danger to the community and may [~~or will~~] continue to engage in criminal sexual conduct; and

(3) level three (high): a designated range of points on the sex offender screening tool indicating [~~no basis for concern~~] that the person poses a serious danger to the community and [~~or~~] will continue to engage in criminal sexual conduct.

(d) The risk assessment review committee, the Texas Department of Criminal Justice, the Texas Youth Commission, or a court may override a risk level only if the entity:

(1) believes that the risk level assessed is not an accurate prediction of the risk the offender poses to the community; and

(2) documents the reason for the override in the offender's case file.

(e) Notwithstanding Chapter 58, Family Code, records and files, including records that have been sealed under Section 58.003 of that code, relating to a person for whom a court, the Texas Department of Criminal Justice, or the Texas Youth Commission is required under this article to determine a level of risk shall be released to the court, department, or commission, as appropriate, for the purpose of determining the person's risk level.

(f) Chapter 551, Government Code, does not apply to a meeting of the risk assessment review committee.

[~~(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 1206
Effective Date: September 1, 2001
Applicability: None stated.

Summary of Changes: Subsection (b) makes it clear that the TDCJ risk assessment review committee develops the test and oversees the testing process, but does not administer tests to individuals. Subsection (c) makes two changes in the way the test is scored. Previously, the scores were one or two, which one showing the most risk. A score of three was available only after initial assessments was made. Under these amendments, the world has been turned up side down: a one is low risk, a two is moderate risk and a three is high risk—a system that is more intuitive.

Subsection (d) is new and permits the TDCJ or TYC to override a risk assessment test result if there is a documented a belief that the assessment is not an accurate reflection of the risk posed by the individual. The override can be up and well as down. Curiously, juvenile probation departments and adult community supervision and corrections departments are not included in this authority to override, while one would think that individuals on probation would be prime candidates for considering downward overrides.

Subsection (e) requires that juvenile records be made available to officials conducting risk assessments. Although unlikely, this authorization includes sealed records.

Code of Criminal Procedure article 62.04. Change of Address.

(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, the age of the person subject to registration, 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, 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 <u>of one</u> [~~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 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 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. 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.

Commentary by Robert Dawson

Source: SB 1206
Effective Date: September 1, 2001
Applicability: None stated.
Summary of Changes: The amendment in (d) reflects the fact that under the new risk assessment plan, a score of three can be awarded on initial testing (and means the obverse of level three in the prior law) not merely when the person intends a change of address. The change in (f) merely directs appropriate officials to advertise in newspapers when a registrant moves and has obtained a score of two or three under the new system, rather than one or two under the old. The newspaper advertisement provision does not apply to juveniles at all.

Code of Criminal Procedure article 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 of three [~~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.

(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 three [~~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.

Commentary by Robert Dawson

Source: SB 1206
Effective Date: September 1, 2001
Applicability: None stated.
Summary of Changes: This article requires DPS to send written notices to the neighbors of a registered sex offender under some circumstances. Under the new risk assessment scoring system, notice is required when the person scores a three and must be given when the person is released from TDCJ or TYC, or is placed on adult community supervision or juvenile probation, or changes residence address.

Code of Criminal Procedure article 62.045. Additional Public Notice for Certain Offenders.

(b) The department shall provide the notice in English and Spanish and 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.

(e) An owner, builder, seller, or lessor of a single-family residential real property or any improvement to residential real property or that person's broker, salesperson, or other agent or representative in a residential real estate transaction does not have a [~~the owner's agent has no~~] duty to make a disclosure to a prospective buyer or lessee [~~tenant~~] about registrants under this chapter. To the extent of any conflict between this subsection and another law imposing a duty to disclose information about registered sex offenders, this subsection controls.

Commentary by Robert Dawson

Source: SB 1380
Effective Date: September 1, 2001
Applicability: Conduct occurring on or after effective date
Summary of Changes: Subsection (b) provides that the notice to neighbors must be in Spanish as well as English. Subsection (e), perhaps suggested by the home builders and brokers of Texas, exempts those folks from the obligation to tell potential buyers or renters that there is a registered sex offender living next door.

Code of Criminal Procedure article 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, as applicable, an original or renewal driver's license under Section 521.272, Transportation Code, an original or renewal [~~or for a~~] personal identification certificate under Section 521.103, Transportation Code, or an original or renewal commercial driver's license or commercial driver learner's permit under Section 522.033, 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.

Commentary by Neil Nichols

Source: HB 2663
Effective Date: September 1, 2001
Applicability: To a license, permit, or identification certificate issued or renewed by the Department of Public Safety on or after effective date.
Summary of Changes: The amendment adds driver's license renewals and commercial driver's licenses and learner's permits to the list of driver's licenses and personal identification certifications, whichever of

them may be applicable, a person subject to sex offender registration is required to obtain within 30 days of placement on probation or release under parole supervision.

Code of Criminal Procedure article 62.08. Central Database; Public Information.

(c) Notwithstanding Chapter 730, Transportation Code, the department shall maintain in the database, and shall post on any department website related to the database, any photograph of the person that is available through the process for obtaining or renewing a personal identification certificate or driver's license under Section 521.103 or 521.272, Transportation Code. The department shall update the photograph in the database and on the website annually or as the photograph otherwise becomes available through the renewal process for the certificate or license.

(d) A local law enforcement authority shall release public information described under Subsection (b) to any person who submits to the authority a written request for the information. The authority may charge the person a fee not to exceed the amount reasonably necessary to cover the administrative costs associated with the authority's release of information to the person under this subsection.

(e) [~~(d)~~] On the written request of a licensing authority that identifies an individual and states that the individual is an applicant for or a holder of a license issued by the authority, the department shall release any information described by Subsection (a) to the licensing authority.

(f) [~~(e)~~] For the purposes of Subsection (e) [~~(d)~~]:

(1) "License" means a license, certificate, registration, permit, or other authorization that:

(A) is issued by a licensing authority; and

(B) a person must obtain to practice or engage in a particular business, occupation, or profession.

(2) "Licensing authority" means a department, commission, board, office, or other agency of the state or a political subdivision of the state that issues a license.

Commentary by Robert Dawson

Source: SB 1380
Effective Date: September 1, 2001
Applicability: Conduct occurring on or after effective date
Summary of Changes: New subsection (c) requires updating the photographs in the sex offender database with photographs taken when driver's licenses or DPS identification cards are renewed.

Code of Criminal Procedure article 62.08. Central Database; Public Information.

(b) The information contained in the database is public information, with the exception of any information:

(1) regarding the person's social security number, driver's license number, or telephone number;

(2) that is required by the department under Article 62.02(b)(6) [~~62.02(b)(5)~~]; or

(3) that would identify the victim of the offense for which the person is subject to registration.

(d) The department shall provide a licensing authority with notice of any person required to register under this chapter who holds or seeks a license that is issued by the authority. The department shall provide the notice required by this subsection as the applicable licensing information becomes available through the person's registration or verification of registration.

(e) On the written request of a licensing authority that identifies an individual and states that the individual is an applicant for or a holder of a license issued by the authority, the department shall release any information described by Subsection (a) to the licensing authority.

(f) [~~(e)~~] For the purposes of Subsections [~~Subsection~~] (d) and (e):

(1) "License" means a license, certificate, registration, permit, or other authorization that:

(A) is issued by a licensing authority; and

(B) a person must obtain to practice or engage in a particular business, occupation, or profession.

(2) "Licensing authority" means a department, commission, board, office, or other agency of the state or a political subdivision of the state that issues a license.

Commentary by Robert Dawson

Source: SB 654
Effective Date: September 1, 2001
Applicability: None stated.
Summary of Changes: The cross reference in (b) is to a provision that enables DPS to require any other information it deems appropriate for its sex offender database. Subsection (d) requires the DPS to notify any licensing authority when a sex offender who holds such a license is registered. Section 62.02(b)(5) as amended requires identifying any occupational license that the offender may hold as part of the registration process. This supplements the provision in (e) that permits licensing agencies, when one applies for an occupational license, to query DPS about sex offender registration.

Code of Criminal Procedure article 62.091. General Immunity.

The following persons are immune from liability for good faith conduct under this chapter:

(1) an employee or officer of the Texas Department of Criminal Justice, the Texas Youth Commission, the Texas Juvenile Probation Commission, or the Department of Public Safety;

(2) an employee or officer of a community supervision and corrections department or a juvenile probation department; and

(3) a member of the judiciary.

Commentary by Robert Dawson

Source: SB 1206
Effective Date: September 1, 2001
Applicability: None stated.
Summary of Changes: This new section creates official (qualified) immunity for the good faith discharges of duties required by Chapter 62.

Code of Criminal Procedure article 62.11. Applicability.

(a) This chapter applies only to a reportable conviction or adjudication occurring on or after September 1, 1970, except that the provisions of Articles 62.03 and 62.04 of this chapter relating to the requirement of newspaper publication apply only to a reportable conviction or adjudication occurring on or after:

(1) September 1, 1997, if the conviction or adjudication relates to an offense under Section 43.05, Penal Code; or

(2) September 1, 1995, if the conviction or adjudication relates to any other offense listed in Article 62.01(5).

(b) Except as provided by Subsection (c), the duties imposed on a person required to register under this chapter on the basis of a reportable conviction or adjudication, and the corresponding duties and powers of other entities in relation to the person required to register on the basis of that conviction or adjudication, are not affected by:

(1) an appeal of the conviction or adjudication; or

(2) a pardon of the conviction or adjudication.

(c) If a conviction or adjudication that is the basis of a duty to register under this chapter is set aside on appeal by a court or if the person required to register under this chapter on the basis of a conviction or adjudication receives a pardon on the basis of subsequent proof of innocence, the duties imposed on the person by this chapter and the corresponding duties and powers of other entities in relation to the person are terminated.

Commentary by Robert Dawson

Source: SB 1380
Effective Date: September 1, 2001
Applicability: Applies to an offense committed or conduct engaged in before, on, or after the effective date.
Summary of Changes: Subsection (b) provides that the duty to register exists even if an appeal is pending or the registrant is pardoned. But, subsection (c) provides that a pardon for subsequent proof of innocence terminates registration, as does or a an appellate decision setting aside the conviction or adjudication. Missing is any mention of trial court orders setting aside a conviction or adjudication on a motion for new trial. Logically, that action should have the same consequence as an appellate court decision setting aside a conviction or adjudication.

Code of Criminal Procedure article 62.12. Expiration of Duty to Register.

(a) The duty to register for a person ends when the person dies if the person has [~~with~~] a reportable conviction or adjudication, other than an adjudication of delinquent conduct, for:

(1) a sexually violent offense;

(2) [~~or for~~] an offense under Section 25.02, 43.05(a)(2), or 43.26, Penal Code;

(3) an offense under Section 21.11(a)(2), Penal Code, if before or after the person is convicted or adjudicated for the offense under Section 21.11(a)(2), Penal Code, the person receives or has received another reportable conviction or adjudication, other than an adjudication of delinquent conduct, for an offense or conduct that requires registration under this chapter; or

(4) an offense under Section 20.02, 20.03, or 20.04, Penal Code, or an attempt, conspiracy, or solicitation to commit one of those offenses, if:

(A) the judgment in the case contains an affirmative finding under Article 42.015, as added by Chapter 1193, Acts of the 76th Legislature, Regular Session, 1999, or for a deferred adjudication, the papers in the case contain an affirmative finding that the victim or intended victim was younger than 17 years of age; and

(B) before or after the person is convicted or adjudicated for the offense under Section 20.02, 20.03, or 20.04, Penal Code, the person receives or has received another reportable conviction or adjudication, other than an adjudication of delinquent conduct, for an offense or conduct that requires registration under this chapter[~~, ends when the person dies~~].

Commentary by Robert Dawson

Source: SB 1380

Effective Date: September 1, 2001
Applicability: Applies to a defendant with a reportable conviction or adjudication for an offense or conduct under Subdivision (2), Subsection (a), Section 21.11, Penal Code, that was committed before, on, or after the effective date of this Act, and a defendant with a reportable conviction or adjudication for an offense or conduct under Section 20.02, 20.03, or 20.04, Penal Code, that was committed on or after September 1, 1999.
Summary of Changes: This section identifies those offenses and circumstances in which the obligation to register terminates in the grave. Importantly, an amendment makes it clear that lifetime registration is restricted to adult offenders and does not reach juveniles. This restates and clarifies prior law.

Code of Criminal Procedure article 62.12. Expiration of Duty to Register.

(a) The duty to register for a person with a reportable conviction [~~or adjudication~~] for a sexually violent offense or for an offense under Section 25.02, 43.05(a)(2), or 43.26, Penal Code, ends when the person dies. This subsection does not apply to an adjudication by a juvenile court under Title 3, Family Code.

Commentary by Robert Dawson

Source: HB 1118
Effective Date: September 1, 2001
Applicability: Conduct occurring on or after effective date
Summary of Changes: This amendment makes it clear that the duty of lifetime registration does not apply to a juvenile court adjudication.

Code of Criminal Procedure article 62.13. Hearing to Determine Need for Registration of a Juvenile.

(a) A person who has an adjudication of delinquent conduct that would otherwise be reportable under Article 62.01(5) does not have a reportable adjudication of delinquent conduct for purposes of this chapter if the juvenile court enters an order under this article excusing compliance by the person with the registration requirements of this chapter.

(b) After disposition of a case under Section 54.04, Family Code, for adjudication of an offense for which registration is required under this chapter, the juvenile court on motion of the respondent shall conduct a hearing to determine whether the interests of the public require registration under this chapter.

(c) The hearing is without a jury and the burden of persuasion is on the respondent to show by a preponderance of evidence that the criteria of Subsection (e) have been met. The court at the hearing may make its determination based on:

(1) the receipt of exhibits;

(2) the testimony of witnesses;

(3) representations of counsel for the parties; or

(4) the contents of a social history report prepared by the juvenile probation department that may include the results of testing and examination of the respondent by a psychologist, psychiatrist, or counselor.

(d) All written matter considered by the court shall be disclosed to all parties as provided by Section 54.04(b), Family Code.

(e) The court shall enter an order excusing compliance with the registration requirements of this chapter if the court determines:

(1) that the protection of the public would not be increased by registration of the respondent under this chapter; or

(2) that any potential increase in protection of the public resulting from registration is clearly outweighed by the anticipated substantial harm to the respondent and the respondent's family that would result from registration under this chapter.

(f) The prosecuting attorney may waive the state's right to a hearing under this article and agree that registration under this chapter is not required. If the waiver is entered under a plea agreement, the court shall without a hearing enter an order excusing compliance with the registration requirements of this chapter or, under Section 54.03(j), Family Code, inform the respondent that the court believes a hearing under this article is required and give the respondent the opportunity to withdraw the respondent's plea of guilty, nolo contendere, or true or to affirm the respondent's plea and participate in the hearing. If the waiver is entered other than under a plea agreement, the court shall without a hearing enter an order excusing compliance with the registration requirements of this chapter. The waiver must state whether or not it is entered under a plea agreement. The respondent may as part of a plea agreement promise not to file a motion seeking an order excusing registration, in which case the court may not recognize the motion.

(g) Notwithstanding Section 56.01, Family Code, on entry by a juvenile court of an order under Subsection (e) excusing registration under this chapter, the prosecuting attorney may appeal that order by giving notice of appeal within the time required under Rule 26.2(b), Texas Rules of Appellate Procedure. The appeal is civil and the standard of review in the appellate court is whether the juvenile court committed procedural error or abused its discretion in excusing compliance with registration. The appeal is limited to review of the order excusing compliance with

registration and may not include any other issues in the case.

(h) The respondent may under Section 56.01, Family Code, appeal the juvenile court's order requiring registration in the same manner as the appeal of any other legal issue in the case. The standard of review in the appellate court is whether the juvenile court committed procedural error or abused its discretion in not excusing compliance with registration.

(i) If the juvenile court enters an order excusing registration, the respondent may not be required to register in this or any other state for the offense for which registration was excused.

(j) After a hearing under Subsection (b) or under a plea agreement under Subsection (f), the juvenile court may enter an order deferring decision on requiring registration until the respondent has completed a sex offender treatment program as a condition of probation or while committed to the Texas Youth Commission. The court retains discretion to require or to excuse registration at any time during the treatment program or on its successful or unsuccessful completion. During the period of deferral, registration may not be required.

(k) After a hearing under Subsection (b) or under a plea agreement under Subsection (f), the juvenile court may enter an order requiring the respondent to register as a sex offender but provide that the registration information is not public information and is restricted to use by law enforcement and criminal justice agencies. Information obtained under this subsection may not be posted on the Internet or released to the public.

(l) A person who has registered as a sex offender for an adjudication of delinquent conduct, regardless of when the delinquent conduct or the adjudication for the conduct occurred, may file a motion in the adjudicating juvenile court for a hearing seeking excusal from registration as provided by Subsection (e) or seeking under Subsection (k) an order that the registration become nonpublic.

(m) The person may file a motion under Subsection (l) in the original juvenile case regardless of whether the person is at the time of filing 18 years of age or older. Notice of the motion shall be provided to the prosecuting attorney. A hearing on the motion shall be provided as in other cases under this article.

(n) A motion may be filed under Subsection (l) only if a previous motion under this article has not been filed concerning that case.

(o) To the extent feasible, the motion under Subsection (l) shall identify those public and private agencies and organizations that possess sex offender registration information about the case.

(p) The juvenile court, after a hearing, may:

(1) deny the motion;

(2) grant the motion to excuse all registration; or

(3) grant the motion to change the registration from public to nonpublic.

(q) If the court grants the motion, a copy of the court's order shall be sent to each public and private agency or organization that the court determines may be in possession of sex offender registration information. The order shall require the recipient to conform its records to the court's orders either by deleting the information or changing its status to nonpublic, as the order requires.

(r) A private agency or organization that possesses sex offender registration information it obtained from a state, county, or local governmental entity is required to conform its records to the court's order on or before the 30th day after the date of its entry. Failure to comply in that period automatically bars the agency or organization from obtaining sex offender registration information from any state, county, or local governmental entity in this state in the future.

Commentary by Robert Dawson

Source: HB 1118

Effective Date: September 1, 2001

Applicability: Applies to a juvenile adjudicated for an offense for which registration as a sex offender is required and applies without regard to whether the offense and adjudication occurred before, on, or after the effective date.

Summary of Changes: This article authorizes a juvenile court to excuse sex offender registration (un-registration) and to terminate registration of some juveniles already registered (de-registration). The premise is that in some circumstances requiring registration of juveniles does not protect the public or does so only marginally and by inflicting a greater harm on the juvenile and his or her family.

Subsections (a) through (k) set out the procedures for un-registration. Those provisions apply to any juvenile case in which registration has not already occurred on September 1, 2001. Pending adjudications or dispositions and children in the TYC who have not been paroled or registered on prior probation are eligible for un-registration without regard to when the offense occurred.

Subsection (a) re-defines reportable adjudication to exclude a person whose registration has been excused by a juvenile court order entered under this article.

Subsection (b) requires the juvenile court to conduct a hearing on motion of the respondent after disposition of the case to determine whether registration should be required.

