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CHAIR'S MESSAGE
by Vaughn Bailey

Welcome to new members of the Juvenile Law Section of our State Bar, and thank you to all of you returning members for maintaining your interest in juvenile justice and renewing your membership in the section. On behalf of the Council, welcome to new council members Chris Hubner of Austin, Wesley Shackelford of Austin, and the Honorable Laura Parker of San Antonio. On behalf of the Council and the Section, deepest thanks and appreciation to council members who have completed their service on the Council, the Honorable Pat Garza of San Antonio, Jim Bethke of Austin, and Jeanne Parker of Belton. I wish to express my special thanks to last year's chair, the Honorable Philip Martinez of El Paso, for his hard work and excellent leadership, which resulted in an extremely successful year for our Section. As the result of the hard work and efforts of these fine folks along with many other section members and volunteers, much progress was made toward the end of promoting the practice of juvenile law here in Texas.

The members of the Council and I intend to continue making progress and improving the resources that we have available to our members and others that are interested in the arena of juvenile justice. Our intention is to continue to provide quality CLE at an affordable price, and the conference planning committee, under the direction of Chair-Elect Arthur Provenghi, is already hard at work putting together our annual conference, which this year for the first time will be known by it's new name, The Professor Robert O. Dawson Juvenile Law Institute, and will be held in San Antonio on February 18-20, 2004. Please start making plans now to attend what promises to be an outstanding seminar. One of the first items on the Council agenda this year is to consider requesting approval from the State Bar Board of Directors to hold our Section's Annual Meeting and election in conjunction with the seminar, instead of at the State Bar Annual Meeting. I hope that we can accomplish this, thereby opening the opportunity for involvement in the business of you Section to a far greater number of its' members .

Let me also remind you of the great resource the Section provides, in our website, www.juvenilelaw.org. I encourage each of you to visit the site, as it contains much useful information.

It is a great honor for me to serve as Chair of the Section this year, and I thank you for the opportunity to do so. I am very fortunate to be serving with such an outstanding Council and, of course, to have the invaluable assistance of the mainstay, not only of our Section, but of juvenile justice in the State of Texas, the incomparable Professor Robert O. Dawson. Please enjoy this excellent Legislative issue of our newsletter that Professor Dawson has so ably prepared.

My best regards,
Vaughn Bailey

EDITOR'S FOREWORD
by Robert Dawson

Juvenile bills. There were over 20 bills passed this session that impact juvenile justice. The most important was **House Bill 2319**, authored by **Harold Dutton** and **Toby Goodman** and sponsored by **Royce West**. It is the major juvenile cleanup bill enacted in our unending pursuit of perfection. **House Bill 888**, authored by **Harold Dutton** and sponsored by **John Whitmire**, modernized the system of progressive sanctions guidelines. **Senate Bill 358** authored by **Florence Shapiro** and sponsored by **Toby Goodman**, enacted a unique system for judicial enforcement of truancy laws for Dallas County. These three bills and about 20 others are all included in this Special Legislative Issue.

Acknowledgements. My thanks to **Neil Nichols** (TYC General Counsel), **Lisa Capers**, (TJPC Deputy Executive Director and General Counsel) **Ryan Turner** (Program Attorney and Deputy Counsel of the Texas Municipal Courts Education Center), and **Linda Brooke** (TJPC Director for Education Related Services) for writing the extensive and intelligent commentaries that appear throughout this issue. Also thanks to **Vicki Spriggs** and **Nydia Thomas**, **Steve Robinson** and **Henry Darrington**, who wrote budget pieces for TJPC, TYC and DPRS, respectfully.

A very special acknowledgement goes to **Debbie Steed**, faculty assistant extraordinaire, who put together this issue with her usual unflagging energy, intelligence, and good humor.

Departures from the Council. At the annual meeting in June, the Section elected new officers and council members. The new officers and members are reflected in this issue. **Jim Bethke** of Austin departs as Immediate Past Chair. We shall miss his hard work and intelligent contributions to our effort. **Pat Garza** of San Antonio and **Jeanne Parker** of Belton are also leaving and will be greatly missed as well. Pat has written more practitioner articles for the newsletter than any other 10 lawyers in Texas. I hope he will continue his efforts on our behalf.

78th Texas Legislature Appropriations to the Texas Juvenile Probation Commission

Vicki Spriggs
Executive Director
and
Nydia D. Thomas
Senior Staff Attorney/Intergovernmental Relations

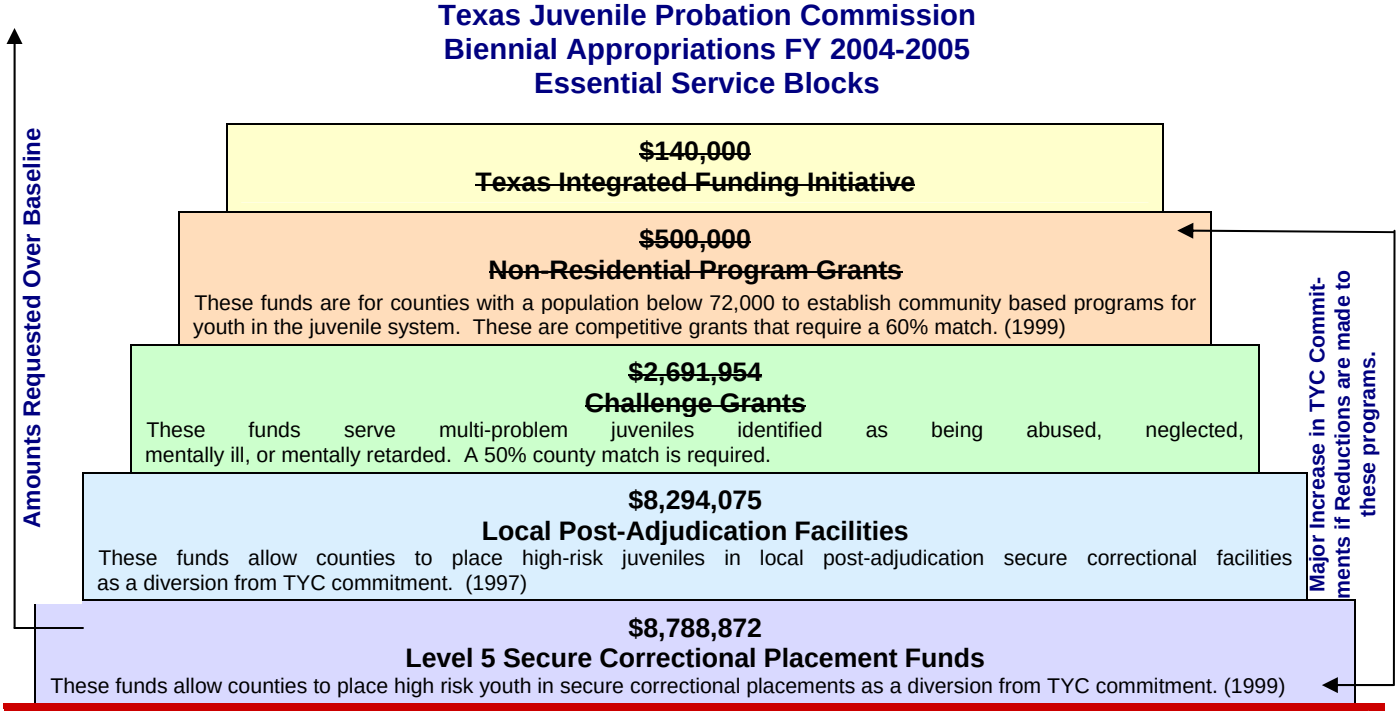
On June 2, 2003, the 78th Regular Session of Texas Legislature concluded. Despite a budget shortfall, statewide funding reductions and government reorganization, juvenile justice fared well. This session, the legislature gave funding priority to critical programs that, if eliminated, would have significantly increased the number commitments to the Texas Youth Commission. Overall, the Texas Juvenile Probation Commission's budget was reduced by 3.48 percent. This percentage represented line item reductions for two diversionary programs that were eliminated as part of the funding cuts requested of all agencies and the restoration of another expenditure item.

Budget Process

Projections of a state budget deficit began to surface early last summer. By the time the Texas Juvenile Probation Commission (TJPC) filed its Legislative Appropriations Request in August 2002, it was apparent that the State of Texas would be facing a significant fiscal crisis during the 2004-2005 biennium. The Commission's Legislative Appropriations Request (LAR) reflected three basic funding objectives. The first objective was to maintain current level funding for all programs and grants administered by the agency. The second objective was to obtain an increase in funding in order to keep pace with the Criminal Justice Policy Council projections of an eight percent growth in the juvenile referrals between fiscal years 2002 and 2005. The third goal was to preserve funding for the Special Needs Diversionary Program for mentally impaired offenders. After a joint hearing before the Legislative Budget Board and the Governor's Office of Budget and Planning, it appeared as if TJPC's request for an increase to its appropriations base in the amount of $2.8 million for fiscal year 2004 and $4.0 million for fiscal year 2005 would be recommended to the legislature. Just prior to the session, however, Comptroller Carole Keeton Strayhorn released a bleak report of the state's revenue estimate and economic growth projections. TJPC and other state agencies were then asked to abandon their original appropriations requests.

By the start of the session in January 2003, the state's budget deficit was estimated to be approximately $9.9 billion dollars. One early indication of the unusual appropriations process ahead was the filing of a general appropriations bill that contained a zero-based budget. With the filing of House Bill 1 by Representative Heflin, the current system of performance based budgeting, which had been used in state government since 1991, was replaced with zero-based budgeting. Performance based budgeting is determined by an agency's current level of funding, performance measures and other strategic planning goals. In contrast, the zero-based budgeting process is one in which an agency is not guaranteed expenditures and is required to justify essential services and programs. As a result, TJPC and other state agencies were asked to identify and prioritize core functions and essential services according to a pro-rata share of the state's anticipated general revenue for fiscal years 2004-2005. TJPC's budget was reduced by a pro-rata share of 12.28% and its funding request was restructured on the basis of essential service building blocks. These building blocks represented the amount of TJPC's available general revenue baseline in the sum of $170,835,471. The core functions falling "below the line" in the baseline budget were considered high priority items within the initial general revenue amounts. The functions and services "above the line" were potential dollars above the initial revenue amount that would be authorized only if funds were available to the legislature. The chart below illustrates TJPC's Biennial Essential Service Blocks.

Texas Juvenile Probation Commission
Biennial Appropriations FY 2004-2005
Essential Service Blocks



Baseline Amount Available for TJPC after 12.28% reduction = $170,825,471

Goal/Objective/Strategy 1.1.1
Overall Total for 1.1.1 = $92,517,358

$72,000
Community Resource Coordination Groups (CRCG) These funds facilitate community resource groups that staff cases for multi-problem youth to find community-based solutions.

$485,670
Border Projects. The funds are provided to border counties to assist in responding to delinquent youth from Mexico who violate Texas law.

$20,576,596
Salary Adjustment for Probation, Detention and Corrections Officers. These funds were allocated to counties to supplement the salaries of probation, detention and corrections officers in an effort to reduce the high turnover and inadequate salaries of officers. (2001)

$10,200,000
Progressive Sanctions Levels 1, 2, 3 Programs. These funds were provided to counties to establish early intervention programs for less serious offenders just entering the juvenile justice system at PS Levels 1-3. (1997)

$10,200,000
185 Progressive Sanctions Level 1, 2, 3 Officers. These funds hired an additional 185 officers who supervise youth in intervention programs including supervisory caution, deferred prosecution and court-ordered probation. (1997)

$18,096,066
408 Probation Officers. Probation officers provide supervision and programs for youth in the community referred to the juvenile court. This funding hired an additional 408 officers and was intended to lower case loads so that youth could be supervised more effectively. (1995)

$32,887,026
State Aid Base Funding. Provides funding to counties for basic probation programs and services in the community.

Goal/Objective/Strategy 1.2.1
Overall Total for 1.2.1 = $71,812,551

$633,615
Small County Diversionary Placement Funding. Funding for residential placement is provided to small counties to help divert youth from TYC commitment.

$2,000,000
Harris County Boot Camp. The Delta Boot Camp serves serious and violent youth in a secure post-adjudication program.

$4,000,000
Special Needs Diversionary Project/TCOMI. This program provides funds to counties to establish specialized teams and caseloads to serve juveniles with serious mental health needs. This project is a cooperative effort with TCOMI, TYC, and TDMHMR. (2001)

$2,451,600
43 Intensive Services Probation Officers. These funds hired 43 additional ISP officers who provide a higher level and frequency of supervision for high risk juvenile probationers. (1997)

$2,120,160
40 Intensive Services Probation Officers. These funds hired an additional 40 ISP Officers who provide a higher level and frequency of supervision for high risk juvenile probationers. (1995)

$60,607,176
Community Corrections Base Funding. Provides funding to assist counties in developing programs and services used to divert high-risk youth from TYC commitment.

Goal/Objective/Strategy 1.2.2
Overall Total for 1.2.2 = $4,281,496

$4,281,496
Probation Assistance. Funds utilized by TJPC to provide 17 key functional categories of service to the juvenile justice field.

Goal/Objective/Strategy 2.1.1
Overall Total for 2.1.1 = $2,214,066

$2,214,066
Direct and Indirect Administration. Funds utilized by TJPC to provide 17 key functional categories of service to the juvenile justice field.

In addition to reductions in general revenue, agencies were also directed by state leadership to propose a seven percent cut to the current year budget. To accomplish this, TJPC's fiscal year 2003 budget was reduced by $6,835,433 and these funds were frozen in a state reserve account. As part of the initial process, TJPC sought an exemption request for specific programmatic funding streams such as Level 5 Secure Post-Adjudication Placement Funds, Construction Bond Facilities 25% Operating Costs and JJAEP 2003 funds. In March 2003, Representative Heflin filed House Bill 7 in order to authorize the current year appropriations reductions. Later in the session, the engrossed version of CSHB 7 incorporated an amendment that decreased TJPC's original proposed budget reduction to $1,985,283. In addition, JJAEP funds were also reduced by $1.3 million from the Foundation School Fund. Upon the final passage of CSHB 7, nearly $3.5 million in frozen funds were restored for Level 5 and local secure post-adjudication facilities. When the Governor signed CSHB 7 on June 22, 2003, the funds were authorized to be released. The legislature stipulated, however, that Level 5 and Local Secure Post-Adjudication residential placements must be subject to the same reimbursement criteria specified for fiscal years 2004-2005. TJPC also developed guidelines for distributing the placement costs incurred by counties during the months the funds were frozen.

Narrative Summary of TJPC Fiscal Years 2004-2005 Appropriations

After numerous hearings and work sessions, the legislative budget cycle came to a close with a significant portion of juvenile justice programs and services in tact. Overall, TJPC's budget sustained a 3.48 percent cut that consisted of two line item reductions in the Community Corrections strategy and the restoration of another expenditure item. In the remaining appropriation strategies, the legislature provided funding for juvenile probation positions and essential services including critical diversionary programs that serve high-risk juvenile offenders. The following strategy overview highlights some of the most significant budgetary changes.

In the Basic Probation strategy, the legislature approved a total biennial budget of $92,517,358. TJPC identified the allocation of funds for salaries to the counties for juvenile probation officers and intensive supervision probation officers as a high priority core function. This strategy also included $20,576,596 for the continuation of the salary adjustment that was authorized as an exceptional item during the 77th Legislative Session. According to the terms of the salary supplement, each county will continue to receive up to $3,000 per certified probation officer and up to $1,500 per detention or correctional officer inclusive of fringe benefits. These funds will assist juvenile boards in retaining experienced probation staff as well as help to stabilize supervision caseloads.

The legislature appropriated $88,895,498 for Community Corrections over the biennium. In this strategy, general revenue funds were decreased by $7,993,309 and two programs were eliminated. Secure post-adjudication residential placement for high-risk offenders was identified as an essential above-the line function that, if eliminated, would have dramatically increased the number of TYC commitments. In an effort to minimize the potential cost to the state, the legislature authorized $8,788,872 to fully fund secure post-adjudication placements for youth who are ordered to Level 5 of the Progressive Sanctions Model. In addition to the conditions set forth in Rider 6 regarding secure post-adjudication placements, the legislature also asked TJPC to establish a policy to limit the length of residential placements to a maximum of 6-months.

The legislature also provided partial funding in the amount of $8,294,075 over the biennium for local secure post-adjudication facilities which represents a funding decrease of $4,493,424. As originally authorized, these funds were utilized to pay 25% of the operating costs for 19 facilities that were built with state construction bond appropriations in 1995. Rider 8 discontinues the original payment method and specifies that the facility costs must now be reimbursed based upon historical occupancy rates rather than the number of beds in the facility. In addition, the Special Needs Diversionary Program was reinstated and $4,000,000 of TJPC's baseline amount was set aside to fund the specialized caseloads for mentally impaired offenders. The Special Needs Diversionary Program was authorized last session as an exceptional item as part of a system-wide initiative with the Texas Council on Offenders with Mental Impairments.

The programs eliminated in this strategy were the Challenge Grant Program which served multi-problem juveniles and the Non-Residential Program Grants which provided funds to counties with a population below 72,000 to establish community based programs. TJPC originally requested $2,691,954 for the Challenge Grant program and $500,000 for the Non-Residential Program Grants for each year of the biennium.

In the Probation Assistance strategy, the legislature appropriated $4,281,496 for probation assistance to provide 17 key functional categories of service to the juvenile justice field. The Title IV-E program also received $30,000,000 in federal funds to reimburse counties for qualifying foster care services.

The legislature also authorized $15,000,000 for Juvenile Justice Alternative Education Program (JJAEP) in the 2004-2005 biennium to provide educational services to mandatory expulsion students and to

fund summer school. Finally, in the Direct and Indirect Administration strategy, $2,214,066 was authorized for agency administrative expenditures.

All state agencies will have to adjust to the budget cuts and fiscal restructuring that dominated a significant portion of the deliberations during 78th Legislative Session. Despite the uncertain beginning of the budget cycle, the juvenile justice field managed to emerge from the session with only minimal systemic impact. Juvenile probation positions in the field were funded and essential services were maintained including critical diversionary programs that serve high-risk juvenile offenders. The dedication and hard work of juvenile justice practitioners in implementing the massive system reforms over the past several years was indeed recognized by the legislature.

Appropriations Riders to TJPC Budget

1. **Capital Budget**. None of the funds appropriated above may be expended for capital budget items except as listed. The amounts shown shall be expended only for the purposes shown and are not available for expenditure for other purposes. Amounts appropriated and identified in this provision as appropriations either for "Lease payments to the Master Lease Purchase Program" or for items with an "(MLPP)" notation shall be expended only for the purpose of making lease-purchase payments to the Texas Public Finance Authority pursuant to the provisions of Government Code §1232.103.

2. **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.

3. **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 appropriated to the Texas Juvenile Probation Commission for the purpose of reimbursing counties for services provided to eligible children.

4. **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.

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 2004 and $10,200,000 in fiscal year 2005 can be distributed only to local probation departments for funding juvenile probation services associated with sanction levels described in ɔɔ 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 2004 and $4,394,436 in fiscal year 2005 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 ɔɔ 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 $4,147,037 in fiscal year 2004 and $4,147,038 in fiscal year 2005 may be used only for the purpose of funding local post-adjudication facilities. The agency shall fund these facilities based on historical occupancy rates, rather than the number of beds in the facility.

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 39 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 population 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 ə 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 2004 shall be appropriated to fiscal year 2005 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 39. 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 ə 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, 2004. 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 Knowledge and Skills (TAKS);

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, 2004 in Strategy A.1.1, Basic Probation (estimated to be $200,000), and in Strategy A.2.1, Community Corrections (estimated to be $200,000), above are hereby appropriated to the Juvenile Probation Commission in fiscal year 2005 for the purpose of providing funding for juvenile probation departments whose allocation would otherwise be affected as a result of reallocations related to population shifts.

15. **Appropriation: Refunds of Unexpended Balances from Local Juvenile Probation Departments**. The Texas Juvenile Probation Commission (JPC) shall maintain procedures to ensure that the state is refunded all unexpended and unencumbered balances of state funds held as of the close of each fiscal year by local juvenile probation departments. All fiscal year 2004 and fiscal year 2005 refunds received from local juvenile probation departments by JPC are appropriated above in Strategy A.2.1, Community Corrections. Any Basic Probation refunds received in excess of $470,000 in fiscal year 2004 and $470,000 in fiscal year 2005 are hereby appropriated to JPC for the Level 5 Secure Correction Placement Program. Any Community Corrections refunds received in excess of $530,000 in fiscal year 2004 and $530,000 in fiscal year 2005 are hereby appropriated to JPC for the Level 5 Secure Correction Placement Program.

TYC Makes Cuts to Match Reduced Budget Appropriation

Steve Robinson
Executive Director

Considering Texas' state budget deficit, the Texas Youth Commission stepped out of the 77th legislative session in a fortunate position. The agency was asked to make cuts, but we believe our appropriation is workable and that overall there will not be a significant reduction in services to TYC youth. Our major disappointment is that we lost some positions.

State agency appropriations for the *current* biennium were cut by 7%, which reduced TYC's 2003 appropriation by $11.8 million. The Legislature also cut agencies' requests for the 2004-2005 biennium by 12.5%. Our total appropriation for FY 2004-2005 is $494.4 million, which is nearly $33 million less than the FY 2002-2003 appropriation.

What these reductions mean for TYC:

- Hamilton State School in Bryan closed in June 2003 and was transferred to the Texas Department of Criminal Justice. Hamilton State School employed 415 people and housed more than 300 boys. The youth were transferred to other facilities statewide or to parole. Some of the staff transferred to jobs in other TYC facilities, some accepted correctional officer jobs at TDCJ, and some found other jobs in the Bryan-College Station area. Those employees who didn't find a position were given a 10% preferential consideration for jobs within TYC over other applicants for the next 12 months.

- The average TYC youth length of stay will be reduced. In April 2003, the average time a general offender spent in residential care was 18 months, and the average length of stay for a violent or serious offender was 26.5 months. *This does not include lengths of stay for sentenced offenders whose determinate sentences are specified by the courts.* To meet the budget, TYC will have to reduce the average lengths of stay as follows:

  FY2004 15.9 months for general offenders
  FY2004 22.4 months for other non-sentenced violent and serious offenders
  FY2005 15.2 months for general offenders
  FY2005 21.9 months for other non-sentenced violent and serious offenders

- TYC's Prevention Strategy was eliminated.

- Health Care Services was cut by 5 percent.

- Other Support Services was cut by 6 percent.

- Overall, 46 full-time equivalent positions were eliminated effective August 31, 2003, due to our 2004-2005 appropriation reduction. In an effort to continue to maintain our current level of direct youth services, we made these reductions in administrative and support services. When you add the closing of the Hamilton State School, a total of 461 positions have been eliminated.

On a positive note:

We *were* funded to operate recently completed expansions at McLennan County State Juvenile Correctional Facility at Mart and at the Sheffield Boot Camp. Both expansions will open this September, and we'll begin phasing in youth until we fill the beds. This will give us a total of 384 new beds, which will be helpful since we filled all available beds statewide with the closing of Hamilton State School.

A proposal to terminate TYC jurisdiction of parolees at age 18 *was not approved*. The Legislature had considered a $7 million dollar annual cost-savings proposal that would have meant releasing TYC 18-year-old parolees without parole supervision after three months of transition services. TYC can maintain jurisdiction over youth until their 21st birthdays. In the end, the legislators decided that 18-and-older parolees could still benefit from our supervision of their activities.

Department of Protective and Regulatory Services
New Budget to Reduce Services for Statewide Delinquency Programs

Henry Darrington
Director, Prevention and Early Intervention

As a result of the recently passed state appropriation, the Texas Department of Protective and Regulatory Services (soon to be renamed the Texas Department of Family and Protective Services) will reduce the amount of services currently provided to Texas youth through programs designed to curb the juvenile delinquency rate. All of the programs are managed out of the agency's Prevention and Early Intervention services division, which works with Texas communities to prevent child abuse, delinquency, running away, truancy, and dropping out of school.

The chart below illustrates the agency's estimate of changes that will take place:

Program	FY 03 Budget	FY 02 Clients*	FY 04 Est. Budget	FY 04 Est. Clients	Est. % Change in Funding	Est % Change in Clients
Services To At Risk Youth (STAR)	$22,021,881	33,520	$18,581,994	28,160	-15.60	-16.00
Community Youth Development (CYD)	$8,373,780	21,088	$7,065,945	17,715	-15.60	-16.00
At Risk Mentoring (ARM)	$1,349,223	2,435	$0	0	-100.00	-100.00
Facility Based Youth Enrichment Activities	$464,862	675	$0	0	-100.00	-100.00
Dan Kubiak Buffalo Soldiers Heritage Program**	Up to $250,000**	299	Up to $250,000**	299	0.00	0.00
Total	$32,459,746	58,017	$25,897,939	46,174	-21.10%	-20.40

*Final FY 03 client counts will not be available until October 2003. As such FY 02 client numbers are provided.

**The Texas Legislature approved a rider requiring the agency to find funding within its budget to allow up to $250,000 to fund the Buffalo Soldiers program

Services To At-Risk Youth (STAR)

Through contracts with community agencies, STAR offers family crisis intervention counseling, short-term emergency residential care, and individual and family counseling to youth ages 7 to 17 who experience conflict at home, have been truant or delinquent, or have run away. STAR services are currently available in all 254 Texas counties.

Community Youth Development Grants (CYD)

The CYD program provides grants to develop juvenile delinquency prevention programs in communities that have a high incidence of juvenile crime. Approaches used by communities to prevent delinquency include mentoring, parenting skills, tutoring, youth employment, career preparation, and alternative recreation activities. Local communities decide the exact prevention services provided. In 2003, PRS awarded grants to serve 15 targeted communities. PRS provides ongoing training and technical assistance for all local CYD programs.

At-Risk Mentoring

Adult mentors spend time on a weekly basis with youth. Mentors are supervised during their involvement with the youth to ensure that the relationships are mutually beneficial. Youth served through this program are ages 7 through 17 and are at risk of substance abuse, educational failure, dropping out of school, juvenile delinquency, gang activity, or running away. In 2003, PRS provided support to 11 community-based mentoring programs.

Facility-Based Youth Enrichment Services

Local after-school and summer youth programs deliver enrichment activities to youth who reside in communities identified as at risk due to indicators such as juvenile crime and high dropout rates. In 2003, PRS funded three such programs.

Dan Kubiak Buffalo Soldiers Heritage Program

This specialized program helps develop honor, pride and dignity in minority and at-risk youth. The goal is to reduce and prevent risky behavior, truancy, and juvenile delinquency in males ages 10 to 17. The program strives to increase youth volunteer work, community service, leadership, and cultural activities. Referrals are received from juvenile probation departments, schools, churches, and civic groups. There are four projects located in Bexar, Dallas, Tarrant, and Tom Green counties.

As a result of legislation, Communities In Schools (CIS), a program to curb student dropouts, will be transferred from the Texas Department of Protective and Regulatory Services to the Texas Education Agency effective Sept. 1, 2003. CIS develops and coordinates programs, community and business partners, and resources as a one-stop shop to improve school attendance, academic performance, everyday behavior, and the Texas dropout rate. At the end of 2002, there were 27 CIS programs that received state contract funds.

1. Title 3 and Related Provisions

§ 51.02. Definitions.

(16) "Traffic offense" means:

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

(i) conduct constituting an offense under Section 521.457, Transportation Code;

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

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

(iv) [~~(iii)~~] conduct constituting an offense punishable as a Class B misdemeanor under Section 550.024, Transportation Code; or

(v) conduct constituting an offense punishable as a Class B misdemeanor under Section 550.025, Transportation Code; or

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

Commentary by Robert Dawson

Source: HB 2319.
Effective Date: September 1, 2003.
Applicability: Conduct occurring on or after effective date.
Summary of Changes: This amendment removes leaving the scene of an accident after colliding with a fixed object resulting in damages in excess of $200 and driving with an invalid license from the definition of a traffic offense. Thus, when committed by a juvenile it becomes delinquent conduct to be pursued in juvenile court rather than in justice or municipal court.

§ 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 or the state under Chapter 56 or by the person 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.

Commentary by Robert Dawson

Source: HB 2319.
Effective Date: September 1, 2003.
Applicability: Conduct occurring on or after effective date.
Summary of Changes: Section 56.03, enacted in 2003, gives the State a limited right to appeal in juvenile cases. Upon appellate reversal, this section as amended gives the juvenile court continuing jurisdiction. The reference to "by the person" in a criminal appeal from a post-certification conviction reinforces the proposition made clear in the referenced Code of Criminal Procedure article that only the respondent, not the State, can appeal under those circumstances.

§ 51.08. Transfer from Criminal Court.

(d) A court that has implemented a juvenile case manager program under Article 45.056 [~~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 2319.
Effective Date: September 1, 2003.
Applicability: Conduct occurring on or after effective date.
Summary of Changes: Two articles in the Code of Criminal Procedure were enacted in 2001 authorizing the use of juvenile case managers in justice or municipal court. In 2003, those provisions were consolidated into article 45.056.

§ 51.10. Right to Assistance of Attorney; Compensation.

(j) The juvenile board of a county may make available to the public the list of attorneys eligible for appointment to represent children in proceedings under this title as provided in the plan adopted under Section 51.102. The list of attorneys must indicate the level of case for which each attorney is eligible for appointment under Section 51.102(b)(2).

(k) Subject to Chapter 61, the juvenile court may order the parent or other person responsible for support of the child to reimburse the county for payments the county made to counsel appointed to represent the child under Subsection (f) or (g). The court may:

(1) order payment for each attorney who has represented the child at any hearing, including a detention hearing, discretionary transfer hearing, adjudication hearing, disposition hearing, or modification of disposition hearing;

(2) include amounts paid to or on behalf of the attorney by the county for preparation time and investigative and expert witness costs; and

(3) require full or partial reimbursement to the county.

(l) The court may not order payments under Subsection (k) that exceed the financial ability of the parent or other person responsible for support of the child to meet the payment schedule ordered by the court.

Commentary by Robert Dawson

Source: HB 2319.
Effective Date: September 1, 2003.
Applicability: Conduct occurring on or after effective date.
Summary of Changes: Subsection (j) permits the juvenile board to make its appointment list available to parents and others who may wish to retain counsel for juvenile proceeding but who lack an informational basis for determining whether a lawyer has juvenile justice expertise.

Subsection (k) recognizes the power of the juvenile court to order a parent to reimburse the county for the payments it made to appointed counsel. Subsection (l) restricts the court to ordering payments that are within the financial ability of the parent to meet on the schedule ordered by the court.

§ 51.102. [~~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 the 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 or [~~;~~][~~(ii)~~] delinquent conduct, and commitment to the Texas Youth Commission is not an authorized disposition; or

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

(B) determinate sentence proceedings have been initiated[~~;~~] or [~~(C)~~] proceedings for discretionary transfer to criminal court have been initiated.

Commentary by Robert Dawson

Source: HB 2319.
Effective Date: September 1, 2003.
Applicability: Conduct occurring on or after effective date.
Summary of Changes: These amendments reduce from five to three the categories of cases in which counsel must be qualified in order to receive an appointment.

§ 51.13. Effect of Adjudication or Disposition.

(d) An adjudication under Section 54.03 that a child engaged in conduct that occurred on or after January 1, 1996, and that constitutes a felony offense resulting in commitment to the Texas Youth Commission under Section 54.04(d)(2), (d)(3), or (m) or 54.05(f) is a final felony conviction only for the purposes of Sections 12.42(a), (b), (c)(1), [~~12.42(a) (c)~~] and (e), Penal Code.

Commentary by Robert Dawson

Source: HB 2319.
Effective Date: September 1, 2003.
Applicability: Conduct occurring on or after effective date.
Summary of Changes: After this subsection was enacted in 1995, the legislature added a new type of punishment enhancement—mandatory life upon conviction of certain sex offenses committed after a prior conviction for a similar offense. The 2003 amendment in the section makes it clear that a prior juvenile adjudication does not qualify as a prior conviction upon subsequent adult conviction for mandatory life under that provision, thus placing it in the same category as punishment under the habitual offender statute.

§ 51.17. Procedure and Evidence.

(d) When on the motion for appointment of an interpreter by a party or on the motion of the juvenile court, in any proceeding under this title, the court determines that the child, the child's parent or guardian, or a witness does not understand and speak English, an interpreter must be sworn to interpret for the person as provided by Article 38.30, Code of Criminal Procedure.

(e) In any proceeding under this title, if a party notifies the court that the child, the child's parent or guardian, or a witness is deaf, the court shall appoint a qualified interpreter to interpret the proceedings in any language, including sign language, that the deaf person can understand, as provided by Article 38.31, Code of Criminal Procedure.

(f) Any requirement under this title that a document contain a person's signature, including the signa-

ture of a judge or a clerk of the court, is satisfied if the document contains the signature of the person as captured on an electronic device or as a digital signature. Article 2.26, Code of Criminal Procedure, applies in a proceeding held under this title.

Commentary by Neil Nichols

Source: HB 2319.
Effective Date: September 1, 2003.
Applicability: Conduct occurring on or after effective date.
Summary of Changes: Under current law, interpreters must be provided for children and witnesses who are deaf or who cannot speak or understand English. This requirement of Articles 38.30 and 38.31, Code of Criminal Procedure, was made applicable to juvenile court proceedings in 1995 when the legislature added § 51.17(c), Family Code. New subsections (d) and (e) extend the current requirement regarding the provision of interpreters for children and witnesses to include parents and guardians who are deaf or who cannot speak or understand English since they are parties to proceedings in the juvenile court.

New subsection (f) makes article 2.26, Code of Criminal Procedure, applicable to juvenile proceedings. Electronically transmitted documents issued or received by the court are considered signed if the document contains the signature of the person as captured on an electronic device or if a digital signature (an electronic identifier intended to have the same force and effect as a manual signature) is transmitted with the document.

§ 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 a disinterested [~~the local mental health or mental retardation authority or another appropriate~~] expert, including a physician, psychiatrist, or psychologist, qualified by education and clinical training in mental health or mental retardation and experienced in forensic evaluation, to determine whether the child has a mental illness as defined by Section 571.003, Health and Safety Code, or is a person with mental retardation as defined by Section 591.003, Health and Safety Code. If the examination is to include a determination of the child's fitness to proceed, an expert may be appointed to conduct the examination only if the expert is qualified under Subchapter B, Chapter 46B, Code of Criminal Procedure, to examine a defendant in a criminal case, and the examination and the report resulting from an examination under this subsection must comply with the requirements under Subchapter B, Chapter 46B, Code of Criminal Procedure, for the examination and resulting report of a defendant in a criminal case.

Commentary by Robert Dawson

Source: SB 1057.
Effective Date: January 1, 2004.
Applicability: Competency proceedings have not been begun on or before effective date.
Summary of Changes: SB 1057 re-wrote the procedures for determining competency to stand trial in the Code of Criminal Procedure. The amendments to this section establish minimum qualifications for those persons conducting examinations and minimum standards for reports made from those examinations. The inherent power of the juvenile court to order physical examinations of children at any stage in the juvenile process was not diminished by these amendments.

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

(a) A child may be taken into custody:

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

(2) pursuant to the laws of arrest;

(3) by a law-enforcement officer, including a school district peace officer commissioned under Section 37.081, Education Code, if there is probable cause to believe that the child has engaged in:

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

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

(C) conduct that violates a condition of probation imposed by the juvenile court;

(4) by a probation officer if there is probable cause to believe that the child has violated a condition of probation imposed by the juvenile court; or

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

(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 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 board [~~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 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.

Commentary by Lisa Capers

Source: HB 2319.
Effective Date: September 1, 2003.
Applicability: Conduct occurring on or after effective date.
Summary of Changes: During the 2001 legislative session, House Bill 1118 deleted the violation of a reasonable and lawful order of a juvenile court from the definition of delinquent conduct in Section 51.03(a)(2) because the definition was technically unnecessary since a commitment to the Texas Youth Commission was legislatively restricted to felony adjudiations and multiple misdemeanor adjudications. However justified that deletion was, it did cause quite a bit of confusion among juvenile justice practitioners, including those in law enforcement. Many in the law enforcement community believed that an officer had no authority to take a juvenile into custody since a violation of probation was not explicitly defined as an offense (i.e., delinquent conduct) after the HB 1118 amendment to Section 51.03(a)(2). The addition in Section 52.01 of Subsection (C) under (a)(3) attempts to remedy this confusion and clarifies that a law enforcement officer indeed has the authority take a child into custody if the officer has probable cause to believe the child has violated his or her probation.

The amendment to Subsection (c)(2) changes the reference to juvenile "court" to "board". This was an amendment that should have been made in 2001 in HB 1118 when most administrative duties of juvenile courts were transferred to juvenile boards. This amendment corrects that oversight.

§ 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 if there is probable cause to believe that the child engaged in delinquent conduct, [~~or~~] conduct indicating a need for supervision, or conduct that violates a condition of probation imposed by the juvenile court;

(3) bring the child to a detention facility designated by the juvenile board;

(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.

Commentary by Lisa Capers

Source: HB 2319.
Effective Date: September 1, 2003.
Applicability: Conduct occurring on or after effective date.
Summary of Changes: This section is a companion amendment to the one discussed in Section 52.01 above. Similar to the confusion caused in the law enforcement community, many juvenile detention facilities believed that because of the House Bill 1118 amendments in 2001, the facilities had no authority to detain a juvenile for a probation violation since such a violation was no longer in the definition of delinquent conduct to which this section refers. The addition in Subsection (a) (2) now clarifies that when a law enforcement officer or probation officer brings a child to juvenile court intake for a probation violation as authorized under Section 52.01, the intake official and ultimately the detention facility has the authority to detain that child if otherwise authorized under Section 53.02.

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

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

~~(1) for 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) as a status offender or nonoffender.~~

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

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

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

~~(3) for truancy or running away, is taken to a juvenile detention facility, or a secure detention facility, as authorized by Sections 51.12(a)(3) and (4), respectively, for the detention of the child as provided by Section 54.011.~~

~~(c) 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 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, municipal court, or justice court;~~

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

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

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

~~(f) A child taken into custody for 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 under Section 52.02(a)(3) only if:~~

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

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

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

~~(h) 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 municipal court or justice court may:~~

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

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

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

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

Commentary by Robert Dawson

Source: HB 2319.
Effective Date: September 1, 2003.
Applicability: Conduct occurring on or after effective date.
Summary of Changes: Section 52.027 is repealed by HB 2319, Section 61(1). This section, dealing with justice or municipal court handling of juvenile criminal charges, is redundant of article 45.058 of the Code of Criminal Procedure, enacted in 2001, which contains substantially identical language.

§ 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, as ordered by the board [~~court~~].

Commentary by Robert Dawson

Source: HB 2319.
Effective Date: September 1, 2003.
Applicability: Conduct occurring on or after effective date.
Summary of Changes: This amendment continues the policy begun in 2001 of shifting responsibility for making administrative designations from the juvenile court to the juvenile board.

§ 52.04. Referral to Juvenile Court; Notice to Parents

(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 board [~~court~~], the office or official designated by the juvenile board [~~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 Lisa Capers

Source: HB 2319.
Effective Date: September 1, 2003.
Applicability: Conduct occurring on or after effective date.
Summary of Changes: This amendment changes the reference to juvenile "court" to "board" in two places in subsection (d). This was an amendment that should have been made in House Bill 1118 in 2001 when most administrative duties of juvenile courts were transferred to juvenile boards. It was an oversight that this section was not changed in 2001 and this amendment corrects that oversight.

§ 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, the intake officer, probation officer, or other person authorized by the board [~~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:

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

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

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

Commentary by Robert Dawson

Source: HB 2319.
Effective Date: September 1, 2003.
Applicability: Conduct occurring on or after effective date.
Summary of Changes: This amendment authorizes intake to accept the referral of a nonoffender being held for deportation and to place such a person into the juvenile detention facility. However, Section 54.011 was amended to make it clear that such children can be detained only for 24 hours, excluding weekend and holiday hours. At that point, further detention constitutes a Class B misdemeanor and gives rise to civil liability.

§ 53.013. Progressive Sanctions Programs.

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

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

Commentary by Lisa Capers

Source: HB 888.
Effective Date: September 1, 2003.
Applicability: Conduct occurring on or after effective date.
Summary of Changes: During the interim between the 2001 and 2003 legislative sessions, the Texas Juvenile Probation Commission (TJPC) sponsored a workgroup of juvenile justice practitioners to review the Progressive Sanctions Guidelines originally established during the extensive juvenile justice reforms made in 1995. This workgroup was composed of probation officers, prosecutors, defense attorneys, juvenile court judges, personnel from the Texas Youth Commission, the Texas Juvenile Probation Commission, and the Texas Criminal Justice Policy Council and several staff from key legislative offices. The workgroup analyzed the use of the guidelines, problems and issues with the guidelines, and the continued need and viability of the guidelines in the juvenile justice system. This workgroup prepared various recommendations regarding the Progressive Sanctions Guidelines and presented these to the Senate Committee on Criminal Justice which had as one of its interim charges to study the effectiveness of the guidelines. Additionally, the group presented its findings to the House Committee on Juvenile Justice and Family Issues. Both of these legislative committees included many of the workgroup's key findings and recommendations in their interim reports to the legislature which ultimately became House Bill 888.

The main conclusion of the workgroup was that the Progressive Sanctions Guidelines had served a valuable purpose in defining the juvenile justice system and were of continued value; however, the importance placed on deviations from the guidelines was detracting from the beneficial uses of the guidelines and did not fully represent the variety of legitimate reasons for departures from the recommendations set forth in the guidelines. The changes made to this section and Chapter 59 in general reflect the recommendations from the workgroup and the legislative committees.

The amendment to Section 53.013 conforms to the philosophical changes in Chapter 59 which are designed to decrease the importance placed on deviations from the guidelines. The former name *Progressive*

Sanctions Guidelines was changed to *Progressive Sanctions Model* to reinforce the concept that the model is not a mandatory guide for dispositions, but a discretionary model of recommended dispositional alternatives designed to assist juvenile justice practitioners.

§ 53.03. Deferred Prosecution.

(d) The juvenile board [~~court~~] may adopt a fee schedule for deferred prosecution services and rules for the waiver of a fee for financial hardship in accordance with guidelines that the Texas Juvenile Probation Commission shall provide. The maximum fee is $15 a month. If the board [~~court~~] adopts a schedule and rules for waiver, the probation officer or other designated officer of the court shall collect the fee authorized by the schedule from the parent, guardian, or custodian of a child for whom a deferred prosecution is authorized under this section or waive the fee in accordance with the rules adopted by the board [~~court~~]. The officer shall deposit the fees received under this section in the county treasury to the credit of a special fund that may be used only for juvenile probation or community-based juvenile corrections services or facilities in which a juvenile may be required to live while under court supervision. If the board [~~court~~] does not adopt a schedule and rules for waiver, a fee for deferred prosecution services may not be imposed.

(i) The court may defer prosecution for a child at any time:

(1) for an adjudication that is to be decided by a jury trial, before the jury is sworn;

(2) for an adjudication before the court, before the first witness is sworn; or

(3) for an uncontested adjudication, before the child pleads to the petition or agrees to a stipulation of evidence.

(j) The court may add the period of deferred prosecution under Subsection (i) to a previous order of deferred prosecution, except that the court may not place the child on deferred prosecution for a combined period longer than one year.

Commentary by Robert Dawson

Source: HB 2319.
Effective Date: September 1, 2003.
Applicability: Conduct occurring on or after effective date.
Summary of Changes: The amendments in subsection (d) continue the policy begun in 2001 of shifting responsibility for making administrative designations from the juvenile court to the juvenile board. New subsection (i) recognizes the power of the juvenile court to grant deferred prosecution independently of the prosecutor's wishes, but requires that the court act before jeopardy attaches. Subsection (j) recognizes there may be cases in which a court may properly wish to grant a second deferred prosecution in a case; it authorizes such a step so long as the total of deferred prosecution terms does not exceed one year. The prohibition in (g) against placing certain alcohol-related offenses in deferred prosecution applies to judicially-granted deferral prosecution.

§ 54.01. Detention Hearing

(b) Reasonable notice of the detention hearing, either oral or written, shall be given, stating the time, place, and purpose the hearing. Notice shall be given to the child and, if they can be found, to his parents, guardian, or custodian. Prior to the commencement of the hearing, the court shall inform the parties of the child's right to counsel and to appointed counsel if they are indigent and of the child's right to remain silent with respect to any allegations of delinquent conduct, [~~or~~] conduct indicating a need for supervision, or conduct that violates an order of probation imposed by a juvenile court.

(m) The detention hearing required in this section may be held in the county of the designated place of detention where the child is being held even though the designated place of detention is outside the county of residence of the child or the county in which the alleged delinquent conduct, [~~or~~] conduct indicating a need for supervision, or probation violation occurred.

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

(q) If a child has not been released under Section 53.02 or this section and a petition has not been filed under Section 53.04 or 54.05 concerning the child, the court shall order the child released from detention not later than:

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

(2) the 15th working day after the date the initial detention hearing is held, if the child is alleged

to have engaged in conduct constituting an offense other than an offense listed in Subdivision (1) or conduct that violates an order of probation imposed by a juvenile court.

(r) On the conditional release of a child from detention by judicial order under Subsection (f), the court, referee, or detention magistrate may order that the child's parent, guardian, or custodian present in court at the detention hearing engage in acts or omissions specified by the court, referee, or detention magistrate that will assist the child in complying with the conditions of release. The order must be in writing and a copy furnished to the parent, guardian, or custodian. An order entered under this subsection may be enforced as provided by Chapter 61.

Commentary by Lisa Capers

Source: HB 2319.
Effective Date: September 1, 2003.
Applicability: Conduct occurring on or after effective date.
Summary of Changes: The changes in Subsections (b), (m), (o) and (q) are companion changes to those made in Sections 52.01 and 52.02. All these changes seek to clarify the confusion caused by the deletion of the violation of probation from the definition of delinquent conduct which was done in House Bill 1118 in 2001. These amendments clarify that the detention hearing requirements for children accused of delinquent conduct or CINS offenses are basically the same for a child charged with a violation of probation. These rights include the right to have appointed counsel, the right to remain silent, the proper venue for a detention hearing, and the requirement of a finding of probable cause at the detention hearing. Subsection (o) also corrects the reference to the Texas Rules of Evidence which used to the Texas Rules of Criminal Evidence. The Civil and Criminal rules were formally combined into the Texas Rules of Evidence.

An additional change to Subsection (q) adds the reference to Section 54.05 (i.e., modification hearings) to the requirement of release from detention if a petition is not filed within the prescribed timeframe based upon the offense. This was an oversight from the 1999 legislative session that is now being corrected.

The amendment to Subsection (r) authorizes the court, referee or detention magistrate to order a parent, guardian or custodian who is present at a detention hearing to engage in specified acts or omissions that will assist the child in complying with conditions of release that are imposed under authority of subsection (f). This order, like the conditions of release authorized by (f), must be reduced to writing and furnished to the individual. Enforcement is by contempt of court proceedings as authorized under the newly created Chapter 61 entitled Rights and Responsibilities of Parents and Other Eligible Persons.

§ 54.011. Detention Hearing for Status Offenders and Nonoffenders; Penalty

(f) Except as provided by Subsection (a), a nonoffender, including a person who has been taken into custody and is being held solely for deportation out of the United States, may not be detained for any period of time in a secure detention facility or secure correctional facility, regardless of whether the facility is publicly or privately operated. A nonoffender who is detained in violation of this subsection is entitled to immediate release from the facility and may bring a civil action for compensation for the illegal detention against any person responsible for the detention. A person commits an offense if the person knowingly detains or assists in detaining a nonoffender in a secure detention facility or secure correctional facility in violation of this subsection. An offense under this subsection is a Class B misdemeanor.

Commentary by Robert Dawson

Source: HB 2319.
Effective Date: September 1, 2003.
Applicability: Only to a nonoffender who is detained in a secure detention facility or secure correctional facility on or after the effective date. A nonoffender who is detained in a secure detention facility or secure correctional facility before the effective date is not entitled to bring a civil action.
Summary of Changes: In 2001, several hundred children were held in secure detention facilities in a few Texas counties under contract with the federal government. These children were being held not on charges of delinquent conduct, but as nonoffenders being held solely to facilitate deportation from the United States. That practice violates both Texas law and federal standards for the dispersal of moneys to the states for juvenile justice programs. This amendment, in combination with an amendment in Section 53.01, authorizes detention of such children for 24 hours, not counting hours of weekends and holidays, to enable longer term placement in more suitable settings. After 24 hours, the detention not only becomes illegal and makes the child amendable to habeas corpus release, but subjects officials to prosecution for a Class B misdemeanor and to lawsuits for civil liability.

§ 54.021. County, Justice, or Municipal Court: Truancy.

(a) The juvenile court may waive its exclusive original jurisdiction and transfer a child to the constitutional county court, if the county has a population of two million or more, or to an appropriate justice or municipal court, with the permission of the county, justice, or municipal court, for disposition in the manner provided by Subsection (b) [~~of this section~~]

if the child is alleged to have engaged in conduct described in Section 51.03(b)(2) [~~of this code~~]. A waiver of jurisdiction under this subsection may be for an individual case or for all cases in which a child is alleged to have engaged in conduct described in Section 51.03(b)(2) [~~of this code~~]. The waiver of a juvenile court's exclusive original jurisdiction for all cases in which a child is alleged to have engaged in conduct described in Section 51.03(b)(2) [~~of this code~~] is effective for a period of one year.

(b) A county, 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 county, justice, or municipal court charging an offense under Section 25.094, Education Code.

(c) A proceeding in a county, 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.

(d) Notwithstanding any other law, the costs assessed in a case filed in or transferred to a constitutional county court for an offense under Section 25.093 or 25.094, Education Code, must be the same as the costs assessed for a case filed in a justice court for an offense under Section 25.093 or 25.094, Education Code.

(e) The proceedings before a constitutional county court related to an offense under Section 25.093 or 25.094, Education Code, may be recorded in any manner provided by Section 30.00010, Government Code, for recording proceedings in a municipal court of record.

Commentary by Robert Dawson

Source: SB 358.
Effective Date: September 1, 2003.
Applicability: Conduct occurring on or after effective date.
Summary of Changes: These changes reflect enactment in 2003 in the Government Code of provisions enabling the Dallas county constitutional county court to handle through magistrates criminal charges of failure to attend school and contributing to failure to attend school.

[~~§ 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 2319.
Effective Date: September 1, 2003.

Applicability: Conduct occurring on or after effective date.
Summary of Changes: Section 54.023 is repealed by HB 2319, Section 61(1). Substantially the same provisions were enacted in 2001 as article 45.058 of the Code of Criminal Procedure. This repeal simply eliminates the redundancy.

§ 54.03. Adjudication Hearing.

(i) In order to preserve for appellate or collateral review the failure of the court to provide the child the explanation required by Subsection (b), the attorney for the child must comply with Rule 33.1 [~~52(a)~~], Texas Rules of Appellate Procedure, before testimony begins or, if the adjudication is uncontested, before the child pleads to the petition or agrees to a stipulation of evidence.

Commentary by Neil Nichols

Source: HB 2319.
Effective Date: September 1, 2003.
Applicability: Conduct occurring on or after effective date.
Summary of Changes: This technical amendment corrects a citation reference to the Texas Rules of Appellate Procedure related to preservation of appellate complaints.

§ 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 for not more than 180 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, 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.

(f) A court may transfer a case in which proceedings have been deferred as provided by this section to a court in another [~~a contiguous~~] county if the court to which the case is transferred consents. A case may not be transferred unless it is within the 17 jurisdiction of the court to which it is transferred.

Commentary by Neil Nichols

Source: HB 2319.
Effective Date: September 1, 2003.
Applicability: Conduct occurring on or after effective date.
Summary of Changes: The provisions of this section largely track the language of article 45.052, Code of Criminal Procedure, related to deferral and dismissal of cases by justice and municipal courts on completion of teen court programs. The amendments to this section conform with language in article 45.052 to disallow deferral if the youth has completed a teen court program for any offense within the preceding two years and to allow transfer of a deferred case to an appropriate court any other county with that court's consent, not just to one in a contiguous county.

§ 54.04. Disposition Hearing.

(o) In a disposition under this title:

(1) 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 county, 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.

Commentary by Robert Dawson

Source: SB 358.
Effective Date: September 1, 2003.
Applicability: Conduct occurring on or after effective date.
Summary of Changes: This amendment reflects the enactment in 2003 in the Government Code of provisions enabling the Dallas County constitutional county judge, through magistrates, to handle criminal charges of failure to attend school and contributing to failure to attend school.

§ 54.041. Orders Affecting Parents and Others.

(a) When a child has been found to have engaged in delinquent conduct or conduct indicating a need for supervision and the juvenile court has made a finding that the child is in need of rehabilitation or that the protection of the public or the child requires that disposition be made, the juvenile court, on notice by any reasonable method to all persons affected, may:

(1) order any person found by the juvenile court to have, by a wilful act or omission, contributed to, caused, or encouraged the child's delinquent conduct or conduct indicating a need for supervision to do any act that the juvenile court determines to be reasonable and necessary for the welfare of the child or to refrain from doing any act that the juvenile court determines to be injurious to the welfare of the child;

(2) enjoin all contact between the child and a person who is found to be a contributing cause of the child's delinquent conduct or conduct indicating a need for supervision; [~~or~~]

(3) after notice and a hearing of all persons affected order any person living in the same household with the child to participate in social or psychological counseling to assist in the rehabilitation of the child and to strengthen the child's family environment; or

(4) after notice and a hearing of all persons affected order the child's parent or other person responsible for the child's support to pay all or part of the reasonable costs of treatment programs in which the child is required to participate during the period of probation if the court finds the child's parent or person responsible for the child's support is able to pay the costs.

Commentary by Robert Dawson

Source: HB 2319.
Effective Date: September 1, 2003.
Applicability: Conduct occurring on or after effective date.
Summary of Changes: The addition of subsection (4) is part of the new chapter on parental rights and responsibilities. It authorizes ordering a parent to pay for probation treatment programs.

§ 54.042. License Suspension

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

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

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

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

Commentary by Lisa Capers

Source: HB 2319.
Effective Date: September 1, 2003.
Applicability: Conduct occurring on or after effective date.
Summary of Changes: The amendments to Section 54.042 (c) and (d) are an attempt to bring the law applicable to juveniles into consistency with the sanctions that are applicable to an adult offender (age 17 or older) regarding drivers license suspensions. For example, under current law in subsection (c) and (d), a juvenile who is adjudicated at age 14 for specific offenses would have issuance of his or her driver's license denied until age 19. This is five years, but for an adult committing the same offense, the maximum period of suspension is one year. The penalty for juvenile offenders was too severe in some situations and was completely out of sync with adult penalties; thus, the legislature remedied this situation with these amendments to Section 54.042.

§ 54.0461. Payment of Juvenile Delinquency Prevention [~~Graffiti Eradication~~] Fees.

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

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

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

Commentary by Lisa Capers

Source: HB 1828.
Effective Date: September 1, 2003.
Applicability: Court order entered on or after effective date.
Summary of Changes: In 1997, the legislature authorized the creation of the *Graffiti Eradication Fund* in each county administered by the local county commissioner's court. Originally, the proceeds from the fund were targeted at the repair of property damaged by graffiti, educational/intervention type programs to help prevent or reduce graffiti offenses and programs designed to assist in the apprehension of offenders who commit graffiti offenses. The amendment to Section 54.0461 is a companion change to those made in

Article 102.0171 of the Code of Criminal Procedure (discussed later in this commentary).

The amendments in this section change the official name of the fund to the *Juvenile Delinquency Prevention Fund*, a name which carries a broader scope and purpose for the fund. The amendments to the Code of Criminal Procedure Article 102.0171 greatly expand the type of programs for which the fund proceeds may be spent. The new programs that are now authorized include teen recognition and recreation programs, teen court programs, funding for the local juvenile probation department, and general delinquency educational/intervention programs.

§ 54.05. Hearing to Modify Disposition

(k) The court may modify a disposition under Subsection (f) that is based on an adjudication [~~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 one [~~two~~] previous occasion before the adjudication that prompted the disposition that is being modified [~~occasions~~];

(2) [~~of the previous adjudications,~~] the conduct that was the basis [~~for one~~] of the adjudication that prompted the disposition that is being modified [~~adjudications~~] occurred after the date of the [~~another~~] previous adjudication.

(l) The court may extend a period of probation under this section at any time during the period of probation or, if a motion for revocation or modification of probation is filed before the period of supervision ends, before the first anniversary of the date on which the period of probation expires.

Commentary by Neil Nichols

Source: HB 2319.
Effective Date: September 1, 2003.
Applicability: Conduct occurring on or after effective date.
Summary of Changes: Section 54.05(k) was added in 1999 to require for commitment to the Texas Youth Commission for a violation of a condition of a Class A or B misdemeanor probation that there have been at least one adjudication for a felony or Class A or B misdemeanor offense before the adjudication that resulted in the child's current probation. The amendments are needed to clarify language in this section that has been interpreted to require more than one previous adjudication.

Section 54.05(l) authorizes a court to modify a period of probation even though the hearing may occur after the period of probation has ended so long as the motion was filed prior to the expiration of the period of probation. It is patterned after Code of Criminal Procedure Article 42.12 Sec. 22 (c).

§ 54.051. Transfer of Determinate Sentence Probation to Appropriate District Court

(e) A district court that exercises jurisdiction over a child transferred under Subsection (d) shall place the child on community supervision under Article 42.12, Code of Criminal Procedure, for the remainder of the child's probationary period and under conditions consistent with those ordered by the juvenile court.

(e-1) The restrictions on a judge placing a defendant on community supervision imposed by Section 3g, Article 42.12, Code of Criminal Procedure, do not apply to a case transferred from the juvenile court. The minimum period of community supervision imposed by Section 3(b), Article 42.12, Code of Criminal Procedure, does not apply to a case transferred from the juvenile court.

(e-2) If a child who is placed on community supervision under this section [~~subsection~~] violates a condition of that supervision or if the child violated a condition of probation ordered under Section 54.04(q) and that probation violation was not discovered by the state before the child's 18th birthday, the district court shall dispose of the violation of community supervision or probation, as appropriate, in the same manner as if the court had originally exercised jurisdiction over the case. If the judge revokes community supervision, the judge may reduce the prison sentence to any length without regard to the minimum term imposed by Section 23(a), Article 42.12, Code of Criminal Procedure.

(e-3) The time that a child serves on probation ordered under Section 54.04(q) is the same as time served on community supervision ordered under this section [~~subsection~~] for purposes of determining the child's eligibility for early discharge from community supervision under Section 20, Article 42.12, Code of Criminal Procedure.

(g) If the juvenile court places the child on probation for an offense for which registration as a sex offender is required by Chapter 62, Code of Criminal Procedure, and defers the registration requirement until completion of treatment for the sex offense under Article 62.13, Code of Criminal Procedure, the authority under that article to reexamine the need for registration on completion of treatment is transferred to the court to which probation is transferred.

(h) If the juvenile court places the child on probation for an offense for which registration as a sex offender is required by Chapter 62, Code of Criminal Procedure, and the child registers, the authority of the court to excuse further compliance with the registration requirement under Articles 62.13(l)-(r), Code of

Criminal Procedure, is transferred to the court to which probation is transferred.

(i) If the juvenile court exercises jurisdiction over a person who is 18 years of age or older under Section 51.041 or 51.0412, the court or jury may, if the person is otherwise eligible, place the person on probation under Section 54.04(q). The juvenile court shall set the conditions of probation and immediately transfer supervision of the person to the appropriate court exercising criminal jurisdiction under Subsection (e).

Commentary by Robert Dawson

Source: HB 2319.
Effective Date: September 1, 2003.
Applicability: All cases without regard to whether the conduct or proceedings occur before, on, or after the effective date.
Summary of Changes: Subsection (e-1) recognizes that a criminal court judge may place a transferred juvenile on community supervision even if the juvenile was adjudicated in juvenile court of an aggravated offense or an offense in which a deadly weapon was used. It also recognizes that the minimum periods of community supervision applicable to adult offenders—two years for a third or second degree felony and five years for a first degree felony—do not apply in cases of transferred juveniles. Similarly, subsection (e-2) makes it clear that if the criminal court judge imposes a prison sentence upon revocation, the sentence is not subject to the minimum periods specified for adult offenders—two years for a third or second degree felony and five years for a first degree felony. Both of these subsections are intended to give the criminal court judge greater flexibility in the handling of transferred juveniles than the judge has with regard to adult offenders.

Subsection (g) provides that if a transferred juvenile was placed on deferred sex offender registration by the juvenile court, the power to re-examine that status upon completion of treatment is transferred to the criminal court along with the case. Similarly, under subsection (h) the power to de-register a registered sex offender is transferred to the criminal court when the case is transferred.

Subsection (i) addresses the situation in which the subject of determinate sentence act proceedings is 18 at the time of disposition. Without a special provision, that respondent would not be eligible for determinate sentence probation. Under this subsection, the juvenile court could place the 18 year old respondent on determinate sentence probation and immediately transfer supervision to the criminal court. This provision prevents making the respondent ineligible for probation simply because the disposition of the case was delayed.

§ 54.06. Judgments for Support.

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

Commentary by Robert Dawson

Source: HB 2319.
Effective Date: September 1, 2003.
Applicability: Conduct occurring on or after effective date.
Summary of Changes: Section 54.06(d) is repealed by HB 2319, Section 61(1). Juvenile court child support orders are enforced using the full box of tools under Title 5, not section 54.07.

§ 54.07. Enforcement of Order.

(a) Except as provided by Subsection (b) or a juvenile court child support order, any [~~Any~~] order of the juvenile court may be enforced as provided by Chapter 61 [~~by contempt~~].

(b) A violation of any of the following orders of the [~~The~~] juvenile court may not be enforced by contempt of court proceedings against the child:

(1) an order setting conditions of probation;

(2) an order setting conditions of deferred prosecution; and

(3) an order setting conditions of release from detention [~~enforce its order for support or for the payment of restitution or probation fees by civil contempt proceedings after 10 days' notice to the defaulting person of his failure or refusal to carry out the terms of the order~~].

(c) This section and Chapter 61 do not preclude a [~~On the motion of the~~] juvenile court from summarily finding [~~or any person or agency entitled to receive restitution or probation payments or payments for the benefit of~~] a child or other [~~, the juvenile court may render judgment against a defaulting~~] person in direct contempt of the juvenile court for conduct occurring in the presence of the judge of the court. Direct contempt of the juvenile court by a child is punishable by a maximum of [~~for any amount unpaid and owing after~~] 10 days' confinement in a secure juvenile detention facility or by a maximum of 40 hours of community service, or both. The juvenile court may not impose a fine on a child for direct contempt [~~notice to the defaulting person of his failure or refusal to carry out the terms of the order. The judgment may be enforced by any means available for the enforcement of judgments for other debts~~].

(d) This section and Chapter 61 do not preclude a juvenile court in an appropriate case from using a civil or coercive contempt proceeding to enforce an order.

Commentary by Robert Dawson

Source: HB 2319.

Effective Date: September 1, 2003.
Applicability: Conduct occurring on or after effective date.
Summary of Changes: This section, as rewritten, establishes basic guidelines for the enforcement of court orders against parents and others under new Chapter 61. Subsection (b) prohibits the juvenile court from using contempt of court proceedings against the child to enforce violations of the conditions of probation, deferred prosecution, or release from detention because Title 3 elsewhere provides specific procedures to respond to such violations.

Subsection (c) permits direct contempt of court proceedings against parents or children and imposes restrictions on direct contempt punishment of a child. Subsection (d) permits the juvenile court to use coercive contempt proceedings to enforce its orders when otherwise authorized by law.

§ 54.11. Release or Transfer Hearing.

(l) Pending the conclusion of a transfer hearing, the juvenile court shall order that the person who is referred for transfer be detained in a certified juvenile detention facility as provided by Subsection (m). If the person is at least 17 years of age, the juvenile court may order that the person be detained without bond in an appropriate county facility for the detention of adults accused of criminal offenses.

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

(n) If the juvenile court orders that a person who is referred for transfer be detained in a county facility under Subsection (l), the county sheriff shall take custody of the person under the juvenile court's order.

Commentary by Neil Nichols

Source: HB 2319.
Effective Date: September 1, 2003.
Applicability: Conduct occurring on or after effective date.
Summary of Changes: These new subsections provide for the detention in adult jail facilities of determinate sentence youth who are 17 years of age or older pending a juvenile court hearing regarding their transfer to adult prison. These are youth who have been sentenced to commitment to TYC and who have been referred back to the juvenile court by TYC for possible transfer to adult prison due to their misconduct at TYC. Just as in the case of older TYC parole violators and escapees, the short-term detention of these older sentenced youth in an adult facility is more age appropriate than their detention would be in a juvenile facility. Though they are detained in an adult detention facility, bond may not be set for their release since they are under TYC sentence for an adjudicated felony. The language of the new subsections tracks the language of §54.02(p), (q) and (r) related to the detention of youth pending discretionary transfer hearings.