Subsection (c) sets outs the details of the non-jury hearing, including placing the burden of persua-

sion on the juvenile respondent. In addition to testimony and exhibits, the court can consider the factual representations of the attorneys and information from the probation department in the form of a written report. Subsection (d) requires that all written materials must be disclosed to the parties, just as in the case of disposition hearings.

Subsection (e) sets out the criteria that are to guide the juvenile court's decision. The court is required to excuse registration is it finds either that protection of the public would not be increased by registration or that any potential increase in protection of the public is clearly outweighed by the anticipated substantial harm to the respondent and respondent's family from registration.

Subsection (f) integrates the un-registration process with plea bargaining. If the parties make un-registration part of the plea agreement, that is disclosed to the juvenile court, which has the option as in any plea agreement to accept or reject the terms of the deal. If the deal is accepted by the juvenile court, then it must order un-registration without conducting a hearing. If the deal is rejected, the juvenile is given the option of withdrawing the plea or accepting the court's modifications of the agreement. Conversely, as part of a plea agreement, the juvenile may agree not to file an un-registration motion. The prosecutor may waive registration without a plea agreement, in which case the judge must excuse registration without a hearing.

Subsection (g) gives the State the right to appeal to a Court of Appeals a juvenile court decision ordering un-registration. The appeal is limited to review for procedural error or abuse of discretion. Subsection (h) gives the juvenile the same right of appeal when the juvenile court has decided against un-registration.

Subsection (i) provides that if the juvenile court excuses registration the juvenile is not required to register in Texas or any other state.

Subsection (j) gives the juvenile court the option of deferring its un-registration decision to await the outcome of sex offender treatment. That should enhance the juvenile's incentives for meaningful participation in those programs.

Subsection (k) authorizes the court to require registration but to provide that it is to be a non-public registration. That makes the materials available to criminal justice agencies for a criminal justice purpose but not to the public generally.

Thus, there are four possible outcomes of an un-registration motion: full registration is required, no registration is required, decision is deferred pending result of treatment program, and non-public registration is required.

Subsections (l) through (r) set out the procedures and standards for de-registration of a person already registered as a sex offender.

Subsection (l) permits a motion for de-registration to be filed seeking total de-registration or non-public registration without regard to when the offense was committed or the registration occurred.

Subsection (m) recognizes the jurisdiction of the juvenile court over these proceedings no matter what the age of the person filing the motion.

Subsection (n) limits a juvenile to only one motion for de-registration. A motion for de-registration may not be filed if the juvenile previously filed a motion for un-registration and was required to register.

Subsection (o) requires the moveant to identify those agencies that have sex offender registration records. That would include the local law enforcement authority where the juvenile registered, any local law enforcement authority in a community to which the juvenile moved and re-registered, the Department of Public Safety, and any private Internet web sites, such as publicata.com, to which the DPS has provided data.

Subsection (p) sets out the three options the court has on a motion for de-registration. These do not include deferring decision pending outcome of treatment efforts, since presumably treatment, if it will occur, has already occurred so the outcome is already known.

Subsection (q) requires that the court's order be sent to each public or private agency identified in the motion to contain information and requiring those entities to remove or make non-public the moveant's records.

Finally, subsection (r) gives private entities 30 days to comply with the juvenile court's deletion or non-public orders. Failure to do so precludes that entity from obtaining sex offender registration information from any state, county or local governmental entity in the state in the future.

The June 2001 issue of this Newsletter contains a model motion for un-registration.

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

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

(1) may require as a condition of probation that the child:

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

(B) [~~(2)~~] submit to a polygraph examination as provided by Subsection (f) for purposes of evaluating the child's treatment progress; and

(2) shall require as a condition of probation that the child:

(A) register under Chapter 62, Code of Criminal Procedure; and

(B) submit a blood sample or other specimen to the Department of Public Safety under Subchapter G, Chapter 411, Government Code, for the purpose of creating a DNA record of the child, unless the child has already submitted the required specimen under other state law.

(b) This section applies to a child placed on probation for conduct constituting an offense for which the child is required to register as a sex offender under Chapter 62, Code of Criminal Procedure[~~:~~

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

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

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

Commentary by Robert Dawson

Source: SB 1380
Effective Date: September 1, 2001
Applicability: Applies to an offense committed or conduct engaged in before, on, or after the effective date.
Summary of Changes: The amendments to this section mandate that the juvenile court require sex offender registration and giving a DNA sample as conditions of probation for a child required to register. Subsection (b) makes it clear that this requirement exists only for children required to register as a sex offender and do not apply if registration is excused by the juvenile court under article 62.13.

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 has not already provided the required specimen under other state law and 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~~]; 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).

Commentary by Robert Dawson

Source: SB 1380
Effective Date: September 1, 2001
Applicability: Conduct occurring on or after effective date
Summary of Changes: The amendment makes it clear that TYC is not obligated to obtain a sample for DNA testing if the juvenile has already provided the sample, perhaps as a condition of probation.

Human Resources Code § 61.0813. Sex Offender Counseling and Treatment.

(a) Before releasing a child described by Subsection (b) under supervision, the commission:

(1) may require as a condition of release that the child:

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

(B) [~~(2)~~] submit to a polygraph examination as provided by Subsection (f) for purposes of evaluating the child's treatment progress; and

(2) shall require as a condition of release that the child:

(A) register under Chapter 62, Code of Criminal Procedure; and

(B) submit a blood sample or other specimen to the Department of Public Safety under Subchapter G, Chapter 411, Government Code, for the purpose of creating a DNA record of the child, unless the child has already submitted the required specimen under other state law.

(b) This section applies to a child [~~only if:~~

[~~(1) the child has been~~] adjudicated for engaging in delinquent conduct constituting an offense for which the child is required to register as a sex offender under Chapter 62, Code of Criminal Procedure[~~:~~

[~~(A) under Section 21.08, 21.11, 22.011, 22.021, or 25.02, Penal Code;~~

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

[~~(C) under Section 30.02, Penal Code, punishable under Subsection (d) of that section, if the child engaged in the conduct with the intent to commit a felony listed in Paragraph (A) or (B) of this subdivision; and~~

[~~(2) the victim of the conduct described by Subdivision (1) was a child as defined by Section 22.011(c), Penal Code~~].

Commentary by Neil Nichols

Source: SB 1380
Effective Date: September 1, 2001
Applicability: Applies to an offense committed or conduct engaged in before, on, or after the effective date.
Summary of Changes: The amendment provides that a youth who is required to register as a sex offender must actually register and submit a sample for the DNA record before the Texas Youth Commission has the authority to release the youth under parole supervision. The actual registration will take place in person with the law enforcement agency in the youth's home community. In accordance with the provisions of § 411.150, Government Code, the DNA sample will have already been submitted at the time of the youth's initial commitment.

SB 1380. Transitional Section.

SECTION 18.

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(b) If a defendant, releasee, or child is required as a condition of community supervision, parole, or mandatory supervision to submit a blood sample or other specimen to the Department of Public Safety of the State of Texas and that person has not previously submitted the required specimen under other state law, the court, the parole panel, or the Texas Youth Commission shall modify the conditions of supervision or parole, as applicable, to require the submission of the specimen.

Commentary by Robert Dawson

Source: SB 1380
Effective Date: September 1, 2001
Applicability: None stated for this provision.
Summary of Changes: This section appears to require retroactive application of amendments requiring giving DNA samples to reach persons currently on juvenile probation or parole.

Transportation Code § 521.222. Instruction Permit.

(e) Except as provided by Subsection (f), an [~~An~~] instruction permit is not required to include a photograph.

(f) The department may issue an instruction permit under this section to a person who is subject to the registration requirements under Chapter 62, Code of Criminal Procedure, and is otherwise eligible for the permit. An instruction permit issued under this subsection must include a photograph of the person.

Commentary by Neil Nichols

Source: HB 2663
Effective Date: September 1, 2001
Applicability: To a license, permit, or identification certificate issued or renewed by the Department of Public Safety on or after effective date.
Summary of Changes: A driver's instruction permit issued to a person subject to sex offender registration must include a photograph of the person.

Transportation Code § 521.223. Hardship License.

(g) The department may issue a hardship license to a person who is subject to the registration requirements under Chapter 62, Code of Criminal Procedure, and is otherwise eligible for the license. A hardship license issued under this section must include a photograph of the person.

Commentary by Neil Nichols

Source: HB 2663
Effective Date: September 1, 2001
Applicability: To a license, permit, or identification certificate issued or renewed by the Department of Public Safety on or after effective date.
Summary of Changes: A hardship license issued to a person subject to sex offender registration must include a photograph of the person.

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 the [~~a~~] fee required by Section 521.421(h) [~~of $20~~].

(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. This subsection does not apply to:

(1) a provisional license;

(2) an instruction permit issued under Section 521.222; or

(3) a hardship license issued under Section 521.223.

Commentary by Neil Nichols

Source: HB 2663
Effective Date: September 1, 2001
Applicability: To a license, permit, or identification certificate issued or renewed by the Department of Public Safety on or after effective date.
Summary of Changes: The requirement that a driver's license issued to a person subject to sex offender registration be renewed annually on the person's birthday does not apply to provisional licenses, instruction permits and hardship licenses. The $20 fee for issuance or renewal remains the same for all, however (§ 521.421, Transportation Code).

Transportation Code § 521.274. Renewal by Mail.

(a) The department by rule may provide that the holder of a driver's license may renew the license by mail, by telephone, over the Internet, or by other electronic means.

(b) A rule adopted under this section:

(1) may prescribe eligibility standards for renewal under this section; and

(2) may not permit a person subject to the registration requirements under Chapter 62, Code of Criminal Procedure, to register by mail or electronic means.

[~~(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 moving violation, as defined by department rule, in this state; or~~

[~~(ii) 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 Neil Nichols

Source: HB 2663
Effective Date: September 1, 2001
Applicability: To a license, permit, or identification certificate issued or renewed by the Department of Public Safety on or after effective date.
Summary of Changes: A person subject to sex offender registration must renew in person, not by mail or electronic means.

Transportation Code § 521.421. License Fees; Examination Fees.

(h) The fee for issuance or renewal of a driver's license, a provisional license, an instruction permit, or a hardship license issued to a person subject to the registration requirements under Chapter 62, Code of Criminal Procedure, is $20.

Commentary by Neil Nichols

Source: HB 2663
Effective Date: September 1, 2001
Applicability: To a license, permit, or identification certificate issued or renewed by the Department of Public Safety on or after effective date.
Summary of Changes: For persons subject to sex offender registration, issuance and renewals of licenses cost $20.

Transportation Code § 521.422. Personal Identification Certificate Fee.

(a) The fee for a personal identification certificate is:

(1) $15 for a person under 60 years of age; [~~and~~]

(2) $5 for a person 60 years of age or older; and

(3) $20 for a person subject to the registration requirements under Chapter 62, Code of Criminal Procedure.

Commentary by Neil Nichols

Source: HB 2663
Effective Date: September 1, 2001
Applicability: To a license, permit, or identification certificate issued or renewed by the Department of Public Safety on or after effective date.

Summary of Changes: For persons subject to sex offender registration, issuance and renewals of certificates cost $20.

Transportation Code § 521.426. Disabled Veteran Exemption.

(a) Except as provided by Subsection (c), a [~~A~~] veteran of service in the armed forces of the United States is exempt from the payment of fees under this chapter for the issuance of a driver's license if the veteran:

(1) was honorably discharged;

(2) has a service-related disability of at least 60 percent; and

(3) receives compensation from the United States because of the disability.

(c) Subsection (a) does not apply to a person subject to the registration requirements of Chapter 62, Code of Criminal Procedure.

Commentary by Neil Nichols

Source: HB 2663
Effective Date: September 1, 2001
Applicability: To a license, permit, or identification certificate issued or renewed by the Department of Public Safety on or after effective date.
Summary of Changes: Disabled veterans who are subject to sex offender registration do not get a break on the $20 driver's license fees.

Transportation Code § 522.029. Fees.

(a) The fee for a commercial driver's license or commercial driver learner's permit issued by the department is $60, except as
provided by Subsections [~~Subsection~~] (f) and (h).

(h) The fee for a commercial driver's license or commercial driver learner's permit issued under Section 522.033 is $20.

Commentary by Neil Nichols

Source: HB 2663
Effective Date: September 1, 2001
Applicability: To a license, permit, or identification certificate issued or renewed by the Department of Public Safety on or after effective date.
Summary of Changes: For persons subject to sex offender registration, the fee for a commercial driver's license or commercial driver learner's permit is $20.

Transportation Code § 522.033. Commercial Driver's License Issued to Certain Sex Offenders.

(a) The department may issue an original or renewal commercial driver's license or commercial driver learner's permit 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, only if the person is otherwise eligible for the commercial driver's license or commercial driver learner's permit and:

(1) applies in person for the issuance of a license or permit under this section; and

(2) pays a fee of $20.

(b) Notwithstanding Section 522.051, a commercial driver's license or commercial driver learner's permit 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 Neil Nichols

Source: HB 2663
Effective Date: September 1, 2001
Applicability: To a license, permit, or identification certificate issued or renewed by the Department of Public Safety on or after effective date.
Summary of Changes: For persons subject to sex offender registration, the requirements for a commercial driver's license or commercial driver learner's permit are the same as for other driver's licenses issued to sex offenders: the application must be made in person and renewed annually on or before the person's birthday for $20.

Transportation Code § 522.051. Expiration of License or Permit.

(a) Except as provided by Section 522.033, an [~~An~~] original commercial driver's license or commercial driver learner's permit expires six years after the applicant's next birthday.

Commentary by Neil Nichols

Source: HB 2663
Effective Date: September 1, 2001
Applicability: To a license, permit, or identification certificate issued or renewed by the Department of Public Safety on or after effective date.
Summary of Changes: The change conforms with the new § 522.033.

Transportation Code § 522.052. Renewal of License.

(a) Except as provided by Subsection (g), a [~~A~~] commercial driver's license issued by the department may be renewed in the year preceding the expiration date.

(g) A commercial driver's license issued under Section 522.033 may not be renewed before the 60th day preceding the expiration date.

Commentary by Neil Nichols

Source: HB 2663
Effective Date: September 1, 2001
Applicability: To a license, permit, or identification certificate issued or renewed by the Department of Public Safety on or after effective date.
Summary of Changes: For commercial driver's license and learner's permit holders who are subject to sex offender registration, renewal cannot take place before the 60th day before the person's birthday when the license or permit expires.

Code of Criminal Procedure article 62.05. Status Report by Supervising Officers.

(b) A [~~If a~~] person subject to registration under this chapter [~~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 Neil Nichols

Source: HB 121
Effective Date: September 1, 2001
Applicability: None stated.
Summary of Changes: Under current law, the probation or parole officer who supervises a person who is subject to sex offender registration, but not the person under supervision, must report various changes in the person's status to the appropriate local law enforcement agency. This amendment requires the person who is under supervision to report these changes also to the local law enforcement agency, just as others who are not under supervision are required to do.

4. Education and Juvenile Justice

Code of Criminal Procedure article 15.27. Notification to Schools Required.

(a) A law enforcement agency that arrests any person or refers a child to the office or official designated by the juvenile board [~~court~~] who the agency believes is enrolled as a student in a public primary or secondary school, for an offense listed in Subsection (h), shall attempt to ascertain whether the person is so enrolled. If the law enforcement agency ascertains that the individual is enrolled as a student in a public primary or secondary school, the agency shall orally notify the superintendent or a person designated by the superintendent in the school district in which the student is enrolled of that arrest or referral within 24 hours after the arrest or referral is made, or on the next school day. If the law enforcement agency cannot ascertain whether the individual is enrolled as a student, the agency shall orally notify the superintendent or a person designated by the superintendent in the school district in which the student is believed to be enrolled of that arrest or detention within 24 hours after the arrest or detention, or on the next school day. If the individual is a student, the superintendent shall promptly notify all instructional and support personnel who have responsibility for supervision of the student. All personnel shall keep the information received in this subsection confidential. The State Board for Educator Certification may revoke or suspend the certification of personnel who intentionally violate this subsection. Within seven days after the date the oral notice is given, the law enforcement agency shall mail written notification, marked "PERSONAL and CONFIDENTIAL" on the mailing envelope, to the superintendent or the person designated by the superintendent. Both the oral and written notice shall contain sufficient details of the arrest or referral and the acts allegedly committed by the student to enable the superintendent or the superintendent's designee to determine whether there is a reasonable belief that the student has engaged in conduct defined as a felony offense by the Penal Code. The information contained in the notice may be considered by the superintendent or the superintendent's designee in making such a determination.

(g) The office of the prosecuting attorney or the office or official designated by the juvenile board [~~court~~] shall, within two working days, notify the school district that removed a student to an alternative

education program under Section 37.006, Education Code, if:

(1) prosecution of the student's case was refused for lack of prosecutorial merit or insufficient evidence and no formal proceedings, deferred adjudication, or deferred prosecution will be initiated; or

(2) the court or jury found the student not guilty or made a finding the child did not engage in delinquent conduct or conduct indicating a need for supervision and the case was dismissed with prejudice.

(h) This article applies to any felony offense and the following misdemeanors:

(1) an offense under Section [~~19.02, 19.03, 19.04, 19.05,~~] 20.02, [~~20.03, 20.04,~~] 21.08, [~~21.11,~~] 22.01, [~~22.011, 22.02, 22.021, 22.04,~~] 22.05, 22.07, [~~28.02, 29.02, 29.03, 30.02,~~] or 71.02, Penal Code;

(2) the unlawful use, sale, or possession of a controlled substance, drug paraphernalia, or marihuana, as defined by Chapter 481, Health and Safety Code; or

(3) the unlawful possession of any of the weapons or devices listed in Sections 46.01(1)-(14) or (16), Penal Code,[~~;~~] or a weapon listed as a prohibited weapon under Section 46.05, Penal Code[~~; or~~

[~~(4) a felony offense in which a deadly weapon, as defined by Section 1.07, Penal Code, was used or exhibited~~].

Commentary by Robert Dawson

Source: HB 1118
Effective Date: September 1, 2001
Applicability: Conduct occurring on or after effective date
Summary of Changes: The amendments in (a) and (g) change "court" to "board." Amendments to Family Code Section 52.02 provide that the juvenile board decides to what office or official a referral should go.

The amendment in (h) corrects a problem introduced by legislation enacted in 1997. Two bills provided different, but not inconsistent, definitions of the offenses that require school notice. One listed all felonies while the other listed specific felonies and misdemeanors. This amendment harmonizes those provisions to require school notice for all felonies and for those misdemeanors that had previously been listed. No substantive change is intended to be made.

Education Code § 25.002. Requirements for Enrollment.

(f) Except as otherwise provided by this subsection, for a child to be enrolled in a public school, the child must be enrolled by the child's parent or by the child's guardian or other person with legal control of the child under a court order. A school district shall record the name, address, and date of birth of the person enrolling a child.

Commentary by Ryan Turner

Source: SB 1432.
Effective Date: September 1, 2001.
Applicability: Conduct occurring on or after effective date.
Summary of Changes: Since its inception, this section has designated which individuals may enroll a child in public school. In an attempt to ascertain the actual identity of such individuals, this addition now requires schools to record unique identifying information. In the past, the lack of such information has posed an obstacle to enforcing school attendance laws.

Education Code § 25.091. Powers and Duties of Peace Officers and Other Attendance Officers [~~Officer~~].