Sentenced youth who are not detained in adult jail facilities are required to be detained separately from other children in juvenile detention if it is practicable. Sheriffs are expressly required to take custody of youth who are ordered detained in an adult jail.

§ 55.19. Transfer to Criminal Court on 18th Birthday.

(b) The juvenile court shall send notification of the transfer of a child under Subsection (a) to the inpatient mental health facility. The criminal court shall, within 90 days of the transfer, institute proceedings under Chapter 46B [~~Article 46.02~~], Code of Criminal Procedure. If those or any subsequent proceedings result in a determination that the defendant is competent to stand trial, the defendant may not receive a punishment for the delinquent conduct described by Subsection (a)(2) that results in confinement for a period longer than the maximum period of confinement the defendant could have received if the defendant had been adjudicated for the delinquent conduct while still a child and within the jurisdiction of the juvenile court.

Commentary by Neil Nichols

Source: SB 1057.
Effective Date: January 1, 2004.
Applicability: Competency proceedings not begun on or before effective date.
Summary of Changes: SB 1057 creates a new criminal competency statute (Chapter 46B, Code of Criminal Procedure) to replace the current one (Article 46.02, Code of Criminal Procedure). The amendment to this section related to the transfer of certain youth with mental illness to the criminal court at age 18 for a competency determination conforms with that change.

§ 55.44. Transfer to Criminal Court on 18th Birthday of Child.

(b) The juvenile court shall send notification of the transfer of a child under Subsection (a) to the facility. The criminal court shall, before the 91st day after the date of the transfer, institute proceedings under Chapter 46B [~~Article 46.02~~], Code of Criminal Procedure. If those or any subsequent proceedings result in a determination that the defendant is competent to stand trial, the defendant may not receive a punishment for the delinquent conduct described by Subsection (a)(2) that results in confinement for a period longer than the maximum period of confinement the defendant could have received if the defendant had been

adjudicated for the delinquent conduct while still a child and within the jurisdiction of the juvenile court.

Commentary by Neil Nichols

Source: SB 1057.
Effective Date: January 1, 2004.
Applicability: Competency proceedings not begun on or before effective date.
Summary of Changes: This section relates to youth who have been determined unfit to proceed by the juvenile court as a result of mental illness or mental retardation and who have been placed in an inpatient mental health facility or a residential facility for persons with mental retardation. The competency determination following their transfer to the criminal court at age 18 under certain circumstances is now governed by the new chapter 46B, Code of Criminal Procedure, which replaces the current article 46.02, Code of Criminal Procedure.

§ 56.03. Appeal by State in Cases of Violent or Habitual Offender

(a) In this section, "prosecuting attorney" means the county attorney, district attorney, or criminal district attorney who has the primary responsibility of presenting cases in the juvenile court. The term does not include an assistant prosecuting attorney.

(b) The state is entitled to appeal an order of a court in a juvenile case in which the grand jury has approved of the petition under Section 53.045 if the order:

(1) dismisses a petition or any portion of a petition;

(2) arrests or modifies a judgment;

(3) grants a new trial;

(4) sustains a claim of former jeopardy; or

(5) grants a motion to suppress evidence, a confession, or an admission and if:

(A) jeopardy has not attached in the case;

(B) the prosecuting attorney certifies to the trial court that the appeal is not taken for the purpose of delay; and

(C) the evidence, confession, or admission is of substantial importance in the case.

(c) The prosecuting attorney may not bring an appeal under Subsection (b) later than the 15th day after the date on which the order or ruling to be appealed is entered by the court.

(d) The state is entitled to a stay in the proceedings pending the disposition of an appeal under Subsection (b).

(e) The court of appeals shall give preference in its docket to an appeal filed under Subsection (b).

(f) The state shall pay all costs of appeal under Subsection (b), other than the cost of attorney's fees for the respondent.

(g) If the respondent is represented by appointed counsel, the counsel shall continue to represent the respondent as appointed counsel on the appeal. If the respondent is not represented by appointed counsel, the respondent may seek the appointment of counsel to represent the respondent on appeal. The juvenile court shall determine whether the parent or other person responsible for support of the child is financially able to obtain an attorney to represent the respondent on appeal. If the court determines that the parent or other person is financially unable to obtain counsel for the appeal, the court shall appoint counsel to represent the respondent on appeal.

(h) If the state appeals under this section and the respondent is not detained, the court shall permit the respondent to remain at large subject only to the condition that the respondent appear in court for further proceedings when required by the court. If the respondent is detained, on the state's filing of notice of appeal under this section, the respondent is entitled to immediate release from detention on the allegation that is the subject of the appeal. The court shall permit the respondent to remain at large regarding that allegation subject only to the condition that the respondent appear in court for further proceedings when required by the court.

(i) The Texas Rules of Appellate Procedure apply to a petition by the state to the supreme court for review of a decision of a court of appeals in a juvenile case.

Commentary by Robert Dawson

Source: HB 2319.
Effective Date: September 1, 2003.
Applicability: Appeal by the State of an order rendered by a juvenile court on or after the effective date.
Summary of Changes: Prior to enactment of this section, only the juvenile respondent could appeal from juvenile court rulings, except for rulings granting certain relief to juveniles under sex offender registration provisions, in which the State has a limited right of appeal. This section gives the State the right to appeal from certain adverse rulings in determinate sentence act proceedings. Subsection (b) specifies those orders that can be appealed--all of which can be reversed and remanded by an appellate court without violating the prohibition on double jeopardy.

The section is modeled after article 44.01 of the Code of Criminal Procedure, which authorizes State appeal from similar rulings in criminal proceedings.

Subsection (g) provides for appointment of counsel to defend the interests of the respondent during the appeal.

Subsection (h) requires that the child be released from detention on the charges that are the subject of the appeal on the sole condition that he or she appear in court when required after termination of the appeal.

§ 58.003. Sealing of Records.

(n) A record created or maintained under Chapter 62, Code of Criminal Procedure [~~Article 6252-13c.1, Revised Statutes~~], may not be sealed under this section if the person who is the subject of the record has a continuing obligation to register under that chapter [~~article~~].

Commentary by Neil Nichols

Source: HB 2319.
Effective Date: September 1, 2003.
Applicability: Conduct occurring on or after effective date.
Summary of Changes: This section prohibits the sealing of sex offender registration records as long as the person has a continuing obligation to register. The technical amendment corrects the citation to the Sex Offender Registration Program which was recodified in 1997.

§ 58.005. Confidentiality of Records.

(a) Records and files concerning a child, including personally identifiable information, and information [~~Information~~] obtained for the purpose of diagnosis, examination, evaluation, or treatment or for making a referral for treatment of a child by a public or private agency or institution providing supervision of a child by arrangement of the juvenile court or having custody of the child under order of the juvenile court may be disclosed only to:

(1) the professional staff or consultants of the agency or institution;

(2) the judge, probation officers, and professional staff or consultants of the juvenile court;

(3) an attorney for the child;

(4) a governmental agency if the disclosure is required or authorized by law;

(5) a person or entity to whom the child is referred for treatment or services if the agency or institution disclosing the information has entered into a written confidentiality agreement with the person or entity regarding the protection of the disclosed information;

(6) the Texas Department of Criminal Justice and the Texas Juvenile Probation Commission for the purpose of maintaining statistical records of recidivism and for diagnosis and classification; or

(7) with leave of the juvenile court, any other person, agency, or institution having a legitimate interest in the proceeding or in the work of the court.

Commentary by Robert Dawson

Source: HB 2319.
Effective Date: September 1, 2003.
Applicability: Conduct occurring on or after effective date.
Summary of Changes: This amendment adds personally identifiable information to that information that is confidential.

CHAPTER 59. PROGRESSIVE SANCTIONS MODEL [~~GUIDELINES~~].

§ 59.001. Purposes.

The purposes of the progressive sanctions model [~~guidelines~~] are to:

(1) ensure that juvenile offenders face uniform and consistent consequences and punishments that correspond to the seriousness of each offender's current offense, prior delinquent history, special treatment or training needs, and effectiveness of prior interventions;

(2) balance public protection and rehabilitation while holding juvenile offenders accountable;

(3) permit flexibility in the decisions made in relation to the juvenile offender to the extent allowed by law;

(4) consider the juvenile offender's circumstances; [~~and~~]

(5) recognize that departure of a disposition from this model is not necessarily undesirable and in some cases is highly desirable; and

(6) improve juvenile justice planning and resource allocation by ensuring uniform and consistent reporting of disposition decisions at all levels.

Commentary by Lisa Capers

Source: HB 888.
Effective Date: September 1, 2003.
Applicability: Conduct occurring on or after effective date.
Summary of Changes: During the interim between the 2001 and 2003 legislative sessions, the Texas Juvenile Probation Commission (TJPC) sponsored a workgroup of juvenile justice practitioners to review the Progressive Sanctions Guidelines originally established during the extensive juvenile justice reforms made in 1995. This workgroup was composed of probation officers, prosecutors, defense attorneys, juvenile court judges, personnel from the Texas Youth Commission, the Texas Juvenile Probation Commission, and the Texas Criminal Justice

Policy Council and several staff from key legislative offices. The workgroup analyzed the use of the guidelines, problems and issues with the guidelines, and the continued need and viability of the guidelines in the juvenile justice system. This workgroup prepared various recommendations regarding the Progressive Sanctions Guidelines and presented these to the Senate Committee on Criminal Justice which had as one of its interim charges to study the effectiveness of the guidelines. Additionally, the group presented its findings to the House Committee on Juvenile Justice and Family Issues. Both of these legislative committees included many of the workgroup's key findings and recommendations in their interim reports to the legislature which ultimately became House Bill 888.

The main conclusion of the workgroup was that the Progressive Sanctions Guidelines had served a valuable purpose in defining the juvenile justice system and were of continued value; however, the importance placed on deviations from the guidelines was detracting from the beneficial uses of the guidelines and did not fully represent the variety of legitimate reasons for departures from the recommendations set forth in the guidelines. The changes made to this section and Chapter 59 in general reflect the recommendations from the workgroup and the legislative committees.

The amendments made to the title of Chapter 59 and Section 59.001 reflect the philosophy of the workgroup and the legislative committees which renamed the *Progressive Sanctions Guidelines* to the *Progressive Sanctions Model*. This name change enforces the concept that the recommendations are a "model" and are not strict guidelines. This also reinforces the acknowledgement that departures from the guidelines are expected and necessary in order to provide dispositional alternatives that best fit the child's needs and those of the community. This theme is carried forth through all of the amendments to Chapter 59.

The addition of a new Subsection (5) explicitly clarifies that a deviation or departure from the model is often the most desirable course of action for a particular case and should not be considered in a negative light.

§ 59.003. Sanction Level Assignment Model [~~Guidelines~~].

(e) [~~Except as otherwise provided by this subsection, 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. 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.~~]

[~~(f)~~] The probation department may, in accordance with Section 54.05, request the extension of a period of probation specified under sanction levels one through five if the circumstances of the child warrant the extension.

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

Commentary by Lisa Capers

Source: HB 888.
Effective Date: September 1, 2003.
Applicability: Conduct occurring on or after effective date.
Summary of Changes: The changes to Subsection 59.003 continue the theme of the Progressive Sanctions changes discussed above. This amendment changes the name from "guidelines" to "model" to reflect the view that the legislature does not expect exact conformity to the dispositional alternatives suggested in the statute. This amendment also eliminates the requirement of a written statement of reasons for a deviation from the guidelines. That information is no longer required to be collected separately from the statistical information collected by the Texas Juvenile Probation Commission (TJPC) using the CASEWORKER program or other electronic data collection programs. Currently, reliance is not placed on these written reports by either TJPC or the Criminal Justice Policy Council, but instead on the electronic statistical gathering programs that collect data on the entire handling of the case, not just deviations.

§ 59.006. Sanction Level Three.

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

(1) place the child on probation for not less than six months [~~or more than 12 months~~];

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

(3) impose specific restrictions on the child's activities and requirements for the child's behavior as conditions of probation;

(4) require a probation officer to closely monitor the child's activities and behavior;

(5) require the child or the child's parents or guardians to participate in programs or services designated by the court or probation officer; and

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

Commentary by Lisa Capers

Source: HB 888.
Effective Date: September 1, 2003.
Applicability: Conduct occurring on or after effective date.
Summary of Changes: Under current law, if a juvenile court places a child on probation for an initial period longer than 12 months, this would be considered as a deviation from the guidelines. Because probation terms vary according to the needs of the juvenile and a variety of other factors, the upper limit made little sense. This amendment would permit probation for any term permitted by Section 54.04 to be employed and for the disposition to count as a level three disposition if it otherwise qualifies as such.

§ 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 an intensive services probation program that emphasizes frequent contact and reporting with a probation officer, discipline, intensive supervision services, 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 Capers

Source: HB 888.
Effective Date: September 1, 2003.
Applicability: Conduct occurring on or after effective date.
Summary of Changes: This change also recognizes that the term of regular probation supervision ordered for a juvenile who has completed an intensive supervision probation program will vary depending on the needs of the juvenile and other factors. This amendment would permit any post-intensive supervision probation term to be as short or long as the law permits without it being counted as a deviation from the model.

§ 59.008. Sanction Level Five.

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

(1) as a condition of probation, place the child for not less than six months or more than 12 months in a post-adjudication secure correctional facility;

(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 Capers

Source: HB 888.
Effective Date: September 1, 2003.
Applicability: Conduct occurring on or after effective date.
Summary of Changes: This change also recognizes that the term of probation supervision ordered for a juvenile who has completed a secure post-adjudciation correctional facility placement will vary depending on the needs of the juvenile and other factors. This amendment would permit any post-placement probation term to be as short or long as the law permits without it being counted as a deviation from the model.

§ 59.012. Reports by Criminal Justice Policy Council.

(a) 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.

Commentary by Lisa Capers

Source: HB 888.
Effective Date: September 1, 2003.
Applicability: Conduct occurring on or after effective date.
Summary of Changes: This amendment continues with the theme of all the Progressive Sanctions changes made this session. The change makes the studying and reporting duties of the Criminal Justice Policy Council more general, rather than focusing only on compliance with the model. However, it is important to note that as of this writing, the Criminal Justice Policy Council has been abolished by action of the Governor's veto of the agency's budget. Whether the agency will be re-created under a new name will have been decided in the special session but is unknown as of this writing. In any event, the compliance with the Progressive Sanctions Model will no longer be a mandatory subject of study for CJPC if the agency is recreated in some form.

§ 59.014. Appeal.

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

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

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

(3) a departure [~~deviation~~] from the sanction level assignment model [~~guidelines~~] provided by this chapter; or

(4) the failure of a juvenile court or probation department to report a departure [~~deviation~~] from the model [~~guidelines as required by Section 59.003(e)~~].

Commentary by Lisa Capers

Source: HB 888.
Effective Date: September 1, 2003.
Applicability: Conduct occurring on or after effective date.
Summary of Changes: This amendment is the final one of the Chapter 59 changes and continues the theme of all the Progressive Sanctions changes made this session. The term "deviation" has been changed to "departure" in an attempt to remove the negative connotation associated with a "deviation". Additionally, the term "guidelines" has been changed to "model" throughout Chapter 59.

CHAPTER 61. RIGHTS AND RESPONSIBILITIES OF PARENTS AND OTHER ELIGIBLE PERSONS

Introductory Comment

This chapter is designed to bring parents more into the juvenile process to assist in rehabilitating their children.

Subchapter A specifies requirements for entering enforceable court orders against parents by the juvenile court. Subchapter B establishes enforcement proceedings regarding those orders. Subchapter C establishes parental rights to information about a child in the juvenile process, to access to the child, and to provide the court with information relevant to disposition of the case.

SUBCHAPTER A. ENTRY OF ORDERS AGAINST PARENTS AND OTHER ELIGIBLE PERSONS

§ 61.001. DEFINITIONS.

In this chapter:

(1) "Juvenile court order" means an order by a juvenile court in a proceeding to which this chapter applies requiring a parent or other eligible person to act or refrain from acting.

(2) "Other eligible person" means the respondent's guardian, the respondent's custodian, or any other person described in a provision under this title authorizing the court order.

Commentary by Robert Dawson

Source: HB 2319.
Effective Date: September 1, 2003.
Applicability: Conduct occurring on or after effective date.
Summary of Changes: While the great majority of orders under this subchapter will be entered against parents, other persons have been made subject to such orders by provisions in Title 3. Only persons identified as eligible for being placed under court order be-

cause of their relationship to a juvenile respondent are eligible for court order under this subchapter.

§ 61.002. APPLICABILITY.

(a) Except as provided by Subsection (b), this chapter applies to a proceeding to enter a juvenile court order:

(1) for payment of probation fees under Section 54.061;

(2) for restitution under Sections 54.041(b) and 54.048;

(3) for payment of graffiti eradication fees under Section 54.0461;

(4) for community service under Section 54.044(b);

(5) for payment of costs of court under Section 54.0411 or other provisions of law;

(6) requiring the person to refrain from doing any act injurious to the welfare of the child under Section 54.041(a)(1);

(7) enjoining contact between the person and the child who is the subject of a proceeding under Section 54.041(a)(2);

(8) ordering a person living in the same household with the child to participate in counseling under Section 54.041(a)(3);

(9) requiring a parent or guardian of a child found to be truant to participate in an available program addressing truancy under Section 54.041(g);

(10) requiring a parent or other eligible person to pay reasonable attorney's fees for representing the child under Section 51.10(e);

(11) requiring the parent or other eligible person to reimburse the county for payments the county has made to an attorney appointed to represent the child under Section 51.10(j);

(12) requiring payment of deferred prosecution supervision fees under Section 53.03(d);

(13) requiring a parent or other eligible person to attend a court hearing under Section 51.115;

(14) requiring a parent or other eligible person to act or refrain from acting to aid the child in complying with conditions of release from detention under Section 54.01(r); or

(15) requiring a parent or other eligible person to act or refrain from acting under any law imposing an obligation of action or omission on a parent or other eligible person because of the parent's or person's relation to the child who is the subject of a proceeding under this title.

(b) This subchapter does not apply to the entry and enforcement of a child support order under Section 54.06.

Commentary by Robert Dawson

Source: HB 2319.

Effective Date: September 1, 2003.

Applicability: Conduct occurring on or after effective date.

Summary of Changes: Subsection (a) identifies 14 instances in Title 3 in which parents and others have been made subject to possible juvenile court orders because of their relationship to a juvenile respondent. The 15th subdivision deals with other instances that have been enacted or may be enacted by legislatures as yet unborn.

Subsection (b) excepts child support order enforcement from this scheme since those orders are enforceable using the full range of legal tools in Title 5.

§ 61.003. ENTRY OF JUVENILE COURT ORDER AGAINST PARENT OR OTHER ELIGIBLE PERSON.

(a) To comply with the requirements of due process of law, the juvenile court shall:

(1) provide sufficient notice in writing or orally in a recorded court hearing of a proposed juvenile court order; and

(2) provide a sufficient opportunity for the parent or other eligible person to be heard regarding the proposed order.

(b) A juvenile court order must be in writing and a copy promptly furnished to the parent or other eligible person.

(c) The juvenile court may require the parent or other eligible person to provide suitable identification to be included in the court's file. Suitable identification includes fingerprints, a driver's license number, a social security number, or similar indicia of identity.

Commentary by Robert Dawson

Source: HB 2319.

Effective Date: September 1, 2003.

Applicability: Conduct occurring on or after effective date.

Summary of Changes: Subsection (a) sets out the rudiments of due process of law for entering an order against a parent or other eligible person—adequate notice and an opportunity to be heard. It applies to all orders entered against those persons under any provision of Title 3. Section 61.055(g) recognizes an affirmative defense in enforcement proceedings that the defendant was not accorded due process when the order was entered. This section does not require that the parent or other person must be represented by counsel when the order is entered. However, absence of counsel would certainly be a major factor in a later decision whether due process was provided when the order was entered.

Subsection (c) permits the court to require identification from the parent or other eligible person to

facilitate locating the person later for enforcement proceedings.

§ 61.004. APPEAL.

(a) The parent or other eligible person against whom a final juvenile court order has been entered may appeal as provided by law from judgments entered in civil cases.

(b) The movant may appeal from a judgment denying requested relief regarding a juvenile court order as provided by law from judgments entered in civil cases.

(c) The pendency of an appeal initiated under this section does not abate or otherwise affect the proceedings in juvenile court involving the child.

Commentary by Robert Dawson

Source: HB 2319.
Effective Date: September 1, 2003.
Applicability: Conduct occurring on or after effective date.
Summary of Changes: Either the parent/eligible person or the State or other movant (e.g. the child) may appeal from an order granting or denying a request for an order. Under subsection (c) an appeal under this section has no effect on the underlying juvenile proceedings.

SUBCHAPTER B. ENFORCEMENT OF ORDER AGAINST PARENT OR OTHER ELIGIBLE PERSON

§ 61.051. MOTION FOR ENFORCEMENT.

(a) A party initiates enforcement of a juvenile court order by filing a written motion. In ordinary and concise language, the motion must:

(1) identify the provision of the order allegedly violated and sought to be enforced;

(2) state specifically and factually the manner of the person's alleged noncompliance;

(3) state the relief requested; and

(4) contain the signature of the party filing the motion.

(b) The movant must allege in the same motion for enforcement each violation by the person of the juvenile court orders described by Section 61.002(a) that the movant had a reasonable basis for believing the person was violating when the motion was filed.

(c) The juvenile court retains jurisdiction to enter a contempt order if the motion for enforcement is filed not later than six months after the child's 18th birthday.

Commentary by Robert Dawson

Source: HB 2319.
Effective Date: September 1, 2003.
Applicability: Conduct occurring on or after effective date.
Summary of Changes: Any party, including the respondent, may file a motion for enforcement. Subsection (b) mandates joinder of all violations known or that should have been known to the movant at the time the motion is filed to prevent fragmentation of enforcement proceedings. Section 61.057(b) authorizes only one contempt of court punishment per enforcement proceeding, which encompasses all violations alleged in the motion for enforcement. Subsection (c) gives the movant until 6 months after the child becomes 18 to seek enforcement for violations of court orders; a violation occurring shortly before the child's 18th birthday may not be discovered or enforcement proceedings may not be possible until after that birthday.

§ 61.052. NOTICE AND APPEARANCE.

(a) On the filing of a motion for enforcement, the court shall by written notice set the date, time, and place of the hearing and order the person against whom enforcement is sought to appear and respond to the motion.

(b) The notice must be given by personal service or by certified mail, return receipt requested, on or before the 10th day before the date of the hearing on the motion. The notice must include a copy of the motion for enforcement. Personal service must comply with the Code of Criminal Procedure.

(c) If a person moves to strike or specially excepts to the motion for enforcement, the court shall rule on the exception or motion to strike before the court hears evidence on the motion for enforcement. If an exception is sustained, the court shall give the movant an opportunity to replead and continue the hearing to a designated date and time without the requirement of additional service.

(d) If a person who has been personally served with notice to appear at the hearing does not appear, the juvenile court may not hold the person in contempt, but may issue a capias for the arrest of the person. The court shall set and enforce bond as provided by Subchapter C, Chapter 157. If a person served by certified mail, return receipt requested, with notice to appear at the hearing does not appear, the juvenile court may require immediate personal service of notice.

Commentary by Robert Dawson

Source: HB 2319.
Effective Date: September 1, 2003.
Applicability: Conduct occurring on or after effective date.

Summary of Changes: Notice of hearing and a copy of the motion for enforcement must be served at least 10 days before the enforcement hearing occurs. Either personal service or certified mail service is permitted; if a parent personally served fails to appear at the enforcement hearing, subsection (d) permits a warrant of arrest to be issued; however, if service was by certified mail, then personal service must be tried before a warrant may be issued.

§ 61.053. ATTORNEY FOR THE PERSON.

(a) In a proceeding on a motion for enforcement where incarceration is a possible punishment against a person who is not represented by an attorney, the court shall inform the person of the right to be represented by an attorney and, if the person is indigent, of the right to the appointment of an attorney.

(b) If the person claims indigency and requests the appointment of an attorney, the juvenile court may require the person to file an affidavit of indigency. The court may hear evidence to determine the issue of indigency.

(c) The court shall appoint an attorney to represent the person if the court determines that the person is indigent.

(d) The court shall allow an appointed or retained attorney at least 10 days after the date of the attorney's appointment or retention to respond to the movant's pleadings and to prepare for the hearing. The attorney may waive the preparation time or agree to a shorter period for preparation.

Commentary by Robert Dawson

Source: HB 2319.
Effective Date: September 1, 2003.
Applicability: Conduct occurring on or after effective date.
Summary of Changes: If a parent or other person appears for an enforcement hearing without an attorney, the court must inform the person of the person's right to an attorney if the person is indigent. The words "where incarceration is a possible punishment" in subsection (a) were added by a Senate floor amendment. Since all enforcement proceedings may lead to incarceration, these words do not restrict the requirement of notice of counsel. If the person is indigent and wants counsel, the court is required to appoint counsel at least 10 days before the hearing.

§ 61.054. COMPENSATION OF APPOINTED ATTORNEY.

(a) An attorney appointed to represent an indigent person is entitled to a reasonable fee for services to be paid from the general fund of the county according to the schedule for compensation adopted by the county juvenile board. The attorney must meet the qualifications required of attorneys for appointment to Class B misdemeanor cases in juvenile court.

(b) For purposes of compensation, a proceeding in the supreme court is the equivalent of a proceeding in the court of criminal appeals.

(c) The juvenile court may order the parent or other eligible person for whom it has appointed counsel to reimburse the county for the fees the county pays to appointed counsel.

Commentary by Robert Dawson

Source: HB 2319.
Effective Date: September 1, 2003.
Applicability: Conduct occurring on or after effective date.
Summary of Changes: Appointed counsel is compensated by the county. The attorney must meet the requirements for appointment of counsel that the juvenile board has established for Class B misdemeanor representation of juvenile respondents. However, the attorney need not be on the appointment list. Subsection (c) permits the court to order the parent to reimburse the county for the expenditures it has made to appointed counsel.

§ 61.055. CONDUCT OF ENFORCEMENT HEARING.

(a) The juvenile court shall require that the enforcement hearing be recorded as provided by Section 54.09.

(b) The movant must prove beyond a reasonable doubt that the person against whom enforcement is sought engaged in conduct constituting contempt of a reasonable and lawful court order as alleged in the motion for enforcement.

(c) The person against whom enforcement is sought has a privilege not to be called as a witness or otherwise to incriminate himself or herself.

(d) The juvenile court shall conduct the enforcement hearing without a jury.

(e) The juvenile court shall include in its judgment findings as to each violation alleged in the motion for enforcement and the punishment, if any, to be imposed.

(f) If the person against whom enforcement is sought was not represented by counsel during any previous court proceeding involving a motion for enforcement, the person may through counsel raise any defense or affirmative defense to the proceeding that could have been lodged in the previous court proceeding but was not because the person was not represented by counsel.

(g) It is an affirmative defense to enforcement of a juvenile court order that the juvenile court did not provide the parent or other eligible person with due

process of law in the proceeding in which the court entered the order.

Commentary by Robert Dawson

Source: HB 2319.
Effective Date: September 1, 2003.
Applicability: Conduct occurring on or after effective date.
Summary of Changes: Since a finding of criminal contempt is being sought by enforcement proceedings, subsection (b) requires proof of the violation beyond a reasonable doubt. Subsection (f) provides that if the parent was not represented by counsel in previous enforcement proceedings, that person has a continuing opportunity to use a defense or affirmative defense that was not used because of absence of counsel. Subsection (g) establishes an affirmative defense of lack of due process in the proceedings that resulted in initial entry of the court order now being enforced. Section 61.003(a) sets out the rudiments of due process—adequate notice and opportunity to be heard. If the parent was not represented by counsel during the order entering process that would be a major factor in deciding whether due process was violated.

§ 61.056. AFFIRMATIVE DEFENSE OF INABILITY TO PAY.

(a) In an enforcement hearing in which the motion for enforcement alleges that the person against whom enforcement is sought failed to pay restitution, court costs, supervision fees, or any other payment ordered by the court, it is an affirmative defense that the person was financially unable to pay.

(b) The burden of proof to establish the affirmative defense of inability to pay is on the person asserting it.

(c) In order to prevail on the affirmative defense of inability to pay, the person asserting it must show that the person could not have reasonably paid the court-ordered obligation after the person discharged the person's other important financial obligations, including payments for housing, food, utilities, necessary clothing, education, and preexisting debts.

Commentary by Robert Dawson

Source: HB 2319.
Effective Date: September 1, 2003.
Applicability: Conduct occurring on or after effective date.
Summary of Changes: This section establishes an affirmative defense of inability to pay when the violation alleged is failure to pay as ordered by the juvenile court. Subsection (c) provides that the question is whether the person had sufficient resources to comply with the court's order when pre-existing obligations are considered. In other words, the court's order stands behind prior obligations; it does not supplant them.

§ 61.057. PUNISHMENT FOR CONTEMPT.

(a) On a finding of contempt, the juvenile court may commit the person to the county jail for a term not to exceed six months or may impose a fine in an amount not to exceed $500, or both.

(b) The court may impose only a single jail sentence not to exceed six months or a single fine not to exceed $500, or both, during an enforcement proceeding, without regard to whether the court has entered multiple findings of contempt.

(c) On a finding of contempt in an enforcement proceeding, the juvenile court may, instead of issuing a commitment to jail, enter an order requiring the person's future conduct to comply with the court's previous orders.

(d) Violation of an order entered under Subsection (c) may be the basis of a new enforcement proceeding.

(e) The juvenile court may assign a juvenile probation officer to assist a person in complying with a court order issued

(f) A juvenile court may reduce a term of incarceration or reduce payment of all or part of a fine at any time before the sentence is fully served or the fine fully paid.

(g) A juvenile court may reduce the burden of complying with a court order issued under Subsection (c) at any time before the order is fully satisfied, but may not increase the burden except following a new finding of contempt in a new enforcement proceeding.

Commentary by Robert Dawson

Source: HB 2319.
Effective Date: September 1, 2003.
Applicability: Conduct occurring on or after effective date.
Summary of Changes: Subsection (a) establishes the same range of punishment for contempt as the Government Code establishes for district and county level courts generally. Subsection (b) restricts the court to making a single finding of contempt per enforcement proceeding. Section 61.051(b) requires a person filing a motion for enforcement to allege all violations the person knows or should know exist. Subsection (c) authorizes the court to enter a further court order requiring remedial conduct in lieu of imposing a fine or incarceration. Under subsection (d), a violation of a further court order may be the basis of new enforcement proceedings and under subsection (e) the court may assign a juvenile probation officer to assist the parent in complying with the further court order. Under subsections (f) and (g), the court may at any time

mitigate a jail sentence or fine or reduce the burdens of complying with its order.

SUBCHAPTER C. RIGHTS OF PARENTS

§ 61.101. DEFINITION.

In this subchapter, "parent" includes the guardian or custodian of a child.

Commentary by Robert Dawson

Source: HB 2319.
Effective Date: September 1, 2003.
Applicability: Conduct occurring on or after effective date.
Summary of Changes: Section 51.02 gives parents, guardians and custodians different roles in the juvenile justice system, but under subchapter C they have equal rights.

§ 61.102. RIGHT TO BE INFORMED OF PROCEEDING.

(a) The parent of a child referred to a juvenile court is entitled as soon as practicable after the referral to be informed by staff designated by the juvenile board, based on the information accompanying the referral to the juvenile court, of:

(1) the date and time of the offense;

(2) the date and time the child was taken into custody;

(3) the name of the offense and its penal category;

(4) the type of weapon, if any, that was used;

(5) the type of property taken or damaged and the extent of damage, if any;

(6) the physical injuries, if any, to the victim of the offense;

(7) whether there is reason to believe that the offense was gang-related;

(8) whether there is reason to believe that the offense was related to consumption of alcohol or use of an illegal controlled substance;

(9) if the child was taken into custody with adults or other juveniles, the names of those persons;

(10) the aspects of the juvenile court process that apply to the child;

(11) if the child is in detention, the visitation policy of the detention facility that applies to the child;

(12) the child's right to be represented by an attorney and the local standards and procedures for determining whether the parent qualifies for appointment of counsel to represent the child; and

(13) the methods by which the parent can assist the child with the legal process.

(b) If the child was released on field release citation, or from the law enforcement station by the police, by intake, or by the judge or associate judge at the initial detention hearing, the information required by Subsection (a) may be communicated to the parent in person, by telephone, or in writing.

(c) If the child is not released before or at the initial detention hearing, the information required by Subsection (a) shall be communicated in person to the parent unless that is not feasible, in which event it may be communicated by telephone or in writing.

(d) Information disclosed to a parent under Subsection (a) is not admissible in a judicial proceeding under this title as substantive evidence or as evidence to impeach the testimony of a witness for the state.

Commentary by Robert Dawson

Source: HB 2319.
Effective Date: September 1, 2003.
Applicability: Conduct occurring on or after effective date.
Summary of Changes: Subsection (a) gives a parent the right to be informed of those aspects of their child's being taken into custody that a parent needs to know. Excluded are details of the offense as they might appear in the narrative section of an offense or incident report. Probation or intake staff are obligated to provide this information, which should be accessible directly from the law enforcement information provided with the referral. Subsection (d) restricts the information disclosed to the use of the parent as parent and prohibits its use during juvenile proceedings involving the child.

§ 61.103. RIGHT OF ACCESS TO CHILD.

(a) The parent of a child taken into custody for delinquent conduct, conduct indicating a need for supervision, or conduct that violates a condition of probation imposed by the juvenile court has the right to communicate in person privately with the child for reasonable periods of time while the child is in:

(1) a juvenile processing office;

(2) a secure detention facility;

(3) a secure correctional facility;

(4) a court-ordered placement facility; or

(5) the custody of the Texas Youth Commission.

(b) The time, place, and conditions of the private, in-person communication may be regulated to prevent disruption of scheduled activities and to maintain the safety and security of the facility.

Commentary by Robert Dawson

Source: HB 2319.
Effective Date: September 1, 2003.
Applicability: Conduct occurring on or after effective date.

Summary of Changes: The universal right of a parent to access to his or her child is subject under (b) to reasonable time, place and conditions restrictions.

§ 61.104. PARENTAL WRITTEN STATEMENT.

(a) When a petition for adjudication, a motion or petition to modify disposition, or a motion or petition for discretionary transfer to criminal court is served on a parent of the child, the parent must be provided with a form prescribed by the Texas Juvenile Probation Commission on which the parent can make a written statement about the needs of the child or family or any other matter relevant to disposition of the case.

(b) The parent shall return the statement to the juvenile probation department, which shall transmit the statement to the court along with the discretionary transfer report authorized by Section 54.02(e), the disposition report authorized by Section 54.04(b), or the modification of disposition report authorized by Section 54.05(e), as applicable. The statement shall be disclosed to the parties as appropriate and may be considered by the court at the disposition, modification, or discretionary transfer hearing.

Commentary by Robert Dawson

Source: HB 2319.
Effective Date: September 1, 2003.
Applicability: Conduct occurring on or after effective date.
Summary of Changes: This section requires that a parent be given the opportunity to communicate with the juvenile court judge in writing about disposition of the child's case. The communication accompanies the social history report and is subject to the same requirement of disclosure to the parties as the social history report.

§ 61.105. PARENTAL ORAL STATEMENT.

(a) After all the evidence has been received but before the arguments of counsel at a hearing for discretionary transfer to criminal court, a disposition hearing without a jury, or a modification of disposition hearing, the court shall give a parent who is present in court a reasonable opportunity to address the court about the needs or strengths of the child or family or any other matter relevant to disposition of the case.

(b) The parent may not be required to make the statement under oath and may not be subject to cross-examination, but the court may seek clarification or expansion of the statement from the person giving the statement.

(c) The court may consider and act on the statement as the court considers appropriate.

Commentary by Robert Dawson

Source: HB 2319.
Effective Date: September 1, 2003.
Applicability: Conduct occurring on or after effective date.
Summary of Changes: Recognizing that some parents may not be comfortable in communicating in writing, this section requires the juvenile court to give a parent present in court an opportunity to make an oral statement relevant to disposition. The oral statement is intended to be informal and is not subject to cross-examination by the parties; however, the court is permitted to engage in a clarifying dialogue with the parent regarding his or her statement.

§ 61.106. APPEAL OR COLLATERAL CHALLENGE.

The failure or inability of a person to perform an act or to provide a right or service listed under this subchapter may not be used by the child or any party as a ground for:

(1) appeal;

(2) an application for a post-adjudication writ of habeas corpus; or

(3) exclusion of evidence against the child in any proceeding or forum.

Commentary by Robert Dawson

Source: HB 2319.
Effective Date: September 1, 2003.
Applicability: Conduct occurring on or after effective date.
Summary of Changes: The rights granted by Chapter 61 belong to the parent, not the child. This section prohibits attempting to use violations in the child's case.

§ 61.107. LIABILITY.

The Texas Youth Commission, a juvenile board, a court, a person appointed by the court, an employee of a juvenile probation department, an attorney for the state, a peace officer, or a law enforcement agency is not liable for a failure or inability to provide a right listed in this chapter.

Commentary by Robert Dawson

Source: HB 2319.
Effective Date: September 1, 2003.
Applicability: Conduct occurring on or after effective date.
Summary of Changes: This section is modeled after Section 57.005, dealing with victim's rights, and gives

official immunity from liability for a violation of Chapter 61.

Code of Criminal Procedure article 44.47. Appeal of Transfer from Juvenile Court

(b) A defendant may appeal a transfer under Subsection (a) only in conjunction with the appeal of a conviction of or an order of deferred adjudication for the offense for which the defendant was transferred to criminal court.

Commentary by Robert Dawson

Source: HB 2319.
Effective Date: September 1, 2003.
Applicability: Conduct occurring on or after effective date.
Summary of Changes: This amendment makes it clear that a transferred juvenile may appeal certification issues as part of an appeal from an order of deferred adjudication in criminal court.

Government Code § 411.151. Expunction of DNA Records.

(a) The director shall expunge a DNA record of a person from the DNA database if the person:

(1) notifies the director in writing that the DNA record has been ordered to be expunged under this section or Chapter 55, Code of Criminal Procedure, [;] and [~~(2)~~] provides the director with a certified copy of the court order that expunges the DNA record; or

(2) provides the director with a certified copy of a court order issued under Section 58.003, Family Code, that seals the juvenile record of the adjudication that resulted in the DNA record.

Commentary by Neil Nichols

Source: HB 2319.
Effective Date: September 1, 2003.
Applicability: Conduct occurring on or after effective date.
Summary of Changes: This amendment places juvenile sealing orders on the same footing as criminal expunction orders.

Penal Code § 8.07. Age Affecting Criminal Responsibility.

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

(1) perjury and aggravated perjury when it appears by proof that the person 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 521.457, Transportation Code;

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

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

(D) [~~(C)~~] an offense punishable as a Class B misdemeanor under Section 550.024, Transportation Code; or

(E) an offense punishable as a Class B misdemeanor under Section 550.025, 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;

(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 2319.
Effective Date: September 1, 2003.
Applicability: Conduct occurring on or after effective date.
Summary of Changes: This amendment takes leaving the scene of an accident in which a stationary object was damaged to the extent of $200 or more and driving with an invalid license from the definition of a traffic offense. That makes the offenses delinquent conduct to be filed in juvenile court.

Penal Code § 12.42. Penalties for Repeat and Habitual Felony Offenders

(f) For the purposes of Subsections (a), (b), (c)(1), [~~(a) (c)~~] and (e), an adjudication by a juvenile court under Section 54.03, Family Code, that a child engaged in delinquent conduct on or after January 1, 1996, constituting a felony offense for which the child is committed to the Texas Youth Commission under Section 54.04(d)(2), (d)(3), or (m), Family Code, or Section 54.05(f), Family Code, is a final felony conviction.

Commentary by Robert Dawson

Source: HB 2319.
Effective Date: September 1, 2003.
Applicability: All cases without regard to whether the conduct or proceedings occur before, on, or after the effective date.
Summary of Changes: After this subsection was enacted in 1995, the legislature provided for a mandatory punishment of life imprisonment for a person convicted of certain sex offenses who has a prior conviction for a similar offense. This amendment makes it clear that a prior juvenile adjudication does not qualify as a prior conviction under that provision.

Health and Safety Code § 572.001. Request for Admission.

(a) A person 16 years of age or older or a person younger than 16 years of age who is or has been married may request admission to an inpatient mental health facility by filing a request with the administrator of the facility to which admission is requested. The parent, managing conservator, or guardian of a person younger than 18 [~~16~~] years of age who is not and has not been married may request the admission of the person to an inpatient mental health facility by filing a request with the administrator of the facility to which admission is requested.

(c) A person or agency appointed as the guardian or a managing conservator of a person [~~minor~~] younger than 18 [~~16~~] years of age and acting as an employee or agent of the state or a political subdivision of the state may request admission of the person younger than 18 years of age [~~minor~~] only with the person's [~~minor's~~] consent.

Commentary by Lisa Capers

Source: HB 21.
Effective Date: Upon signing.
Applicability: None stated.
Summary of Changes: House Bill 21 was intended to help parents of 16 and 17 year old juveniles who are in need of mental health treatment to actually get that treatment without having to resort to civil commitment proceedings or other means, which frequently involve getting the juvenile involved with the criminal or juvenile justice system just to get help with a treatment need. Although a parent is responsible for the actions of a child until the child turns age 18, the current law did not allow parents to ensure a 16 or 17 year old juvenile received mental health treatment.

This bill is intended to ensure that teenagers receive mental health treatment when they need it and to make this process easier on parents. Under current law, a 16 year old minor can refuse to obtain needed treatment and parents can do nothing without seeking court commitment for the treatment. The court process may delay treatment in some cases. Some parents feel forced to seek immediate help through the juvenile or criminal justice systems, establishing a record for the juvenile, because the parents are intimidated by the difficulty and expense involved in civil commitment proceedings.

HB 21 is similar to Senate Bill 22 passed in the 2001 legislative session which made similar changes by authorizing parents to request chemical dependency treatment for minors age 16 and 17. This bill attempts to enact the same provisions for mental health treatment.

The amendments to Subsections (a) and (c) raise the age from 16 to 18 thereby allowing parents to request treatment on behalf of the juvenile age 16 or 17.

Health and Safety Code § 572.002. Admission.

The facility administrator or the administrator's authorized, qualified designee may admit a person for whom a proper request for voluntary inpatient services is filed if the administrator or the designee determines:

(1) from a preliminary examination that the person has symptoms of mental illness and will benefit from the inpatient services;

(2) that the person has been informed of the person's rights as a voluntary patient; and

(3) that the admission was voluntarily agreed to:

(A) by the person, if the person is:

(i) 16 years of age or older; or

(ii) younger than 16 years of age and is or has been married; or

(B) by the person's parent, managing conservator, or guardian, if the person is younger than 18 [~~16~~] years of age and is not and has not been married.

Commentary by Lisa Capers

Source: HB 21.
Effective Date: Upon signing.
Applicability: None stated.
Summary of Changes: This amendment raises the age from 16 to 18 allowing parents, managing conservators, and guardians to request mental health treatment on behalf of a 16 or 17 year old juvenile thereby authorizing the treatment facility administrator to admit the juvenile.

Health and Safety Code § 572.003. Rights of Patients.

(e) In addition to the rights provided by this subtitle, a person voluntarily admitted to an inpatient mental health facility under Section 572.002(3)(B) has the

right to be evaluated by a physician at regular intervals to determine the person's need for continued inpatient treatment. The department by rule shall establish the intervals at which a physician shall evaluate a person under this subsection.

Commentary by Lisa Capers

Source: HB 21.
Effective Date: Upon signing.
Applicability: None stated.
Summary of Changes: The addition of Subsection (e) ensures that juveniles who are 16 or 17 and who have been admitted for mental health treatment by their parent, managing conservator or guardian have the right to be evaluated by a physician at regular intervals to determine whether continued inpatient treatment is necessary.

Health and Safety Code § 572.004. Discharge or Release.

(i) On receipt of a written request for discharge from a patient admitted under Section 572.002(3)(B), a facility shall notify the patient's parent, managing conservator, or guardian of the request.

Commentary by Lisa Capers

Source: HB 21.
Effective Date: Upon signing.
Applicability: None stated.
Summary of Changes: The addition of Subsection (i) ensures that the parent, managing conservator, or guardian of a juvenile age 16 or 17 who has been admitted for mental health treatment will receive notice from the treatment facility if the facility receives from the juvenile a written request for a discharge.

Government Code § 411.122. Access to Criminal History Record Information: Licensing or Regulatory Agency

(a) Except as provided by Subsection (c)(2), an agency of this state listed in Subsection (d) or a political subdivision of this state covered by Chapter 53, Occupations Code, that licenses or regulates members of a particular trade, occupation, business, vocation, or profession is entitled to obtain from the department criminal history record information maintained by the department that relates to a person who [~~is~~]:

(1) is an applicant for a license from the agency; [~~or~~]

(2) is the holder of a license from the agency; or

(3) requests a determination of eligibility for a license from the agency.

[~~(b) Under this section, an agency is entitled to obtain only criminal history record information that related to the conviction of the person.~~]

(c) This section does not apply to an agency that is:

(1) specifically authorized by this subchapter to obtain criminal history record information from the department; or

(2) covered by Section 53.002, Occupations Code, to the extent provided by that section.

(d) The following state agencies are subject to this section:

(1) Texas Appraiser Licensing and Certification Board;

(2) Texas Board of Architectural Examiners;

(3) State Board of Barber Examiners;

(4) Texas Board of Chiropractic Examiners;

(5) Texas Cosmetology Commission;

(6) State Board of Dental Examiners;

(7) Texas Board of Professional Engineers;

(8) Texas Funeral Service Commission;

(9) Texas Board of Professional Geoscientists;

(10) Texas Department of Health, except as provided by Section 411.110, and agencies attached to the department, including:

(A) Texas State Board of Examiners of Dietitians;

(B) Texas State Board of Examiners of Marriage and Family Therapists;

(C) Midwifery Board;

(D) Texas State Board of Examiners of Perfusionists;

(E) Texas State Board of Examiners of Professional Counselors;

(F) Texas State Board of Social Worker Examiners;

(G) State Board of Examiners for Speech-Language Pathology and Audiology;

(H) Advisory Board of Athletic Trainers;

(I) State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments;

(J) Texas Board of Licensure for Professional Medical Physicists; and

(K) Texas Board of Orthotics and Prosthetics;

(11) Texas Board of Professional Land Surveying;

(12) Texas Department of Licensing and Regulation, except as provided by Section 411.093;

(13) Texas Commission on Environmental Quality;

(14) Texas Board of Occupational Therapy Examiners;

(15) Texas Optometry Board;

(16) Texas State Board of Pharmacy;

(17) Texas Board of Physical Therapy Examiners;

(18) Texas State Board of Plumbing Examiners;

(19) Texas State Board of Podiatric Medical Examiners;

(20) Polygraph Examiners Board;

(21) Texas State Board of Examiners of Psychologists;

(22) Texas Real Estate Commission;

(23) Board of Tax Professional Examiners;

(24) Texas Department of Transportation;

(25) State Board of Veterinary Medical Examiners;

(26) Board of Vocational Nurse Examiners;

(27) Texas Department of Housing and Community Affairs;

(28) secretary of state;

(29) state fire marshal;

(30) Texas Education Agency; and

(31) Department of Agriculture.

Commentary by Neil Nichols

Source: HB 660.
Effective Date: September 1, 2003.
Applicability: None stated.
Summary of Changes: This bill is one of the bills enacted this session that increases access to DPS criminal history record information. These new acts may affect access to DPS juvenile justice information as well. Sec. 58.106(a)(2), Family Code, authorizes DPS to grant access to juvenile justice information as provided by Sec. 411.083, Government Code -- and that section includes a provision in subsection (b)(2) that requires DPS to grant access to noncriminal justice agencies that are authorized by state statute to receive criminal history record information.

These amendments to Sec. 411.122, Government Code, are particularly pertinent since they entitle the listed licensing agencies to have access to the information (not just conviction information) when a person applies for a license or requests a determination of license eligibility from the agency. The State Board of Barber Examiners and the Texas Cosmetology Commission are just two of the agencies that may be influenced by information obtained from the juvenile justice information system that could hurt youth's employment opportunities.

Government Code § 411.1401. ACCESS TO CRIMINAL HISTORY RECORD INFORMATION: PROGRAMS PROVIDING ACTIVITIES FOR CHILDREN.

(a) In this section, "activity provider" means a nonprofit program that includes as participants or recipients persons who are younger than 17 years of age and that regularly provides athletic, civic, or cultural activities.

(b) An activity provider is entitled to obtain from the department criminal history record information maintained by the department that relates to a person who is a volunteer or a volunteer applicant of the activity provider.

(c) The department may establish rules governing the administration of this section.

(d) An activity provider may use criminal history record information obtained under this section only to determine the suitability of a person for a position as a volunteer and may not keep or retain criminal history record information obtained under this section in any file. Criminal history record information must be destroyed promptly after a determination of suitability is made.

(e) Criminal history record information obtained under this section may not be released or disclosed to any person except in a criminal proceeding, on court order, or with the consent of the person who is the subject of the criminal history record information.

(f) An employee, officer, or volunteer of an activity provider is not liable in a civil action for damages resulting from a failure to comply with this section unless the act or omission of the employee, officer, or volunteer was intentional, wilfully or wantonly negligent, or done with conscious indifference or reckless disregard for the safety of others.

Commentary by Neil Nichols

Source: SB 443.
Effective Date: Upon signing.
Applicability: None stated.
Summary of Changes: This new Government Code section authorizes nonprofit organizations that provide activities for children, such as the YMCA and youth soccer leagues, to perform background checks on volunteers and volunteer applicants. They are entitled access to DPS criminal history record information, but it is doubtful these nonprofit organizations would also be entitled to have access to the DPS juvenile justice information for the same purpose. Sec. 58.106(a)(2), Family Code, authorizes DPS to grant access to juvenile justice information as provided by Sec. 411.083, Government Code -- and that section includes a provision in subsection (b)(2) that requires DPS to grant access to noncriminal justice agencies that are authorized by state statute to receive criminal history record information. No definition of "noncriminal justice agency" is provided in chapter 411, Government Code, and a nonprofit organization may not be determined to qualify as one.

Government Code § 411.1405. ACCESS TO CRIMINAL HISTORY RECORD INFORMATION: STATE AGENCIES; INFORMATION TECHNOLOGY EMPLOYEES.

(a) In this section:

(1) "Information resources" and "information resources technologies" have the meanings assigned by Section 2054.003.

(2) "State agency" means a department, commission, board, office, council, authority, or other agency in the executive, legislative, or judicial branch of state government that is created by the constitution or a statute of this state, including a university system or institution of higher education as defined by Section 61.003, Education Code.

(b) To the extent consistent with Subsection (e), a state agency is entitled to obtain from the department the criminal history record information maintained by the department that relates to a person who:

(1) is an employee, applicant for employment, contractor, subcontractor, or intern or other volunteer with the state agency or with a contractor or subcontractor for the state agency; and

(2) has access to information resources or information resources technologies, other than a desktop computer or telephone station assigned to that person.

(c) A state agency that obtains criminal history record information under this section may not release or disclose the information or any documents or other records derived from the information except:

(1) by court order;

(2) with the consent of the person who is the subject of the information; or

(3) to the affected contractor or subcontractor, unless the information was obtained by the department from the Federal Bureau of Investigation.

(d) A state agency and the affected contractor or subcontractor shall destroy criminal history record information obtained under this section that relates to a person after the information is used to make an employment decision or to take a personnel action relating to the person who is the subject of the information.

(e) A state agency may not obtain criminal history record information under this section unless the state agency first adopts policies and procedures that provide that evidence of a criminal conviction or other relevant information obtained from the criminal history record information does not automatically disqualify an individual from employment. The attorney general shall review the policies and procedures for compliance with due process and other legal requirements before adoption by the state agency. The attorney general may charge the state agency a fee to cover the cost
of the review. The policies and procedures adopted under this subsection must provide that the hiring official will determine, on a case-by-case basis, whether the individual is qualified for employment based on factors that include:

(1) the specific duties of the position;

(2) the number of offenses committed by the individual;

(3) the nature and seriousness of each offense;

(4) the length of time between the offense and the employment decision;

(5) the efforts by the individual at rehabilitation;
and

(6) the accuracy of the information on the individual's employment application.

(f) A criminal history record information provision in another law that is more specific to a state agency, including Section 411.089, prevails over this section to the extent of any conflict.

Commentary by Neil Nichols

Source: HB 1075.
Effective Date: September 1, 2003.
Applicability: None stated.
Summary of Changes: This new Government Code section authorizes state agencies to access DPS criminal history record information to do background checks on employees, applicants, contractors, subcontractors and interns who have access to information resources or information resources technology (other than just having access to a desktop computer or telephone). The agencies must adopt policies to prevent information obtained through the checks from automatically disqualifying the person from employment. Since Sec. 58.106(a)(2), Family Code, authorizes DPS to grant access to juvenile justice information as provided by Sec. 411.083, Government Code, these state agencies would also have access to juvenile justice information for the same purposes. Sec. 411.083(b)(2) requires DPS to grant access to noncriminal justice agencies that are authorized by state statute to receive criminal history record information.

Code of Criminal Procedure article 102.0171.
Court Costs: Juvenile Delinquency Prevention [~~Graffiti Eradication~~] Funds.

(c) The clerks of the respective courts shall collect the costs and pay them to the county treasurer or to any other official who discharges the duties commonly delegated to the county treasurer for deposit in a fund to be known as the county juvenile delinquency prevention [~~graffiti eradication~~] fund. A fund designated by this subsection may be used only to:

(1) repair damage caused by the commission of offenses under Section 28.08, Penal Code;

(2) provide educational and intervention programs designed to prevent individuals from committing offenses under Section 28.08, Penal Code; [~~and~~]

(3) provide to the public rewards for identifying and aiding in the apprehension and prosecution of offenders who commit offenses under Section 28.08, Penal Code;

(4) provide funding for teen recognition and teen recreation programs;

(5) provide funding for local teen court programs;

(6) provide funding for the local juvenile probation department; and

(7) provide educational and intervention programs designed to prevent juveniles from engaging in delinquent conduct.

(d) The county juvenile delinquency prevention [~~graffiti eradication~~] fund shall be administered by or under the direction of the commissioners court.

Commentary by Lisa Capers

Source: HB 1828.
Effective Date: September 1, 2003.

Applicability: Court order entered on or after effective date.

Summary of Changes: In 1997, the legislature authorized the creation of the *Graffiti Eradication Fund* in each county administered by the local county commissioner's court. Originally, the proceeds from the fund were targeted at the repair of property damaged by graffiti, educational/intervention type programs to help prevent or reduce graffiti offenses and programs designed to assist in the apprehension of offenders who commit graffiti offenses. The amendment to Section 102.0171 is a companion change to those made in Section 54.0461 of the Family Code.

These amendments change the official name of the fund to the *Juvenile Delinquency Prevention Fund* and greatly expand the type of programs for which the fund proceeds may be spent. The new programs that are now authorized include teen recognition and recreation programs, teen court programs, funding for the local juvenile probation department, and general delinquency educational/intervention programs.

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2. Sex Offender Legislation

Code of Criminal Procedure article 62.13. Hearing to Determine Need for Registration of a Juvenile

(b) During or after [~~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. The motion may be filed and the hearing held regardless of whether the respondent is under 18 years of age.

(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 for the respondent's sexual offense [~~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. Following successful completion of treatment, registration is excused unless a hearing under this article is held on motion of the state and the court determines the interests of the public require registration. Not later than the 10th day after the date of the respondent's successful completion of treatment, the treatment provider shall notify the juvenile court and prosecuting attorney of the completion.

(n) Only one [~~A~~] motion may be filed under Subsection (l) [~~only~~] if a previous motion under this article has [~~not~~] been filed concerning that case.

(q) If the court grants the motion, [~~a copy of~~] the clerk of the court [~~court's order~~] shall by certified mail, return receipt requested, send a copy of the order to the department, to each local law enforcement authority that the person has proved to the juvenile court has registration information about the person, and [~~be sent~~] to each public or [~~and~~] private agency or organization that the person has proved to the juvenile court has information about the person that is currently available to the public with or without payment of a fee. The clerk of the court shall by certified mail, return receipt requested, send a copy of the order to any other agency or organization designated by the person. The person shall identify the agency or organization and its address and pay a fee of $20 to the court for each agency or organization the person designates [~~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~~].

(s) A person required to register as a sex offender in this state because of an out-of-state adjudication of delinquent conduct may file in the juvenile court of the

person's county of residence a petition under Subsection (a) for an order to excuse compliance with this chapter. If the person is already registered as a sex offender in this state because of an out-of-state adjudication of delinquent conduct, the person may file in the juvenile court of the person's county of residence a petition under Subsection (l) for an order removing the person from sex offender registries in this state. On receipt of a petition to excuse compliance or for removal, the juvenile court shall conduct a hearing and make rulings as in other cases under this article. An order entered under this subsection requiring removal of registration information applies only to registration information derived from registration in this state.

Commentary by Robert Dawson

Source: HB 2319.
Effective Date: September 1, 2003.
Applicability: All cases without regard to whether the conduct or proceedings occur before, on, or after the effective date.
Summary of Changes: The first amendment in (b) makes it clear that an un-registration hearing can be part of or occur after the disposition hearing, so long as it occurs before the child is required to register as a sex offender. The second amendment in (b) makes it clear that the juvenile court has jurisdiction over the un-registration decision even if the petitioner is 18 or older at the time, as would often be the case, for example, when un-registration is timely because the subject is about to be released from TYC on parole.

The longer amendment in (j) addresses the question of who must to what when registration was deferred pending outcome of treatment and the treatment has been successfully completed. The amendment states that registration is excused unless the prosecutor files a motion seeking registration and the court after hearing orders registration. This burden was placed on the State because at this stage of juvenile proceedings the State, but usually not the respondent, is represented by counsel. The treatment provider must notify the court and prosecutor of successful completion of treatment.

The amendment in (n) gives some relief from the one-bite-at-the-apple rule whereby if a respondent unsuccessfully seeks un-registration he is precluded later from seeking de-registration. The amendment gives such a person one opportunity at de-registration.

The amendment in (q) addresses the burdens of sending out court de-registration orders. Orders must be sent to core agencies in every case without charging a separate fee—DPS, local law enforcement agency, and any agency that the respondent has proved has current, publicly available information about the child. The clerk is required to send out orders to any other agency requested by the respondent for a fee.

Subsection (s) gives un-registration and de-registration relief to a juvenile who was adjudicated for a sex offense out of state but who is now required to register because he became a resident of Texas. Relief is granted only from the Texas registration requirements, not from any requirements to register out of state.

Code of Criminal Procedure article 62.14. REMOVING JUVENILE REGISTRATION INFORMATION WHEN DUTY TO REGISTER EXPIRES.

(a) When a person is no longer required to register as a sex offender for an adjudication of delinquent conduct, the department shall remove all information about the person from the sex offender registry.

(b) The duty to remove information under Subsection (a) arises if:

(1) the department has received notice from a local law enforcement authority under Subsection (c) or (d) that the person is no longer required to register or will no longer be required to renew registration and the department verifies the correctness of that information;

(2) the juvenile court that adjudicated the case for which registration is required requests removal and the department determines that the duty to register has expired; or

(3) the person or the person's representative requests removal and the department determines that the duty to register has expired.

(c) When a person required to register for an adjudication of delinquent conduct appears before a local law enforcement authority to renew or modify registration information, the authority shall determine whether the duty to register has expired. If the authority determines that the duty to register has expired, the authority shall remove all information about the person from the sex offender registry and notify the department that the person's duty to register has expired.

(d) When a person required to register for an adjudication of delinquent conduct appears before a local law enforcement authority to renew registration information, the authority shall determine whether the renewal is the final annual renewal of registration required by law. If the authority determines that the person's duty to register will expire before the next annual renewal is scheduled, the authority shall automatically remove all information about the person from the sex offender registry on expiration of the duty to register and notify the department that the information about the person has been removed from the registry.

(e) When the department has removed information under Subsection (a), the department shall notify all local law enforcement authorities that have provided registration information to the department about

the person of the removal. A local law enforcement authority that receives notice from the department under this subsection shall remove all registration information about the person from its registry.

(f) When the department has removed information under Subsection (a), the department shall notify all public and private agencies or organizations to which it has provided registration information about the person of the removal. On receiving notice, the public or private agency or organization shall remove all registration information about the person from any registry the agency or organization maintains that is accessible to the public with or without charge.

Commentary by Robert Dawson

Source: HB 2319.
Effective Date: September 1, 2003.
Applicability: Conduct occurring on or after effective date.
Summary of Changes: Under current law, a juvenile must register at least once a year and every time he or she moves residence for 10 years following exit from the juvenile justice system. At that point, he has no further obligation to update his registration. The DPS, however, does not remove the registration from the system; rather it simply notes that the person is no longer obligated to register. The information remains on the system forever. As years pass, the information in the system remains frozen at an increasingly remote time in the past and, therefore, becomes less and less accurate. This has the effect of stigmatizing the juvenile without providing much helpful information to the public.

New section 62.14 requires DPS and other agencies to remove a juvenile's registration from the system when it has received reliable information that the juvenile is no longer obligated to update the information. DPS is required to notify agencies that have obtained the registration information of their obligations to remove their registration information as well.

Code of Criminal Procedure article 62.05. Status Report by Supervising Officer.

(a) If the juvenile probation officer, community supervision and corrections department officer, or parole officer supervising a person subject to registration under this chapter receives information to the effect that the person's status has changed in any manner that affects proper supervision of the person, including a change in the person's name, physical health, job [~~status~~], incarceration, or terms of release, the supervising officer shall promptly notify the appropriate local law enforcement authority or authorities of that change. If the person required to register intends to change address, the person's supervising officer shall notify the local law enforcement authorities designated by Article 62.04(b).

(b) A person subject to registration under this chapter shall report to the local law enforcement authority any change in status with respect to the person's name, 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. Regarding a change of name, the notice of a proposed name change provided to a local law enforcement authority as described by Sections 45.004 and 45.103, Family Code, is sufficient for purposes of this subsection, except that the person shall promptly notify the authority of any denial of the person's petition for a change of name.

Commentary by Robert Dawson

Source: SB 146.
Effective Date: September 1, 2003.
Applicability: A person subject to registration for an offense or conduct that was committed before, on, or after the effective date.
Summary of Changes: This if the first of five sections that were amended to address the implications for sex offender registration of obtaining a change of name from a court. This section provides that notice of a change of name of a registered sex offender must be given to his local law enforcement authority. If a juvenile probation officer receives information that there has been a change of name, he or she is required promptly to notify the appropriate law enforcement authority of the change.

Family Code § 45.002. Requirements of Petition.

(a) A petition to change the name of a child must be verified
and include:

(1) the present name and place of residence of the child;

(2) the reason a change of name is requested;

(3) the full name requested for the child; [~~and~~]

(4) whether the child is subject to the continuing
exclusive jurisdiction of a court under Chapter 155; and

(5) whether the child is subject to the registration requirements of Chapter 62, Code of Criminal Procedure.

Commentary by Robert Dawson

Source: SB 146.
Effective Date: September 1, 2003.
Applicability: Petition for a change of name of a child or adult that is filed on or after the effective date.
Summary of Changes: A petition for change of name of a child must allege whether the child is required to register as a sex offender.

Family Code § 45.004. Order.

(a) The court may order the name of a child changed if:

(1) the change is in the best interest of the child; and

(2) for a child subject to the registration requirements of Chapter 62, Code of Criminal Procedure:

(A) the change is in the interest of the public; and

(B) the person petitioning on behalf of the child provides the court with proof that the child has notified the appropriate local law enforcement authority of the proposed name change.

(b) If the child is subject to the continuing jurisdiction of a court under Chapter 155, the court shall send a copy of the order to the central record file as provided in Chapter 108.

(c) In this section, "local law enforcement authority" has the meaning assigned by Article 62.01, Code of Criminal Procedure.

Commentary by Robert Dawson

Source: SB 146.
Effective Date: September 1, 2003.
Applicability: Petition for a change of name of a child or adult that is filed on or after the effective date.
Summary of Changes: If the petitioner is a registered sex offender, the court must find that change of name is in the interest of the public and that the appropriate local law enforcement authority has been notified of the change being sought.

Family Code § 45.102. Requirements of Petition.

(a) A petition to change the name of an adult must be verified and include:

(1) the present name and place of residence of the petitioner;

(2) the full name requested for the petitioner;

(3) the reason the change in name is requested; [~~and~~]

(4) whether the petitioner has been the subject of a final felony conviction; and

(5) whether the petitioner is subject to the registration requirements of Chapter 62, Code of Criminal Procedure.

Commentary by Robert Dawson

Source: SB 146.
Effective Date: September 1, 2003.
Applicability: Petition for a change of name of a child or adult that is filed on or after the effective date.
Summary of Changes: A petition to change the name of an adult must allege whether the petitioner is a registered sex offender.

Family Code § 45.103. Order.