(a) A peace officer serving as an attendance officer has the following powers and duties concerning enforcement of compulsory school attendance requirements:

(1) to investigate each case of a violation of compulsory school attendance requirements referred to the peace officer;

(2) to enforce compulsory school attendance requirements by:

(A) referring a student to a juvenile court or filing a complaint against a student in a justice or municipal court if the student has unexcused absences for the amount of time specified under Section 25.094 or under Section 51.03(b)(2), Family Code; and

(B) filing a complaint in a justice or municipal court against a parent who violates Section 25.093;

(3) to serve court-ordered legal process;

(4) to review school attendance records for compliance by each student investigated by the officer;

(5) to maintain an investigative record on each compulsory school attendance requirement violation and related court action and, at the request of a court, the board of trustees of a school district, or the commissioner, to provide a record to the individual or entity requesting the record;

(6) to make a home visit or otherwise contact the parent of a student who is in violation of compulsory school attendance requirements, except that a peace officer may not enter a residence without the permission of the parent of a student required under this subchapter to attend school or of the tenant or owner of the residence except to lawfully serve court-ordered legal process on the parent; and

(7) to take a student into custody with the permission of the student's parent or in obedience to a court-ordered legal process.

(b) An attendance officer employed by a school district who is not commissioned as a peace officer has the following powers and duties with respect to enforcement of compulsory school attendance requirements:

(1) to investigate each case of a violation of the compulsory school attendance requirements referred to the attendance officer;

(2) to enforce compulsory school attendance requirements by:

(A) referring a student to a juvenile court or filing a complaint against a student in a justice or municipal court if the student has unexcused absences for the amount of time specified under Section 25.094 or under Section 51.03(b)(2), Family Code; and

(B) filing a complaint in a justice or municipal court against a parent who violates Section 25.093;

(3) to monitor school attendance compliance by each student investigated by the officer;

(4) to maintain an investigative record on each compulsory school attendance requirement violation and related court action and, at the request of a court, the board of trustees of a school district, or the commissioner, to provide a record to the individual or entity requesting the record;

(5) to make a home visit or otherwise contact the parent of a student who is in violation of compulsory school attendance requirements, except that the attendance officer may not enter a residence without permission of the parent or of the owner or tenant of the residence;

(6) at the request of a parent, to escort a student from any location to a school campus to ensure the student's compliance with compulsory school attendance requirements; and

(7) if the attendance officer has or is informed of a court-ordered legal process directing that a student be taken into custody and the school district employing the officer does not employ its own police department, to contact the sheriff, constable, or any peace officer to request that the student be taken into custody and processed according to the legal process.

(c) In this section:

(1) "Parent" includes a person standing in parental relation.

(2) "Peace officer" has the meaning assigned by Article 2.12, Code of Criminal Procedure. [~~A school attendance officer has the following powers and duties:~~

[~~(1) to investigate each case of unexcused absence from school;~~

[~~(2) to administer oaths and to serve legal process;~~

[~~(3) to enforce the compulsory school attendance law;~~

[~~(4) to keep a record of each case of any kind investigated by the officer in the discharge of the officer's duties;~~

[~~(5) to make any report required by the commissioner concerning the discharge of the officer's duties; and~~

[~~(6) to refer to a juvenile court or to a justice court if the juvenile court has waived jurisdiction as provided by Section 54.021(a), Family Code, any student who has unexcused voluntary absences for the amount of time specified under Section 51.03(b)(2), Family Code, or to file a complaint against any person standing in parental relation who violates Section 25.093 or to file a complaint against a student who violates Section 25.094.~~

[~~(b) A school attendance officer may not enter a private residence or any part of a private residence without the permission of the owner or tenant except to serve lawful process on a parent, guardian, or other person standing in parental relation to a child to whom the compulsory school attendance law applies.~~

[~~(c) A school attendance officer may not forcibly take corporal custody of any child anywhere without permission of the parent, guardian, or other person standing in parental relation to the child except in obedience to a valid process issued by a court of competent jurisdiction.~~]

Commentary by Ryan Turner

Source: SB 1432.
Effective Date: September 1, 2001.
Applicability: Conduct occurring on or after effective date.
Summary of Changes: This section is rewritten to delineate the authority of peace officers serving as school attendance officers from school attendance officers who are not peace officers. The revision makes clear that only peace officers acting as attendance officers may serve court-ordered legal process.

Education Code § 25.093. Parent Contributing to Truancy [~~Thwarting Compulsory Attendance Law~~]

(a) [~~If any parent of a child required to attend school fails to require the child to attend school as required by law, the school attendance officer shall warn the parent in writing that attendance is immediately required.~~

[~~(b)~~] If[~~, after~~] a warning is issued as required by Section 25.095(a) [~~under Subsection (a)~~], the parent with criminal negligence fails to require the child to attend school as required by law, and the child has

[~~unexcused voluntary~~] absences for the amount of time specified under Section 25.094 [~~51.03(b)(2), Family Code~~], the parent commits an offense.

(b) [~~(c)~~] The attendance officer or other appropriate school official shall file a complaint against the parent [~~in the county court,~~] in a justice court of any precinct in the county in which the parent resides or in which the school is located[~~,~~] or in a municipal court of the municipality in which the parent resides or in which the school is located.

(c) [~~The attendance officer shall file a complaint under this section in the court to which the parent's child has been referred for engaging in conduct described in Section 51.03(b)(2), Family Code, if a referral has been made for the child. If a referral has not been made, the attendance officer shall refer the child to the county juvenile probation department for action as engaging in conduct indicating a need for supervision under that section.~~

[~~(d) A court in which a complaint is filed under this section shall give preference to a hearing on the complaint over other cases before the court.~~

[~~(e)~~] An offense under Subsection (a) [~~this section~~] is a Class C misdemeanor. Each day the child remains out of school [~~after the warning has been given or the child has been ordered to attend school by the juvenile court~~] may constitute a separate offense. Two or more offenses under Subsection (a) [~~this section~~] may be consolidated and prosecuted in a single action. If the court orders deferred disposition under Article 45.051, Code of Criminal Procedure [~~probates the sentence~~], the court may require the defendant to provide [~~render~~] personal services to a charitable or educational institution as a condition of the deferral [~~probation~~].

(d) [~~(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.

(e) [~~(g)~~] At the trial of any person charged with violating Subsection (a) [~~this section~~], the attendance records of the child may be presented in court by any authorized employee of the school district.

(f) [~~(h)~~] The court in which a conviction, deferred adjudication, or deferred disposition for an offense under Subsection (a) [~~this section~~] occurs may order the defendant to attend a program [~~class~~] for parents of students with unexcused absences that provides instruction designed to assist those parents in identifying problems that contribute to the students' unexcused absences and in developing strategies for resolving those problems if a program is available [~~the school district in which the person resides offers such a class~~].

(g) If a parent refuses to obey a court order entered under this section, the court may punish the parent for contempt of court under Section 21.002, Government Code.

(h) It is an affirmative defense to prosecution for an offense under Subsection (a) that one or more of the absences required to be proven under Subsection (a) was excused by a school official or should be excused by the court. The burden is on the defendant to show by a preponderance of the evidence that the absence has been or should be excused. A decision by the court to excuse an absence for purposes of this section does not affect the ability of the school district to determine whether to excuse the absence for another purpose.

(i) In this section, "parent" includes a person standing in parental relation.

Commentary by Ryan Turner

Source: SB 1432.

Effective Date: September 1, 2001.

Applicability: An absence that occurs during the 2001-2002 school year is included in determining the number of a student's absences, regardless of whether the absence occurred before the effective date.

Summary of Changes: The new title of this section is somewhat of a misnomer. Do not be misled by the name change. The essence of the offense formerly known as *Thwarting Compulsory Attendance* remains intact. The following amendment reflects an effort to modernize the former law in the following ways: First, it allows school officials other than the school attendance officer to file a complaint against a parent accused of contributing to a child's nonattendance in either municipal court or justice court. Second, if the complaint is filed in a justice court, it may now be filed in the precinct that either the school is located or the parent resides. Third, it potentially increases the scope and duration of parental rehabilitation by changing "class" to "program." Fourth, it allows courts to order parents to attend available programs offered by entities other than the school district. Fifth, courts are expressly authorized to hold parents in contempt who disobey court orders. Finally, it makes the question of whether an absence is excused an affirmative defense in which the parent has the burden of showing that the absence was either excused by the school or should be excused by the court. A court decision to excuse an absence has no

bearing on whether a school, for administrative purposes, excuses the absence.

Education Code § 25.094. Failure to Attend School.

(a) An individual [~~A child~~] commits an offense if the individual [~~child~~]:

(1) is required to attend school under Section 25.085; and

(2) fails to attend school on 10 or more days or parts of days within a six-month period in the same school year or on three or more days or parts of days within a four-week period [~~for the amount of time specified under Section 51.03(b)(2), Family Code, and is not excused under Section 25.087~~].

(b) An offense under this section may be prosecuted in a justice court of any precinct in the county in which the individual [~~child~~] resides or in which the school is located or in a municipal court in the municipality in which the individual [~~child~~] resides or in which the school is located.

(c) On a finding by the justice or municipal court that the individual [~~child~~] has committed an offense under Subsection (a) or on a finding by a juvenile court in a county with a population of less than 100,000 that the individual has engaged in conduct that violates Subsection (a), the court may enter an order that includes one or more of the requirements listed in Article 45.054, Code of Criminal Procedure [~~Section 54.021(d), Family Code~~].

(d) [~~If the justice or municipal court finds that a child has violated an order issued under Subsection (c), the court shall transfer the complaint against the child, together with all pleadings and orders, to a juvenile court for the county in which the child resides. The juvenile court shall conduct an adjudication hearing as provided by Section 54.03, Family Code. The adjudication hearing shall be de novo.~~

[~~(e)~~] Pursuant to an order of the justice or municipal court based on an affidavit showing probable cause to believe that an individual has committed an offense under this section, a peace officer may take the individual [~~a child~~] into custody [~~if there are reasonable grounds to believe that the child has committed an offense under this section~~]. A peace officer taking an individual [~~a child~~] into custody under this subsection shall:

(1) promptly notify the individual's [~~child's~~] parent, guardian, or custodian of the officer's action and the reason for that action; and

(2) without unnecessary delay:

(A) release the individual [~~child~~] to the individual's [~~child's~~] parent, guardian, or custodian or to another responsible adult, if the person promises to bring the individual [~~child~~] to the justice or municipal court as requested by the court; or

(B) bring the individual [~~child~~] to a justice or municipal court with venue over the offense [~~the justice of the peace of the court having jurisdiction over the child~~].

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

(f) It is an affirmative defense to prosecution under this section that one or more of the absences required to be proven under Subsection (a) was excused by a school official or should be excused by the court. The burden is on the defendant to show by a preponderance of the evidence that the absence has been or should be excused. A decision by the court to excuse an absence for purposes of this section does not affect the ability of the school district to determine whether to excuse the absence for another purpose.

(g) It is an affirmative defense to prosecution under this section that one or more of the absences required to be proven under Subsection (a) was involuntary. The burden is on the defendant to show by a preponderance of the evidence that the absence was involuntary. [~~Any person convicted of not more than one violation under this section while a minor, on attaining the age of 18 years, may apply to the court in which the person was convicted to have the conviction expunged.~~

[~~(h) The application must contain the applicant's sworn statement that the person was not convicted of any violation of this section while a minor other than the one the person seeks to have expunged.~~

[~~(i) If the court finds that the applicant was not convicted of any other violation of this section while the person was a minor, the court shall order the conviction, together with all complaints, verdicts, sentences, and other documents relating to the offense, to be expunged from the applicant's record. After entry of the order, the applicant shall be released from all disabilities resulting from the conviction, and the conviction may not be shown or made known for any purpose.~~]

Commentary by Ryan Turner

Source: SB 1432.

Effective Date: September 1, 2001.

Applicability: An absence that occurs during the 2001-2002 school year is included in determining the number of a student's absences, regardless of whether the absence occurred before the effective date.

Summary of Changes: This section of the Education Code is rewritten to make the criminal offense of *Failure to Attend School* independent of the civil statutes defining truancy in the Family Code.

Throughout the revision of this section, the term "child" is replaced with "individual." Accordingly, students who do not meet the Family Code's definition of a "child" (*e.g.*, students who are 17 years

or older) and who cannot be ordered to attend school under the Family Code's truancy provisions may be prosecuted under this statute.

As revised, individuals commit this offense if they fail to attend school on ten or more days or parts of the day within a six-month period in the same school year or on three or more days or parts of days within a four-week period.

Juvenile courts in counties with populations of less than 100,000 are included among the courts authorized to adjudicate school attendance cases under § 25.094. All courts with jurisdiction to adjudicate school attendance violations are authorized to enter orders mandating school attendance and participation by defendants and parents in special programs listed in Article 45.054, Code of Criminal Procedure. Previously, these provisions were exclusively listed in the Family Code.

Former provisions in Subsection (d) mandating that a municipal or justice court transfer a school attendance case (including the complaint against the child, all pleadings and orders) upon discovering that the defendant has violated a court order have been removed.

Under the former law, an individual could be taken into custody for failure to attend school pursuant to a court order based on reasonable suspicion that the offense had been committed. Subsection (e) now requires that such an order be based on an affidavit showing probable cause.

Subsection (f) makes the question of whether an absence is excused an affirmative defense in which the defendant has the burden of showing that the absence was either excused by the school or should be excused by the court. The same is true under Subsection (g) if the absence was involuntary. A court decision to excuse an absence has no bearing on whether a school, for administrative purposes, excuses the absence.

Education Code § 25.094. Failure to Attend School.

(d) If the justice or municipal court believes [~~finds~~] that a child has violated an order issued under Subsection (c), the court may proceed as authorized by Section 54.023, Family Code, by holding [~~shall transfer the complaint against~~] the child in contempt and imposing a fine not to exceed $500 or by referring[~~, together with all pleadings and orders, to a juvenile court for the county in which~~] the child to [~~resides. The~~] juvenile court for delinquent [~~shall~~] conduct [~~an adjudication hearing as provided by Section 54.03, Family Code. The adjudication hearing shall be de novo~~].

Commentary by Ryan Turner

Source: HB 1118
Effective Date: September 1, 2001
Applicability: Conduct occurring on or after effective date.
Summary of Changes: Contained in Section 55 of HB 1118, this amendment provides that if a municipal or justice court believes, rather than finds, that a child has violated an order issued under Subsection (c), the court may proceed to enforce its order pursuant to Section 54.023 of the Family Code. Under Section 54.023, a municipal or justice court may refer the child to juvenile court for delinquent conduct (specifically, contempt of a justice or municipal court order) or retain the case and do one or more of the following: (1) fine the child up to $500, (2) have the child detained in a place of nonsecure custody for a single period up to six hours, or (3) order suspension or denial of a child's driver's license or permit until the child has fully complied with the orders of the court.

With the exception of the provision allowing for up to six hours of nonsecure custody, Section 54.023 essentially mirrors the general juvenile contempt provisions contained in the amended article 45.050 of the Code of Criminal Procedure. The six hours of nonsecure custody is not athorized because it was repealed when SB 1432 passed the legislature later than HB 1118. See the discussion in Segment 1, "Title 3 and Related Provisions."

Education Code § 25.095. Warning Notices [~~Notice~~].

(a) A school district shall notify a student's parent in writing at the beginning of the school year [~~if, in a six-month period, the student has been absent without an excuse five times for any part of the day. The notice must state~~] that if the student is absent from school on [~~without an excuse for~~] 10 or more days or parts of days within [~~in~~] a six-month period in the same school year or on three or more days or parts of days within a four-week period:

(1) the student's parent is subject to prosecution under Section 25.093; and

(2) the student is subject to prosecution under Section 25.094 or to referral to a juvenile court in a county with a population of less than 100,000 for conduct that violates that section.

(b) A school district shall notify a student's parent if the student has been absent from school, without excuse under Section 25.087, on three days or parts of days within a four-week period. The notice must:

(1) inform the parent that:

(A) it is the parent's duty to monitor the student's school attendance and require the student to attend school; and

(B) the parent is subject to prosecution under Section 25.093; and

(2) request a conference between school officials and the parent to discuss the absences. [~~Notice is not required under this section if the student is a party to a juvenile court proceeding for conduct described by Section 51.03(b)(2), Family Code.~~]

(c) The fact that a parent did not receive a notice under Subsection (a) or (b) [~~this section~~] does not create a defense to prosecution under Section 25.093 or 25.094.

(d) In this section, "parent" includes a person standing in parental relation.

Commentary by Ryan Turner

Source: SB 1432.
Effective Date: September 1, 2001.
Applicability: Conduct that occurs on or after effective date.
Summary of Changes: The school district is now required to notify a student's parent in writing at the beginning of the school year that if a student is absent on ten or more days or parts of days within a six-month period in the same school year or on three or more days or parts of days within a four-week period, the student is subject to prosecution in either municipal court, justice court, or a juvenile court in a county with a population of less than 100,000. The school district is also now required to notify a student's parent if the student has been absent from school on three days or parts of days within a four-week period. The notice must inform the parent that it is the parent's duty to monitor the student's school attendance and require the student to attend school, and state that the parent is subject to prosecution. The notice must also request a conference between school officials and the parent to discuss the absences.

Education Code § 25.0951. School District Complaint or Referral for Failure to Attend School.

(a) If a student fails to attend school without excuse on 10 or more days or parts of days within a six-month period in the same school year, a school district shall:

(1) file a complaint against the student or the student's parent or both in a justice or municipal court for an offense under Section 25.093 or 25.094, as appropriate, or refer the student to a juvenile court in a county with a population of less than 100,000 for conduct that violates Section 25.094; or

(2) refer the student to a juvenile court for conduct indicating a need for supervision under Section 51.03(b)(2), Family Code.

(b) If a student fails to attend school without excuse on three or more days or parts of days within a four-week period but does not fail to attend school for the time described by Subsection (a), the school district may:

(1) file a complaint against the student or the student's parent or both in a justice or municipal court for an offense under Section 25.093 or 25.094, as appropriate, or refer the student to a juvenile court in a county with a population of less than 100,000 for conduct that violates Section 25.094; or

(2) refer the student to a juvenile court for conduct indicating a need for supervision under Section 51.03(b)(2), Family Code.

(c) In this section, "parent" includes a person standing in parental relation.

Commentary by Ryan Turner

Source: SB 1432.
Effective Date: September 1, 2001.
Applicability: An absence that occurs during the 2001-2002 school year is included in determining the number of a student's absences, regardless of whether the absence occurred before the effective date.
Summary of Changes: This section regulates when a complaint by a school district is permissible and when it is mandatory. If a student fails to attend school without an excuse on ten or more days or parts of days within a six-month period in the same school year, it is mandatory that the school district file a complaint against the student, the student's parents, or both in a municipal or justice court. If a student fails to attend school without an excuse on three or more days or parts of days within a four-week period, the school district may, but is not required to, file a complaint against the student or the student's parent or both in a municipal or justice court.

Education Code § 25.0952. Procedures Applicable to Truancy-Related Offenses.

In a proceeding in a justice or municipal court based on a complaint under Section 25.093 or 25.094, the court shall, except as otherwise provided by this chapter, use the procedures and exercise the powers authorized by Chapter 45, Code of Criminal Procedure.

Commentary by Ryan Turner

Source: SB 1432.
Effective Date: September 1, 2001.
Applicability: Conduct that occurs on or after effective date.
Summary of Changes: This provision specifically mandates that criminal complaints alleging either *Parent Contributing to Truancy* or *Failure to Attend School* be adjudicated under the Code of Criminal

Procedure provisions governing proceedings in municipal and justice courts.

Education Code § 29.087. High School Equivalency Programs.

(a) The agency shall develop a process by which a school district or open-enrollment charter school may apply to the commissioner for authority to operate a program to prepare eligible students to take a high school equivalency examination.

(b) A school district or open-enrollment charter school may not apply for authorization to operate a program under this section unless on May 1, 2001, the district or school was operating a similar program as authorized by the agency. As part of the application process, the commissioner shall require a district or school to provide information regarding the operation of that similar program during the preceding five years.

(c) A school district or open-enrollment charter school may not increase enrollment of students in a program authorized by this section by more than five percent of the number of students enrolled in the similar program operated by the district or school during the 2000-2001 school year.

(d) A student is eligible to participate in a program authorized by this section if:

(1) the student has been ordered by a court under Article 45.054, Code of Criminal Procedure, to:

(A) participate in a preparatory class for the high school equivalency examination; or

(B) take the high school equivalency examination administered under Section 7.111; or

(2) the following conditions are satisfied:

(A) the student is at least 16 years of age at the beginning of the school year or semester;

(B) the student is a student at risk of dropping out of school, as defined by Section 29.081;

(C) the student and the student's parent or guardian agree in writing to the student's participation;

(D) at least two school years have elapsed since the student first enrolled in ninth grade and the student has accumulated less than one quarter of the credits required to graduate under the minimum graduation requirements of the district or school; and

(E) any other conditions specified by the commissioner.

(e) A school district or open-enrollment charter school shall inform each student who has completed a program authorized by this section of the time and place at which the student may take the high school equivalency examination. Notwithstanding any provision of this section, a student may not take the high school equivalency examination except as authorized by Section 7.111.

(f) Except as otherwise provided by this subsection, a student participating in a program authorized by this section must have taken the exit-level assessment instruments specified by Section 39.025(a) before entering the program or must take those assessment instruments during the first year in which the student is enrolled in the program. The commissioner may authorize a student to take the assessment instruments required by Section 39.023(a) to be administered to students in grade 10 instead of the exit-level assessment instruments. A student participating in the program may not take the high school equivalency examination unless the student has taken the assessment instruments required by this subsection.

(g) A student enrolled in a program authorized by this section may not participate in a competition or other activity sanctioned or conducted by the University Interscholastic League.

(h) A student who has received a high school equivalency certificate is entitled to enroll in a public school as authorized by Section 25.001 and is entitled to the benefits of the Foundation School Program under Section 42.003 in the same manner as any other student who has not received a high school diploma.

(i) The agency shall request permission from the General Educational Development Testing Service to administer the service's high school equivalency examination to students enrolled in high school who participate in a program authorized by this section. From funds appropriated to the agency that may be used for the purpose, the agency may pay a fee imposed by the service for granting permission to the agency necessary to allow operation of programs authorized by this section.

(j) For purposes of funding under Chapters 41, 42, and 46, a student attending a program authorized by this section may be counted in attendance only for the actual number of hours each school day the student attends the program, in accordance with Sections 25.081 and 25.082.

(k) The board of trustees of a school district or the governing board of an open-enrollment charter school shall:

(1) hold a public hearing concerning the proposed application of the district or school before applying to operate a program authorized by this section; and

(2) subsequently hold a public hearing annually to review the performance of the program.

(l) The commissioner may revoke a school district's or open-enrollment charter school's authorization under this section after consideration of relevant factors, including performance of students participating in the district's or school's program on as-

sessment instruments required under Chapter 39, the percentage of students participating in the district's or school's program who complete the program and perform successfully on the high school equivalency examination, and other criteria adopted by the commissioner. A decision by the commissioner under this subsection is final and may not be appealed.

(m) Not later than December 1, 2002, the commissioner shall report to the legislature regarding the implementation of this section and make appropriate recommendations regarding the continuation of the commissioner's authority to approve programs under this section. The report must include:

(1) the number of students enrolled in programs authorized by this section, disaggregated by ethnicity, age, gender, and socioeconomic status;

(2) the number of students enrolled in programs authorized by this section who performed satisfactorily on the high school equivalency examination, disaggregated by ethnicity, age, gender, and socioeconomic status; and

(3) to the extent practicable, information regarding the attendance of students enrolled in programs authorized by this section at institutions of higher education or trade schools or at other postsecondary educational programs.

(n) The commissioner may adopt rules to implement this section.

(o) This section expires September 1, 2003.

Commentary by Ryan Turner

Source: SB 1432.

Effective Date: January 1, 2002.

Applicability: Applies to each student enrolled in a high school equivalency examination program operated by a school district or an open-enrollment charter school on or after the effective date.

Summary of Changes: Section 29.087 of the Education Code authorizes the Texas Education Agency to develop a process for school districts and open-enrollment charter schools to seek permission to operate programs that prepare students to take the high school equivalency exam. To receive authorization, a school must have a similar program operating by May 1, 2001 that is approved by TEA. Schools authorized to operate preparatory programs will be restricted in the number of new students who may participate. A student is eligible to participate in such a program if ordered by a court under Article 45.054, Code of Criminal Procedure to either participate in a special program or take the high school equivalency examination. Schools are required to inform eligible students of the time and place of the examination. To be eligible to take the examination, students are required to take specified assessment instruments. Students enrolled in the program may not participate in UIL activities. Other restrictions on the student, the school, TEA, the school's board of directors, the commissioner, and funding are specified.

Code of Criminal Procedure article 45.050. Failure to Pay Fine; Contempt; Juveniles.

(a) In this article, "child" has the meaning assigned by Article 45.058(h).

(b) A justice [~~court~~] or municipal court may not order the confinement of a [~~person who is a~~] child [~~for the purposes of Title 3, Family Code,~~] for:

(1) the failure to pay all or any part of a fine or costs imposed for the conviction of an offense punishable by fine only; or

(2) contempt of another order of a justice or municipal court.

(c) [~~(b)~~] If a [~~person who is a~~] child [~~under Section 51.02, Family Code,~~] 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) has jurisdiction to [~~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; or

(2) may retain jurisdiction of the case and:

(A) hold the child in contempt of the justice or municipal court order and impose a fine not to exceed $500; or

(B) order the Department of Public Safety to suspend the child's driver's license or permit or, if the child does not have a license or permit, to deny the issuance of a license or permit to the child until the child fully complies with the orders of the court.

(d) A court that orders suspension or denial of a driver's license or permit under Subsection (c)(2)(B) shall notify the Department of Public Safety on receiving proof that the child has fully complied with the orders of the court.

Commentary by Ryan Turner

Source: SB 1432.

Effective Date: September 1, 2001.

Applicability: Conduct that occurs on or after effective date.

Summary of Changes: This amendment makes reference to the newly added definition of "child" now contained in the Code of Criminal Procedure and removes reference to the definition contained in the Family Code. If a child fails to obey an order of either a municipal court or justice court, the court is authorized to either refer the child to juvenile court for delinquent conduct for contempt of a justice or

municipal court order or retain the case and do one of the following: (1) fine the child up to $500, (2) order the suspension or denial of the child's driver's license or permit until the child has fully complied with the orders of the court. A court that orders suspension or denial of a driver's license or permit is required to notify DPS on receiving proof that the child has fully complied with the orders of the court.

Code of Criminal Procedure article 45.054. Failure to Attend School Proceedings.

(a) On a finding by a justice or municipal court that an individual has committed an offense under 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 individual:

(A) attend school without unexcused absences;

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

(C) if the individual is at least 16 years of age, take the high school equivalency examination administered under Section 7.111, Education Code;

(2) the individual attend a special program that the court determines to be in the best interest of the individual, including:

(A) an alcohol and drug abuse program;

(B) a rehabilitation program;

(C) a counseling program, including self-improvement counseling;

(D) a program that provides training in self-esteem and leadership;

(E) a work and job skills training program;

(F) a program that provides training in parenting, including parental responsibility;

(G) a program that provides training in manners;

(H) a program that provides training in violence avoidance;

(I) a program that provides sensitivity training; and

(J) a program that provides training in advocacy and mentoring;

(3) the individual and the individual's parent attend a class for students at risk of dropping out of school designed for both the individual and the individual's parent;

(4) the individual complete reasonable community service requirements; or

(5) for the total number of hours ordered by the court, the individual participate in a tutorial program covering the academic subjects in which the student is enrolled provided by the school the individual attends.

(b) An order under Subsection (a)(3) that requires the parent of an individual to attend a class for students at risk of dropping out of school is enforceable in the justice or municipal court by contempt.

(c) A court having jurisdiction under this article shall endorse on the summons issued to the parent of the individual who is the subject of the hearing an order directing the parent to appear personally at the hearing and directing the person having custody of the individual to bring the individual to the hearing.

(d) An individual commits an offense if the individual is a parent who fails to attend a hearing under this article after receiving notice under Subsection (c) that the individual's attendance is required. An offense under this subsection is a Class C misdemeanor.

(e) On the commencement of proceedings under this article, the court shall inform the individual who is the subject of the hearing and the individual's parent in open court of the individual's expunction rights and provide the individual and the individual's parent with a written copy of Article 45.055.

(f) In addition to any other order authorized by this article, the court may order the Department of Public Safety to suspend the driver's license or permit of the individual who is the subject of the hearing or, if the individual does not have a license or permit, to deny the issuance of a license or permit to the individual for a period specified by the court not to exceed 365 days.

(g) A dispositional order under this article is effective for the period specified by the court in the order but may not extend beyond the 180th day after the date of the order or beyond the end of the school year in which the order was entered, whichever period is longer.

(h) In this article, "parent" includes a person standing in parental relation.

Commentary by Ryan Turner

Source: SB 1432.
Effective Date: September 1, 2001.
Applicability: Conduct that occurs on or after effective date.
Summary of Changes: This addition essentially mirrors provisions that were previously contained only in the Family Code (Section 54.021). It lists classes, programs, and other requirements that the court may impose on individuals convicted of *Failure to Attend School* and their parents (including those standing in parental relation).

Code of Criminal Procedure article 45.055. Expunction of Conviction and Records in Failure to Attend School Cases.

(a) An individual convicted of not more than one violation of Section 25.094, Education Code, may, on or after the individual's 18th birthday, apply to the court in which the individual was convicted to have the conviction and records relating to the conviction expunged.

(b) To apply for an expunction, the applicant must submit a written request that:

(1) is made under oath;

(2) states that the applicant has not been convicted of more than one violation of Section 25.094, Education Code; and

(3) is in the form determined by the applicant.

(c) The court may expunge the conviction and records relating to the conviction without a hearing or, if facts are in doubt, may order a hearing on the application. If the court finds that the applicant has not been convicted of more than one violation of Section 25.094, Education Code, the court shall order the conviction, together with all complaints, verdicts, sentences, and other documents relating to the offense, including any documents in the possession of a school district or law enforcement agency, to be expunged from the applicant's record. After entry of the order, the applicant is released from all disabilities resulting from the conviction, and the conviction may not be shown or made known for any purpose. The court shall inform the applicant of the court's decision on the application.

(d) The justice or municipal court may not require an individual who files an application under this article to pay any fee or court costs for seeking expunction.

Commentary by Ryan Turner

Source: SB 1432.
Effective Date: September 1, 2001.
Applicability: Conduct that occurs on or after effective date.
Summary of Changes: This section exclusively applies to the expunction of records of individuals convicted of *Failure to Attend School.* The request may be made on or after the individual's 18th birthday. While the applicant may determine the form, the request must be in writing, under oath, and state that the applicant had no more than one conviction. The court may expunge the conviction without a hearing or order a hearing if facts are in doubt. Subsection (c) specifies what documents are to be expunged. Courts are prohibited from ordering that the applicant pay any fee or court cost for seeking an expunction.

Code of Criminal Procedure article 45.056. Authority to Employ Truancy Case Managers; Reimbursement.

(a) On approval of the commissioners court, city council, school district board of trustees, juvenile board, or other appropriate authority, a justice court, municipal court, school district, juvenile probation department, or other appropriate governmental entity may:

(1) employ a case manager to provide services in truancy cases; or

(2) agree in accordance with Chapter 791, Government Code, to jointly employ a case manager to provide services in truancy cases.

(b) A local entity may apply or more than one local entity may jointly apply to the criminal justice division of the governor's office for reimbursement of all or part of the costs of employing one or more truancy case managers from funds appropriated to the governor's office or otherwise available for that purpose. To be eligible for reimbursement, the entity applying must present to the governor's office a comprehensive plan to reduce truancy in the entity's jurisdiction that addresses the role of the case manager in that effort.

Commentary by Robert Dawson

Source: SB 1432.
Effective Date: September 1, 2001.
Applicability: Conduct that occurs on or after effective date.
Summary of Changes: This new section authorizes justice and municipal courts to employ truancy case managers to assist those courts in managing the cases filed charging Failure to Attend School. Under supervision of the judge, such a case manager could provide pre-trial docketing and diversion services, develop community resources to assist the court in handling these cases, supervise persons given conditional dispositions by the courts and assist the court in handling its contempt docket.

A number of justice and municipal courts have employed juvenile case managers and certainly a juvenile case manager could also handle Failure to Attend School cases. The legislature recognized the authority of justice and municipal courts to employ juvenile case managers by enacting article 45.045 in HB 1118. See the commentary under Segment 5, " Municipal and Justice Court Proceedings." This provision and that are totally consistent with each other to afford maximum flexibility.

If a locality believes that Failure to Attend School is its problem, it could employ a case manager under this section, perhaps obtaining partial funding from a school district. On the other hand, it would employ a general juvenile case manager to handle all

juvenile cases, including Failure to Attend School cases.

Subsection (b) authorizes applications to the Criminal Justice Division of the Governor's Office for funds to reimburse local government for employing truancy case managers. No funds were appropriated for that purpose. Whether the Governor's Office is able and willing to provide funds is unknown at this time.

Code of Criminal Procedure article 102.014. Court Costs for Child Safety Fund in Municipalities.

(d) A person convicted of an offense under Section 25.093 or 25.094, Education Code, [~~or a child convicted of an offense under Section 25.094, Education Code,~~] shall pay as taxable court costs $20 in addition to other taxable court costs. The additional court costs under this subsection shall be collected in the same manner that other fines and taxable court costs in the case are collected.

Commentary by Ryan Turner

Source: SB 1432.
Effective Date: September 1, 2001.
Applicability: Conduct that occurs on or after effective date.
Summary of Changes: This amendment makes minor conforming changes.

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

(b) Conduct indicating a need for supervision is:

(1) subject to Subsection (f) [~~of this section~~], conduct, other than a traffic offense, that violates:

(A) the penal laws of this state of the grade of misdemeanor that are punishable by fine only; or

(B) the penal ordinances of any political subdivision of this state;

(2) the [~~unexcused voluntary~~] absence of a child on 10 or more days or parts of days within a six-month period in the same school year or on three or more days or parts of days within a four-week period from school [~~without the consent of his parents~~];

(3) the voluntary absence of a child from the child's [~~his~~] home without the consent of the child's [~~his~~] parent or guardian for a substantial length of time or without intent to return;

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

(5) an act that violates a school district's previously communicated written standards of student conduct for which the child has been expelled under Section 37.007(c), Education Code; or

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

(d) It is an affirmative defense to an allegation of conduct under Subsection (b)(2) that one or more of the absences required to be proven under that subsection have been excused by a school official or should be excused by the court or that one of the absences was involuntary. The burden is on the respondent to show by a preponderance of the evidence that the absence has been or should be excused or that the absence was involuntary. A decision by the court to excuse an absence for purposes of this subsection does not affect the ability of the school district to determine whether to excuse the absence for another purpose. [~~For the purpose of Subsection (b)(2) of this section an absence is excused when the absence results from:~~

[~~(1) illness of the child;~~

[~~(2) illness or death in the family of the child;~~

[~~(3) quarantine of the child and family;~~

[~~(4) weather or road conditions making travel dangerous;~~

[~~(5) an absence approved by a teacher, principal, or superintendent of the school in which the child is enrolled; or~~

[~~(6) circumstances found reasonable and proper.~~]

(e) For the purposes of [~~Subdivisions (2) and (3) of~~] Subsection (b)(3) [~~(b) of this section~~], "child" does not include a person who is married, divorced, or widowed.

(f) Except as provided by Subsection (g), conduct [~~Conduct~~] described under Subsection (b)(1) [~~of this section~~], other than conduct that violates Section 49.02, Penal Code, prohibiting public intoxication, does not constitute conduct indicating a need for supervision unless the child has been referred to the juvenile court under Section 51.08(b) [~~of this code~~].

(g) In a county with a population of less than 100,000, conduct described by Subsection (b)(1)(A) that violates Section 25.094, Education Code, is conduct indicating a need for supervision.

Commentary by Robert Dawson

Source: SB 1432.
Effective Date: September 1, 2001.
Applicability: Conduct that occurs on or after effective date.

Summary of Changes: The amendment in subsection (b)(2) eliminates from the definition of truancy the elements that the absence from school be unexcused, voluntary and without the consent of the parents.

The addition of the requirement that the absences must be during the same school year is intended to prevent schools from tacking absences at the beginning of a school year to those that occurred at the end of the previous year. All kids, even truants, deserve a fresh start from time to time.

Subsection (d) makes it an affirmative defense to truancy charges that a critical absence was excused by school officials or should be excused in the discretion of the juvenile court. It is also made an affirmative defense that the absence was involuntary, for example, when the parent keeps the child home from school or takes the child on a trip. In such cases, the proper remedy is criminal proceedings against the parent in justice or municipal court. The fact that a court may excuse an absence in judicial proceedings does not prevent the school from refusing under its own standards to excuse an absence for purpose of determining course credit.

The list of excuses in subsection (d) is repealed because it was not particularly helpful in view of the all encompassing provision regarding "circumstances found reasonable and proper."

The amendment in subsection (e) eliminates the defense to truancy that the child has ever been married. That defense seems inappropriate in modern society in which education is critical to the ability of persons to support families. On the other hand, the marriage defense is preserved for the CINS offense of running away from home since a married person should have the right to determine his or her own place of residence.

The addition of (g) is most unfortunate because it will cause untold confusion and mischief. It was added by the House to SB 1432. It states what is already the law without stating it to be so and is based on a fundamental misunderstanding of juvenile law. Failure to attend school under the Education Code Section 25.094 and truancy under Family Code Section 51.03(b)(2) have identical elements. Under law prior to the addition of subsection (g), a peace office or attendance officer in any county can file any school absence in justice or municipal court as failure to attend school under 25.094 or in the juvenile court as truancy under Section 51.03(b)(2). That is true in a county of any population, not just one under 100,000 population. This amendment does nothing to change the law and causes only confusion. Best for all concerned to pretend it does not exist.

Family Code § 51.04. Jurisdiction.