(a) The court shall order a change of name under this subchapter for a person other than a person with a final felony conviction or a person subject to the registration requirements of Chapter 62, Code of Criminal Procedure, if the change is in the interest or to the benefit of the petitioner and in the interest of the public.

(b) A court may order a change of name under this subchapter for a person with a final felony conviction if, in addition to the requirements of Subsection (a), the person has:

(1) received a certificate of discharge by the pardons and paroles division of the Texas Department of Criminal Justice or completed a period of probation ordered by a court and not less than two years have passed from the date of the receipt of discharge or completion of probation; or

(2) been pardoned.

(c) A court may order a change of name under this subchapter for a person subject to the registration requirements of Chapter 62, Code of Criminal Procedure, if, in addition to the requirements of Subsection (a), the person provides the court with proof that the person has notified the appropriate local law enforcement authority of the proposed name change. In this subsection, "local law enforcement authority" has the meaning assigned by Article 62.01, Code of Criminal Procedure.

Commentary by Robert Dawson

Source: SB 146.
Effective Date: September 1, 2003.
Applicability: Petition for a change of name of a child or adult that is filed on or after the effective date.
Summary of Changes: To change the name of an adult registered sex offender, the court must find that the local law enforcement authority has been notified.

3. Education and Juvenile Justice

Education Code § 12.131. REMOVAL OF STUDENTS TO DISCIPLINARY ALTERNATIVE EDUCATION PROGRAM; EXPULSION OF STUDENTS.

(a) The governing body of an open-enrollment charter school shall adopt a code of conduct for its district or for each campus. In addition to establishing standards for behavior, the code of conduct shall outline generally the types of prohibited behaviors and their possible consequences. The code of conduct shall also outline the school's due process procedures with respect to expulsion. Notwithstanding any other provision of law, a final decision of the governing body of an open-enrollment charter school with respect to actions taken under the code of conduct may not be appealed.

(b) An open-enrollment charter school may not elect to expel a student for a reason that is not authorized by Section 37.007 or specified in the school's code of conduct as conduct that may result in expulsion.

(c) Notwithstanding any other provision, Section 37.002 and its provisions, wherever referenced, are not applicable to an open-enrollment charter school unless the governing body of the school so determines.

Commentary by Linda Brooke

Source: HB 1314.
Effective Date: Upon signing – June 20, 2003.
Applicability: Conduct occurring on or after effective date.
Summary of Changes: Chapter 12 of the Texas Education Code deals with charter schools. Section 12.131 is an entirely new section in Subchapter D Open-Enrollment Charter School. This amendment requires open-enrollment charter schools to adopt a student code of conduct that establishes the standards for student behavior, prohibits behaviors and prescribes the consequences for violations. The student code of conduct must also outline the school's due process procedures with respect to expulsion. This amendment prohibits an open-enrollment charter school from expelling a student for reasons other than those authorized in Texas Education Code Section 37.007.

Section 37.002 of the Education Code addresses removals by teachers and the provisions of that section are not applicable to an open-enrollment charter school unless the governing body of the school so determines.

Education Code § 25.001. Admission

(d) For a person under the age of 18 years to establish a residence for the purpose of attending the public schools separate and apart from the person's parent, guardian, or other person having lawful control of the person under a court order, it must be established that the person's presence in the school district is not for the primary purpose of participation in extracurricular activities. The board of trustees shall determine whether an applicant for admission is a resident of the school district for purposes of attending the public schools and may adopt reasonable guidelines for making a determination as necessary to protect the best interests of students. The board of trustees is not required to admit a person under this subsection if the person:

(1) has engaged in conduct or misbehavior within the preceding year that has resulted in:

(A) removal to a disciplinary [~~an~~] alternative education program; or

(B) expulsion;

(2) has engaged in delinquent conduct or conduct in need of supervision and is on probation or other conditional release for that conduct; or

(3) has been convicted of a criminal offense and is on probation or other conditional release.

Commentary by Linda Brooke

Source: HB 1314.
Effective Date: Upon signing – June 20, 2003.
Applicability: Conduct occurring on or after effective date.
Summary of Changes: This bill changes all references to Alternative Education Programs (AEPs) to Disciplinary Alternative Education Programs (DAEPs), as required under Texas Education Code Section 37.008.

Education Code § 25.085. Compulsory School Attendance

(d) Unless specifically exempted by Section 25.086, a student enrolled in a school district must attend:

(1) an extended-year program for which the student is eligible that is provided by the district for students identified as likely not to be promoted to the next grade level or tutorial classes required by the district under Section 29.084;

(2) an accelerated reading instruction program to which the student is assigned under Section 28.006(g);

(3) an accelerated instruction program to which the student is assigned under Section 28.0211; [~~or~~]

(4) a basic skills program to which the student is assigned under Section 29.086; or

(5) a summer program provided under Section 37.008(l) or Section 37.021.

Commentary by Linda Brooke

Source: HB 1314.
Effective Date: Upon signing – June 20, 2003.
Applicability: Conduct occurring on or after effective date.
Summary of Changes: The amendment adds Subsection (d) which requires a student, if the school district operates a summer school programs under Section 37.008(l) or 37.0021 and if the student was placed in a Disciplinary Alternative Education Program (DAEP) or in-school suspension or another setting other than a DAEP, to attend the summer program that is designed to give the student the opportunity to complete each course in which the student was enrolled at the time of removal.

Education Code § 25.093. Parent Contributing to Nonattendance [~~Truancy~~]

Commentary by Lisa Capers

Source: HB 2319.
Effective Date: September 1, 2003.
Applicability: Conduct occurring on or after effective date.
Summary of Changes: Although the Code Construction Act suggests that section names are not to be used in interpreting the law, the fact remains that both law trained and non-law trained users give weight to the name of such sections. This change to the title of Texas Education Code Section 25.093 changes the term "truancy" to "nonattendance" to conform with changes made during the last legislative session.

Education Code § 25.094. Failure to Attend School

(d) If the justice or municipal court believes that a child has violated an order issued under Subsection (c), the court may proceed as authorized by Article 45.050, Code of Criminal Procedure [~~Section 54.023, Family Code, by holding the child in contempt and imposing a fine not to exceed $500 or by referring the child to juvenile court for delinquent conduct~~].

(d-1) 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 into custody. A peace officer taking an individual into custody under this subsection shall:

(1) promptly notify the individual'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 to the individual's parent, guardian, or custodian or to another responsible adult, if the person promises to bring the individual to the justice or municipal court as requested by the court; or

(B) bring the individual to a justice or municipal court with venue over the offense.

Commentary by Lisa Capers

Source: HB 2319.
Effective Date: September 1, 2003.
Applicability: Conduct occurring on or after effective date.
Summary of Changes: This change corrects the citation to the Code of Criminal Procedure section that deals with the procedures for handling contempt of court by a juvenile.

Education Code § 25.0952. Procedures Applicable to School Attendance-Related [~~Truancy-Related~~] Offenses.

Commentary by Lisa Capers

Source: HB 2319.
Effective Date: September 1, 2003.
Applicability: Conduct occurring on or after effective date.
Summary of Changes: Although the Code Construction Act suggests that section names are not to be used in interpreting the law, the fact remains that both law trained and non-law trained users give weight to the name of such sections. This change clarifies the intent of the Legislature in the last session, specifically, that school attendance as defined in the Education Code is a criminal subject matter.

Education Code § 37.001. Student Code of Conduct

(a) The board of trustees of an independent school district shall, with the advice of its district-level committee established under Subchapter F, Chapter 11 [~~Section 11.251~~], adopt a student code of conduct for the district. The student code of conduct must be posted and prominently displayed at each school campus or made available for review at the office of the campus principal. In addition to establishing standards for student conduct, the student code of conduct must:

(1) specify the circumstances, in accordance with this subchapter, under which a student may be removed from a classroom, campus, or disciplinary alternative education program;

(2) specify conditions that authorize or require a principal or other appropriate administrator to transfer a student to a disciplinary [~~an~~] alternative education program; [~~and~~]

(3) outline conditions under which a student may be suspended as provided by Section 37.005 or expelled as provided by Section 37.007;

(4) specify whether consideration is given to self-defense as a factor in a decision to order suspension, removal to a disciplinary alternative education program, or expulsion;

(5) provide guidelines for setting the length of a term of:

(A) a removal under Section 37.006; and

(B) an expulsion under Section 37.007; and

(6) address the notification of a student's parent or guardian of a violation of the student code of conduct committed by the student that results in suspension, removal to a disciplinary alternative education program, or expulsion.

(d) Each school year, a school district shall provide parents notice of and information regarding the student code of conduct.

Education Code § 37.001. Student Code of Conduct

[~~(b) A teacher with knowledge that a student has violated the student code of conduct shall file with the school principal or the other appropriate administrator a written report, not to exceed one page, documenting the violation. The principal or the other appropriate administrator shall, not later than 24 hours after receipt of a report from a teacher, send a copy of the report to the student's parents or guardians.~~]

Commentary by Linda Brooke

Source: HB 1314.
Effective Date: Upon signing – June 20, 2003.
Applicability: Conduct occurring on or after effective date.
Summary of Changes: Section 37.001(a) was amended to allow a school district to specify in the student code of conduct whether consideration of a claim of self-defense will be given in a disciplinary decision. This section was also amended to require a school district to provide guidelines for the term of a placement in a Disciplinary Alternative Education Program (DAEP) under Section 37.006 or for expulsion under Section 37.007. The section also requires parental notification of any conduct that results in a removal, suspension or expulsion. Additionally, parents must be provided notice of the student code of conduct annually. Section 37.001(b) was repealed by HB 1314, Section 30.

Education Code § 37.002. Removal by Teacher

(c) If a teacher removes a student from class under Subsection (b), the principal may place the student into another appropriate classroom, into in-school suspension, or into a disciplinary [~~an~~] alternative education program as provided by Section 37.008. The principal may not return the student to that teacher's class without the teacher's consent unless the committee established under Section 37.003 determines that such placement is the best or only alternative available. The terms of the removal may prohibit the student from attending or participating in school-sponsored or school-related activity.

(d) A teacher shall remove from class and send to the principal for placement in a disciplinary [~~an~~] alternative education program or for expulsion, as appropriate, a student who engages in conduct described under Section 37.006 or 37.007. The student may not be returned to that teacher's class without the teacher's consent unless the committee established under Section 37.003 determines that such placement is the best or only alternative available.

Commentary by Linda Brooke

Source: HB 1314.
Effective Date: September 1, 2003.
Applicability: Conduct occurring on or after effective date.
Summary of Changes: This bill changes all references to Alternative Education Programs (AEPs) to Disciplinary Alternative Education Programs (DAEPs), as required under Texas Education Code 37.008.

Education Code § 37.0021. Use of Confinement, Restraint, Seclusion, and Time-Out

(a) It is the policy of this state to treat with dignity and respect all students, including students with disabilities who receive special education services under Subchapter A, Chapter 29[~~with dignity and respect~~]. A student with a disability who receives special education services under Subchapter A, Chapter 29, may not be confined in a locked box, locked closet, or other specially designed locked space as either a discipline management practice or a behavior management technique.

(b) In this section:

(1) "Restraint" means the use of physical force or a mechanical device to significantly restrict the free movement of all or a portion of a student's body.

(2) "Seclusion" means a behavior management technique in which a student is confined in a locked box, locked closet, or locked room that:

(A) is designed solely to seclude a person; and

(B) contains less than 50 square feet of space.

(3) "Time-out" means a behavior management technique in which, to provide a student with an opportunity to regain self-control, the student is separated from other students for a limited period in a setting:

(A) that is not locked; and

(B) from which the exit [~~student~~] is not physically blocked by furniture, a closed door held shut from the outside, or another inanimate object [~~prevented from leaving~~].

(c) A school district employee or volunteer or an independent contractor of a district may not place a student in seclusion. This subsection does not apply to the use of seclusion in a court-ordered placement, other than a placement in an educational program of a school district, or in a placement or facility to which the following law, rules, or regulations apply:

(1) the Children's Health Act of 2000, Pub. L. No. 106-310, any subsequent amendments to that Act, any regulations adopted under that Act, or any subsequent amendments to those regulations;

(2) 40 T.A.C. Sections 720.1001-720.1013; or

(3) 25 T.A.C. Section 412.308(e).

(d) The commissioner by rule shall adopt procedures for the use of restraint and time-out by a school district employee or volunteer or an independent contractor of a district in the case of a student with a disability receiving special education services under Subchapter A, Chapter 29. A procedure adopted under this subsection must:

(1) be consistent with:

(A) professionally accepted practices and standards of student discipline and techniques for behavior management; and

(B) relevant health and safety standards; and

(2) identify any discipline management practice or behavior management technique that requires a district employee or volunteer or an independent contractor of a district to be trained before using that practice or technique.

(g) This section and any rules or procedures adopted under this section do not apply to:

(1) a peace officer while performing law enforcement duties;

(2) juvenile probation, detention, or corrections personnel; or

(3) an educational services provider with whom a student is placed by a judicial authority, unless the services are provided in an educational program of a school district.

Commentary by Linda Brooke

Source: HB 1314.
Effective Date: Upon signing – June 20, 2003.
Applicability: Conduct occurring on or after effective date.
Summary of Changes: Subsection 37.0021 deals with the use of confinement, restraint, seclusion and time out in the school setting. The amendments require that all students be treated with dignity and respect, specifically including students with disabilities who are receiving special education services. Subsection (a) explicitly clarifies that students with disabilities who are receiving special education services may not be confined in a locked box, locked closet, or other specially designed locked space as either a discipline management practice or a behavior management technique.

Subsection (g) provides an exemption from the requirements of Section 37.0021 and any applicable rules promulgated by the Commissioner of Education regarding the use of restraints. The exemption to peace officers while performing law enforcement duties, juvenile probation, detention, correctional personnel and an education services provider with whom a student is placed by a judicial authority, unless the services are provided in an educational program. These changes recognize the need for law enforcement and juvenile probation authorities to be able to apply restraints when applicable and necessary and authorized by law. The use of restraints by juvenile probation, detention and corrections officers is governed by administrative rules promulgated by the Texas Juvenile Probation Commission in Title 37 Texas Administrative Code Chapters 341 and 343 and restraints in a juvenile justice alternative education program are governed by Chapter 348.

Education Code § 37.003. Placement Review Committee

(c) The committee's placement determination regarding a student with a disability who receives special education services under Subchapter A, Chapter 29, is subject to the requirements of the Individuals with Disabilities Education Act (20 U.S.C. Section 1400 et seq.) and federal regulations, state statutes, and agency requirements necessary to carry out federal law or regulations or state law relating to special education.

Commentary by Linda Brooke

Source: HB 1314.
Effective Date: Upon signing – June 20, 2003.

Applicability: Conduct occurring on or after effective date.
Summary of Changes: Section 37.003 is the section that creates a placement review committee that reviews the placement of a student when a teacher refuses the return of a student to the teacher's class and makes recommendations to the district regarding readmission of expelled students. This amendment adds subsection (c) that requires the actions of the placement committee to meet the requirements of federal law, specifically the Individuals with Disabilities Education Act (IDEA), and any state law and agency rules in determining a student's placement.

Education Code § 37.004. Placement of Students with Disabilities

(e) Notwithstanding any other provision of this subchapter, in a county with a juvenile justice alternative education program established under Section 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, 2005 [~~2003~~].

Commentary by Lisa Capers

Source: HB 469.
Effective Date: Effective upon signing.
Applicability: None stated.
Summary of Changes: Subsections (e) and (f) of Section 37.004 were enacted during the 2001 legislative session and required juvenile justice alternative education programs (JJAEPs) to be provided notice of the Admission Review and Dismissal (ARD) hearing for a special education student being considered for placement in the JJAEP. These subsections were due to expire on September 1, 2003 and this amendment extends the expiration date until September 1, 2005.

Education Code § 37.005. Suspension

(a) The principal or other appropriate administrator may suspend a student who engages in conduct identified in the student code of conduct adopted under Section 37.001 as conduct for which a student may be suspended [~~for which the student may be placed in an alternative education program under this subchapter~~].

Commentary by Linda Brooke

Source: HB 1314.
Effective Date: Upon signing – June 20, 2003.
Applicability: Conduct occurring on or after effective date.
Summary of Changes: This amendment clarifies that a student may be suspended for any conduct identified in the student code of conduct.

Education Code § 37.006. Removal for Certain Conduct

(a) A [~~Except as provided by Section 37.007(a)(3) or (b), a~~] student shall be removed from class and placed in a disciplinary [~~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) engages in conduct punishable as a felony;

(B) engages in conduct that contains the elements of the offense of assault under Section 22.01(a)(1), Penal Code;

(C) sells, gives, or delivers to another person or possesses or uses or is under the influence of:

(i) 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) a dangerous drug, as defined by Chapter 483, Health and Safety Code;

(D) 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) engages in conduct that contains the elements of an offense relating to an abusable volatile chemical [~~glue or aerosol paint~~] under Sections 485.031 through 485.034 [485.035], Health and Safety Code[, or relating to volatile chemicals under Chapter 484, Health and Safety Code]; or

(F) engages in conduct that contains the elements of the offense of public lewdness under Section 21.07, Penal Code, or indecent exposure under Section 21.08, Penal Code.

(b) Except as provided by Section 37.007(d), a student shall be removed from class and placed in a disciplinary [~~an~~] alternative education program under Section 37.008 if the student engages in conduct on or off of school property that contains the elements of the offense of retaliation under Section 36.06, Penal Code, against any school employee.

(c) In addition to Subsections [~~Subsection~~] (a) and (b), a student shall be removed from class and placed in a disciplinary [~~an~~] alternative education program under Section 37.008 based on conduct occurring off campus and while the student is not in attendance at a school-sponsored or school-related activity if:

(1) the student receives deferred prosecution under Section 53.03, Family Code, for conduct defined as a felony offense in Title 5, Penal Code;

(2) a court or jury finds that the student has engaged in delinquent conduct under Section 54.03, Family Code, for conduct defined as a felony offense in Title 5, Penal Code; or

(3) the superintendent or the superintendent's designee has a reasonable belief that the student has engaged in a conduct defined as a felony offense in Title 5, Penal Code.

(d) In addition to Subsections [~~Subsection~~] (a), (b), and (c), a student may be removed from class and placed in a disciplinary [~~an~~] alternative education program under Section 37.008 based on conduct occurring off campus and while the student is not in attendance at a school-sponsored or school-related activity if:

(1) the superintendent or the superintendent's designee has a reasonable belief that the student has engaged in conduct defined as a felony offense other than those defined in Title 5, Penal Code; and

(2) the continued presence of the student in the regular classroom threatens the safety of other students or teachers or will be detrimental to the educational process.

(f) Subject to Section 37.007(e), a student who is younger than 10 years of age shall be removed from class and placed in a disciplinary [~~an~~] alternative education program under Section 37.008 if the student engages in conduct described by Section 37.007. An elementary school student may not be placed in a disciplinary [~~an~~] alternative education program with any other student who is not an elementary school student.

(h) On receipt of notice under Article 15.27(g), Code of Criminal Procedure, the superintendent or the superintendent's designee shall review the student's placement in the disciplinary alternative education program. The student may not be returned to the regular classroom pending the review. The superintendent or the superintendent's designee shall schedule a review of the student's placement with the student's parent or guardian not later than the third class day after the superintendent or superintendent's designee receives notice from the office or official designated by the court. After reviewing the notice and receiving information from the student's parent or guardian, the superintendent or the superintendent's designee may continue the student's placement in the disciplinary alternative education program if there is reason to believe that the presence of the student in the regular classroom threatens the safety of other students or teachers.

(l) Notwithstanding any other provision of this code, other than Section 37.007(e)(2), a student who is younger than six years of age may not be removed from class and placed in a disciplinary [~~an~~] alternative education program.

(m) Removal to a disciplinary alternative education program under Subsection (a) is not required if the student is expelled under Section 37.007 for the same conduct for which removal would be required.

(n) A principal or other appropriate administrator may but is not required to remove a student to a disciplinary alternative education program for off-campus conduct for which removal is required under this section if the principal or other appropriate administrator does not have knowledge of the conduct before the first anniversary of the date the conduct occurred.

Commentary by Linda Brooke

Source: HB 1314.
Effective Date: Upon signing – June 20, 2003.
Applicability: Conduct occurring on or after effective date.

Summary of Changes: This section pertains to the conduct for which a school district may choose to place or is required to place a student in a Disciplinary Alternative Education Program (DAEP). The changes to this section require that a student be placed in a DAEP if on or off school campus the student engages in conduct that contains the elements of retaliation (Penal Code Section 36.06) against a school employee. The amendment also adds Subsection (n) providing that a principal is not required to remove a student to a DAEP for off-campus conduct that is required under 37.006 if the administrator does not have knowledge of the conduct before the first anniversary of the date the conduct occurred.

Education Code § 37.007. Expulsion for Serious Offenses

(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) sells, gives, or delivers to another person or possesses, uses, or is under the influence of any amount of:

(i) 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) a dangerous drug, as defined by Chapter 483, Health and Safety Code; or

(iii) an alcoholic beverage, as defined by Section 1.04, Alcoholic Beverage Code;

(B) 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) 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; or

(3) engages in conduct that contains the elements of any offense listed in Subsection (a)(2)(A) or (C) or the offense of aggravated robbery under Section 29.03, Penal Code, against another student, 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 Linda Brooke

Source: HB 567.

Effective Date: Upon signing – June 20, 2003.

Applicability: Expulsion of a student engaging in conduct occurring on or after effective date.

Summary of Change: Currently a school district in not allowed to expel a student for any conduct listed in 37.007(a) if the conduct occurred off school campus and not at a school related activity or event. This amendment allows for a school district to discretionarily expel a student for aggravated assault, sexual assault, aggravated sexual assault, murder, capital murder, criminal attempt to commit murder or aggravated robbery regardless of where the behavior occurred.

Education Code § 37.007. Expulsion for Serious Offenses

(a) A student shall be expelled from a school if the student, on school property or while attending a school-sponsored or school-related activity on or off of school property:

(1) 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;

(F) aggravated robbery under Section 29.03, Penal Code;

(G) manslaughter under Section 19.04, Penal Code; or

(H) criminally negligent homicide under Section 19.05, Penal Code; or

(3) engages in conduct specified by Section 37.006(a)(2)(C) or (D), 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 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) sells, gives, or delivers to another person or possesses, uses, or is under the influence of any amount of:

(i) 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) a dangerous drug, as defined by Chapter 483, Health and Safety Code; or

(iii) an alcoholic beverage, as defined by Section 1.04, Alcoholic Beverage Code;

(B) engages in conduct that contains the elements of an offense relating to an abusable volatile chemical [~~glue or aerosol paint~~] under Sections 485.031 through 485.034 [~~485.035~~], Health and Safety Code[~~, or relating to volatile chemicals under Chapter 484, Health and Safety Code~~]; [~~or~~]

(C) 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; or

(D) engages in conduct that contains the elements of the offense of deadly conduct under Section 22.05, Penal Code; or

(3) subject to Subsection (d), while within 300 feet of school property, as measured from any point on the school's real property boundary line:

(A) engages in conduct specified by Subsection (a); or

(B) possesses a firearm, as defined by 18 U.S.C. Section 921.

(e) In accordance with 20 U.S.C. Section 7151 [~~federal law~~], a local educational agency, including a school district, home-rule school district, or open-enrollment charter school, shall expel a student who brings a firearm, as defined by 18 U.S.C. Section 921, to school. The student must be expelled from the student's regular campus for a period of at least one year, except that:

(1) the superintendent or other chief administrative officer of the school district or of the other local educational agency, as defined by 20 U.S.C. Section 7801 [~~2891~~], may modify the length of the expulsion in the case of an individual student;

(2) the district or other local educational agency shall provide educational services to an expelled student in a disciplinary [~~an~~] alternative education program as provided by Section 37.008 if the student is younger than 10 years of age on the date of expulsion; and

(3) the district or other local educational agency may provide educational services to an expelled student who is [~~older than~~] 10 years of age or older in a disciplinary [~~an~~] alternative education program as provided in Section 37.008.

(g) A school district shall inform each teacher who has regular contact with a student through a classroom assignment of the conduct of a student who has engaged in any violation listed in this section. A teacher shall keep the information received in this subsection confidential. The State Board for Educator Certification may revoke or suspend the certification of a teacher who intentionally violates this subsection.

Commentary by Linda Brooke

Source: HB 1314.
Effective Date: Upon signing – June 20, 2003.
Applicability: Conduct occurring on or after effective date.
Summary of Changes: Section 37.007 of the Education Code is the section that details the conduct for which a student is either required to be expelled or may be expelled according to district policy. HB 1314 amends 37.007(a) (2) to include aggravated robbery, manslaughter and criminally negligent homicide to the list of offenses for which a school district is required to expel a student if the offense occurred on school campus or at a school related activity or event.

Subsection 37.007(b) (2) was amended to allow a school district to expel a student for any of the conduct listed under this subsection if the conduct occurred within 300 feet of the school property. This amendment also added deadly conduct as a discretionary expulsion under this subsection.

The amendments also allow a school district to discretionarily expel a student for any of the offenses listed under Subsections (a) or (e), which are the mandatory expulsion offenses, if the conduct occurred within 300 feet of a school campus.

Education Code § 37.007. Expulsion for Serious Offenses

(i) A student who engages in conduct described by Subsection (a) may be expelled from school by the district in which the student attends school if the student engages in that conduct:

(1) on school property of another district in this state; or

(2) while attending a school-sponsored or school-related activity of a school in another district in this state.

Commentary by Linda Brooke

Source: HB 552.
Effective Date: Upon signing – June 18, 2003.

Applicability: Beginning of the 2003-2004 school year.

Summary of Changes: This bill clarifies that a school district can expel a student for any of the mandatory expulsion reasons listed under Section 37.007(a) if the conduct occurs on the property of another district or while attending a school-sponsored or related event of another school district in Texas.

Education Code § 37.008. DISCIPLINARY ALTERNATIVE EDUCATION PROGRAMS

(a) Each school district shall provide a disciplinary [~~an~~] alternative education program that:

(1) is provided in a setting other than a student's regular classroom;

(2) is located on or off of a regular school campus;

(3) provides for the students who are assigned to the disciplinary alternative education program to be separated from students who are not assigned to the program;

(4) focuses on English language arts, mathematics, science, history, and self-discipline;

(5) provides for students' educational and behavioral needs; [~~and~~]

(6) provides supervision and counseling;

(7) requires that to teach in an off-campus disciplinary alternative education program, each teacher meet all certification requirements established under Subchapter B, Chapter 21; and

(8) notwithstanding Subdivision (7), requires that to teach in a disciplinary alternative education program of any kind, each teacher employed by a school district during the 2003-2004 school year or an earlier school year meet, not later than the beginning of the 2005-2006 school year, all certification requirements established under Subchapter B, Chapter 21.

(b) A disciplinary [~~An~~] alternative education program may provide for a student's transfer to:

(1) a different campus;

(2) a school-community guidance center; or

(3) a community-based alternative school.

(c) An off-campus disciplinary alternative education program is not subject to a requirement imposed by this title, other than a limitation on liability, a reporting requirement, or a requirement imposed by this chapter or by Chapter 39.

(d) A school district may provide a disciplinary [~~an~~] alternative education program jointly with one or more other districts.

(e) Each school district shall cooperate with government agencies and community organizations that provide services in the district to students placed in a disciplinary [~~an~~] alternative education program.

(f) A student removed to a disciplinary [~~an~~] alternative education program is counted in computing the average daily attendance of students in the district for the student's time in actual attendance in the program.

(g) A school district shall allocate to a disciplinary [~~an~~] alternative education program the same expenditure per student attending the disciplinary alternative education program, including federal, state, and local funds, that would be allocated to the student's school if the student were attending the student's regularly assigned education program, including a special education program.

(h) A school district may not place a student, other than a student suspended as provided under Section 37.005 or expelled as provided under Section 37.007, in an unsupervised setting as a result of conduct for which a student may be placed in a disciplinary [~~an~~] alternative education program.

(i) On request of a school district, a regional education service center may provide to the district information on developing a disciplinary [~~an~~] alternative education program that takes into consideration the district's size, wealth, and existing facilities in determining the program best suited to the district.

(j) If a student placed in a disciplinary [~~an~~] alternative education program enrolls in another school district before the expiration of the period of placement, the board of trustees of the district requiring the placement shall provide to the district in which the student enrolls, at the same time other records of the student are provided, a copy of the placement order. The district in which the student enrolls may continue the disciplinary alternative education program placement under the terms of the order or may allow the student to attend regular classes without completing the period of placement. A district may take any action permitted by this subsection if:

(1) the student was placed in a disciplinary alternative education program by an open-enrollment charter school under Section 12.131 and the charter school provides to the district a copy of the placement order; or

(2) the student was placed in a disciplinary alternative education program by a school district in another state and:

(A) the out-of-state district provides to the district a copy of the placement order; and

(B) the grounds for the placement by the out-of-state district are grounds for placement in the district in which the student is enrolling.

(j-1) If a student was placed in a disciplinary alternative education program by a school district in another state for a period that exceeds one year and a school district in this state in which the student enrolls continues the placement under Subsection (j),
the district shall reduce the period of the placement so that the aggregate period does not exceed one year unless, after a review, the district determines that:

(1) the student is a threat to the safety of other students or to district employees; or

(2) extended placement is in the best interest of the student.

(k) A program of educational and support services may be provided to a student and the student's parents when the offense involves drugs or alcohol as specified under Section 37.006 or 37.007. A disciplinary [~~An~~] alternative education program that provides chemical dependency treatment services must be licensed under Chapter 464, Health and Safety Code.

(l) A school district is [~~not~~] required to provide in the district's disciplinary alternative education program a course necessary to fulfill a student's high school graduation requirements only as provided by this subsection. A school district shall offer a student removed to a disciplinary alternative education program an opportunity to complete coursework before the beginning of the next school year. The school district may provide the student an opportunity to complete coursework through any method available, including a correspondence course, distance learning, or summer school. The district may not charge the student for a course provided under this subsection [~~other than a course specified by Subsection (a)~~].

(m) The commissioner shall adopt rules necessary to evaluate annually the performance of each district's disciplinary alternative education program established under this subchapter. The evaluation required by this section shall be based on indicators defined by the commissioner, but must include student performance on assessment instruments required under Sections 39.023(a) and (c). Academically, the mission of disciplinary alternative education programs shall be to enable students to perform at grade level.

(m-1) The commissioner shall develop a process for evaluating a school district disciplinary alternative education program electronically. The commissioner shall also develop a system and standards for review of the evaluation or use systems already available at the agency. The system must be designed to identify districts that are at high risk of having inaccurate disciplinary alternative education program data or of failing to comply with disciplinary alternative education program requirements. The commissioner shall notify the board of trustees of a district of any objection the commissioner has to the district's disciplinary alternative education program data or of a violation of a law or rule revealed by the data, including any violation of disciplinary alternative education program requirements, or of any recommendation by the commissioner concerning the data. If the data reflect that a penal law has been violated, the commissioner shall notify the county attorney, district attorney, or criminal district attorney, as appropriate, and the attorney general. The commissioner is entitled to access to all district records the commissioner considers necessary or appropriate for the review, analysis, or approval of disciplinary alternative education program data.

Commentary by Linda Brooke

Source: HB 1314
Effective Date: Upon signing – June 20, 2003.
Applicability: Conduct occurring on or after effective date, but (a)(8) applies beginning with the 2004-2005 school year.
Summary of Changes: House Bill 1314 amends Section 37.008 (a) of the Texas Education Code to require off-campus disciplinary alternative education program (DAEP) teachers to meet certification requirements by the 2004-05 school year. This addition further requires that to teach in a DAEP of any kind, each teacher employeed prior to the 2004-05 school year shall meet certification requirements.

Subsection (j) is amended to allow a school district to place a student in a DAEP if the student transfered from a charter school or out-of-state school and was placed in a DAEP at the time of transfer. The Texas school district may not place a student in a DAEP for a period exceeding one year, unless after review the district determines the student is a threat to the safety of other students or employees or the extended placement is in the best interest of the student.

Previously a school district DAEP was not required to provide a course necessary to fulfill as student's high school graduation requirements. Subsection (l) was amended to now require a school district to provide courses necessary to fulfill a student's high school graduation requirements while placed in a DAEP. The district may provide the student the opportunity to complete the coursework through alternative methods (e.g., correspondence, distance learning or summer school). The district may not charge the student for a course provided under this section. If a school district provides the opportunity to complete the coursework through summer school, compulsory attendance will apply pursuant to Texas Education Code Section 25.085(d)(5).

This section is further amended to require the Commissioner of Education to develop a system to electronically evaluate DAEPs. If during the review of the data the Commissioner determines there was a violation of the Penal Code by the school district, the Commissioner is required to notify the county attorney, district attorney or criminal district attorney, as appropriate, and the attorney general.

Education Code § 37.008. Alternative Education Programs

[~~(j) If a student placed in an alternative education program enrolls in another school district before the expiration of the period of placement, the board of trustees of the district requiring the placement shall provide to the district in which the student enrolls, at the same time other records of the student are provided, a copy of the placement order. The district in~~

~~which the student enrolls may continue the alternative education program placement under the terms of the order or may allow the student to attend regular classes without completing the period of placement.~~]

Commentary by Linda Brooke

Source: HB 2061.
Effective Date: Upon signing – June 20, 2003
Applicability: Beginning of the 2003-2004 school year.
Summary of Changes: Section (j) was repealed, this provision is now addressed in Texas Education Code Section 37.009.

Education Code § 37.0081. PLACEMENT OF CERTAIN STUDENTS IN DISCIPLINARY ALTERNATIVE EDUCATION PROGRAMS

(a) Notwithstanding any other provision of this subchapter, the board of trustees of a school district, or the board's designee, after an opportunity for a hearing may elect to place a student in a disciplinary alternative education program under Section 37.008 if:

(1) the student:

(A) has received deferred prosecution under Section 53.03, Family Code, for conduct defined as a felony offense in Title 5, Penal Code; or

(B) has been found by a court or jury to have engaged in delinquent conduct under Section 54.03, Family Code, for conduct defined as a felony offense in Title 5, Penal Code; and

(2) the board or the board's designee determines that the student's presence in the regular classroom:

(A) threatens the safety of other students or teachers;

(B) will be detrimental to the educational process; or

(C) is not in the best interests of the district's students.

(b) Any decision of the board of trustees or the board's designee under this section is final and may not be appealed.

(c) The board of trustees or the board's designee may order placement in accordance with this section regardless of:

(1) the date on which the student's conduct occurred;

(2) the location at which the conduct occurred;

(3) whether the conduct occurred while the student was enrolled in the district; or

(4) whether the student has successfully completed any court disposition requirements imposed in connection with the conduct.

(d) Notwithstanding Section 37.009(c) or any other provision of this subchapter, the board of trustees or the board's designee may order placement in accordance with this section for any period considered necessary by the board or the board's designee in connection with the determination made under Subsection (a)(2). A student placed in a disciplinary alternative education program in accordance with this section is entitled to the periodic review prescribed by Section 37.009(e).

Commentary by Linda Brooke

Source: HB 1314.
Effective Date: Upon signing – June 20, 2003
Applicability: To any student who attends school on or after the effective date and who engaged in conduct described by this section regardless of the date on which the conduct occurred.
Summary of Changes: This new section allows a school district to place a student in a disciplinary alternative education program (DAEP) if the student received deferred prosecution or was adjudicated for conduct defined as a felony offense in Title 5, Penal Code regardless of the date of the conduct, the location of the conduct, the enrollment status of the student or whether the student had completed successfully any court disposition if the district determines the student's presence in the regular classroom is a threat to the safety of other students or teachers, will be detrimental to the educational process or is not in the best interest of the district's students. The board's decision may not be appealed. The term of placement can be for any period the board deems necessary. The student is entitled to periodic reviews.

Education Code § 37.009. Conference; Hearing; Review

(a) Not later than the third class day after the day on which a student is removed from class by the teacher under Section 37.002(b) or (d) or by the school principal or other appropriate administrator under Section 37.001(a)(2) or 37.006, the principal or other appropriate administrator shall schedule a conference among the principal or other appropriate administrator, a parent or guardian of the student, the teacher removing the student from class, if any, and the student. At the conference, the student is entitled to written or oral notice of the reasons for the removal, an explanation of the basis for the removal, and an opportunity to respond to the reasons for the removal. The student may not be returned to the regular classroom pending the conference. Following the conference, and whether or not each requested person is in attendance after valid attempts to require the person's attendance, the principal shall order the placement of the student [~~as provided by Section 37.002 or 37.006, as applicable,~~] for a period consistent with the student code of conduct. If school district policy allows a student to appeal to

the board of trustees or the board's designee a decision of the principal or other appropriate administrator, other than an expulsion under Section 37.007, the decision of the board or the board's designee is final and may not be appealed. If the period of the placement is inconsistent with the guidelines included in the student code of conduct under Section 37.001(a)(5), the order must give notice of the inconsistency. The period of the placement may not exceed one year unless, after a review, the district determines that:

(1) the student is a threat to the safety of other students or to district employees; or

(2) extended placement is in the best interest of the student.

(b) If a student's placement in a disciplinary [~~an~~] alternative education program is to extend beyond 60 days or the end of the next grading period, whichever is earlier, a student's parent or guardian is entitled to notice of and an opportunity to participate in a proceeding before the board of trustees of the school district or the board's designee, as provided by policy of the board of trustees of the district. Any decision of the board or the board's designee under this subsection is final and may not be appealed.

(c) Before it may place a student in a disciplinary [~~an~~] alternative education program for a period that extends beyond the end of the school year, the board or the board's designee must determine that:

(1) the student's presence in the regular classroom program or at the student's regular campus presents a danger of physical harm to the student or to another individual; or

(2) the student has engaged in serious or persistent misbehavior that violates the district's student code of conduct.

(d) The board or the board's designee shall set a term for a student's placement in a disciplinary [~~an~~] alternative education program. If the period of the placement is inconsistent with the guidelines included in the student code of conduct under Section 37.001(a)(5), the order must give notice of the inconsistency. The period of the placement may not exceed one year unless, after a review, the district determines that:

(1) the student is a threat to the safety of other students or to district employees; or

(2) extended placement is in the best interest of the student [~~under Section 37.002 or 37.006~~].

(e) A student placed in a disciplinary [~~an~~] alternative education program [~~under Section 37.002 or 37.006~~] shall be provided a review of the student's status, including a review of the student's academic status, by the board's designee at intervals not to exceed 120 days. In the case of a high school student, the board's designee, with the student's parent or guardian, shall review the student's progress towards meeting high school graduation requirements and shall establish a specific graduation plan for the student. The district is not required under this subsection to provide a course in the district's disciplinary alternative education program except as required by Section 37.008(l) [~~a course not specified under Section 37.008(a)~~]. At the review, the student or the student's parent or guardian must be given the opportunity to present arguments for the student's return to the regular classroom or campus. The student may not be returned to the classroom of the teacher who removed the student without that teacher's consent. The teacher may not be coerced to consent.

(g) The board or the board's designee shall deliver to the student and the student's parent or guardian a copy of the order placing the student in a disciplinary [~~an~~] alternative education program under Section 37.001, 37.002, or 37.006 or expelling the student under Section 37.007.

(h) If the period of an expulsion is inconsistent with the guidelines included in the student code of conduct under Section 37.001 (a)(5), the order must give notice of the inconsistency. The period of an expulsion may not exceed one year unless, after a review, the district determines that:

(1) the student is a threat to the safety of other students or to district employees; or

(2) extended placement is in the best interest of the student. After a school district notifies the parents or guardians of a student that the student has been expelled, the parent or guardian shall provide adequate supervision of the student during the period of expulsion.

(i) If a student withdraws from the district before an order for placement in a disciplinary alternative education program or expulsion is entered under this section, the principal or board, as appropriate, may complete the proceedings and enter an order. If the student subsequently enrolls in the district during the same or subsequent school year, the district may enforce the order at that time except for any period of the placement or expulsion that has been served by the student on enrollment in another district that honored the order. If the principal or board fails to enter an order after the student withdraws, the next district in which the student enrolls may complete the proceedings and enter an order.

(j) If, during the term of a placement or expulsion ordered under this section, a student engages in additional conduct for which placement in a disciplinary alternative education program or expulsion is required or permitted, additional proceedings may be conducted under this section regarding that conduct and the principal or board, as appropriate, may enter an additional order as a result of those proceedings.

Commentary by Linda Brooke

Source: HB 1314.
Effective Date: Upon signing – June 20, 2003

Applicability: Conduct occurring on or after effective date.

Summary of Changes: Subsection (a) (d) and (h) require that if the period of the placement of a student into a disciplinary alternative education program (DAEP) or a term of expulsion is inconsistent with the guidelines included in the student code of conduct, the district's order must give notice of the inconsistency. Additionally, a school district may not place a student in a DAEP or expel the student for longer than one year unless, after a review, the district determines that the student is a threat to the safety of other students or to district employees or extended placement is in the best interest of the student.

Subsection (b) requires that if a placement in a DAEP exceeds 60 days, then the parent must be given notice and allowed to participate in a hearing before the school board.

Finally, in cases where a student withdraws from a district before a disciplinary proceeding occurs, the district may complete the proceedings or if the student enrolls in another district, the new district may complete the proceedings. If a withdrawn student enrolls in the same or subsequent year, the expulsion order may be enforced.

Education Code § 37.0091. NOTICE TO NON-CUSTODIAL PARENT

(a) A noncustodial parent may request in writing that a school district or school, for the remainder of the school year in which the request is received, provide that parent with a copy of any written notification relating to student misconduct under Section 37.006 or 37.007 that is generally provided by the district or school to a student's parent or guardian.

(b) A school district or school may not unreasonably deny a request authorized by Subsection (a).

(c) Notwithstanding any other provision of this section, a school district or school shall comply with any applicable court order of which the district or school has knowledge.

Commentary by Linda Brooke

Source: HB 1314.

Effective Date: Upon signing – June 20, 2003

Applicability: Conduct occurring on or after effective date.

Summary of Changes: This amendment adds new Section 37.0091 to the Education Code which allows a noncustodial parent to request in writing that the district provide him or her with any written notification related to a student's misconduct that is generally provided to a custodial student's parent or guardian. The school district may not deny this request unreasonably and the school district must comply with any applicable court order of which the district has knowledge.

Education Code § 37.010. Court Involvement

(a) Not later than the second business day after the date a hearing is held under Section 37.009, the board of trustees of a school district or the board's designee shall deliver a copy of the order placing a student in a disciplinary [~~an~~] alternative education program under Section 37.006 or expelling a student under Section 37.007 and any information required under Section 52.04, Family Code, to the authorized officer of the juvenile court in the county in which the student resides. In a county that operates a program under Section 37.011, an expelled student shall to the extent provided by law or by the memorandum of understanding immediately attend the educational program from the date of expulsion, except[~~; provided, however,~~] that in a county with a population greater than 125,000, every expelled student who is not detained or receiving treatment under an order of the juvenile court must be enrolled in an educational program.

(c) Unless the juvenile board for the county in which the district's central administrative office is located has entered into a memorandum of understanding with the district's board of trustees concerning the juvenile probation department's role in supervising and providing other support services for students in disciplinary alternative education programs, a court may not order a student expelled under Section 37.007 to attend a regular classroom, a regular campus, or a school district disciplinary alternative education program as a condition of probation.

(d) Unless the juvenile board for the county in which the district's central administrative office is located has entered into a memorandum of understanding as described by Subsection (c), if a court orders a student to attend a disciplinary [~~an~~] alternative education program as a condition of probation once during a school year and the student is referred to juvenile court again during that school year, the juvenile court may not order the student to attend a disciplinary [~~an~~] alternative education program in a district without the district's consent until the student has successfully completed any sentencing requirements the court imposes.

(e) Any placement in a disciplinary [~~an~~] alternative education program by a court under this section must prohibit the student from attending or participating in school-sponsored or school-related activities.

(f) If a student is expelled under Section 37.007, on the recommendation of the committee established under Section 37.003 or on its own initiative, a district may readmit the student while the student is completing any court disposition requirements the court imposes. After the student has successfully completed any court disposition requirements the court imposes, including conditions of a deferred prosecution ordered by the court, or such conditions required by the prosecutor or probation department, if the student meets the requirements for admission into the public schools established by this title, a district may not refuse to

admit the student, but the district may place the student in the disciplinary alternative education program. Notwithstanding Section 37.002(d), the student may not be returned to the classroom of the teacher under whose supervision the offense occurred without that teacher's consent. The teacher may not be coerced to consent.

(g) If an expelled student enrolls in another school district, the board of trustees of the district that expelled the student shall provide to the district in which the student enrolls, at the same time other records of the student are provided, a copy of the expulsion order and the referral to the authorized officer of the juvenile court. The district in which the student enrolls may continue the expulsion under the terms of the order, may place the student in a disciplinary [~~an~~] alternative education program for the period specified by the expulsion order, or may allow the student to attend regular classes without completing the period of expulsion. A district may take any action permitted by this subsection if the student was expelled by a school district in another state if:

(1) the out-of-state district provides to the district a copy of the expulsion order; and

(2) the grounds for the expulsion are also grounds for expulsion in the district in which the student is enrolling.

(g-1) If a student was expelled by a school district in another state for a period that exceeds one year and a school district in this state continues the expulsion or places the student in a disciplinary alternative education program under Subsection (g), the district shall reduce the period of the expulsion or placement so that the aggregate period does not exceed one year unless, after a review, the district determines that:

(1) the student is a threat to the safety of other students or to district employees; or

(2) extended placement is in the best interest of the student.

Commentary by Linda Brooke

Source: HB 1314.
Effective Date: Upon signing – June 20, 2003
Applicability: Conduct occurring on or after effective date.
Summary of Changes: House Bill 1314 changed all references to Alternative Education Programs (AEPs) to Disciplinary Alternative Education Programs (DAEPs) required under Texas Education Code 37.008. The changes in this section are conforming changes for language consistency.

The amendments to Subsection (g) clarifiy that a school district may choose to continue the expulsion of a student who transfers from another state if the out-of-state district provides a copy of the expulsion order and the grounds for the expulsion. The Texas district shall reduce the period of expulsion so that it does not exceed one year unless the district determines that the student is a threat to the safety of other students or to district employees or that an extended placement is in the best interest of the student.

Education Code § 37.011. Juvenile Justice Alternative Education Program

(a) The juvenile board of a county with a population greater than 125,000 shall develop a juvenile justice alternative education program, subject to the approval of the Texas Juvenile Probation Commission. The juvenile board of a county with a population of 125,000 or less may develop a juvenile justice alternative education program. For the purposes of this subchapter, only a disciplinary alternative education program operated under the authority of a juvenile board of a county is considered a juvenile justice alternative education program. A juvenile justice alternative education program in a county with a population of 125,000 or less:

(1) is not required to be approved by the Texas Juvenile Probation Commission; and

(2) is not subject to Subsection (c), (d), (f), or (g).

(b) If a student admitted into the public schools of a school district under Section 25.001(b) is expelled from school for conduct for which expulsion is required under Section 37.007(a), (d), or (e), the juvenile court, the juvenile board, or the juvenile board's designee, as appropriate, shall:

(1) if the student is placed on probation under Section 54.04, Family Code, order the student to attend the juvenile justice alternative education program in the county in which the student resides from the date of disposition as a condition of probation, unless the child is placed in a post-adjudication treatment facility;

(2) if the student is placed on deferred prosecution under Section 53.03, Family Code, by the court, prosecutor, or probation department, require the student to immediately attend the juvenile justice alternative education program in the county in which the student resides for a period not to exceed six months as a condition of the deferred prosecution; [~~and~~]

(3) in determining the conditions of the deferred prosecution or court-ordered probation, consider the length of the school district's expulsion order for the student; and

(4) provide timely educational services to the student in the juvenile justice alternative education program in the county in which the student resides, regardless of the student's age or whether the juvenile court has jurisdiction over the student.

(b-1) Subsection (b)(4) does not require that educational services be provided to a student who is not entitled to admission into the public schools of a school district under Section 25.001(b).

(h) Academically, the mission of juvenile justice alternative education programs shall be to enable students to perform at grade level. For purposes of accountability under Chapter 39, a student enrolled in a juvenile justice alternative education program is reported as if the student were enrolled at the student's assigned campus in the student's regularly assigned education program, including a special education program. Annually the Texas Juvenile Probation Commission, with the agreement of the commissioner, shall develop and implement a system of accountability consistent with Chapter 39, where appropriate, to assure that students make progress toward grade level while attending a juvenile justice alternative education program. The Texas Juvenile Probation Commission shall adopt rules for the distribution of funds appropriated under this section to juvenile boards in counties required to establish juvenile justice alternative education programs. Except as determined by the commissioner, a student served by a juvenile justice alternative education program on the basis of an expulsion required under Section 37.007(a), (d), or (e) is not eligible for Foundation School Program funding under Chapter 42 or 31 if the juvenile justice alternative education program receives funding from the Texas Juvenile Probation Commission under this subchapter.

(k) Each school district in a county with a population greater than 125,000 and the county juvenile board shall annually enter into a joint memorandum of understanding that:

(1) outlines the responsibilities of the juvenile board concerning the establishment and operation of a juvenile justice alternative education program under this section;

(2) defines the amount and conditions on payments from the school district to the juvenile board for students of the school district served in the juvenile justice alternative education program whose placement was not made on the basis of an expulsion required under Section 37.007(a), (d), or (e);

(3) identifies those categories of conduct that the school district has defined in its student code of conduct as constituting serious or persistent misbehavior for which a student may be placed in the juvenile justice alternative education program;

(4) identifies and requires a timely placement and specifies a term of placement for expelled students for whom the school district has received a notice under Section 52.041(d), Family Code;

(5) establishes services for the transitioning of expelled students to the school district prior to the completion of the student's placement in the juvenile justice alternative education program;

(6) establishes a plan that provides transportation services for students placed in the juvenile justice alternative education program;

(7) establishes the circumstances and conditions under which a juvenile may be allowed to remain in the juvenile justice alternative education program setting once the juvenile is no longer under juvenile court jurisdiction; and

(8) establishes a plan to address special education services required by law.

Commentary by Linda Brooke

Source: HB 1314.
Effective Date: Upon signing – June 20, 2003
Applicability: Conduct occurring on or after effective date.
Summary of Changes: Section 37.011(a) was amended to clarify that only a juvenile board has the authority to operate a juvenile justice alternative education program (JJAEP).

Subsection (b) clarifies that a JJAEP shall provide timely educational services to a student regardless of the student's age or whether the juvenile court has jurisdiction over the student. This means that any student aged 17 or older who is required to attend school pursuant to compulsory school attendance law is required to be served by the JJAEP if expelled.

Education Code § 37.012. Funding of Juvenile Justice Alternative Education Programs

(a) Subject to Section 37.011(n), the school district in which a student is enrolled on the date the student is expelled for conduct for which expulsion is permitted but not required under Section 37.007 [~~on a basis other than Section 37.007(a), (d), or (e)~~] shall, if the student is served by the juvenile justice alternative education program, provide funding to the juvenile board for the portion of the school year for which the juvenile justice alternative education program provides educational services in an amount determined by the memorandum of understanding under Section 37.011(k)(2).

(d) A school district is not required to provide funding to a juvenile board for a student who is assigned by a court to a juvenile justice alternative education program but who has not been expelled.

Commentary by Linda Brooke

Source: HB 1314.
Effective Date: Upon signing – June 20, 2003
Applicability: Conduct occurring on or after effective date.
Summary of Changes: Current law does not require a school district to provide funding for a student who is not expelled but placed in a juvenile justice alternative education program (JJAEP) via a court order. Section 37.012 adds clarifying language that a school district is not required to provide funding for students in a JJAEP who are not expelled but assigned by the juvenile court to the program. The decision to serve

non-expelled students in the JJAEP is a local juvenile board decision. The issue of who will provide funding to serve the student in the JJAEP is also a local issue that should be discussed during the development of the memorandum of understanding between the juvenile board and the county school districts.

Education Code § 37.013. Coordination Between School Districts and Juvenile Boards

The board of trustees of the school district or the board's designee shall at the call of the president of the board of trustees regularly meet with the juvenile board for the county in which the district's central administrative office is located or the juvenile board's designee concerning supervision and rehabilitative services appropriate for expelled students and students assigned to disciplinary alternative education programs. Matters for discussion shall include service by probation officers at the disciplinary alternative education program site, recruitment of volunteers to serve as mentors and provide tutoring services, and coordination with other social service agencies.

Commentary by Linda Brooke

Source: HB 1314.
Effective Date: Upon signing – June 20, 2003
Applicability: Conduct occurring on or after effective date.
Summary of Changes: House Bill 1314 changed all references to Alternative Education Programs (AEPs) to Disciplinary Alternative Education Programs (DAEPs) required under Texas Education Code 37.008. The changes in this section are conforming changes for language consistency.

Education Code § 37.015. Reports to Law Enforcement; Liability

(a) The principal of a public or private primary or secondary school, or a person designated by the principal under Subsection (d), shall notify any school district police department and the police department of the municipality in which the school is located or, if the school is not in a municipality, the sheriff of the county in which the school is located if the principal has reasonable grounds to believe that any of the following activities occur in school, on school property, or at a school-sponsored or school-related activity on or off school property, whether or not the activity is investigated by school security officers:

(1) conduct that may constitute an offense listed under Section 508.149, Government Code;

(2) deadly conduct under Section 22.05, Penal Code;

(3) a terroristic threat under Section 22.07, Penal Code;

(4) the use, sale, or possession of a controlled substance, drug paraphernalia, or marihuana under Chapter 481, Health and Safety Code;

(5) the possession of any of the weapons or devices listed under Sections 46.01(1)-(14) or Section 46.01(16), Penal Code; [~~or~~]

(6) conduct that may constitute a criminal offense under Section 71.02, Penal Code; or

(7) conduct that may constitute a criminal offense for which a student may be expelled under Section 37.007(a), (d), or (e).

Commentary by Linda Brooke

Source: HB 1314.
Effective Date: Upon signing – June 20, 2003
Applicability: Conduct occurring on or after effective date.
Summary of Changes: The addition of subsection (7) requires a principal of a public or private school to report to the appropriate law enforcement officials any student conduct that constitutes one of the mandatory expulsion reasons found in the Education Code Section 37.007 (a), (d) or (e).

Education Code § 37.019. Emergency Placement or Expulsion

(a) This subchapter does not prevent the principal or the principal's designee from ordering the immediate placement of a student in a disciplinary [~~the~~] alternative education program if the principal or the principal's designee reasonably believes the student's behavior is so unruly, disruptive, or abusive that it seriously interferes with a teacher's ability to communicate effectively with the students in a class, with the ability of the student's classmates to learn, or with the operation of school or a school-sponsored activity.

(c) At the time of an emergency placement or expulsion, the student shall be given oral notice of the reason for the action. The reason must be a reason for which placement in a disciplinary alternative education program or expulsion may be made on a nonemergency basis. Within a reasonable time after the emergency placement or expulsion, but not later than the 10th day after the date of the placement or expulsion, the student shall be accorded the appropriate due process as required under Section 37.009. If the student subject to the emergency placement or expulsion is a student with disabilities who receives special education services, the [~~term of the student's~~] emergency placement or expulsion is subject to federal law and regulations and must be consistent with the consequences that would apply under this subchapter to a student without a disability [~~the requirements of 20 U.S.C. Section 1415(j) and (k)~~].

Commentary by Linda Brooke

Source: HB 1314.
Effective Date: Upon signing – June 20, 2003
Applicability: Conduct occurring on or after effective date.
Summary of Changes: This amendment requires that when a student is given an emergency placement or expulsion, the student must be provided appropriate due process by the 10th day after the emergency placement or expulsion was conducted. Emergency placements can only be done for the same reasons that a non-emergency placement would occur. Federal law must be adhered to when an emergency removal occurs for a student with a disability.

Education Code § 37.020. REPORTS RELATING TO EXPULSIONS AND DISCIPLINARY ALTERNATIVE EDUCATION PROGRAM PLACEMENTS.

(a) In the manner required by the commissioner, each school district shall annually report to the commissioner the information required by this section.

(b) For[~~:~~

[~~(1) for~~] each placement in a disciplinary [~~an~~] alternative education program established under Section 37.008, the district shall report:

(1) [~~(A)~~] information identifying the student, including the student's race, sex, and date of birth, that will enable the agency to compare placement data with information collected through other reports;

(2) [~~(B)~~] information indicating whether the placement was based on:

(A) [~~(i)~~] conduct violating the student code of conduct adopted under Section 37.001;

(B) [~~(ii)~~] conduct for which a student may be removed from class under Section 37.002(b);

(C) [~~(iii)~~] conduct for which placement in a disciplinary [~~an~~] alternative education program is required by Section 37.006; or

(D) [~~(iv)~~] conduct occurring while a student was enrolled in another district and for which placement in a disciplinary [~~an~~] alternative education program is permitted by Section 37.008(j); [~~and~~]

(3) [~~(C)~~] the number of full or partial days the student was assigned to the program and the number of full or partial days the student attended the program; and

(4) the number of placements that were inconsistent with the guidelines included in the student code of conduct under Section 37.001(a)(5).

(c) For [~~(2) for~~] each expulsion under Section 37.007, the district shall report:

(1) [~~(A)~~] information identifying the student, including the student's race, sex, and date of birth, that will enable the agency to compare placement data with information collected through other reports;

(2) [~~(B)~~] information indicating whether the expulsion was based on:

(A) [~~(i)~~] conduct for which expulsion is required under Section 37.007, including information specifically indicating whether a student was expelled on the basis of Section 37.007(e); or

(B) [~~(ii)~~] conduct[~~, other than conduct described by Subparagraph (iii),~~] for which expulsion is permitted under Section 37.007; [~~or~~

[~~(iii) serious or persistent misbehavior occurring while the student was placed in an alternative education program;~~]

(3) [~~(C)~~] the number of full or partial days the student was expelled; [~~and~~]

(4) [~~(D)~~] information indicating whether:

(A) [~~(i)~~] the student was placed in a juvenile justice alternative education program under Section 37.011;

(B) [~~(ii)~~] the student was placed in a disciplinary [~~an~~] alternative education program; or

(C) [~~(iii)~~] the student was not placed in a juvenile justice or other disciplinary alternative education program; and

(5) the number of expulsions that were inconsistent with the guidelines included in the student code of conduct under Section 37.001(a)(5).

Commentary by Linda Brooke

Source: HB 1314.
Effective Date: Upon signing – June 20, 2003
Applicability: Conduct occurring on or after effective date.
Summary of Changes: House Bill 1314 changed all references to alternative education programs (AEPs) to disciplinary alternative education programs (DAEPs) required under Texas Education Code 37.008. The changes in this section are conforming changes for language consistency. The additional substantive amendments to Section 37.020 are all related to the reporting requirements of a school district for expulsion and disciplinary alternative education placements.

Education Code § 37.021. OPPORTUNITY TO COMPLETE COURSES DURING IN-SCHOOL AND CERTAIN OTHER PLACEMENTS.

(a) If a school district removes a student from the regular classroom and places the student in in-school suspension or another setting other than a disciplinary alternative education program, the district shall offer the student the opportunity to complete before the beginning of the next school year each course in which the student was enrolled at the time of the removal.

(b) The district may provide the opportunity to complete courses by any method available, including a

correspondence course, distance learning, or summer school.

Commentary by Linda Brooke

Source: HB 1314.
Effective Date: Upon signing – June 20, 2003
Applicability: Conduct occurring on or after effective date.
Summary of Changes: Section 37.021 is a new section added to require school districts to provide a student who was suspended or placed in a setting other than a DAEP the opportunity to complete before the next school year each course in which the student was enrolled at to time of removal. If the school district provides the opportunity to complete the courses during summer school cumpulsory attendance would apply (TEC 25.085 (d) (5)).

Education Code § 37.021. NOTICE OF DISCIPLINARY ACTION

(a) In this section:

(1) "Disciplinary action" means a suspension, expulsion, placement in an alternative education program, or other limitation in enrollment eligibility of a student by a district or school.

(2) "District or school" includes an independent school district, a home-rule school district, a campus or campus program charter holder, or an open-enrollment charter school.

(b) If a district or school takes disciplinary action against a student and the student subsequently enrolls in another district or school before the expiration of the period of disciplinary action, the governing body of the district or school taking the disciplinary action shall provide to the district or school in which the student enrolls, at the same time other records of the student are provided, a copy of the order of disciplinary action.

(c) Subject to Section 37.007(e), the district or school in which the student enrolls may continue the disciplinary action under the terms of the order or may allow the student to attend regular classes without completing the period of disciplinary action.

Commentary by Linda Brooke

Source: HB 2061.
Effective Date: Upon signing – June 20, 2003
Applicability: Beginning of the 2003-2004 school year.
Summary of Changes: This new section requires the district that took disciplinary action against a student to inform a district to which the student changed enrollment of the disciplinary action it has taken. The new district is free to honor the disciplinary sanction imposed by the first district or to ignore it.

Education Code § 37.121. Fraternities, Sororities, Secret Societies and Gangs

(b) A school district board of trustees or an educator shall recommend placing in a disciplinary [~~an~~] alternative education program any student under the person's control who violates Subsection (a).

Commentary by Linda Brooke

Source: HB 1314.
Effective Date: Upon signing – June 20, 2003
Applicability: Conduct occurring on or after effective date.
Summary of Changes: House Bill 1314 changed all references to Alternative Education Programs (AEPs) to Disciplinary Alternative Education Programs (DAEPs) required under Texas Education Code 37.008. The change in this section is a conforming change for language consistency.

Education Code § 38.016. Pyschotropic Drugs and Psychatric Evaluations or Examinations

(a) In this section:

(1) "Parent" includes a guardian or other person standing in parental relation.

(2) "Psychotropic drug" means a substance that is:

(A) used in the diagnosis, treatment, or prevention of a disease or as a component of a medication; and

(B) intended to have an altering effect on perception, emotion, or behavior.

(b) A school district employee may not:

(1) recommend that a student use a psychotropic drug; or

(2) suggest any particular diagnosis; or

(3) use the refusal by a parent to consent to administration of a psychotropic drug to a student or to a psychiatric evaluation or examination of a student as grounds, by itself, for prohibiting the child from attending a class or participating in a school-related activity.

(c) Subsection (b) does not:

(1) prevent an appropriate referral under the child find system required under 20 U.S.C. Section 1412, as amended; or

(2) prohibit a school district employee who is a registered nurse, advanced nurse practitioner, physician, or certified or appropriately credentialed mental health professional from recommending that a child be evaluated by an appropriate medical practitioner; or

(3) prohibit a school employee from discussing any aspect of a child's behavior or academic progress with the child's parent or another school district employee.

(d) The board of trustees of each school district shall adopt a policy to ensure implementation and enforcement of this section.

(e) An act in violation of Subsection (b) does not override the immunity from personal liability granted in Section 22.051 or other law or the district's sovereign and governmental immunity.

Commentary by Lisa Capers

Source: HB 1406.
Effective Date: Upon signing – June 20, 2003
Applicability: Beginning of the 2003-2004 school year.
Summary of Changes: Section 38.016 is a newly created section in the Texas Education Code Chapter 38 which deals with health and safety of students in the public schools. This new section prohibits school district employees from recommending that a student use a psychotropic drug or have a psychiatric evaluation or examination. Additionally, the district employees may not use the refusal of a parent to consent to the administration of a psychotropic drug or psychiatric evaluation as the sole reason for prohibiting a student from attending a class or participating in a school-related activity.

This bill was primarily intended to help ensure that teachers and other non-medical school personnel do not pressure parents to administer psychotropic drugs such as Ritalin to students. The use of Ritalin among school students has increased dramatically in recent years, and many attribute part of this increase to the fact that some teachers recommend to parents that a student be given Ritalin. The legislature felt that since most teachers do not have any formal medical training, any formal or informal recommendations to parents regarding the administration of prescription drugs to students are inappropriate. The bill does not prohibit school district employees who are licensed health care professionals from recommending that a student be evaluated by an appropriate medical practitioner.

Education Code § 39.053. Performance Report

(e) The report may include the following information:

(1) student information, including total enrollment, enrollment by ethnicity, socioeconomic status, and grade groupings and retention rates;

(2) financial information, including revenues and expenditures;

(3) staff information, including number and type of staff by gender, ethnicity, years of experience, and highest degree held, teacher and administrator salaries, and teacher turnover;

(4) program information, including student enrollment by program, teachers by program, and instructional operating expenditures by program; and

(5) the number of students placed in a disciplinary [~~an~~] alternative education program under Chapter 37.

Commentary by Linda Brooke

Source: HB 1314.
Effective Date: Upon signing – June 20, 2003
Applicability: Conduct occurring on or after effective date.
Summary of Changes: House Bill 1314 changed all references to Alternative Education Programs (AEPs) to Disciplinary Alternative Education Programs (DAEPs) required under Texas Education Code 37.008. The change in this section is a conforming change for language consistency.