(a) This title covers the proceedings in all cases involving the delinquent conduct or conduct indicating a need for supervision engaged in by a person who was a child within the meaning of this title at the time the person [~~he~~] engaged in the conduct, and, except as provided by Subsection (h), the juvenile court has exclusive original jurisdiction over proceedings under this title.

(h) In a county with a population of less than 100,000, the juvenile court has concurrent jurisdiction with the justice and municipal courts over conduct engaged in by a child that violates Section 25.094, Education Code.

Commentary by Robert Dawson

Source: SB 1432.
Effective Date: September 1, 2001.
Applicability: Conduct that occurs on or after effective date.
Summary of Changes: This totally unnecessary and mischievous amendment adds nothing to juvenile law. The juvenile court in counties of all sizes already has concurrent jurisdiction over such cases, only it is called truancy rather than failure to attend school. The offense elements are the same--only the offense titles are different.

Family Code § 54.021. Justice or Municipal Court Truancy.

(b) A justice or municipal court may exercise jurisdiction over a person alleged to have engaged in conduct indicating a need for supervision by engaging in conduct described in Section 51.03(b)(2) in a case where:

(1) the juvenile court has waived its original jurisdiction under this section; and

(2) a complaint is filed by the appropriate authority in the justice or municipal court charging an offense under Section 25.094, Education Code.

(c) A proceeding in a justice or municipal court on a complaint charging an offense under Section 25.094, Education Code, is governed by Chapter 45, Code of Criminal Procedure. [~~A justice or municipal court may exercise jurisdiction under this section without regard to whether the justice of the peace or municipal judge for the court is a licensed attorney or the hearing for a case is before a jury consisting of six persons.~~]

Commentary by Ryan Turner

Source: SB 1432.
Effective Date: September 1, 2001.
Applicability: Conduct that occurs on or after effective date.

Summary of Changes: This amendment seeks to assist municipal and justice courts by ridding them of having to delineate between civil school attendance provisions contained in the Family Code and criminal school attendance provisions contained in the Education Code. As written, Subsection 54.021(a) of the Family Code allows juvenile courts to waive their exclusive original jurisdiction of truancy as defined in Section 51.03(b)(2). Such a waiver is effective only if the municipal or justice court permits such a waiver. Under the former law, municipal and justice courts allowing the waiver were required to comply with all pertinent Family Code provisions and to handle the case as a civil matter. As amended, Section 54.021 now specifies that when a juvenile court sends such a case to either a justice or municipal court the case must be filed as a complaint alleging a criminal matter (specifically, *Failure to Attend School*, Section 25.094, Education Code).

Family Code § 54.041. Orders Affecting Parents and Others.

(f) If a child is found to have engaged in conduct indicating a need for supervision described under Section 51.03(b)(2) or (g) [~~of this code~~], the court may order the child's parents or guardians to attend a program [~~class~~] described by Section 25.093(f) [~~25.093(h)~~], Education Code, if a program is available [~~the school district in which the child's parents or guardians reside offers a class under that section~~].

Commentary by Ryan Turner

Source: SB 1432.
Effective Date: September 1, 2001.
Applicability: Conduct that occurs on or after September 1, 2001.
Summary of Changes: This amendment makes conforming changes and potentially increases the scope and duration of parental rehabilitation by changing "class" to "program." Furthermore, it allows courts to order parents to attend available programs offered by entities other than the school district.

Education Code § 7.111. High School Equivalency Examination.

(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; [~~or~~]

(2) 16 years of age or older and:

(A) is enrolled in a Job Corps training program under the Workforce Investment Act of 1998 (29 U.S.C. Section 2801 et seq.) [~~Job Training Partnership Act (29 U.S.C. Section 1501 et seq.)~~], and its subsequent amendments; or

(B) 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 Article 45.054(a)(1)(C), Code of Criminal Procedure [~~Section 54.021(d)(1)(B), Family Code~~].

Commentary by Ryan Turner

Source: SB 1432.
Effective Date: September 1, 2001.
Applicability: Conduct that occurs on or after effective date.
Summary of Changes: This amendment reflects the renaming and recodification of the former Job Training Partnership Act. It also adds reference to the authority in which a municipal or justice court can order a person to take the high school equivalency examination.

Repealed Provisions:

Section 25.096, Education Code, is repealed.

Sections 52.027 and 52.028, Subsections (c) through (h), Section 54.021, and Section 54.022, Family Code, are repealed.

Commentary by Robert Dawson

Source: SB 1432.
Effective Date: September 1, 2001.
Applicability: Conduct that occurs on or after September 1, 2001.
Summary of Changes: Section 25.096 of the Education Code authorized peace officers to enforce the attendance provisions. Those powers are now defined by section 25.091. Family Code sections 52.027 and 52.28 are repealed because their substance was modified and re-enacted as articles 45.058 and 45.059 of the Code of Criminal Procedure, respectively.

Education Code Section 39.073. Determining Accreditation Status

(f) In the computation of dropout rates under Section 39.051(b)(2), a student who is released from a juvenile pre-adjudication secure detention facility or juvenile post-adjudication secure correctional facility and fails to enroll in school or a student who leaves a residential treatment center after receiving treatment for fewer than 85 days and fails to enroll in school may not be considered to have dropped out from the campus or school district serving the facility or center

unless that campus or district is the one to which the student is regularly assigned.

Commentary by Lisa A. Capers

Source: HB 457
Effective Date: September 1, 2001
Applicability: Applies to the computation of dropout rates beginning with the computation made for the 2001-2002 school year.
Summary of Changes: School districts are often frustrated with being held accountable for the education of large numbers of students that are not from their district but are housed in juvenile facilities in their district. Currently, a juvenile held in a juvenile pre-adjudication secure detention facility or a juvenile post adjudication secure correctional facility is considered for enrollment purposes a resident of the school district in which the facility is located. A school district is required to serve a facility that is located within that district. Student data from the facility must be used for the purpose of determining an accountability rating. A juvenile held at a facility often lives in a school district that does not serve the facility. If a juvenile is released from the facility and does not enroll in school, the school district that serves the facility is charged with a dropout for the purpose of determining an accountability rating. This might unfairly prevent a school from achieving a recognized or exemplary rating because they are held accountable for students who do not live in the district

This amendment specifies that a student who is released from a facility and who fails to enroll in school will not be considered a dropout of the school district serving the facility, unless the district is the one to which the student is regularly assigned. Hopefully, this provision will make juvenile facilities a bit more welcomed into local school districts.

Education Code Section 37.006. Removal for Certain Conduct

(a) Except as provided by Section 37.007(a)(3) or (b), a student shall be removed from class and placed in an alternative education program as provided by Section 37.008 if the student:

(1) engages in conduct involving a public school that contains the elements of the offense of false alarm or report under Section 42.06, Penal Code, or terroristic threat under Section 22.07, Penal Code; or

(2) commits the following on or within 300 feet of school property, as measured from any point on the school's real property boundary line, or while attending a school-sponsored or school-related activity on or off of school property:

(A) [~~(1)~~] engages in conduct punishable as a felony;

(B) [~~(2)~~] engages in conduct that contains the elements of the offense of assault under Section 22.01(a)(1), Penal Code [~~, or terroristic threat under Section 22.07, Penal Code~~];

(C) [~~(3)~~] sells, gives, or delivers to another person or possesses or uses or is under the influence of:

(i) [~~(A)~~] marihuana or a controlled substance, as defined by Chapter 481, Health and Safety Code, or by 21 U.S.C. Section 801 et seq.; or

(ii) [~~(B)~~] a dangerous drug, as defined by Chapter 483, Health and Safety Code;

(D) [~~(4)~~] sells, gives, or delivers to another person an alcoholic beverage, as defined by Section 1.04, Alcoholic Beverage Code, commits a serious act or offense while under the influence of alcohol, or possesses, uses, or is under the influence of an alcoholic beverage;

(E) [~~(5)~~] engages in conduct that contains the elements of an offense relating to abusable glue or aerosol paint under Sections 485.031 through 485.035, Health and Safety Code, or relating to volatile chemicals under Chapter 484, Health and Safety Code; or

(F) [~~(6)~~] engages in conduct that contains the elements of the offense of public lewdness under Section 21.07, Penal Code, or indecent exposure under Section 21.08, Penal Code.

Commentary by Lisa A. Capers

Source: HB 1088
Effective Date: September 1, 2001
Applicability: This Act applies beginning with the 2001-2002 school year.
Summary of Changes: A common problem in public schools is a false alarm in the form of a fire alarm, bomb threat, and other false reports that interrupt school operations and cause considerable anxiety among parents, students, and school personnel. House Research reports that in May 1999 the Corpus Christi Independent School District reported nearly two dozen false threats of bombs or violence at area schools, resulting in the evacuation of one middle school. This amendment requires the school district to remove a student who makes a false report to the school district's alternative education program (AEP).

Education Code Sections 37.007. Expulsion for Serious Offenses

(a) A student shall be expelled from a school if the student, on school property or while attending a school-sponsored or school-related activity on or off of school property:

(1) uses, exhibits, or possesses:

(A) a firearm as defined by Section 46.01(3), Penal Code;

(B) an illegal knife as defined by Section 46.01(6), Penal Code, or by local policy;

(C) a club as defined by Section 46.01(1), Penal Code; or

(D) a weapon listed as a prohibited weapon under Section 46.05, Penal Code;

(2) engages in conduct that contains the elements of the offense of:

(A) aggravated assault under Section 22.02, Penal Code, sexual assault under Section 22.011, Penal Code, or aggravated sexual assault under Section 22.021, Penal Code;

(B) arson under Section 28.02, Penal Code;

(C) murder under Section 19.02, Penal Code, capital murder under Section 19.03, Penal Code, or criminal attempt, under Section 15.01, Penal Code, to commit murder or capital murder;

(D) indecency with a child under Section 21.11, Penal Code; or

(E) aggravated kidnapping under Section 20.04, Penal Code; or

(3) engages in conduct specified by Section 37.006(a)(2)(C) or (D) [~~37.006(a)(3) or (4)~~], if the conduct is punishable as a felony.

(b) A student may be expelled if the student:

(1) engages in conduct involving a public school that contains the elements of the offense of false alarm or report under Section 42.06, Penal Code, or terroristic threat under Section 22.07, Penal Code; or

(2) [~~,~~] while on school property or while attending a school-sponsored or school-related activity on or off of school property:

(A) [~~(1)~~] sells, gives, or delivers to another person or possesses, uses, or is under the influence of any amount of:

(i) [~~(A)~~] marihuana or a controlled substance, as defined by Chapter 481, Health and Safety Code, or by 21 U.S.C. Section 801 et seq.;

(ii) [~~(B)~~] a dangerous drug, as defined by Chapter 483, Health and Safety Code; or

(iii) [~~(C)~~] an alcoholic beverage, as defined by Section 1.04, Alcoholic Beverage Code;

(B) [~~(2)~~] engages in conduct that contains the elements of an offense relating to abusable glue or aerosol paint under Sections 485.031 through 485.035, Health and Safety Code, or relating to volatile chemicals under Chapter 484, Health and Safety Code; or

(C) [~~(3)~~] engages in conduct that contains the elements of an offense under Section 22.01(a)(1), Penal Code, against a school district employee or a volunteer as defined by Section 22.053.

(d) A student shall be expelled if the student engages in conduct that contains the elements of any offense listed in Subsection (a), and may be expelled if the student engages in conduct that contains the elements of any offense listed in Subsection (b)(2)(C) [~~(b)(3)~~], against any employee or volunteer in retaliation for or as a result of the person's employment or association with a school district, without regard to whether the conduct occurs on or off of school property or while attending a school-sponsored or school-related activity on or off of school property.

Commentary by Lisa A. Capers

Source: HB 1088

Effective Date: September 1, 2001

Applicability: This Act applies beginning with the 2001-2002 school year.

Summary of Changes: This section makes conforming changes and gives the school district the discretion to expel a student who makes a false report or terroristic threat involving a public school.

Education Code Section 37.004. Placement of Students With Disabilities

(a) The placement of a student with a disability who receives special education services may be made only by a duly constituted admission, review, and dismissal committee.

(b) Any disciplinary action regarding a student with a disability who receives special education services that would constitute a change in placement under federal law may be taken only after the student's admission, review, and dismissal committee conducts a manifestation determination review under 20 U.S.C. Section 1415(k)(4) and its subsequent amendments. Any disciplinary action regarding the student shall be determined in accordance with federal law and regulations, including laws or regulations requiring the provision of:

(1) functional behavioral assessments;

(2) positive behavioral interventions, strategies, and supports; and

(3) behavioral intervention plans.

(c) A student with a disability who receives special education services may not be placed in alternative education programs solely for educational purposes [~~if the student does not also meet the criteria for alternative placement in Section 37.006(a) or 37.007(a)~~].

(d) A teacher in an alternative education program under Section 37.008 who has a special education assignment must hold an appropriate certificate or permit for that assignment.

(e) Notwithstanding any other provision of this subchapter, in a county with a juvenile justice alternative education program established under Sec-

tion 37.011, the expulsion under a provision of Section 37.007 described by this subsection of a student with a disability who receives special education services must occur in accordance with this subsection and Subsection (f). The school district from which the student was expelled shall, in accordance with applicable federal law, provide the administrator of the juvenile justice alternative education program or the administrator's designee with reasonable notice of the meeting of the student's admission, review, and dismissal committee to discuss the student's expulsion. A representative of the juvenile justice alternative education program may participate in the meeting to the extent that the meeting relates to the student's placement in the program. This subsection applies only to an expulsion under:

(1) Section 37.007(b), (c), or (f); or

(2) Section 37.007(d) as a result of conduct that contains the elements of any offense listed in Section 37.007(b)(3) against any employee or volunteer in retaliation for or as a result of the person's employment or association with a school district.

(f) If, after placement of a student in a juvenile justice alternative education program under Subsection (e), the administrator of the program or the administrator's designee has concerns that the student's educational or behavioral needs cannot be met in the program, the administrator or designee shall immediately provide written notice of those concerns to the school district from which the student was expelled. The student's admission, review, and dismissal committee shall meet to reconsider the placement of the student in the program. The district shall, in accordance with applicable federal law, provide the administrator or designee with reasonable notice of the meeting, and a representative of the program may participate in the meeting to the extent that the meeting relates to the student's continued placement in the program.

(g) Subsections (e) and (f) and this subsection expire September 1, 2003.

Commentary by Lisa A. Capers
and
Richard LaVallo
Senior Attorney for Advocacy, Inc.

Source: SB 189
Effective Date: June 15, 2001
Applicability: This Act applies beginning with the 2001-2002 school year.
Summary of Changes: Senate Bill 189 is a critically important bill for students receiving special education services, especially if those students are in Juvenile Justice Alternative Education Programs (JJAEPs). The bill itself had an interesting beginning and evolution to the ultimate version found in SB 189. The first part of this commentary will give the reader the legislative background information and a brief summary of the bill itself. Following that is another synopsis of the bill by Richard LaVallo, Senior Attorney for Advocacy, Incorporated in Austin. Richard was part of the group of practitioners who drafted this legislation and he practices special education law. His comments relate to the special protections under federal law for special education students and should be very useful to all juvenile justice practitioners.

During the legislative hearings on the budget for the Texas Juvenile Probation Commission (TJPC), the Chair of the Criminal Justice Subcommittee of the House Appropriations Committee, Representative Sylvester Turner of Harris County, inquired about the number of special education students who were being sent to JJAEPs statewide. TJPC provided a report to Rep. Turner that showed that 21% of all the students in the JJAEPs are students that are entitled to receive special education services under federal law. The vast majority of those special education students in the JJAEPS have been expelled from school for a discretionary reason as opposed to a mandatory reason (see Education Code Sections 37.006 and 37.007). Rep. Turner was gravely concerned about this high percentage of students. He felt very strongly that the legislature did not create JJAEPs to serve special education students and he further believed that it was not the legislature's intent to place special education students into these programs.

Thus, Rep. Turner filed a bill to address this situation. House Bill 2108 was filed mid way through the session and its original language would have excluded all special education students (both mandatory and discretionary expulsions) from being placed into a JJAEP if they were expelled. HB 2108 was heard in the Juvenile Justice and Family Issues Committee in the House. This committee supported the bill but felt that the chances of passing the bill as originally written were slim. Therefore, the bill was amended to apply only to discretionary expulsions and not to mandatory expulsions. The bill passed the House and went to the Senate where it did not get a hearing because of a lack of support by the education community. At that point, HB 2108 was dead. At the request of Rep. Turner, a group of representatives from the education community, Advocacy, Inc. and TJPC met to develop compromise language to amend onto another bill that was moving. The language they agreed upon was added in as an amendment to SB 189 in the late hours of the session because SB 189 was the only bill still alive, moving and related to JJAEPs. The final language of SB 189 was changed somewhat at the conference committee stage and reflects the best compromise that could be achieved.

This amendment to Section 37.004 is intended to reiterate the protections for students receiving special education services that are provided by federal

law. Basically, the language requires an Admission, Dismissal and Review meeting (ARD) to be held before the placement of any student with a disability is changed. So, before a special education student can be removed to an Alternative Education Program (AEP) or expelled to a JJAEP, the ARD committee must determine the appropriate placement for the child based upon the child's needs.

The really important part of this amendment is that there is now a requirement that the JJAEP administrator be given notice of the ARD hearing for any special education student that is expelled for a discretionary reason. This applies to those counties who must operate a JJAEP (i.e., counties with a population over 125,000). The notice must be reasonable, and the JJAEP administrator can participate in the meeting. At this meeting, it is critical for the JJAEP administrator to speak up and provide input to the ARD committee regarding whether the JJAEP can or cannot serve the student appropriately (i.e., meet the student's need for special services as detailed in the individual education plan—IEP). If a JJAEP cannot meet the students needs, the JJAEP administrator should be on the record making this fact clearly known to the ARD committee. The ARD committee will then determine the appropriate placement of the student. If the ARD committee overrides the recommendation of the JJAEP administrator against placing the child in the JJAEP, then the child's parents have steps they can take under federal law.

Under Subsection (f), a mechanism is provided for the JJAEP administrator who believed the JJAEP could meet the child's needs, but subsequently determines that the child's needs cannot in fact be met. In this case, the administrator must provide written notice of these concerns to the expelling school district. Then the ARD committee must again meet, with reasonable notice to the JJAEP administrator. At this meeting, the JJAEP administrator needs to present the facts and evidence to support the fact that the JJAEP is an inappropriate placement for the child because the program cannot meet the child's needs. It is recommended that JJAEP administrators sufficiently document in writing all evidence and testimony presented at any of these ARD meetings.

It should be noted that although SB 189 applies only to discretionary expulsions to the JJAEP, this was done as a political strategy to help get the bill passed. Federal special education law draws no distinction between discretionary and mandatory expulsions if the child is receiving special education services. Therefore, in reality, it is just as important for the JJAEP administrator to be present at the ARD meeting for a mandatory expulsion—unfortunately, the administrator is not guaranteed notice of this meeting since SB 189 only applies to discretionary expulsions. Administrators should attempt to get the school district to provide this same notice for all expulsions and attend those ARD meetings to provide input on whether the JJAEP can provide appropriate services to the student. This can be done by the juvenile board in the Memorandum of Understanding (MOU) negotiations that take place each year regarding the JJAEP as required in Education Code Section 37.011.