Code of Criminal Procedure art. 15.27. Notification to Schools Required

(b) On conviction, deferred prosecution, or deferred adjudication or [~~on~~] an adjudication of delinquent conduct of an individual enrolled as a student in a public primary or secondary school, for an offense or for any conduct listed in Subsection (h) of this article, the office of the prosecuting attorney acting in the case shall orally notify the superintendent or a person designated by the superintendent in the school district in which the student is enrolled of the conviction or adjudication. Oral notification must be given within 24 hours of the time of the order [~~determination of guilt,~~] or on the next school day. The superintendent shall promptly notify all instructional and support personnel who have regular contact with the student. Within seven days after the date the oral notice is given, the office of the prosecuting attorney shall mail written notice, which must contain a statement of the offense of which the individual is convicted or on which the adjudication, deferred adjudication, or deferred prosecution is grounded.

(e)(2) On conviction, deferred prosecution, or deferred adjudication or an adjudication of delinquent conduct of an individual enrolled as a student in a private primary or secondary school, the office of prosecuting attorney shall make the oral and written notifications described by Subsection (b) of this article to the principal or a school employee designated by the principal of the school in which the student is enrolled.

(g) The office of the prosecuting attorney or the office or official designated by the juvenile board shall, within two working days, notify the school district that removed a student to a disciplinary [~~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.

Commentary by Linda Brooke

Source: HB 1314.
Effective Date: Upon signing – June 20, 2003
Applicability: Conduct occurring on or after effective date.
Summary of Changes: Currently the law requires the prosecutor to provide oral and written notice to a school district when a student is adjudicated or found guilty of certain offenses. This amendment expands the Notice to School Districts in Article 15.27 of the Code of Criminal Procedures to require the prosecuting attorney to send a simlar notice for the same offenses when a student has received deferred prosecution or deferred adjudication.

Health and Safety Code § 164.006. Soliciting and Contracting with Certain Referral Sources

A treatment facility or a person employed or under contract with a treatment facility, if acting on behalf of the treatment facility, may not:

(1) contact a referral source or potential client for the purpose of soliciting, directly or indirectly, a referral of a patient to the treatment facility without disclosing its soliciting agent's, employee's, or contractor's affiliation with the treatment facility;

(2) offer to provide or provide mental health or chemical dependency services to a public or private school in this state, on a part-time or full-time basis, the services of any of its employees or agents who make, or are in a position to make, a referral, if the services are provided on an individual basis to individual students or their families. Nothing herein prohibits a treatment facility from:

(A) offering or providing educational programs in group settings to public schools in this state if the affiliation between the educational program and the treatment facility is disclosed;

(B) providing counseling services to a public school in this state in an emergency or crisis situation if the services are provided in response to a specific request by a school; provided that, under no circumstances may a student be referred to the treatment facility offering the services; or

(C) entering into a contract under Section 464.020 with the board of trustees of a school district with a disciplinary [~~an~~] alternative education program [~~under Section 464.020~~], or with the board's designee, for the provision of chemical dependency treatment services;

(3) provide to an entity of state or local government, on a part-time or full-time basis, the mental health or chemical dependency services of any of its employees, agents, or contractors who make or are in a position to make referrals unless:

(A) the treatment facility discloses to the governing authority of the entity:

(i) the employee's, agent's, or contractor's relationship to the facility; and

(ii) the fact that the employee, agent, or contractor might make a referral, if permitted, to the facility; and

(B) the employee, agent, or contractor makes a referral only if:

(i) the treatment facility obtains the governing authority's authorization in writing for the employee, agent, or contractor to make the referrals; and

(ii) the employee, agent, or contractor discloses to the prospective patient the employee's, agent's, or contractor's relationship to the facility at initial contact; or

(4) in relation to intervention and assessment services, contract with, offer to remunerate, or remunerate a person who operates an intervention and assessment service that makes referrals to a treatment facility for inpatient treatment of mental illness or chemical dependency unless the intervention and assessment service is:

(A) operated by a community mental health and mental retardation center funded by the Texas Department of Mental Health and Mental Retardation;

(B) operated by a county or regional medical society;

(C) a qualified mental health referral service as defined by Section 164.007; or

(D) owned and operated by a nonprofit or not-for-profit organization offering counseling concerning family violence, help for runaway children, or rape.

Commentary by Linda Brooke

Source: HB 1314.
Effective Date: Upon signing – June 20, 2003
Applicability: Conduct occurring on or after effective date.
Summary of Changes: House Bill 1314 changed all references to Alternative Education Programs (AEPs) to Disciplinary Alternative Education Programs (DAEPs) required under Texas Education Code 37.008. The change in this section is a conforming change for language consistency.

Health and Safety Code § 464.020. ADDITIONAL REQUIREMENTS FOR DISCIPLINARY ALTERNATIVE EDUCATION TREATMENT PROGRAMS

(a) A disciplinary [~~An~~] alternative education program under Section 37.008, Education Code, may apply for a license under this chapter to offer chemical dependency treatment services.

(b) The board of trustees of a school district with a disciplinary [~~an~~] alternative education program, or the board's designee, shall employ a mental health professional, as defined by Section 164.003, to provide the services authorized by a license issued under this chapter to the disciplinary alternative education program.

(c) The commission may not issue a license that authorizes a disciplinary [~~an~~] alternative education program to provide detoxification or residential services.

(d) The board of trustees of a school district with a disciplinary [~~an~~] alternative education program, or the board's designee, may contract with a private treatment facility or a person employed by or under contract with a private treatment facility to provide chemical dependency treatment services. The contract may not permit the services to be provided at a site that offers detoxification or residential services. Section 164.006 applies to a contract made under this section.

Commentary by Linda Brooke

Source: HB 1314.
Effective Date: Upon signing – June 20, 2003
Applicability: Conduct occurring on or after effective date.
Summary of Changes: House Bill 1314 changed all references to Alternative Education Programs (AEPs) to Disciplinary Alternative Education Programs (DAEPs) required under Texas Education Code 37.008. The changes in this section are conforming changes for language consistency.

Government Code § 26.045. Original Criminal Jurisdiction.

(c) Except as provided by Subsection (d), a [~~A~~] county court that is in a county with a criminal district court does not have any criminal jurisdiction.

(d) A county court in a county with a population of two million or more has original jurisdiction over cases alleging a violation of Section 25.093 or 25.094, Education Code.

(e) Subsections (c) and (d) do [~~This subsection does~~] not affect the jurisdiction of a statutory county court.

Commentary by Robert Dawson

Source: SB 358.
Effective Date: September 1, 2003.
Applicability: Conduct occurring on or after effective date.
Summary of Changes: This section and those following derive from SB 358, which creates a unique court system for handling failure to attend school and contributing to failure to attend school cases for Dallas County. County officials were not satistified with the pace with which such cases were being processed by the Dallas County justices of the peace. The system that will replace that one consists of a series of magistrates with county-wide jurisdiction who operate under the immediate supervision of the Dallas County constitutional county judge.

Government Code Chapter 54. Masters; Magistrates; Referees

SUBCHAPTER V. MAGISTRATES IN CERTAIN COUNTY COURTS

§ 54.1151. APPLICATION OF SUBCHAPTER.

This subchapter applies to a constitutional county court in a county with a population of two million or more.

Commentary by Robert Dawson

Source: SB 358.
Effective Date: September 1, 2003.
Applicability: Conduct occurring on or after effective date.
Summary of Changes: While technically subchapter V applies to both Dallas and Harris Counties, it is expected the system will be implemented only in Dallas County.

§ 54.1152. APPOINTMENT.

(a) The county judge may appoint one or more full-time magistrates to hear a matter alleging a violation of Section 25.093 or 25.094, Education Code.

(b) An appointment under Subsection (a) is subject to the approval of the commissioners court.

(c) A magistrate serves at the pleasure of the county judge.

Commentary by Robert Dawson

Source: SB 358.
Effective Date: September 1, 2003.
Applicability: Conduct occurring on or after effective date.

Summary of Changes: The reference to 25.093 is to the Class C misdemeanor offense of contributing to failure to attend school; 25.094 refers to the Class C misdemeanor of failure to attend school.

§ 54.1153. QUALIFICATIONS.

A magistrate must:

(1) be a citizen of this state;

(2) be at least 25 years of age; and

(3) have been licensed to practice law in this state for at least four years preceding the date of appointment.

Commentary by Robert Dawson

Source: SB 358.
Effective Date: September 1, 2003.
Applicability: Conduct occurring on or after effective date.
Summary of Changes: The qualifications are set relatively high, including at least four years of law practice.

§ 54.1154. COMPENSATION.

A magistrate is entitled to the compensation set by the commissioners court. The compensation shall be paid from the general fund of the county.

Commentary by Robert Dawson

Source: SB 358.
Effective Date: September 1, 2003.
Applicability: Conduct occurring on or after effective date.
Summary of Changes: This is strictly a local system, depending upon local funding.

§ 54.1155. POWERS.

Except as limited by an order of the county judge, a magistrate appointed under this subchapter may:

(1) conduct hearings and trials, including jury trials;

(2) hear evidence;

(3) compel production of relevant evidence, including books, papers, vouchers, documents, and other writings;

(4) rule on admissibility of evidence;

(5) issue summons and attachments for the appearance of witnesses;

(6) examine witnesses;

(7) swear witnesses for hearings and trials; and

(8) perform any act and take any measure necessary and proper for the efficient performance of the duties assigned by the county judge.

Commentary by Robert Dawson

Source: SB 358.
Effective Date: September 1, 2003.
Applicability: Conduct occurring on or after effective date.
Summary of Changes: The magistrates can do anything a judge can, including hearing jury trials. The county judge must approve of all final recommendations from the magistrates.

§ 54.1156. PAPERS TRANSMITTED TO JUDGE.

(a) At the conclusion of a hearing, the magistrate shall transmit to the judge any papers relating to the case, including:

(1) the magistrate's findings and recommendations; and

(2) a statement that notice of the findings and recommendations and of the right to a hearing before the judge has been given to all parties.

(b) The judge shall adopt, modify, or reject the magistrate's recommendations not later than the third working day after the date the judge receives the recommendations.

(c) The judge shall send written notice of any modification or rejection of the magistrate's recommendations to each party to the case.

Commentary by Robert Dawson

Source: SB 358.
Effective Date: September 1, 2003.
Applicability: Conduct occurring on or after effective date.
Summary of Changes: The county judge has three working days to adopt, modify or reject the magistrate's findings and recommendations.

Education Code § 25.091. Powers and Duties of Attendance Officers

(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 county, 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 county, 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 county, 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 county, 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.

Commentary by Robert Dawson

Source: SB 358.
Effective Date: September 1, 2003.
Applicability: Conduct occurring on or after effective date.
Summary of Changes: These amendments simply permit Class C complaints against parents to be filed in the county court system, as well as in JP and municipal court.

Education Code § 25.093. Parent Contributing to Truancy

(b) The attendance officer or other appropriate school official shall file a complaint against the parent in:

(1) the constitutional county court of the county in which the parent resides or in which the school is located, if the county has a population of two million or more;

(2) a justice court of any precinct in the county in which the parent resides or in which the school is located; or

(3) [~~in~~] a municipal court of the municipality in which the parent resides or in which the school is located.

(d) 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, as applicable:

(A) the school district in which the child attends school;

(B) the open-enrollment charter school the child attends; or

(C) the juvenile justice alternative education program that the child has been ordered to attend; 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 justice court or the constitutional county court; or

(B) the general fund of the municipality, if the complaint is filed in municipal court.

Commentary by Robert Dawson

Source: SB 358.
Effective Date: September 1, 2003.
Applicability: Conduct occurring on or after effective date.
Summary of Changes: The addition of the constitutional county court is a filing option; it is not mandatory. Harrris County can still file its cases in JPs or municipal courts.

Education Code § 25.094. Failure to Attend School.

(b) An offense under this section may be prosecuted in:

(1) the constitutional county court of the county in which the individual resides or in which the school is located, if the county has a population of two million or more;

(2) a justice court of any precinct in the county in which the individual resides or in which the school is located; or

(3) [~~in~~] a municipal court in the municipality in which the individual resides or in which the school is located.

(c) On a finding by the county, justice, or municipal court that the individual 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, as added by Chapter 1514, Acts of the 77th Legislature, Regular Session, 2001.

(d) If the county, justice, or municipal court believes 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 the child in contempt and imposing a fine not to exceed $500 or by referring the child to juvenile court for delinquent conduct.

(d-1) [~~(d)~~] Pursuant to an order of the county, 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 into custody. A peace officer taking an individual into custody under this subsection shall:

(1) promptly notify the individual'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 to the individual's parent, guardian, or custodian or to another responsible adult, if the person promises to bring the individual to the county, justice,or municipal court as requested by the court; or

(B) bring the individual to a county, justice, or municipal court with venue over the offense.

Commentary by Robert Dawson

Source: SB 358.
Effective Date: September 1, 2003.
Applicability: Conduct occurring on or after effective date.
Summary of Changes: Again, filing in the county court is an option; it is not mandatory.

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 county, 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 county, 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.

Commentary by Robert Dawson

Source: SB 358.
Effective Date: September 1, 2003.
Applicability: Conduct occurring on or after effective date.
Summary of Changes: This amendment includes the county court as a place for the filing of the complaint.

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 Robert Dawson

Source: SB 358.
Effective Date: September 1, 2003.
Applicability: Conduct occurring on or after effective date.
Summary of Changes: By striking the restricting language—justice or municipal court—this section includes county courts in its scope.

Family Code § 51.03. Delinquent Conduct; Conducting 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 lawful order of a [~~municipal~~] court [~~or justice court~~] under circumstances that would constitute contempt of that court in:

(A) a justice or municipal court; or

(B) a county court for conduct punishable only by a fine;

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

(4) 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: SB 358.
Effective Date: September 1, 2003.
Applicability: Conduct occurring on or after effective date.
Summary of Changes: This amendment makes juvenile court contempt of court proceedings available to county court order violations, as well as justice and municipal court order violations.

Family Code § 54.021. County, Justice, or Municipal Court: Truancy.

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

(b) A county, 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 county, justice, or municipal court charging an offense under Section 25.094, Education Code.

(c) A proceeding in a county, 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.

(d) Notwithstanding any other law, the costs assessed in a case filed in or transferred to a constitutional county court for an offense under Section 25.093 or 25.094, Education Code, must be the same as the costs assessed for a case filed in a justice court for an offense under Section 25.093 or 25.094, Education Code.

(e) The proceedings before a constitutional county court related to an offense under Section 25.093 or 25.094, Education Code, may be recorded in any manner provided by Section 30.00010, Government Code, for recording proceedings in a municipal court of record.

Commentary by Robert Dawson

Source: SB 358.
Effective Date: September 1, 2003.
Applicability: Conduct occurring on or after effective date.
Summary of Changes: This amendment permits a juvenile court to transfer a failure to attend school case to the county court as well as to a justice or municipal court.

Family Code § 54.04. Disposition Hearing.

(o) In a disposition under this title:

(1) a status offender may not, under any circumstances, be committed to the Texas Youth Com-

mission 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 county,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.

(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 county, municipal, justice, or juvenile court under circumstances that would constitute contempt of that court.

Commentary by Robert Dawson

Source: SB 358.
Effective Date: September 1, 2003.
Applicability: Conduct occurring on or after effective date.
Summary of Changes: This amendment includes county courts without the scope of courts that can produce delinquent conduct contempt of court cases.

Code of Criminal Procedure article 45.054. Failure to Attend School Proceedings.

(a) On a finding by a county, 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.

Commentary by Robert Dawson

Source: SB 358.
Effective Date: September 1, 2003.
Applicability: Conduct occurring on or after effective date.
Summary of Changes: This amendment adds county courts to those courts that may employ the dispositional powers listed in this article.

Code of Criminal Procedure article 45.055. Expunction of Conviction and Records in Failure to Attend School Cases

(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 Robert Dawson

Source: SB 358.
Effective Date: September 1, 2003.
Applicability: Conduct occurring on or after effective date.
Summary of Changes: The effect of this amendment is to add county courts to justice and municipal courts for expunction proceedings.

[~~Government Code § 26.201. Harris County.~~

~~The County Court of Harris County has the general jurisdiction of a probate court and juvenile juris-~~

~~dictiion as provided by Section 26.042(b) but has no other civil or criminal jurisdiction.~~]

Commentary by Robert Dawson

Source: SB 358.

Effective Date: September 1, 2003.
Applicability: Conduct occurring on or after effective date.
Summary of Changes: This section was repealed by Section 16 of SB 358. It was made at the request of Harris County.

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4. Municipal and Justice Court Proceedings

Code of Criminal Procedure article 45.045. Capias Pro Fine.

(a) If the defendant is not in custody when the judgment is rendered or if the defendant fails to satisfy the judgment according to its terms, the court may order a capias pro fine issued for the defendant's arrest. The capias pro fine shall state the amount of the judgment and sentence, and command the appropriate peace officer to bring the defendant before the court or place the defendant in jail until the defendant can be brought before the court.

(b) A capias pro fine may not be issued for an individual convicted for an offense committed before the individual's 17th birthday unless:

(1) the individual is 17 years of age or older;

(2) the court finds that the issuance of the capias pro fine is justified after considering:

(A) the sophistication and maturity of the individual;

(B) the criminal record and history of the individual; and

(C) the reasonable likelihood of bringing about the discharge of the judgment through the use of procedures and services currently available to the court; and

(3) the court has proceeded under Article 45.050 to compel the individual to discharge the judgment.

(c) This article does not limit the authority of a court to order a child taken into custody under Article 45.058 or 45.059.

Commentary by Ryan Kellus Turner

Source: HB 2319.
Effective Date: September 1, 2003.
Applicability: Conduct occurring on or after effective date.
Summary of Changes: This amendment provides that municipal and justice courts may, subject to conditions, use capias pro fine warrants to enforce their judgments upon adults who have outstanding judgments incurred prior to reaching the age of seventeen.

In recent years, local trial court judges have been inundated with increasing numbers of juveniles in their courts. State law has provided limited enforcement options for such judges and even fewer procedural guidelines. In response, some courts have hesitated to compel enforcement of their orders upon juveniles. A limited number of courts have waited for the juvenile to reach adulthood before making any effort to bring about compliance. Consequentially, years may pass before the court takes action. While debatably unethical, this practice, known as a "birthday party," has neither been prohibited nor authorized under Texas law.

Notably, this amendment prohibits "birthday parties." At the same time, however, it puts into place a new framework of procedures for ensuring that individuals cannot avoid the rule of law merely by becoming adults. For the first time, municipal judges and justices of the peace are expressly authorized to use capias pro fines for misdemeanants who are JNA (juveniles now adults). To legally use such enforcement measures, however, judges may not simply wait for the child to become an adult. Rather, the amendment mandates that municipal and justice courts make specific determinations and utilize their juvenile contempt authority prior to enforcing their judgments via capias pro fine.

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 or municipal court may not order the confinement of a child 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) If a child fails to obey an order of a justice or municipal court under circumstances that would constitute contempt of court, the justice or municipal

court, after providing notice and an opportunity to be heard, may:

(1) [has jurisdiction to] 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, hold the child in contempt of the justice or municipal court, and order either or both of the following [and]:

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

(B) that [order] the Department of Public Safety [to] suspend the contemnor's [child's] driver's license or permit or, if the contemnor [child] does not have a license or permit, to deny the issuance of a license or permit to the contemnor [child] until the contemnor [child] fully complies with the orders of the court.

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

(1) the person was convicted for an offense committed before the person's 17th birthday;

(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.

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

(f) 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 of compliance [that the child has fully complied] with the orders of the court.

(g) 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 Ryan Kellus Turner

Source: HB 2319.
Effective Date: September 1, 2003.
Applicability: Conduct occurring on or after effective date.
Summary of Changes: This change is part of a consolidation effort to move all juvenile contempt provisions into Article 45.050, Code of Criminal Procedure. In conjunction with changes made to the Family Code and Education Code, this amendment clarifies that school attendance-related contempt and all other offenses within the jurisdiction of the courts, are to be handled under the same Code of Criminal Procedure provisions as other cases involving contemptuous conduct in municipal and justice court.

Enforcement-related provisions, previously contained only in the Family Code, are now incorporated into Article 45.050, Code of Criminal Procedure. With the consolidation of the two statutes, enforcement provisions are removed from the Family Code. These changes makes it clear that cases in which the person was arrested before becoming 17 but was convicted after 17 are subject to the contempt of court protections that apply when the conviction occurred before age 17. Finally, this amendment codifies years of Texas case law holding that contemnors must be given a meaningful opportunity to be heard.

Notably, as amended, if the municipal or justice court opts not to refer the case to juvenile court for delinquent conduct, juvenile contemnors may face the imposition of either a fine, the loss of driving privileges, or both. Former law only allowed for one of the two sanctions.

[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 Ryan Kellus Turner

Source: HB 2319.
Effective Date: September 1, 2003.
Applicability: Conduct occurring on or after effective date.
Summary of Changes: Article 45.054, added in 2001 by HB 1118, was repealed by HB 2319, Section 59(4). Its content is now part of Article 45.056.

Code of Criminal Procedure article 45.054. Authority to Employ Case Managers for Juvenile Cases.

(a-1) 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 Section 25.094, Education Code, the court has jurisdiction to enter an order that includes one or more of the provisions listed under Subsection (a).

(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, or juvenile court by contempt.

Commentary by Ryan Kellus Turner

Source: HB 829.
Effective Date: September 1, 2003.
Applicability: None stated.
Summary of Changes: This is an amendment to article 45.054 as added in 2001 by SB 1432. It allows juvenile courts in counties with a population of less than 100,000 to use the same dispositions as justice or municipal courts. Notably, for the first time in Chapter 45 other Texas courts will potentially utilize procedures expressly written for municipal and justice courts.

Code of Criminal Procedure article 45.056. Authority to Employ Juvenile 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 involving juvenile offenders before a court consistent with the court's statutory powers; 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 juvenile [~~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 juvenile crimes [~~truancy~~] in the entity's jurisdiction that addresses the role of the case manager in that effort.

Commentary by Ryan Kellus Turner

Source: HB 2319.
Effective Date: September 1, 2003.
Applicability: Conduct occurring on or after effective date.
Summary of Changes: This is one of two amendments that resolve the conflict, created during the 77th Legislature, of having two articles numbered 45.054 in the Code of Criminal Procedure. It clarifies that juvenile case managers are not merely for school attendance cases but may be utilized to reduce various forms of juvenile crime.

Code of Criminal Procedure article 45.057. Offenses Committed by Juveniles

(a) In this article:

(1) "Child" [~~, "child"~~] has the meaning assigned by Article 45.058(h).

(2) "Residence" means any place where the child lives or resides for a period of at least 30 days.

(3) "Parent" includes a person standing in parental relation, a managing conservator, or a custodian.

(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 18 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.

(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 result in arrest and is [~~be punishable as~~] a Class C misdemeanor.

(h) A child and parent required to appear before the court have an obligation to provide the court in writing with the current address and residence of the child. The obligation does not end when the child reaches age 17. On or before the seventh day after the

date the child or parent changes residence, the child or parent shall notify the court of the current address in the manner directed by the court. A violation of this subsection may result in arrest and is a Class C misdemeanor. The obligation to provide notice terminates on discharge and satisfaction of the judgment or final disposition not requiring a finding of guilt.

(i) If an appellate court accepts an appeal for a trial de novo, the child and parent shall provide the notice under Subsection (h) to the appellate court.

(j) The child and parent are entitled to written notice of their obligation under Subsections (h) and (i), which may be satisfied by being given a copy of those subsections by:

(1) the court during their initial appearance before the court;

(2) a peace officer arresting and releasing a child under Article 45.058(a) on release; and

(3) a peace officer that issues a citation under Section 543.003, Transportation Code, or Article 14.06(b) of this code.

(k) It is an affirmative defense to prosecution under Subsection (h) that the child and parent were not informed of their obligation under this article.

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

Commentary by Ryan Kellus Turner

Source: HB 2319.
Effective Date: September 1, 2003.
Applicability: Conduct occurring on or after effective date.
Summary of Changes: This amendment is designed to address various juvenile-related problems experienced by municipal and justice court. First, it holds parents of children accused of traffic offenses responsible for appearing with their child in the same manner as in the adjudication of all other fine-only offenses. As revised, the parents' failure to appear with their child, when their child is accused of a traffic offense, is also a Class C misdemeanor. This amendment incorporates the definition of "parent" from the Education Code that includes anyone standing in parental relation.

A major problem in municipal and justice courts is that neither youthful offenders nor their parents or guardians are under any obligation to keep the court advised of their current address. This amendment makes it the responsibility of both the youth and their parent or guardian to keep the court advised of the place of residence. In light of the fact that many local trial courts, especially in metropolitan areas, have considerable difficulty tracking and keeping up with youthful offenders, this is a needed change. Violation of this obligation is a Class C misdemeanor.

Code of Criminal Procedure article 45.060. UNADJUDICATED CHILDREN, NOW ADULTS; NOTICE ON REACHING AGE OF MAJORITY; OFFENSE.

(a) Except as provided by Articles 45.058 and 45.059, an individual may not be taken into secured custody for offenses alleged to have occurred before the individual's 17th birthday.

(b) On or after an individual's 17th birthday, if the court has used all available procedures under this chapter to secure the individual's appearance to answer allegations made before the individual's 17th birthday, the court may issue a notice of continuing obligation to appear by personal service or by mail to the last known address and residence of the individual. The notice must order the individual to appear at a designated time, place, and date to answer the allegations detailed in the notice.

(c) Failure to appear as ordered by the notice under Subsection (b) is a Class C misdemeanor independent of Section 38.10, Penal Code, and Section 543.003, Transportation Code.

(d) It is an affirmative defense to prosecution under Subsection (c) that the individual was not informed of the individual's obligation under Articles 45.057(h) and (i) or did not receive notice as required by Subsection (b).

(e) A notice of continuing obligation to appear issued under this article must contain the following statement provided in boldfaced type or capital letters: "WARNING: COURT RECORDS REVEAL THAT BEFORE YOUR 17TH BIRTHDAY YOU WERE ACCUSED OF A CRIMINAL OFFENSE AND HAVE FAILED TO MAKE AN APPEARANCE OR ENTER A PLEA IN HIS MATTER. AS AN ADULT, YOU ARE NOTIFIED THAT YOU HAVE A CONTINUING OBLIGATION TO APPEAR IN THIS CASE. FAILURE TO APPEAR AS REQUIRED BY THIS NOTICE MAY BE AN ADDITIONAL CRIMINAL OFFENSE AND RESULT IN A WARRANT BEING ISSUED FOR YOUR ARREST."

Commentary by Ryan Kellus Turner

Source: HB 2319.
Effective Date: September 1, 2003.
Applicability: Conduct occurring on or after effective date.
Summary of Changes: This amendment, in conjunction with changes to Article 45.045, Code of Criminal Procedure, addresses the problems associated with youthful offenders who, despite the court's best efforts, either cannot be located or who refuse to appear as ordered by the court.

This new provision expressly prohibits young adults accused of fine-only offenses while children from being subjected to arrest and detention in secure

custody upon reaching the age of seventeen. If, however, upon reaching the individual's 17th birthday, the court has made efforts to secure the child's appearance to no avail, a notice of continuing obligation to appear may be issued. Failure to appear as required by the notice would constitute an additional offense. Since the individual failing to appear as ordered is now an adult, the court would have the authority to issue a warrant for the individual to be taken into secure custody.

Government Code § 71.0352. JUVENILE DATA: JUSTICE, MUNICIPAL, AND JUVENILE COURTS.

As a component of the official monthly report submitted to the Office of Court Administration of the Texas Judicial System:

(1) justice and municipal courts shall report the number of cases filed for the following offenses:

(A) failure to attend school under Section 25.094, Education Code;

(B) parent contributing to nonattendance under Section 25.093, Education Code; and

(C) violation of a local daytime curfew ordinance adopted under Section 341.905 or 351.903, Local Government Code; and

(2) in cases in which a child fails to obey an order of a justice or municipal court under circumstances that would constitute contempt of court, the justice or municipal court shall report the number of incidents in which the child is:

(A) referred to the appropriate juvenile court for delinquent conduct as provided by Article 45.050(c)(1), Code of Criminal Procedure, and Section 51.03(a)(2), Family Code; or

(B) held in contempt, fined, or denied driving privileges as provided by Article 45.050(c)(2), Code of Criminal Procedure.

Commentary by Ryan Kellus Turner

Source: HB 2319.
Effective Date: September 1, 2003.
Applicability: Conduct occurring on or after effective date.
Summary of Changes: In order to assist policy makers and the judiciary in more effectively analyzing and addressing school attendance issues, uniform and comprehensive data are needed. Such data do not currently exist. This section authorizes the Office of Court Administration to collect additional juvenile-related data in order to better ascertain: (1) the volume of school attendance and truancy cases throughout the state, (2) the number of justice, municipal, and juvenile courts adjudicating such cases, (3) what measures are most frequently being used by the local trial courts to adjudicate "chronic truants," and (4) the number of school attendance cases being referred to juvenile court.

Transportation Code § 521.201. License Ineligibility in General.

The department may not issue any license to a person who:

(1) is under 15 years of age;

(2) is under 18 years of age unless the person complies with the requirements imposed by Section 521.204;

(3) is shown to be addicted to the use of alcohol, a controlled substance, or another drug that renders a person incapable of driving;

(4) holds a driver's license issued by this state or another state or country that is revoked, canceled, or under suspension;

(5) has been determined by a judgment of a court to be totally incapacitated or incapacitated to act as the operator of a motor vehicle unless the person has, by the date of the license application, been:

(A) restored to capacity by judicial decree; or

(B) released from a hospital for the mentally incapacitated on a certificate by the superintendent or administrator of the hospital that the person has regained capacity;

(6) the department determines to be afflicted with a mental or physical disability or disease that prevents the person from exercising reasonable and ordinary control over a motor vehicle while operating the vehicle on a highway, except that a person may not be refused a license because of a physical defect if common experience shows that the defect does not incapacitate a person from safely operating a motor vehicle;

(7) has been reported by a court under Section 729.003 for failure to appear [~~or for default in payment of a fine~~] unless the court has filed an additional report on final disposition of the case; or

(8) has been reported by a court for failure to appear or default in payment of a fine for a misdemeanor that is not covered under Subdivision (7) and that is punishable by a fine only, including a misdemeanor under a municipal ordinance, committed by a person who was under 17 years of age at the time of the alleged offense, unless the court has filed an additional report on final disposition of the case.

Commentary by Ryan Kellus Turner

Source: HB 2319.
Effective Date: September 1, 2003.
Applicability: Conduct occurring on or after effective date.
Summary of Changes: This is a conforming change to be construed in light of Section 521.3451 of the Transportation Code and Article 45.050 of the Code of

Criminal Procedure. Presumably, rather than reporting the defendant's default, municipal and justice courts must now proceed to revoke the juvenile's driving privileges via contempt.

Transportation Code § 521.294. Department's Determination for License Revocation.

The department shall revoke the person's license if the department determines that the person:

(1) is incapable of safely operating a motor vehicle;

(2) has not complied with the terms of a citation issued by a jurisdiction that is a party to the Nonresident Violator Compact of 1977 for a traffic violation to which that compact applies;

(3) has failed to provide medical records or has failed to undergo medical or other examinations as required by a panel of the medical advisory board;

(4) has failed to pass an examination required by the director under this chapter;

(5) has been reported by a court under Section 729.003 for failure to appear [~~or for default in payment of a fine~~] unless the court files an additional report on final disposition of the case;

(6) has been reported within the preceding two years by a justice or municipal court for failure to appear or for a default in payment of a fine for a misdemeanor punishable only by fine, other than a failure [~~or default~~] reported under Section 11 729.003, committed by a person who is at least 14 years of age but younger than 17 years of age when the offense was committed, unless the court files an additional report on final disposition of the case; or

(7) has committed an offense in another state or Canadian province that, if committed in this state, would be grounds for revocation.

Commentary by Ryan Kellus Turner

Source: HB 2319.
Effective Date: September 1, 2003.
Applicability: Conduct occurring on or after effective date.
Summary of Changes: This is a conforming change to be construed in light of Section 521.3451 of the Transportation Code and Article 45.050 of the Code of Criminal Procedure. Presumably, rather than reporting the defendant's default, municipal and justice courts must now proceed to revoke the juvenile's driving privileges via contempt.

Transportation Code § 521.3451. SUSPENSION OR DENIAL ON ORDER OF JUSTICE OR MUNICIPAL COURT FOR CONTEMPT OF COURT; REINSTATEMENT.

(a) The department shall suspend or deny the issuance of a license or instruction permit on receipt of an order to suspend or deny the issuance of the license or permit from a justice or municipal court under Article 45.050, Code of Criminal Procedure.