The following section was written by Richard LaVallo who is the Senior Attorney for Advocacy, Incorporated. Advocacy, Inc. has handled several cases in Texas dealing with the placement of special education students into JJAEPs. Richard provides another overview of the SB 189 provisions as well as a good synopsis of the protections to which a special education student is entitled.

Commentary by Richard LaVallo

Under federal law, a school district must provide a free appropriate public education to a student with a disability who has been expelled for more than ten school days. 20 U.S.C. Section 1412(a)(1)(A). If a student is expelled, the school must provide educational services in a JJAEP to the extent necessary to enable the student to progress in the general curriculum and advance toward achieving his or her IEP goals. 34 C.F.R.. Section 300.121(d)(2)(i). Not only must the JJAEP enable the student to continue to receive those services and modifications described in the student's current IEP, but also include the services and modifications designed to prevent the behavior, which resulted in the placement in the JJAEP from recurring. 34 C.F.R. Section 300.522(b)(1), (2).

In other words, federal law requires that the student receive the special education services that had been provided to him or her prior to placement in the JJAEP. Before a student is placed in the JJAEP, the school district cannot change the student's IEP that had been approved prior to the disciplinary incident in order to conform to the educational services offered at the JJAEP. For instance, the ARD committee cannot change a student's individualized behavior intervention plan (IBIP) in order to be consistent with the JJAEP's behavior management system. Also, if a student received special education transportation as a related service before placement in the JJAEP, the ARD committee would be prohibited from requiring the student's parent to provide transportation to the JJAEP.

S.B. 189 provides the administrator of the JJAEP or the administrator's designee with the opportunity to ensure that students with disabilities are provided with appropriate educational services in the JJAEP. For the first time, a representative of the JJAEP will receive notice of the initial ARD meeting to discuss placement in the JJAEP and be able to participate in determining if the student's IEP can be

implemented in the JJAEP. Even though the representative is not a voting member of the ARD committee, the representative can offer valuable input to the student's parent and the other committee members as to whether the student's IEP can be implemented in the JJAEP. By being aware of the special education and related services that the student had been receiving prior to the disciplinary incident, the representative can request that the ARD committee approve the continuation of these services in the JJAEP.

S.B. 189 also provides the administrator of the JJAEP or his designee with a mechanism to raise concerns after the placement of a student with a disability in the JJAEP. If a student's educational or behavioral needs cannot be met in the JJAEP, the administrator or his designee must provide written notice of those concerns to the school district from which the student was expelled. This will trigger an ARD meeting in which a representative of the JJAEP will be able to participate in the determination of whether the student should remain in the JJAEP. At this meeting, the student's parent will hear those concerns about the student's continued placement in the JJAEP. If the ARD committee refuses to change the student's placement or provide appropriate services to address the concerns raised by the administrator or his designee, the parent will be able to resort to the procedural safeguards under federal law to challenge the ARD committee's decision.

S.B. 189 may also be used to initiate the evaluation of students who may be in need of special education services. It is not uncommon for a student to be identified as requiring special education services after his or her placement in the JJAEP. That is, the behavior or the academic performance of the student may demonstrate a need for special education. Under federal law, a request may be made to evaluate a student not yet eligible for special education during his or her placement in the JJAEP. 20 U.S.C. Section 1415(k)(8)(C)(ii). The evaluation must be conducted in an expedited manner. Since S.B. 189 permits the administrator or his designee to notify the school district about concerns related to the behavioral or educational performance of a student in a JJAEP, the procedure set forth in subsection (f) can be utilized to request an evaluation to determine whether the student is eligible for special education services. This is consistent with existing state law, which allows "another appropriate person" to initiate a referral for an evaluation. TEX. EDUC. CODE . 29.004.

With zero tolerance in public schools becoming the norm in Texas, a significant number of students with disabilities are being placed in JJAEP as discussed earlier. In order to ensure that students with disabilities receive appropriate educational services in JJAEP, it is imperative that the administrators of JJAEPs, parents, defense attorneys and prosecutors become aware of the rights of students with disabilities under federal law. If you have any questions or concerns about the placement or provision of special education services to students with disabilities in JJAEPs, information or assistance may be obtained from Advocacy, Incorporated by calling Richard LaVallo at 512-454-4816.

Education Code Section 37.011. Juvenile Justice Alternative Education Program

(f) A juvenile justice alternative education program must operate at least[~~:~~

[~~(1)~~] seven hours per day[~~;~~] and

[~~(2)~~] 180 days per year, except that a program may apply to the Texas Juvenile Probation Commission for a waiver of the 180-day requirement. The commission may not grant a waiver to a program under this subsection for a number of days that exceeds the highest number of instructional days waived by the commissioner during the same school year for a school district served by the program.

Commentary by Lisa A. Capers

Source: SB 189
Effective Date: June 15, 2001
Applicability: This Act applies beginning with the 2001-2002 school year.
Summary of Changes: Juvenile justice alternative education programs (JJAEP) are required to operate for 180 days per year. Currently, these programs cannot operate according to the same schedule used by the local school district. School districts have several teacher in-service days each school year for teacher training, planning and development. JJAEPs need the same opportunity for in-service days and frequently participate in trainings held by the local school district. This amendment authorizes a JJAEP to apply to the Texas Juvenile Probation Commission (TJPC) for a waiver of the 180-day requirement.

5. Municipal and Justice Court Proceedings

Code of Criminal Procedure Article 45.0216. Expunction of Certain Conviction Records of Children.

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

(b) A person convicted of not more than one offense described by Section 8.07(a)(4) or (5), Penal Code, while the person was a child may, on or after the person's 17th birthday, apply to the court in which the child was convicted to have the conviction expunged as provided by this Article.

(c) The person must make a written request to have the records expunged. The request must be under oath.

(d) The request must contain the person's statement that the person was not convicted while the person was a child of any offense described by Section 8.07(a)(4) or (5), Penal Code, other than the offense the person seeks to have expunged.

(e) The judge shall inform the person and any parent in open court of the person's expunction rights and provide them with a copy of this Article.

(f) If the court finds that the person was not convicted of any other offense described by Section 8.07(a)(4) or (5), Penal Code, while the person was a child, the court shall order the conviction, together with all complaints, verdicts, sentences, and prosecutorial and law enforcement records, and any other documents relating to the offense, expunged from the person's record. After entry of the order, the person is released from all disabilities resulting from the conviction and the conviction may not be shown or made known for any purpose.

(g) This Article does not apply to any offense otherwise covered by:

(1) Chapter 106, Alcoholic Beverage Code;

(2) Chapter 161, Health and Safety Code; or

(3) Section 25.094, Education Code.

(h) Records of a person under 17 years of age relating to a complaint dismissed as provided by Article 45.051 or 45.052 may be expunged under this Article.

(i) The justice or municipal court may not require a person who requests expungement under this Article to pay any fee or court costs.

(j) The procedures for expunction provided under this Article are separate and distinct from the expunction procedures under Chapter 55.

Commentary by James Bethke

Source: HB 1118
Effective Date: September 1, 2001
Applicability: Conduct occurring on or after effective date
Summary of Changes: Code of Criminal Procedure Article 45.0216 is entirely new and replaces Article 58.01, *Sealing Files and Records of Children* in justice and municipal court cases.

This provision allows a person who has reached 17 years of age to file a request in the court where he or she was convicted to have his or her records expunged. To qualify for expungement, a child must not have been convicted of more than one non-traffic Class C misdemeanor or ordinance violation. Also, the records of a person under 17 years of age relating to a complaint dismissed through deferred disposition or teen court may be expunged under this Article. This Article does not change existing law concerning expungement of alcohol, tobacco, or failure to attend offenses committed by minors. Moreover, the procedures for expunction provided under this Article are separate and distinct from the expunction procedures provided under Chapter 55.

Subsections (c) and (d) provide that the person's request must be: 1) in writing; 2) under oath; and, 3) contain the person's statement that he or she has not been convicted of another non-traffic Class C misdemeanor other than the one sought to be expunged. Although the Article does not provide a particular form in which the request must be made, in keeping with the objectives of Chapter 45, the form should be simple and without undue formalism.

Subsection (e) requires the judge to inform the child and any parent in open court of the child's expunction rights and to provide them with a copy of this Article.

If the court determines that the person is entitled to expunction, subsection (f) provides that the court shall order the conviction, together with all complaints, verdicts, sentences, and prosecutorial and law enforcement records, and any other documents relating to the offense, expunged from the person's record. After entry of the order, the person is released from all disabilities resulting from the conviction and the conviction may not be shown or made known for any purpose.

Subsection (i) prohibits the collection of any court costs or fees for this procedure.

Code of Criminal Procedure Article 45.050. Failure to Pay Fine; Contempt; Juveniles.

(b) If a person who is a child under Section 51.02, Family Code, 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 54.023 [~~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 James Bethke

Source: HB 1118
Effective Date: September 1, 2001
Applicability: Conduct occurring on or after effective date
Summary of Changes: Section 52.027(h) was repealed by HB 1118 and replaced with section 54.023, *Justice or Municipal Court Enforcement*. Repealed section 52.027 (h) pertained to the contempt powers of justice and municipal court judges over juvenile offenders. New section 54.023 of the Family Code incorporates the contempt provisions formerly in section 52.027(h) and provides alternative tools for justice and municipal courts to enforce its orders. SB 1432 made additional changes to Article 45.050 similar to those made by HB 1118 regarding section 54.023. See commentary that follows for further elaboration.

Code of Criminal Procedure Article 45.050. Failure to Pay Fine; Contempt; Juveniles.

(a) In this Article, "child" has the meaning assigned by Article 45.058(h).

(b) A justice [~~court~~] or municipal court may not order the confinement of a [~~person who is a~~] child [~~for the purposes of Title 3, Family Code,~~] for:

(1) the failure to pay all or any part of a fine or costs imposed for the conviction of an offense punishable by fine only; or

(2) contempt of another order of a justice or municipal court.

(c) [~~(b)~~] If a [~~person who is a~~] child [~~under Section 51.02, Family Code,~~] 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) has jurisdiction to [~~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; or

(2) may retain jurisdiction of the case and:

(A) hold the child in contempt of the justice or municipal court order and impose a fine not to exceed $500; or

(B) order the Department of Public Safety to suspend the child's driver's license or permit or, if the child does not have a license or permit, to deny the issuance of a license or permit to the child until the child fully complies with the orders of the court.

(d) A court that orders suspension or denial of a driver's license or permit under Subsection (c)(2)(B) shall notify the Department of Public Safety on receiving proof that the child has fully complied with the orders of the court.

Commentary by James Bethke

Source: SB 1432.
Effective Date: September 1, 2001.
Applicability: Conduct that occurs on or after effective date.
Summary of Changes: As noted in the preceding section, the changes made by SB 1432 to Article 45.050 are analogous to the changes made by HB 1118 in enacting section 54.023 of the Family Code. Since the legislative process is sometimes a "crapshoot" it is not uncommon for similar language to be proposed in different bills affecting the same subject matter. This is one of those instances.

In 1991, justice and municipal courts regained jurisdiction over juvenile offenders charged with nonjailable misdemeanors. For the past ten years many of these courts have grappled with correlating the definition of child contained in the Penal Code with that found in the Family Code. The change made by subsection (a) combined with the revised definition a "child" in Article 45.058(h) eliminated ambiguity that was inherent in the former definition of "child." Article 45.058 defines a child as a person who is 10 years of age and younger than 17 years of age for purpose of offenses with the jurisdiction of justice or municipal court.

Subsection (b) makes it clear that a "child" may not be confined for contempt of court.

Subsection (c) adds an alternative tool of driver's license suspension or denial for justice and municipal courts to enforce its orders. On or after September 1, 2001, when conduct of a child constitutes contempt of court, the justice or municipal may: 1) refer the child to juvenile court for delinquent conduct; 2) impose a fine not to exceed $500; or, 3) order the Department of Public Safety to suspend or deny issuance of the person's driver's license until the person fully complies with the orders of the court.

Under subsection (d), it is the responsibility of the justice or municipal court to notify the Department of Public Safety on receipt of proof that the person has fully complied with the orders of the court.

See the discussion of Family Code § 54.023 in Segment 1, which contains overlapping provisions.

Code of Criminal Procedure Article 45.054. Authority to Employ Case Managers for Juvenile Cases

(a) A justice or municipal court, with the written consent of the city council or the commissioners court, as appropriate, may employ a case manager to provide services in cases before the court dealing with juvenile offenders consistent with the court's statutory powers.

(b) One or more justice or municipal courts, with the written consent of the city council or the commissioners court, as appropriate, may agree under Chapter 791, Government Code, to jointly employ a case manager.

Commentary by Robert Dawson

Source: HB 1118
Effective Date: September 1, 2001
Applicability: Conduct occurring on or after effective date
Summary of Changes: This section authorizes justice and municipal courts to employ case mangers to assist in handling their juvenile dockets. Many courts have already done so. Case managers may be employed full or part-time and several courts may combine to employ one person to serve all of the courts. The case manager can manage the juvenile docket and provide pre-trial diversion services, as well as supervise juveniles placed on conditional disposition and assist in managing the contempt docket.

No funds were specifically appropriated for employing juvenile case mangers. Some courts have used local funds, while others have been able to supplement those funds with funds from various criminal justice sources.

This provision is virtually the same as article 45.056 enacted by Senate Bill 1432, the truancy bill, except that provision is restricted to managing truancy cases. A single case manager appointed under this section can provide services in all juvenile cases, including Failure to Attend School cases. See the segment on Education and Juvenile Justice for a discussion of the truancy case manager provision.

Section 51.08 of the Family Code provides that juvenile or municipal court that employs a juvenile case manger is not required to transfer a juvenile's case to juvenile court when the defendant has two prior convictions. The court may transfer, but is not required to do so because with the case manager in place the court should be better equipped to handle the case itself. See the commentary to Section 51.08 in the segment on Title 3 and Related Provisions.

HB 1118. Section 71.

The following are repealed:

(1) Sections 52.027(h) and (j), Family Code;

(2) Section 54.022(e), Family Code;

(3) Article 58.01, Code of Criminal Procedure;

(4) Section 21.002(h), Government Code

Commentary by James Bethke

Source: HB 1118
Effective Date: September 1, 2001
Applicability: Conduct occurring on or after effective date
Summary of Changes: Section 52.027 (h) and (j) pertained to the contempt powers, prohibition against jailing juveniles, and the definition of "child" for the purpose of justice and municipal court practice. The contempt powers and prohibition against jailing juveniles coupled with revisions was placed in the following two code sections: 1) Article 45.050, Code of Criminal Procedure entitled *Failure to Pay Fine; Contempt; Juveniles*; and, 2) section 54.023, Family Code entitled *Justice or Municipal Court: Enforcement*. The revised definition of "child" for justice and municipal court practice was codified in Article 45.58(h), Code of Criminal Procedure.

Section 54.022 (e) pertained to referral to juvenile court from a justice or municipal court for contempt by a juvenile. This section is no longer necessary in that it is covered elsewhere as noted above. Also note, SB 1432 repealed section 54.022, *Justice or Municipal Court: Certain Misdemeanors*, in its entirety and moved it with revisions to Chapter 45, Code of Criminal Procedure. See, "Summary of Changes" to Code of Criminal Procedure Article 45.057, *Offenses Committed by Juveniles*.

Code of Criminal Procedure, Article 58.01 applied to non-traffic misdemeanors processed in justice and municipal courts. It incorporated by reference the sealing provisions of section 58.003, Family Code. This Article was repealed and replaced with a "new" expunction procedure for juvenile offenders in article 45.0216 of the Code of Criminal Procedure. Chapter 45 pertains specifically to justice and municipal court proceedings.

Section 21.002, Government Code addresses contempt of court powers and processes in justice and municipal court. Subsection (h) addressed justice and municipal court contempt procedures over a juvenile and are now covered elsewhere. Hence, subsection (h) was repealed.

Code of Criminal Procedure Article 45.057. Offenses Committed by Juveniles.

(a) In this Article, "child" has the meaning assigned by Article 45.058(h).

(b) On a finding by a justice or municipal court that a child committed an offense that the court has jurisdiction of under Article 4.11 or 4.14, other than a traffic offense, the court has jurisdiction to enter an order:

(1) referring the child or the child's parent, managing conservator, or guardian for services under Section 264.302, Family Code;

(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; or

(3) if the court finds the parent, managing conservator, or guardian, by 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) attend the child's school classes or functions.

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

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

(e) A justice or municipal court shall endorse on the summons issued to a parent, managing conservator, or guardian an order to appear personally at the hearing with the child. The summons must include a warning that the failure of the parent, managing conservator, or guardian to appear may be punishable as a Class C misdemeanor.

(f) An order under this Article involving a child is enforceable under Article 45.050.

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

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

Commentary by James Bethke

Source: SB 1432.

Effective Date: September 1, 2001.

Applicability: Conduct that occurs on or after effective date.

Summary of Changes: This new Article replaces repealed section 54.022, Family Code. It pertains to the powers and responsibilities of justice and municipal courts over children and their parents.

Subsection (a) defines "child." See, “Summary of Changes” to Code of Criminal Procedure Article 45.050, *Failure to Pay Fine; Contempt; Juveniles*.

Subsection (b) sets forth the jurisdictional powers of a justice or municipal court on a finding by the court that a child committed a non-traffic offense.

Under subsection (c) a justice or municipal court may order the parent, managing conservator, or guardian of the child required to attend a program under Subsection (b) and to pay an amount not greater than $100 to pay for the costs of the program. Subsection (d) allows a justice or municipal court to require a child, parent, managing conservator, or guardian required to attend a program, class, or function under this Article to submit proof of attendance to the court.

Subsection (e) requires a justice or municipal court to endorse on the summons issued to a parent, managing conservator, or 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.

Subsection (g) sets forth the conditions constituting an offense under this Article and provides that an offense under this subsection is a Class C misdemeanor.

Subsections (f) and (h) address contempt of court issues. Subsection (f) relates to children. It provides that an order under this Article involving a child is enforceable as contempt of court under Article 45.050. Subsection (h) relates to adults and provides that any other order under this Article is enforceable by the justice or municipal court by contempt.

Code of Criminal Procedure Article 45.058. Children Taken Into Custody.

(a) A child may be released to the child's parent, guardian, custodian, or other responsible adult as provided by Section 52.02(a)(1), Family Code, if the child is taken into custody for an offense that a justice

or municipal court has jurisdiction of under Article 4.11 or 4.14, other than public intoxication.

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

(1) is released under Section 52.02(a)(1), Family Code; or

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

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

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

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

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

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

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

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

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

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

(2) the child is referred to the juvenile court by a justice or municipal court for contempt of court under Article 45.050.

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

(h) In this Article, "child" means a person who is:

(1) at least 10 years of age and younger than 17 years of age; and

(2) charged with or convicted of an offense that a justice or municipal court has jurisdiction of under Article 4.11 or 4.14.

Commentary by James Bethke

Source: SB 1432.

Effective Date: September 1, 2001.

Applicability: Conduct that occurs on or after effective date.

Summary of Changes: Article 45.058, *Children Taken Into Custody* replaces repealed Family Code section 52.027, *Children Taken Into Custody for Traffic Offenses, Other Fineable Only Offenses, or as a Status Offender*. This change is part of an effort to consolidate the procedures for processing cases applicable to justice or municipal courts under Chapter 45, Code of Criminal Procedure. Chapter 45 is like a code within a code applicable only to justice and municipal courts.

In general, Article 45.058 provides the procedure for processing children taken into custody for traffic offenses and other non-jailable misdemeanor offenses within the jurisdiction of justice or municipal court. Subsection (a) provides that a child may be released to the child's parent, guardian, custodian, or other responsible adult as provided by Section 52.02(a)(1), Family Code.

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

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

Subsection (d) sets forth the required procedures to be followed in a place of nonsecure custody for children.

Subsection (e) prohibits a child, notwithstanding any other provision of this Article, from being detained in a place of nonsecure custody for more than **six hours** under any circumstances.

Subsection (f) sets forth when a child taken into custody for an offense that a justice or municipal court has jurisdiction of under Article 4.11 or 4.14,

may be presented or detained in an authorized detention facility.

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

Subsection (h) defines a child as a person who is 10 years of age and younger than 17 years of age for purpose of offenses with the jurisdiction of justice or municipal court. See, "Summary of Changes" to Code of Criminal Procedure Article 45.050.

Code of Criminal Procedure Article 45.059. Children Taken Into Custody for Violation of Juvenile Curfew or Order.

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

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

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

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

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

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

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

(3) the person may not be held longer than necessary to accomplish the purposes of identification, investigation, processing, release to a parent, guardian, or custodian, or arrangement of transportation to school or court;

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

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

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

(c) A place designated under this Article as a juvenile curfew processing office is not subject to the approval of the juvenile board having jurisdiction where the governmental entity is located.

Commentary by James Bethke

Source: SB 1432.
Effective Date: September 1, 2001.
Applicability: Conduct that occurs on or after effective date.
Summary of Changes: Article 45.059, *Children Taken Into Custody for Violation of Juvenile Curfew or Ordinance or Order,* replaces repealed Family Code section 52.028, *Children Taken Into Custody for Violation of Juvenile Curfew or Ordinance or Order*. This is another example of the effort to consolidate the procedures for processing cases applicable to justice or municipal courts under Chapter 45, Code of Criminal Procedure. This Article requires a peace officer who is taking into custody a person younger than 17 years of age for violation of a juvenile curfew ordinance of a municipality or order of the commissioners court of a county to take certain actions without unnecessary delay. Subsection (b) sets forth the required procedures for a juvenile curfew processing officer to follow.

Subsection (c) provides that a place designated under this Article as a juvenile curfew processing office is not subject to the approval of the juvenile board having jurisdiction where the governmental entity is located.

Local Government Code § 351.903. County Juvenile Curfew.

(b) This authority includes the authority to:

(1) establish the hours of the curfew, including different hours for different days of the week;

(2) apply different curfew hours to different age groups of juveniles;

(3) describe the kinds of conduct subject to the curfew;

(4) determine the locations to which the curfew applies;

(5) determine which persons incur liability if a violation of the curfew occurs;

(6) prescribe procedures, in compliance with Article 45.059, Code of Criminal Procedure [~~Section 52.028, Family Code~~], a police officer must follow in enforcing the curfew; and

(7) establish exemptions to the curfew, including but not limited to exemptions for times when there are no classes being conducted, for holidays, and for persons going to or from work.

Commentary by James Bethke

Source: SB 1432.
Effective Date: September 1, 2001.
Applicability: Conduct that occurs on or after effective date.

Summary of Changes: Changes to this section reference the redesignation of Section 52.028, Family Code to Code of Criminal Procedure Article 45.059.

Code of Criminal Procedure Article 45.052. 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 not more than 180 [~~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;

(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.

(c) A defendant for whom proceedings are deferred under Subsection (a) shall complete the teen court program not later than the 90th day after the date the teen court hearing to determine punishment is held or the last day of the deferral period, whichever date is earlier. The justice or municipal court shall dismiss the charge at the time [~~conclusion of the deferral period if~~] the defendant presents satisfactory evidence that the defendant has successfully completed the teen court program.

Commentary by James Bethke

Source: HB 822.
Effective Date: September 1, 2001.
Applicability: Conduct occurring on or after effective date.
Summary of Changes: Prior to the 77th Legislature, a justice or municipal court was permitted to defer proceedings, and a juvenile court was permitted to defer adjudication proceedings, against certain teen defendants for 90 days on successful completion of a teen court program. The teen court program is an alternative sentencing system, which offers teenage offenders an opportunity to make restitution for their offenses and accept responsibility for their respective actions.

The changes made to subsection (a) allow a justice or a municipal court to defer proceedings against a teen offender for not more than 180 days; and, subsection (c) requires the teen offender to complete the teen court program not later than the 90th day after the date the teen court hearing to determine punishment is held, or the last day of the deferral period, whichever date is earlier. After the person presents satisfactory evidence to the court of successful completion of the teen court program, the justice or a municipal court shall dismiss the charge and case.

6. Texas Youth Commission Provisions

Human Resources Code § 61.0813. Sex Offender Counseling and Treatment.

(a) Before releasing a child described by Subsection (b) under supervision, the commission:

(1) may require as a condition of release that the child:

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

(B) [~~(2)~~] submit to a polygraph examination as provided by Subsection (f) for purposes of evaluating the child's treatment progress; and

(2) shall require as a condition of release that the child:

(A) register under Chapter 62, Code of Criminal Procedure; and

(B) submit a blood sample or other specimen to the Department of Public Safety under Subchapter G, Chapter 411, Government Code, for the purpose of creating a DNA record of the child, unless the child has already submitted the required specimen under other state law.

(b) This section applies to a child [~~only if:~~

[~~(1) the child has been~~] adjudicated for engaging in delinquent conduct constituting an offense for which the child is required to register as a sex offender under Chapter 62, Code of Criminal Procedure[~~:~~

[~~(A) under Section 21.08, 21.11, 22.011, 22.021, or 25.02, Penal Code;~~

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

[~~(C) under Section 30.02, Penal Code, punishable under Subsection (d) of that section, if the child engaged in the conduct with the intent to commit a felony listed in Paragraph (A) or (B) of this subdivision; and~~

[~~(2) the victim of the conduct described by Subdivision (1) was a child as defined by Section 22.011(c), Penal Code~~].

Commentary by Neil Nichols

Source: SB 1380
Effective Date: September 1, 2001
Applicability: Conduct occurring on or after effective date
Summary of Changes: The amendment provides that a youth who is required to register as a sex offender must actually register and submit a sample for the DNA record before the Texas Youth Commission has the authority to release the youth under parole supervision. The actual registration will take place in person with the law enforcement agency in the youth's home community. In accordance with the provisions of § 411.150, Government Code, the DNA sample will have already been submitted at the time of the youth's initial commitment.

§ 54.11. Release or Transfer Hearing.

(d) At a hearing under this section the court may consider written reports from probation officers, professional court employees, [~~or~~] professional consultants, or employees of the Texas Youth Commission, in addition to the testimony of witnesses. At least one day before the hearing, the court shall provide the attorney for the person to be transferred or released under supervision with access to all written matter to be considered by the court.

Commentary by Neil Nichols

Source: HB 1118
Effective Date: September 1, 2001
Applicability: Conduct occurring on or after effective date
Summary of Changes: This amendment clarifies that among the written reports the juvenile court may consider in deciding whether to grant the Texas Youth Commission's request to either transfer a determinate sentence youth to prison or to release a determinate sentence youth early under parole supervision are the written reports of TYC employees. They do not need to be qualified as the reports of "professional consultants."

7. Texas Juvenile Probation Commission Provisions

Family Code § 261.103. Report Made to Appropriate Agency.

(a) Except as provided by Subsection (b) and Section 261.405, 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.

Commentary by Lisa A. Capers

Source: HB 1118
Effective Date: September 1, 2001
Applicability: Conduct occurring on or after effective date
Summary of Changes: These changes are intended to clarify that reports of abuse or neglect of a juvenile under the jurisdiction of a juvenile court that occur in a juvenile justice program or facility should be made to the Texas Juvenile Probation Commission (TJPC) as required by Section 261.405. Section 261.103, the general reporting statute, clarifies that the public may report abuse of a juvenile offender in a juvenile justice program to TJPC under section 261.405 instead of the Texas Department of Protective and Regulatory Services (TDPRS) under the general statute.

Family Code § 261.405. Investigations in Juvenile Justice Programs and Facilities.

(a) In this section:

(1) "Juvenile justice facility" means a facility operated wholly or partly by the juvenile board or by a private vendor under a contract with the juvenile board or county that serves juveniles under juvenile court jurisdiction. The term includes:

(A) a public or private juvenile pre-adjudication secure detention facility, including a holdover facility;

(B) a public or private juvenile post-adjudication secure correctional facility except for a facility operated solely for children committed to the Texas Youth Commission; and

(C) a public or private non-secure juvenile post-adjudication residential treatment facility that is not licensed by the Department of Protec-

tive and Regulatory Services or the Texas Commission on Alcohol and Drug Abuse.

(2) "Juvenile justice program" means a program operated wholly or partly by the juvenile board or by a private vendor under a contract with a juvenile board that serves juveniles under juvenile court jurisdiction. The term includes:

(A) a juvenile justice alternative education program; and

(B) a non-residential program that serves juvenile offenders under the jurisdiction of the juvenile court.

(b) A report of alleged abuse or neglect in any [~~a public or private~~] juvenile justice program or [~~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 the Texas Juvenile Probation Commission and 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.~~]

(c) [~~(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 juvenile justice program or facility[~~, 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~~].

(d) [~~(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 A. Capers

Source: HB 1118
Effective Date: September 1, 2001
Applicability: Conduct occurring on or after effective date
Summary of Changes: Amendments to this section were intended to 1) clarify and expand the child abuse and neglect investigatory authority of TJPC to all juvenile justice programs, not just juvenile facilities; 2) define "juvenile justice facility"; and 3) define "juvenile justice program."

Juvenile justice facility includes any facility operated by the juvenile board, county or any private vendor under contract with the juvenile board or county. Pre-adjudication secure detention facilities, post-adjudication secure correctional facilities, and holdover facilities are included. Also included are non-secure treatment facilities operated by a county or juvenile board that are not licensed with the Texas Department of Protective and Regulatory Services (TDPRS). Facilities operated solely for Texas Youth Commission (TYC) youth are excluded.

Juvenile justice program includes any program operated in whole or part by the juvenile board or a private vendor under contract with the juvenile board. Implicit in this definition are all probation department programs since the juvenile board is the oversight authority for the probation department. Juvenile justice alternative education programs (JJAEP) and non-residential programs are also included.

Government Code § 411.137. Access to Criminal History Record Information: Texas Juvenile Probation Commission.

The Texas Juvenile Probation Commission is entitled to obtain from the department criminal history record information maintained by the department that relates to a person who is:

(1) an applicant for a position with the commission;

(2) an applicant for certification from the commission; or

(3) a holder of a certification from the commission.

Commentary by Lisa A. Capers

Source: HB 1118
Effective Date: September 1, 2001
Applicability: Conduct occurring on or after effective date
Summary of Changes: This amendment grants the Texas Juvenile Probation Commission (TJPC) the ability to perform criminal history checks on agency applicants, and those individuals who either seek certification from, or currently hold certification with the agency. The change here simply adds TJPC to the long list of agencies and entities who have access to the Department of Public Safety (DPS) automated Texas and national criminal history systems, known as the Texas Crime Information Center (TCIC) and the National Crime Information Center (NCIC).

Government Code § 411.138. Access to Criminal History Record Information: Juvenile Board or Juvenile Probation Department.

A juvenile board or juvenile probation department is entitled to obtain from the department criminal history record information maintained by the department that relates to a person who is:

(1) an applicant for a position with the juvenile probation department;

(2) an employee for whom the juvenile board or juvenile probation department will seek certification from the Texas Juvenile Probation Commission; or

(3) an employee or department applicant who currently holds certification from the Texas Juvenile Probation Commission.

Commentary by Lisa A. Capers

Source: HB 1118
Effective Date: September 1, 2001
Applicability: Conduct occurring on or after effective date
Summary of Changes: This amendment will allow juvenile boards or juvenile probation departments to run criminal history checks on applicants with the juvenile probation department and current juvenile probation department employees who are certified by TJPC. Criminal history background checks will be required for all probation, detention and corrections officers under new standards that are in development at TJPC. Therefore, it is necessary for probation departments to have legal access to the TCIC and NCIC systems. Currently, many probation departments run background checks through local law enforcement entities under the ORI number of the law enforcement office. Unfortunately, this practice is not authorized and DPS and federal auditors are more closely monitoring law enforcement's use of the TCIC and NCIC systems.

Human Resources Code § 141.042. Rules Governing Juvenile Boards, Probation Departments, Probation Officers, Programs, and Facilities.

(e) Juvenile probation departments shall use the mental health screening instrument selected [~~standard assessment tool developed~~] by the commission [~~or a similar tool developed by a juvenile probation department and approved by the commission~~] for the initial screening [~~assessment~~] of children under the jurisdiction of probation departments who have been formally referred to the department. The commission shall give priority to training in the use of this instrument [~~tool~~] in any preservice or in-service training that the commission provides for probation officers. Juvenile probation departments shall report data [~~the information relating to the results~~] from the use of the screening instrument [~~standard assessment tool or other similar tool~~] to the commission in a format and in the time [~~manner~~] prescribed by the commission. [~~The assessment tool shall:~~

[~~(1) facilitate assessment of a child's mental health, family background, and level of education; and~~

[~~(2) assist juvenile probation departments in determining when a child in the department's jurisdiction is in need of comprehensive psychological or other evaluation.~~]

(g) Any statement made by a child and any mental health data obtained from the child during the administration of the mental health screening instrument under this section is not admissible against the child at any other hearing. The person administering the mental health screening instrument shall inform the child that any statement made by the child and any mental health data obtained from the child during the administration of the instrument is not admissible against the child at any other hearing.

Commentary by Lisa A. Capers

Source: HB 1118
Effective Date: September 1, 2001
Applicability: Conduct occurring on or after effective date
Summary of Changes: Subsection (e) of current law requires juvenile probation departments to use a standard assessment tool developed or approved by TJPC to assess youth under the jurisdiction of the probation department. Since 1995, this instrument has primarily been the COMPASS that was developed by TJPC. Use of the COMPASS was problematic on several fronts: first, the instrument was not a validated instrument and produced questionable results; and second, the data from the COMPASS was not consistently reported or analyzed to reveal the needs of youth statewide.

During the 77th Texas Legislature, a great deal of attention was focused on adult and juvenile offenders with mental impairments. Anecdotally, it is believed that 40% of juvenile offenders are in need of some mental health services; however, Texas has no reliable data to support this widely-believed estimate. It became quite clear during the session that if probation departments have much hope of getting long-term resources and solutions to the problem of juveniles with mental impairments, the first step is to begin collecting, reporting and analyzing accurate data. To do this statewide, a consistent mental health screening would be required to begin the process. This amendment was a part of a larger plan for developing good data upon which future legislatures can base policy decisions.

The newly added language of this amendment requires TJPC to select a mental health screening instrument for use by probation departments statewide to initially screen all youth who have been formally referred to the department. It also requires the probation departments to report data from the screening instrument to TJPC in the format and time frame the Commission prescribes. TJPC has selected the *Massachusetts Youth Screening Instrument*, Second Version known as the MAYSI-2. The MAYSI-2 is a brief screening tool for use in juvenile justice contacts

with youths to identify signs of mental/emotional disturbance or distress. It was developed in 1994 at the Center for Mental Health Services Research at the University of Massachusetts Medical School by doctors Thomas Grisso and Richard Barnum. This instrument has been validated and is being used in juvenile justice systems nationally. For more information on the MAYSI-2, visit www.umassmed.edu/nysap/maysi2/what.cfm. TJPC is sponsoring multiple statewide training seminars beginning in July and running through September to train probation staff on the use of the MAYSI-2. For more information on the training sites and dates, call TJPC at (512) 424-6700 or visit the TJPC website at www.tjpc.state.tx.us.

New Subsection (g) was added because mental health screening instruments typically ask questions regarding the child's drug use and other issues that may tend to incriminate the child if a prosecutor was given access to this information. If statements made by the child during such an assessment can be used against the child in other proceedings, the child must be given the constitutionally required warnings against self-incrimination. It is widely believed by mental health professionals that a warning such as this would invalidate any data collected on the mental health screening instrument because children will be prone to either not answer the questions or to answer them inaccurately in an effort to protect themselves. If this happens, the goal and purpose of the mental health screening (i.e., to identify and treat mental health needs) would be thwarted. Therefore, a statutory prohibition against using any statements made by the child or any data collected during the course of administering the mental health screening instrument against the child in subsequent hearings, is necessary. The person administering the mental health screening instrument must give the statutory warning to the child prior to the child being asked any questions.

Human Resources Code § 141.0471. Coordinated Strategic Plan for Juvenile Justice System.

(c) The governing board of each [~~Each~~] agency shall [~~by rule~~] adopt the coordinated strategic plan on or before December 1st of each odd-numbered year, or before the adoption of the agency's individual strategic plan, whichever is earlier.

Commentary by Lisa A. Capers

Source: HB 1118
Effective Date: September 1, 2001
Applicability: Conduct occurring on or after effective date
Summary of Changes: This change removes the requirement that the coordinated strategic plan developed by the Texas Youth Commission (TYC) and the Texas Juvenile Probation Commission (TJPC) be adopted by rule (i.e., via the administrative law rulemaking process). Under the amendment, the governing board of each agency is still required to officially adopt the plan by action of the board in an open meeting. However, the requirement to adopt it in accordance with all the formal rulemaking procedures under the Administrative Procedure Act, including posting in the Texas Register, is now deleted.

Human Resources Code § 141.061. Minimum Standards for Probation Officers.

(f) The commission may waive the degree accreditation requirement in Subsection (a)(2) if the applicant possesses a foreign or other degree that the commission determines is the substantial equivalent of a bachelor's degree. The commission shall adopt rules defining the procedures to be used to request a waiver of the accreditation requirement in Subsection (a)(2).

Commentary by Lisa A. Capers

Source: HB 1118
Effective Date: September 1, 2001
Applicability: Conduct occurring on or after effective date
Summary of Changes: Human Resources Code Section 141.061 is the section of the Texas Juvenile Probation Commission (TJPC) enabling legislation that lists the requirements a person must meet to be a probation officer. Subsection (a)(2) requires the person to have acquired a bachelor's degree conferred by a college or university accredited by an accrediting organization recognized by the Texas Higher Education Coordinating Board. Under current law, TJPC has no authority to waive this requirement. This requirement is intended to eliminate applicants that may possess degrees from "diploma mills" and other substandard educational institutions. Unfortunately, a person holding a foreign degree from a reputable university cannot be certified as a juvenile probation officer under this provision because the Texas Higher Education Coordinating Board has no mechanism in place to recognize foreign degrees.

This amendment now authorizes TJPC to accept a foreign or other degree if the Commission determines it is the substantial equivalent of a bachelor's degree from an accredited university. TJPC is required to adopt rules that define the procedures applicants must follow if they have degrees from unaccredited or foreign colleges and universities. TJPC plans to put the burden on the applicant to show the substantial equivalency of the applicant's degree because the agency does not have adequate staffing or expertise to make this type of determination. Show-

ing this equivalency is most easily accomplished by using a professional accreditation/evaluation service that can be found in most metropolitan areas.

Human Resources Code § 151.065. Persons Who May Not Act as Juvenile Probation, Detention, or Corrections Officers.

A peace officer, prosecuting attorney, or other person who is employed by or who reports directly to a law enforcement or prosecution official may not act as a juvenile probation, detention, or corrections officer or be made responsible for supervising a juvenile on probation.

Commentary by Lisa A. Capers

Source: HB 1118
Effective Date: September 1, 2001
Applicability: Conduct occurring on or after effective date
Summary of Changes: This change makes clear that the prohibition on being a certified peace officer extends to detention and correction workers that are employed by county or private juvenile detention or correctional facilities. The rationale for excluding a certified peace officer from acting as a probation officer is exactly the same for detention and corrections officers. A potentially serious conflict of interest would exist if a law enforcement officer who arrested the juvenile the night before was supervising the child on probation or in detention the next day. The juvenile justice system envisions the existence of a different relationship between a juvenile justice offender and the supervising juvenile probation, detention and corrections officers from that of the law enforcement officer whose primary duties are arresting offenders and investigating crimes.

Human Resources Code § 141.066. Prohibition on Carrying Firearm.

(a) A juvenile probation, detention, or corrections officer may not carry a firearm in the course of the person's official duties.

(b) This section does not apply to an employee of the Texas Youth Commission.

Commentary by Lisa A. Capers

Source: HB 1118
Effective Date: September 1, 2001
Applicability: Conduct occurring on or after effective date
Summary of Changes: This change makes clear that the prohibition on carrying a firearm extends to detention and correction workers who are employed by county or private juvenile detention or correctional facilities. While no juvenile detention or correctional facilities allow detention and corrections officers to carry a firearm under current law, the legislature felt this clarification was necessary. Employees of the Texas Youth Commission (TYC) are not intended to come under this provision.

Human Resources Code § 142.005. Administration of Medication, Immunity from Liability.

(a) On the adoption of policies concerning the administration of medication to juveniles by authorized employees, the juvenile board and any authorized employee of a program or facility operated by the juvenile board are not liable for damages arising from the administration of medication to a juvenile if:

(1) the program or facility administrator has received a written request to administer the medication from the parent, legal guardian, or other person having legal control over the juvenile; and

(2) when administering prescription medication, the medication appears to be in the original container and to be properly labeled.

(b) This section does not apply to:

(1) damages arising from the administration of medication that is not in accordance with the prescription issued by a medical practitioner; or

(2) an act or omission of a person administering medication if the act or omission is:

(A) reckless or intentional;

(B) done wilfully, wantonly, or with gross negligence; or

(C) done with conscious indifference or reckless disregard for the safety of others.

Commentary by Lisa A. Capers

Source: HB 1118
Effective Date: September 1, 2001
Applicability: Conduct occurring on or after effective date
Summary of Changes: Many juvenile justice facilities and programs do not have medical staff available 24 hours a day. This includes pre-adjudication secure detention facilities, post-adjudication secure correctional facilities, juvenile justice alternative education programs (JJAEP) and day programs. Juveniles residing in the facilities, or attending these programs often require the administration of medications (prescription and over the counter) throughout a 24-hour period. This amendment would allow employees of these facilities and programs to administer these medications, and would grant immunity for medicine administration. This amendment is modeled after Education Code Section 22.052, which addresses the administration of medications in schools.

It is critical that the juvenile board adopt policies for the probation department programs and facilities that expressly delineate the circumstances under

which the medications are to be dispensed as well as the staff authorized to perform these functions. The remaining two requirements are that the program or facility administrator must have a written request to administer the medicine, and the medicine must be in the original, properly labeled container.

Human Resources Code § 152.0007. Duties.

(a) The juvenile board shall:

(1) establish a juvenile probation department and employ [~~personnel to conduct probation services, including~~] a chief probation officer [~~and, if more than one officer is necessary, assistant officers,~~] who meets [~~meet~~] the standards set by the Texas Juvenile Probation Commission; and

(2) adopt a budget and establish policies, including financial policies, for [~~operate or supervise~~] juvenile services within the jurisdiction of the board [~~in the county and make recommendations as to the need for and purchase of services~~].

Commentary by Lisa A. Capers

Source: HB 1118
Effective Date: September 1, 2001
Applicability: Conduct occurring on or after effective date
Summary of Changes: The changes to this section are part of a comprehensive package of statutory changes related to the duties of juvenile boards and juvenile courts found in HB 1118 which were recommended to the legislature by a TJPC interim workgroup of juvenile justice practitioners. See the commentary to Section 51.04 in Segment 1 for a discussion of the background of this workgroup.

Current law is inconsistent as to whether the juvenile board appoints the chief juvenile probation officer, who then hires his or her staff or whether the board appoints the chief and all the staff. Current Section 152.0007 says the board should appoint the chief and all assistant probation officers. Conversely, Section 152.0008 says the chief appoints all necessary personnel with the approval of the board.

Under the amendment, the board should hire the chief. The chief, within the budget approved by the board and funded by the county, state and federal governments, should hire all necessary personnel for the probation department and any detention services. This is the way modern business operates and should also be the way juvenile services are delivered. This amendment sets up a structure for juvenile boards that is similar to the corporate model. The juvenile board functions similar to a corporate board of directors. The juvenile board hires the chief juvenile probation officer (similar to the CEO in the corporate world) who runs the day-to-day operations of the probation department. As Professor Bob Dawson describes it, the chief juvenile probation officer is the CEO of Juvenile Justice, Inc., and he or she reports to the Juvenile Justice, Inc. board of directors, better known as the Juvenile Board. In this setup, the chief probation officer makes the hiring decisions for all staff in the probation department as opposed to the juvenile board having this duty. In reality, few juvenile boards wanted or attempted to take on this function, but occasionally, a juvenile board would get into the micromanagement of a department, which is not necessarily what the legislature intended. Obviously, the chief will ordinarily not employ personnel who do not meet the approval of the board. Should that occur, the remedy is for the board to urge the chief to reconsider his or her decision and, failing that, to dismiss the chief. For efficiency, the juvenile board should not involve itself with personnel matters beyond employing and discharging the chief.

It is important to note that many specific juvenile board statutes in Chapter 152 have exempted the board from Section 152.007 and 152.008. Originally, HB 1118 contained a provision in Section 152.0014 that would have provided that the amendments to 152.007 and 152.008 apply regardless of any contrary provisions in the chapter relating to specific juvenile boards. Unfortunately, Section 152.0014 did not pass. So, legally, Section 152.007 and 152.008 will not apply to many juvenile boards. In other words, without Section 152.0014 the amendments made to 152.0007 and 152.0008 have no legal effect in those jurisdictions. Notwithstanding that fact, it is recommended for efficiency reasons that juvenile board should operate as envisioned by the new amendments to152.007 and 152.008.

Human Resources Code § 152.0008. Personnel.

(a) The chief juvenile probation officer may, within the budget adopted by the board, employ:

(1) assistant officers who meet the standards set by the Texas Juvenile Probation Commission; and

(2) other [~~appoint~~] necessary personnel [~~with the approval of the board~~].

Commentary by Lisa A. Capers

Source: HB 1118
Effective Date: September 1, 2001
Applicability: Conduct occurring on or after effective date
Summary of Changes: The rationale for this amendment is similar to the one made to Section 152.007 discussed above. It requires the chief juvenile probation officer to hire the probation department staff, within the budget limitations adopted by the juvenile board. The staff must meet the standards set by the Texas Juvenile Probation Commission (TJPC).

Human Resources Code § 152.0010. Advisory Council.

(a) A [~~Each~~] juvenile board may [~~shall~~] appoint an advisory council consisting of the number of [~~not more than nine~~] citizen members determined appropriate by the board. To the extent available in the county, the advisory council may include [~~, including~~]:

(1) a prosecuting attorney as defined by Section 51.02, Family Code;

(2) a mental health professional;

(3) a medical health professional; and

(4) a representative of the education community.

(b) Council members serve [~~for staggered two year~~] terms as specified by the board [~~with as near as possible to half of the members' terms expiring on January 31 of each year~~].

Commentary by Lisa A. Capers

Source: HB 1118
Effective Date: September 1, 2001
Applicability: Conduct occurring on or after effective date
Summary of Changes: Current law requires all juvenile boards to appoint advisory councils. The idea of a mandated citizen advisory council, while good in theory, has been somewhat of a failure in practice. Some juvenile boards have ignored the requirement. Others have appointed advisory councils that exist only on paper to comply with the requirement of the statute. Many never meet and have no functions to perform for the most part. Additionally, some juvenile boards have difficulty meeting the professional group quotas in their counties for service on the advisory council.

Juvenile board advisory councils can serve useful purposes at various times in various counties. A citizen's advisory council can be quite useful when new programs or facilities are needed by advocating for the juvenile justice system to the community. Unfortunately, the existence of a continuous advisory council with no duties makes it more difficult to recruit suitable members when there is an actual need for such assistance. In other words, the requirement of a citizen's advisory council is counterproductive. It should be left to the judgment of the members of the juvenile board whether and when to use the services of an advisory council. This amendment does just that.

Human Resources Code § 152.0013. Immunity from Liability.

(a) A member of a juvenile board is not liable for damages arising from an act or omission committed while performing duties as a board member.

(b) This section does not apply if the act or omission is:

(1) reckless or intentional;

(2) done wilfully, wantonly, or with gross negligence; or

(3) done with conscious indifference or reckless disregard for the safety of others.

Commentary by Lisa A. Capers

Source: HB 1118
Effective Date: September 1, 2001
Applicability: Conduct occurring on or after effective date
Summary of Changes: Judges enjoy absolute immunity for judicial acts unless the act is performed in the clear absence of all jurisdiction. *City of Houston v. Swindall*, 960 S.W.2d 413, 417 (Tex.App.--Houston [1st Dist.] 1998). However, according to an old Attorney General opinion, when serving in his or her capacity as a member of the juvenile board, a judge loses the absolute immunity from civil liability that he or she enjoys while making judicial decisions. While judges often receive extra compensation for service on the juvenile board, they have no choice about service because membership is fixed by the legislature and imposed on the current occupants of designated courts whether those occupants wish to serve or not.

This section assures that members of the juvenile board individually and personally are protected for their actions with qualified immunity. As the duties of juvenile boards become more and more complex, there is a corresponding risk of civil liability for official acts or omissions by members of the board. This was recognized in 1997 when the legislature became concerned about civil liability of juvenile board members for the operation of Juvenile Justice Alternative Education Programs (JJAEP). The legislature enacted two statutes that provided immunity for the juvenile board, for the county, for the commissioner's court, and for JJAEP employees and volunteers to the same extent enjoyed by members of a school board and by school district employees and volunteers. It is not clear that the immunity granted by this provision reaches only the juvenile board as a special unit of local government, or also reaches the members of the juvenile board individually and personally.

As a member of a juvenile board, a judge should have at least qualified immunity for official acts in their administrative capacity. He or she should not be reluctant to serve on a juvenile board out of fear of incurring legal liability for an official act or omission. This amendment to the Human Resources Code grants qualified judicial immunity for acts or omissions while acting as a member of a juvenile board.

Penal Code § 39.04. Violations of the Civil Rights of Person in Custody; Improper Sexual Activity With Person in Custody.

(2) "Custody" means the detention, arrest, or confinement of an adult offender or the detention or the commitment of a juvenile offender to a facility operated by or under a contract with the Texas Youth Commission or a facility operated by or under contract with [~~of~~] a juvenile board [~~offender~~].

Commentary by Lisa A. Capers

Source: HB 1118
Effective Date: September 1, 2001
Applicability: Conduct occurring on or after effective date
Summary of Changes: Currently Penal Code Section 39.04 does not clearly apply to those juveniles in pre-adjudication secure detention facilities and post-adjudication secure correctional facilities. Texas Youth Commission (TYC) facilities are covered by the current law, but probation department facilities were inadvertently left out. This amendment corrects this oversight by extending the protections of Section 39.04 to all juvenile facilities.

HB 1118, SECTION 70.

(a) The Prairie View A&M University Center for the Study and Prevention of Juvenile Crime and Delinquency shall study the relationship of the juvenile justice system to special categories of juveniles, including:

(1) minorities;
(2) female offenders; and
(3) sex offenders.

(b) The center shall cooperate with the Criminal Justice Policy Council, the Texas Juvenile Probation Commission, and the Texas Youth Commission in conducting those studies.

(c) The center shall report its findings and recommendations to the lieutenant governor, the speaker of the house of representatives, and the governor by December 1, 2002.

Commentary by Robert Dawson

Source: HB 1118
Effective Date: September 1, 2001
Applicability: Conduct occurring on or after effective date
Summary of Changes: This section was added by the Senate. It defines a statutory research role for the juvenile justice center at Prairie View A&M University. It is required to investigate the statutorily-specified major issues in the juvenile justice system and to report back to the legislature and the Governor on the results.

HB 1118. Section 71.

The following are repealed:
***
(5) Section 53.001, Human Resources Code.

Commentary by Lisa A. Capers

Source: HB 1118
Effective Date: September 1, 2001
Applicability: Conduct occurring on or after effective date
Summary of Changes: Section 53.001 of the Texas Human Resources Code relates to an interagency Memorandum of Understanding (MOU) on Service Contracts for Dysfunctional Families. This MOU has existed for many years between the Texas Department of Protective and Regulatory Services (TDPRS), the Texas Youth Commission (TYC) and the Texas Juvenile Probation Commission (TJPC). The MOU required the agencies to develop or expand nonresidential community contracts to help dysfunctional families.

The MOU requirement has been deleted by this amendment. The goals of the MOU are now being met through other services and programs offered by the agencies. The STAR (Services to At Risk Youth) program operated by the TDPRS provides services to youth and their families in communities across the state. These services include family counseling, parenting skills training, and youth coping skills training. These services were much more limited at the time the requirement for this MOU was originally passed by the legislature.

Human Resources Code § 152.0013. Indemnification by State.

The state shall indemnify a juvenile board member in the same manner and under the same conditions that it indemnifies an officer of a state agency under Chapter 104, Civil Practice and Remedies Code.

Commentary by Lisa A. Capers

Source: SB 486.
Effective Date: September 1, 2001.
Applicability: Applies only to a cause of action that accrues on or after the effective date.
Summary of Changes: This amendment provides indemnification from the State of Texas for juvenile board members that is identical to the indemnification protections afforded state employees under Chapter 104 of the Civil Practice and Remedies Code. Chapter 104 is the chapter that deals with state liability for the conduct of public servants. This chapter sets out the terms of the indemnification and puts caps on the recovery. The limits are $100,000 to a single person and $300,000 for a single occurrence in the case of

personal injury, death, or deprivation of a right, privilege, or immunity; and $10,000 for a single occurrence of damage to property. The Attorney General's Office provides legal representation under this section.

Human Resources Code § 152.1361. Kendall County

(a) The juvenile board of Kendall County is composed of the county judge, the judge of the county court at law, and the district judges in Kendall County.

Commentary by Lisa A. Capers

Source: HB 1881
Effective Date: September 1, 2001.
Applicability: None stated.
Summary of Changes: This amendment adds the judge of the county court at law to the list of mandatory juvenile board members in Kendall County.

Health and Safety Code § 614.018. Study and Comprehensive Plan for Juveniles.

(a) The council shall conduct a study and develop a comprehensive plan for juveniles with mental health and substance abuse disorders who are involved in or who are at risk of becoming involved in the juvenile justice system.

(b) The plan must address:

(1) a process to define and identify juveniles with mental health and substance abuse disorders who come in contact with the juvenile justice system, including recommendations on uniform screenings, assessment procedures, sharing of information between entities, and a data collection and reporting process;

(2) a process to improve the coordination and communication among local and state entities, including a review of existing models of collaboration and opportunities for cross-training among relevant entities;

(3) a review of mental health and substance abuse interventions that have proven to be effective for juvenile offenders with mental health and substance abuse disorders, including an analysis of:

(A) community-based, residential, institutional, and aftercare treatment services; and

(B) early intervention for young children at high risk of involvement in the juvenile justice system; and

(4) a review of applicable federal, state, and local policy, procedure, rules, regulations, and financial or programmatic barriers that may impact the development and implementation of a comprehensive juvenile justice plan.

(c) The council shall include representatives of the following persons that it considers necessary in the preparation of the study and plan:

(1) local and state juvenile justice entities;
(2) mental health entities;
(3) substance abuse groups;
(4) educational groups;
(5) service providers;
(6) family members of juveniles;
(7) advocacy organizations;
(8) the Department of Protective and Regulatory Services; and
(9) any other group or entity.

(d) The council shall submit the study and plan, including recommendations and projected funding to implement the plan, to the lieutenant governor, the speaker of the house of representatives, and the members of the legislature on or before December 1, 2002.

(e) This section expires December 1, 2002.

Commentary by Lisa A. Capers

Source: HB 1901.
Effective Date: September 1, 2001.
Applicability: None stated.
Summary of Changes: Currently, one of the most significant issues facing the Texas juvenile justice system is the number of youth (up to 40 percent of offenders by some estimates) who have a diagnosable mental health disorder. This is an issue that is being encountered daily by local probation departments in their programs and facilities, and the Texas Youth Commission also deals with these offenders statewide. During the 77th Texas legislature, considerable attention was given to adult and juvenile offenders with mental health needs.

Unfortunately, as the number of mentally impaired juvenile offenders continues to rise, the state as a whole and the affected state agencies have yet to develop a comprehensive and coordinated effort to address the scope of this issue. This new section requires the Texas Council on Offenders with Mental Impairments (TCOMI) to perform a comprehensive study to develop a plan for juveniles with mental health and substance abuse disorders who are involved or who are at risk of becoming involved in the juvenile justice system.

In the legislative appropriations process, TCOMI received approximately $10 million to begin projects to serve juvenile offenders with mental health issues. Additionally, TJPC received $4 million to fund specialized caseloads in this area. TCOMI and TJPC are working jointly to begin pilot projects in the 7 largest urban areas (Harris, Dallas, Bexar, Tarrant, El Paso, Travis, and Hidalgo counties) with the potential to expand to the small and medium size counties later on.

Health and Safety Code § 614.019. Pilot Program for Juveniles.

The council, in cooperation with the Texas Commission on Alcohol and Drug Abuse, the Texas Department of Mental Health and Mental Retardation, the Department of Protective and Regulatory Services, the Texas Juvenile Probation Commission, the Texas Youth Commission, and the Texas Education Agency, may establish pilot programs, building on existing successful efforts in communities, to address prevention, intervention, and continuity of care for juveniles with mental health and substance abuse disorders.

Commentary by Lisa A. Capers

Source: HB 1901
Effective Date: September 1, 2001.
Applicability: None stated.
Summary of Changes: This section is a part of the comprehensive state plan to address the needs of mentally impaired juvenile offenders as discussed in detail in the previous section. This section authorizes pilot projects to be implemented to address prevention, intervention, and continuity of care for juveniles with mental health and substance abuse disorders.