(b) The department shall reinstate a license or permit suspended or reconsider a license or permit denied under Subsection (a) on receiving notice from the justice or municipal court that ordered the suspension or denial that the contemnor has fully complied with the court's order.

Commentary by Ryan Kellus Turner

Source: HB 2319.
Effective Date: September 1, 2003.
Applicability: Conduct occurring on or after effective date.
Summary of Changes: During the 77th Legislature, municipal and justice courts were authorized to impose an indefinite lien on the driving privileges of contemptuous juveniles. Legislation, however, was not passed specifically authorizing DPS to impose such a sanction. These changes specifically give DPS such statutory authority and clarify that such orders remain in effect until the contemnor complies with the courts order, regardless of the contemnor's age. These changes also specifically require DPS to reinstate a suspended license or permit or remove a denial of a license or permit when notified by the court that ordered the suspension or denial that the contemnor has fully complied with its orders.

Transportation Code § 543.117. Offense in Construction or Maintenance Work Zone.

A charge may not be dismissed under this subchapter for an offense to which Section 542.404 [~~or 729.004~~] applies except upon motion of the attorney representing the state.

Commentary by Ryan Kellus Turner

Source: HB 2319.
Effective Date: September 1, 2003.
Applicability: Conduct occurring on or after effective date.
Summary of Changes: This is a nonsubstantive conforming change to the streamlining of Chapter 729 of the Transportation Code.

Transportation Code § 729.001. Operation of Motor Vehicle by Minor in Violation of Traffic Laws; Offense.

(a) A person who is younger than 17 years of age commits an offense if the person operates a motor vehicle on a public road or highway, a street or alley in a

municipality, or a public beach in violation of any traffic law of this state, including:

(1) Chapter 502, other than Section 502.282 or 502.412;

(2) Chapter 521, other than an offense under Section 521.457;

(3) Subtitle C, other than an offense punishable by imprisonment or by confinement in jail under Section 550.021, 550.022, [~~or~~] 550.024, or 550.025;

(4) Chapter 601;

(5) Chapter 621;

(6) Chapter 661; and

(7) Chapter 681.

Commentary by Ryan Kellus Turner

Source: HB 2319.
Effective Date: September 1, 2003.
Applicability: Conduct occurring on or after effective date.
Summary of Changes: Not all traffic violations involving juveniles fall within the jurisdiction of municipal and justice courts (trial courts of limited jurisdiction). This amendment adds Transportation Code Section 521.457, Driving While License Invalid, to the offenses over which the juvenile court has jurisdiction because the offense carries a sentence of up to 180 days confinement if committed by an adult.

Additionally it adds Section 550.025 of the Transportation Code, Duty on Striking Fixture or Highway Landscaping, when the damage is at least $200 to the list of offenses within the jurisdiction of the juvenile court since it is a Class B misdemeanor. This amendment would treat this offense in the same manner that striking and damaging an unattended vehicle is treated under Section 550.024 when the damage to the vehicles is more than $200.

Transportation Code § 729.003. Procedure [~~and jurisdiction~~] in Cases Involving Minors.

~~[(a) A person may not plead guilty to an offense under Section 729.001 or 729.002 or to a violation of a motor vehicle traffic ordinance of an incorporated city or town except in open court before a judge. A person may not be convicted of an offense or fined as provided by this chapter or under a municipal traffic ordinance except in the presence of one or both parents or guardians having legal custody of the person. The court shall summon one or both parents or guardians to appear in court and shall require one or both of them to be present during all proceedings in the case. The court may waive the requirement of the presence of parents or guardians if, after diligent effort, the court cannot locate them or compel their presence.~~

~~(b) The provisions of the Code of Criminal Procedure relating to release of a defendant on bail apply to a person charged with a traffic offense under this chapter.~~

~~(c) A person detained for an offense under this chapter shall be detained in a facility that complies with Section 51.12, Family Code.]~~

~~(d)~~] A court shall report to the Department of Public Safety a person charged with a traffic offense under this chapter who does not appear before the court as required by law. In addition to any other action or remedy provided by law, the department may deny renewal of the person's driver's license under Section 521.310 or Chapter 706. The court also shall report to the department on final disposition of the case.

~~[(e) A person may not be committed to a jail in default of payment of a fine imposed under this chapter, but the court imposing the fine shall report the default to the Department of Public Safety. The court also shall report to the department on final disposition of the case.~~

~~(f) The court may order a person convicted of an offense under this chapter to perform a specified number of hours of community service in lieu of a fine.~~

~~(g) An offense under this chapter is within the jurisdiction of the courts regularly empowered to try misdemeanors carrying the penalty provided by this chapter and is not within the jurisdiction of a juvenile court. This chapter does not otherwise affect the powers and duties of juvenile courts.~~

Commentary by Ryan Kellus Turner

Source: HB 2319.
Effective Date: September 1, 2003.
Applicability: Conduct occurring on or after effective date.
Summary of Changes: Subsections a through c and e through g are repealed by HB 2319, Section 61(2). Much of Chapter 729, in light of more recent legislation, is redundant, antiquated, and unnecessary. With few exceptions, most of the amendments in this chapter repeal provisions that are addressed elsewhere in Texas law.

[~~Transportation Code § 729.004. Fine for Offense in Construction or Maintenance Work Zone~~

~~(a) This section applies to an offense under Section 729.001 for a violation of Subtitle C, other than Chapter 548 or 552 or Section 545.412 or 545.413.~~

~~(b) If an offense to which this section applies is committed in a construction or maintenance work zone when workers are present and any written notice to appear issued for the offense states on its face that workers were present when the offense was committed:~~

~~(1) the minimum fine applicable to the offense is twice the minimum fine that would be applicable to~~

~~the offense if it were committed outside a construction or maintenance work zone; and~~

~~(2) the maximum fine applicable to the offense is twice the maximum fine that would be applicable to the offense if it were committed outside a construction or maintenance work zone.~~

~~(c) In this section, "construction or maintenance work zone" has the meaning assigned by Section 472.022.~~]

Commentary by Ryan Kellus Turner

Source: HB 2319.
Effective Date: September 1, 2003.
Applicability: Conduct occurring on or after effective date.
Summary of Changes: This section was repealed by HB 2319, Section 61(2). Regardless of a driver's age, it is illegal to speed in a construction work zone while workers are present (Section 542.404, Transportation Code). This amendment repeals the provisions making a separate offense for a minor to speed in a construction work zone while workers are present.

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5. Texas Youth Commission Provisions

Education Code § 29.087. High School Equivalency Programs

(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, or by the Texas Youth Commission 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.

(f) Except as otherwise provided by this subsection, a student participating in a program authorized by this section, other than a student ordered to participate under Subsection (d)(1), 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. Except for a student ordered to participate under Subsection (d)(1), a [~~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.

Commentary by Neil Nichols

Source: HB 2319.
Effective Date: September 1, 2003.
Applicability: Conduct occurring on or after effective date, but only if this section does not expire September 1, 2003. An amendment enacted in SB 1470 repeals a sunset provision that would have called for the section to expire.
Summary of Changes: This amendment exempts youth who are ordered by TYC to participate in high school equivalency examination preparation courses from the admission eligibility criteria that would otherwise apply to them once they are placed outside of TYC institutions.

Under current law, a TYC youth 16 years of age or older is eligible to take the high school equivalency examination if TYC recommends it [§7.111(a)(2)(B), Education Code]. This special provision has been made for these youth because they are typically severely behind in course credits for their age and will likely drop out of school. TYC's research data have shown a positive correlation between a diploma or completion of the high school equivalency examination and low recidivism rates. A high school equivalency certificate opens opportunities for industry job training and post-secondary programs that increase the likelihood of constructive activity and eventual success.

Education Code § 30.104 CREDIT FOR COMPLETION OF EDUCATIONAL PROGRAMS; HIGH SCHOOL DIPLOMA AND CERTIFICATE.

(a) A school district shall grant to a student credit toward the academic course requirements for high school graduation for courses the student successfully completes in Texas Youth Commission educational programs.

(b) A student may graduate and receive a diploma from a Texas Youth Commission educational program if:

(1) the student successfully completes the curriculum requirements identified by the State Board of Education under Section 28.025(a) and complies with Section 39.025(a); or

(2) the student successfully completes the curriculum requirements under Section 28.025(a) as modified by an individualized education program developed under Section 29.005.

(c) A Texas Youth Commission educational program may issue a certificate of course-work completion to a student who successfully completes the curriculum requirements identified by the State Board of Education under Section 28.025(a) but who fails to comply with Section 39.025(a).

Commentary by Neil Nichols

Source: HB 2319.
Effective Date: September 1, 2003.
Applicability: Conduct occurring on or after effective date.
Summary of Changes: This new section of the Education Code requires a school district to grant a student credit for courses the student successfully completes in TYC educational programs. It authorizes TYC to grant a diploma or a certificate of coursework completion under the same terms and conditions as public schools. These provisions make explicit in the law what has always been acknowledged—that TYC has an educational program in its institutions that is based on the state's curriculum requirements and is delivered by properly certified educators. TYC youth participate in the state exit exam to earn a diploma. This section places TYC educational programs on an equal footing with school districts with regard to the transfer of course credits.

Government Code § 552.028. Request for Information from Incarcerated Individual.

(c) In this section, "correctional facility" means:

(1) a secure correctional facility, as defined by Section 1.07, Penal Code;

(2) a secure correctional facility and a secure detention facility, as defined by Section 51.02, Family Code; and

(3) a place designated by the law of this state, another state, or the federal government for the confinement of a person arrested for, charged with, or convicted of a criminal offense.

Commentary by Neil Nichols

Source: HB 2319.
Effective Date: September 1, 2003.
Applicability: Conduct occurring on or after effective date.
Summary of Changes: This section of the Texas Public Information Act denies adult inmates of jails and prisons the right to access public information under the Act. It is amended to include youth who are placed in secure juvenile correctional and detention facilities. Inmates' interest in being informed about the work of their government is outweighed by the public's interest in ensuring that the power to request public records is not abused for illegitimate purposes. The longer lengths of the youth's confinement and their increasing level of criminal sophistication give cause for concern that, as with their adult counterparts, this power to obtain quantities of sensitive public records could be abused.

Human Resources Code § 61.073. Records of Examinations and Treatment.

The commission shall keep written records of all examinations and conclusions based on them and of all orders concerning the disposition or treatment of each child subject to its control. Except as provided by Section 61.093(c), these records and all other information concerning a child, including personally identifiable information, are not public and are available only according to the provisions of Section 58.005, Family Code, Section 61.0731, Human Resources Code, and Chapter 61, Code of Criminal Procedure.

Commentary by Neil Nichols

Source: HB 2319.
Effective Date: September 1, 2003.
Applicability: Conduct occurring on or after effective date.
Summary of Changes: This amendment to TYC's enabling act makes explicit what has always been implicit in the law that, subject to the listed exceptions, all files and records pertaining to TYC youth are confidential, including all personally identifiable information. This amendment clarifies that all youth's files and records are included, not just the records that have a treatment purpose. Reference to a new section related to information that is available to children, parents and others is added to the list of exceptions.

Human Resources Code § 61.073. Records of Examinations and Treatment.

The commission shall keep written records of all examinations and conclusions based on them and of all orders concerning the disposition or treatment of each child subject to its control. Except as provided by Section 61.093(c), these records and all other information concerning a child, including personally identifiable information, are not public and are available only according to the provisions of Section 58.005, Family Code, Section 61.0731 of this code, and Chapter 61, Code of Criminal Procedure.

Commentary by Neil Nichols

Source: HB 2895.
Effective Date: September 1, 2003.
Applicability: A proceeding or any part of a proceeding that occurs on or after effective date.
Summary of Changes: Two bills (HB 2319 and HB 2895) have been enacted with this same amendment. The provisions are identical except for a technical drafting variation regarding the final Human Resources Code reference.

Human Resources Code § 61.0731. INFORMATION AVAILABLE TO CHILDREN, PARENTS, AND OTHERS.

(a) In the interest of achieving the purpose of the commission and protecting the public, the commission may disclose records and other information concerning a child to the child and the child's parent or guardian only if disclosure would not materially harm the treatment and rehabilitation of the child and would not substantially decrease the likelihood of the commission receiving information from the same or similar sources in the future. Information concerning a child who is age 18 or older may not be disclosed to the child's parent or guardian without the child's consent.

(b) The commission may disclose information regarding a child's location and committing court to a person having a legitimate need for the information.

Commentary by Neil Nichols

Source: HB 2319.
Effective Date: September 1, 2003.
Applicability: Conduct occurring on or after effective date.
Summary of Changes: Under the Texas Public Information Act, persons have a special right of access to information about themselves when it is the protection of their own privacy interests that makes the information confidential. This new section clarifies that there are additional important public interests, besides protection of the youth's privacy, for making TYC files and records concerning youth confidential. These records often contain information from peers, family members, victims, law enforcement and court officials, mental health professionals and others which, if revealed to the youth or the youth's parents, could have a detrimental effect on treatment efforts and possibly risk the safety of other persons. This new section in TYC's enabling act gives the agency the discretion to release information to the youth and their parents only when it determines that doing so would not be detrimental to treatment or would not have a chilling effect on the willingness of persons to provide information to the agency in the future. This is the same information that attorneys for children are cautioned not to reveal to the children and their parents under §54.04(b), Family Code. The new section also makes explicit in the law that an adult-age youth in TYC must give consent for his parents to have access to his records. Finally, the new section includes a provision that gives TYC the discretion to disclose a youth's location and committing court when it is needed for legitimate purposes. The most common example is when the information is needed for service of process or to identify the court having jurisdiction over certain matters.

Human Resources Code § 61.0731. INFORMATION AVAILABLE TO CHILDREN, PARENTS, AND OTHERS.

(a) In the interest of achieving the purpose of the commission and protecting the public, the commission may disclose records and other information concerning a child to the child and the child's parent or guardian only if disclosure would not materially harm the treatment and rehabilitation of the child andwould not substantially decrease the likelihood of the commission receiving information from the same or similar sources in the future. Information concerning a person who is age 18 or older may not be disclosed to the person's parent or guardian without the person's consent.

(b) The commission may disclose information regarding a child's location and committing court to a person having a legitimate need for the information.

Commentary by Neil Nichols

Source: HB 2895.
Effective Date: September 1, 2003.
Applicability: A proceeding or any part of a proceeding that occurs on or after effective date.
Summary of Changes: Two bills (HB 2319 and HB 2895) have been enacted with this same amendment. The provisions are identical except for a technical drafting variation regarding consent to release information to the "person's" (or "child's") parents.

Human Resources Code § 61.0751. SUBPOENAS.

(a) A hearings examiner appointed by the commission may issue a subpoena requiring the attendance of a witness or the production of any record, book, paper, or document the hearings examiner considers necessary for a determination of treatment under Section 61.075.

(b) The hearings examiner may sign a subpoena and administer an oath.

(c) A peace officer, apprehension specialist, parole officer, or other commission official may serve the subpoena in the same manner as similar process in a court of record having original jurisdiction of criminal actions is served.

(d) A person who testifies falsely, fails to appear when subpoenaed, or fails or refuses to produce material under thesubpoena is subject to the same orders and penalties to which a person taking those actions before a court is subject.

(e) On application of the commission, a court of record having original jurisdiction of criminal actions may compel the attendance of a witness, the production of material, or the giving of testimony before the hearings examiner, by an attachment for contempt or in the same manner as the court may otherwise compel the production of evidence.

Commentary by Neil Nichols

Source: HB 2895.
Effective Date: September 1, 2003.
Applicability: A proceeding or any part of a proceeding that occurs on or after effective date.
Summary of Changes: Constitutional due process requirements for disciplinary matters in adult and juvenile correctional agencies have been established by the U.S. Supreme Court through a series of cases beginning in the 1960s. The leading case establishing due process requirements in parole revocation hearings is *Morrissey v. Brewer*, 408 U.S. 471 (1972), a case that carefully balances the rights of parolees to test the evidence against them and to present evidence on their own behalf with the interests of the state in a fair and expeditious proceeding. For TYC, meeting these standards has meant the employment of hearings examiners, who are licensed attorneys, to conduct hearings on-site throughout the state where the parole violations are alleged to have occurred. There are approximately 1,100 of these hearings each year. Proper notice is provided, but the hearings are held as promptly as possible since most youth are not in school while they are detained in county facilities pending the hearing. Another case, *Gagnon v. Scarpelli*, 93 S. Ct. 1756 (1973), requires that indigent youth be provided counsel to represent them in the hearings.

The Human Resources Code amendment to TYC's enabling act tracks the language of Section 508.048, Government Code, related to the subpoena authority of parole panels in the Board of Pardons and Paroles. The amendment grants the same authority to hearings examiners in the Texas Youth Commission to subpoena witnesses and records when necessary to make a determination whether a youth has violated a condition of parole. Provision is made for enforcement of the subpoenas in a court having original jurisdiction of criminal actions.

Human Resources Code § 61.0772. Examination Before Discharge.

(b) Before a child who is identified as mentally ill is discharged from the commission's custody under Section 61.077(b), a commission psychiatrist shall examine the child. The commission shall refer a child requiring outpatient psychiatric treatment to the appropriate mental health authority. For a child requiring inpatient psychiatric treatment, the [~~The~~] commission shall file a sworn application for court-ordered mental health services, as provided in Subchapter C, Chapter 574, Health and Safety Code, if:

(1) the child is not receiving court-ordered mental health services; and

(2) the psychiatrist who examined the child determines that the child is mentally ill and the child meets at least one of the criteria listed in Section 574.034, Health and Safety Code.

Commentary by Neil Nichols

Source: HB 2895.
Effective Date: September 1, 2003.
Applicability: A proceeding or any part of a proceeding that occurs on or after effective date.
Summary of Changes: This amendment to TYC's enabling act provides an additional option for referral of TYC youth who are discharged following completion of their minimum lengths of stay because of mental illness that prevents them from progressing further in the agency's rehabilitation programs. Current law requires TYC to apply for court-ordered mental health services in all these cases. This amendment authorizes referral to the appropriate mental health authority when a psychiatrist determines a youth needs only outpatient mental health services.

Eligibility for both inpatient and outpatient court-ordered services requires that the youth be determined to be either a danger to self or others or deteriorating in the absence of treatment and incompetent to make a rational decision regarding consent to treatment. Since youth who are stabilized on medication are competent at that time, they do not meet the criteria for court-ordered services as the section currently requires, despite the fact that they will continue to need mental health treatment to avoid deterioration. This amendment allows these youth who have topped out in

terms of their progress in TYC rehabilitation programs to continue to receive needed mental health services on an outpatient basis after discharge.

Human Resources Code § 61.084. Termination of Control.

[~~(d) The commission shall transfer a person sentenced under a determinate sentence to commitment under Section 54.04(d)(3), 54.04(m), or 54.05(f), Family Code, for delinquent conduct constituting the offense of capital murder to the institutional division of the Texas Department of Criminal Justice on the person's 21st birthday to serve the remainder of the sentence if the person has not:~~

~~(1) served at least 10 years of the person's sentence; or~~

~~(2) been transferred or released under supervision by court order.~~]

(e) Except as provided by Subsection [~~(d),~~] (f)[~~,~~] or (g), the commission shall discharge from its custody a person not already discharged on the person's 21st birthday.

Commentary by Neil Nichols

Source: HB 2319.
Effective Date: September 1, 2003.
Applicability: Conduct occurring on or after effective date.
Summary of Changes: This section of the Human Resources Code is repealed by Section 61(3) of HB 2319. It is the section of TYC's enabling act that requires youth who are sentenced to commitment for capital murder to be transferred automatically at age 21 to the Institutional Division of TDCJ to complete their sentences when they have not been released on parole earlier by the court. Instead, these youth will now be treated in the same manner as youth who are sentenced to commitment for other offenses. At age 21, if they have not already been discharged or transferred, they are released automatically to serve the remainder of their sentences on adult parole. A transfer hearing must be held under § 54.11, Family Code, before any sentenced youth, including sentenced capital offender youth, may be transferred to adult prison from a TYC institution.

Human Resources Code § 61.054. Sale or License of Treatment Programs

(c) At the end of each fiscal year, any unexpended proceeds from the sale or license of a treatment program shall be carried over to the next fiscal year to the credit of the fund that provided the money to finance the development of the treatment program.

Commentary by Neil Nichols

Source: HB 2002.
Effective Date: Upon signing – June 20, 2003.
Applicability: None stated.
Summary of Changes: In 1997, the 75th Legislature authorized the Texas Youth Commission to sell or license the right to use its Resocialization Program so that it could be made available to other states and to other treatment providers, but in a way that fairly recoups some of the costs of its development and provides funds for further development and implementation of the program within TYC. HB 2002 permits unexpended proceeds in the fund at the end of each fiscal year to be carried over to the next fiscal year in the same account so that they might be used by TYC to help sustain an agency resocialization training institute for TYC treatment providers and mid-level managers.

Government Code § 411.1481. DNA Records: Capital Murder

(a) This section applies to:

(1) an inmate serving a sentence in the institutional division of the Texas Department of Criminal Justice for an offense under Section 19.03, Penal Code (capital murder); and

(2) a juvenile committed to the Texas Youth Commission for an adjudication as having engaged in delinquent conduct that violates Section 19.03, Penal Code (capital murder).

(b) The institutional division or the commission, as appropriate, shall obtain a sample or specimen from an inmate or juvenile described by Subsection (a) for the purpose of creating a DNA record and shall perform duties in respect to obtaining, preserving, maintaining a record of, and sending the sample or specimen to the director in the same manner as if the sample or specimen were obtained under Section 411.148.

Commentary by Neil Nichols

Source: HB 562.
Effective Date: September 1, 2003.
Applicability: Juveniles in custody on or after the effective date if DPS Director certifies that funds are available.
Summary of Changes: This new section amends the DNA collection provisions of the Government Code to add capital murder (Sec. 19.03, Penal Code) to the list of offenses for which TDCJ and TYC must take blood or other samples from persons in custody for the DNA record at DPS. The list currently includes all the sex offender registration offenses and the offenses of murder, aggravated assault, and burglary of a habitation. Youth sentenced or committed to TYC for capital murder who are in custody in TYC institutions on September 1, 2003 must give a sample for the DNA record

within one year, before they are released on parole. On or after 120 days of the effective date, the sample must be taken from the youth as a part of their initial admission and assessment process.

Code of Criminal Procedure article 49.18. Death in Custody.

(b) If a person dies while in the custody of a peace officer or as a result of a peace officer's use of force or if a person incarcerated [~~prisoner dies while confined~~] in a jail, correctional facility, or state juvenile facility dies [~~prison~~], the director of the law enforcement agency of which the officer is a member or of the facility in which the person [~~prisoner~~] was incarcerated[~~confined~~] shall investigate the death and file a written report of the cause of death with the attorney general no later than the 30th[~~20th~~] day after the date on which the person in custody or the incarcerated person [~~prisoner~~] died. The director shall make a good faith effort to obtain all facts relevant to the death and
include those facts in the report. The attorney general shall make the report, with the exception of any portion of the report that the attorney general determines is privileged, available to any interested person.

(c) Subsection (a) does not apply to a death that occurs in a facility operated by or under contract with the Texas Department of Criminal Justice. Subsection (b) does not apply to a death that occurs in a facility operated by or under contract with the Texas Department of Criminal Justice if the death occurs under circumstances described by Section 501.055(b)(2), Government Code.

(d) In this article:

(1) "Correctional facility" means a confinement facility or halfway house operated by or under contract with any division of the Texas Department of Criminal Justice.

(2) "In the custody of a peace officer" means:

(A) under arrest by a peace officer; or

(B) under the physical control or restraint of a peace officer.

(3) "State juvenile facility" means any facility or halfway house:

(A) operated by or under contract with the Texas Youth Commission; or

(B) described by Section 51.02(13) or (14), Family Code.

Commentary by Neil Nichols

Source: SB 826.
Effective Date: September 1, 2003.
Applicability: None stated.
Summary of Changes: Under current law, the head of any adult prison or jail facility (extended to include use of force by peace officers) is required to investigate and send a written report to the attorney general regarding the cause of death of any person in custody. The report must be filed within 30 days of the date of death (extended from 20 days) and represent a good faith effort to obtain all the facts surrounding the death. The report itself is public information, except for any information the attorney general determines is privileged. This amendment extends the reporting requirement to include all state juvenile facilities, including facilities and halfway houses operated by or under contract with TYC and secure correctional facilities and secure detention facilities as defined in Section 51.02 (13) and (14), Family Code.

Code of Criminal Procedure article 49.24. Notification and Report of Death of Resident of Institution.

(a) A superintendent or general manager of an institution who is required by Article 49.04 to report to a justice of the peace the death of an individual under the care, custody, or control of or residing in the institution shall:

(1) notify the office of the attorney general of the individual's death within 24 hours of the death; and

(2) prepare and submit to the office of the attorney general a report containing all facts relevant to the individual's death within 72 hours of the death.

(b) The superintendent or general manager of the institution shall make a good faith effort to obtain all facts relevant to an individual's death and to include those facts in the report submitted under Subsection (a)(2).

(c) The office of the attorney general may investigate each death reported to the office by an institution that receives payments through the medical assistance program under Chapter 32, Human Resources Code.

(d) Except as provided by Subsection (e), the office of the attorney general shall make a report submitted under Subsection (a)(2) available to any interested person who submits a written request for access to the report.

(e) The office of the attorney general may deny a person access to a report or a portion of a report filed under Subsection (a)(2) if the office determines that the report or a portion of the report is:

(1) privileged from discovery; or

(2) exempt from required public disclosure under Chapter 552, Government Code.

(f) This article does not relieve a superintendent or general manager of an institution of the duty of making any other notification or report of an individual's death as required by law.

Commentary by Neil Nichols

Source: SB 826

Effective Date: September 1, 2003.
Applicability: None stated.
Summary of Changes: According to the definition of "institution" as used in this chapter [Art. 49.01(4), Code of Criminal Procedure], this new section applies only to health-care institutions (places "where health care services are rendered, including a hospital, clinic, health facility, nursing home, extended-care facility, out-patient facility, foster-care facility, and retirement home"). It is not intended to apply to correctional or detention facilities where the longer time periods for reporting in article 49.18 are applicable.

Code of Criminal Procedure article 49.25. Medical Examiners.

Section 7. Reports of Death

(a) Any police officer, superintendent or general manager of an institution, physician, or private citizen who shall become aware of a death under any of the circumstances set out in Section 6(a) of this Article, shall immediately report such death to the office of the medical examiner or to the city or county police departments; any such report to a city or county police department shall be immediately transmitted to the office of the medical examiner.

(c) A superintendent or general manager of an institution who reports a death under Subsection (a) must comply with the notice and reporting requirements of Article 49.24. The office of the attorney general has the same powers and duties provided the office under that article regarding the dissemination and investigation of the report.

Commentary by Neil Nichols

Source: SB 826.
Effective Date: September 1, 2003.
Applicability: None stated.
Summary of Changes: According to the definition of "institution" in article 49.01 (4), Code of Criminal Procedure, this new subsection (c) applies only to health-care institutions (places "where health care services are rendered, including a hospital, clinic, health facility, nursing home, extended-care facility, out-patient facility, foster-care facility, and retirement home"). It is not intended to apply to correctional or detention facilities. However, the provision in subsection (a) that requires even any private citizen to report suspicious deaths (including suicides) to the medical examiner or law enforcement agency is unchanged. This may be an important distinction in light of the new section 38.19, Penal Code provision that includes no definition of "institution."

Penal Code § 38.19. Failure to Provide Notice and Report of Death of Resident of Institution.

(a) A superintendent or general manager of an institution commits an offense if, as required by Article 49.24 or 49.25, Code of Criminal Procedure, the person fails to:

(1) provide notice of the death of an individual under the care, custody, or control of or residing in the institution;

(2) submit a report on the death of the individual; or

(3) include in the report material facts known or discovered by the person at the time the report was filed.

(b) An offense under this section is a Class B misdemeanor.

Commentary by Neil Nichols

Source: SB 826
Effective Date: September 1, 2003.
Applicability: None stated.
Summary of Changes: This new Penal Code provision makes it a Class B Misdemeanor offense for a superintendent or general manager of an "institution" to fail to meet the requirements of Article 49.24 or 49.25, Code of Criminal Procedure, by failing to provide notice of the death of a person residing in the institution or to submit a report of the death that includes all the material facts that are known at the time. As used in article 49, Code of Criminal Procedure, "institution" is defined to mean only health-care institutions (places "where health care services are rendered, including a hospital, clinic, health facility, nursing home, extended-care facility, out-patient facility, foster-care facility, and retirement home"). However, the term is not defined in the Penal Code for this new section. The head of a juvenile residential facility would be well-advised, therefore, to report any death of a facility resident in accordance articles 49.25(a) and 49.18, Code of Criminal Procedure, in order to avoid any possibility of criminal penalty.

6. Texas Juvenile Probation Commission Provisions

Family Code § 261.405. Investigations in Juvenile Justice Programs and Facilities.

(b) A report of alleged abuse, [~~or~~] neglect, or exploitation in any juvenile justice program or facility shall be made to the Texas Juvenile Probation Commission and a local law enforcement agency for investigation.

(c) 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, or exploitation in any juvenile justice program or facility.

Commentary by Lisa Capers

Source: HB 2319.
Effective Date: September 1, 2003.
Applicability: Conduct occurring on or after effective date.
Summary of Changes: Section 261.405 of the Family Code requires the reporting of any alleged child abuse or neglect in any juvenile justice program or facility to be made to the Texas Juvenile Probation Commission (TJPC) and local law enforcement. This section further requires TJPC to investigate such allegations. This amendment adds the term "exploitation" to the child abuse and neglect investigation and reporting statutes contained in Section 261.405. In the 2001 legislative session, the term "exploitation" was added to the definitions contained in Subchapter E Section 261.401 regarding agency investigations but it was not added to Section 261.405 governing investigations in juvenile justice programs and facilities. This change corrects that oversight.

Human Resources Code § 141.042. Rules Governing Juvenile Boards, Probation Departments, Probation Officers, Programs and Facilities.

(a) The commission shall adopt reasonable rules that provide:

(1) minimum standards for personnel, staffing, case loads, programs, facilities, record keeping, equipment, and other aspects of the operation of a juvenile board that are necessary to provide adequate and effective probation services;

(2) a code of ethics for probation, detention, and corrections officers and for the enforcement of that code;

(3) appropriate educational, preservice and in-service training, and certification standards for probation, detention, and corrections officers or court-supervised community-based program personnel;

(4) minimum standards for public and private juvenile pre-adjudication secure detention facilities, public juvenile post-adjudication secure correctional facilities that are operated under the authority of a juvenile board, and private juvenile post-adjudication secure correctional facilities, except those facilities exempt from certification by Section 42.052(g) [~~42.052(e)~~];

(5) [~~(5) procedures for implementation of the progressive sanctions guidelines in Chapter 59, Family Code; and~~] [~~(6)~~] minimum standards for juvenile justice alternative education programs created under Section 37.011, Education Code, in collaboration and conjunction with the Texas Education Agency, or its designee.

(d) The commission shall biennially [~~annually~~] inspect all public and private juvenile pre-adjudication secure detention facilities and all public and private juvenile post-adjudication secure correctional facilities except a facility operated or certified by the Texas Youth Commission and shall biennially [~~annually~~] monitor compliance with the standards established under Subsection (a)(4) if the juvenile board has elected to comply with those standards or shall biennially [~~annually~~] ensure that the facility is certified by the American Correctional Association if the juvenile board has elected to comply with those standards.

[~~(f) The commission shall monitor compliance with alternative referral programs adopted by juvenile boards under Section 53.01, Family Code.~~]

(h) A juvenile board that does not accept state aid funding from the commission under Section 141.081 shall report to the commission each month on a form provided by the commission the same data as that required of counties accepting state aid funding regarding juvenile justice activities under the jurisdiction of the board. If the commission makes available free software to the board for the automation and tracking of juveniles under the jurisdiction of the board, the commission may require the monthly report to be provided in an electronic format adopted by rule by the commission.

Commentary by Lisa Capers

Source: HB 2319.
Effective Date: September 1, 2003.
Applicability: Conduct occurring on or after effective date.
Summary of Changes: Human Resources Code § 141.042(f) is repealed by HB 2319, Section 61(3).

Section 141.042 of the Human Resources Code is part of the enabling legislation of the Texas Juvenile Probation Commission (TJPC). Various technical and substantive amendments were made to this section by HB 2319.

Subsections (a)(2) and (a)(3) were amended to expand the TJPC rulemaking authority by adding "detention" and "corrections" officers to the existing rulemaking authority regarding the code of ethics and certain training and certification requirements for probation officers.

The amendment in Subsection (a)(4) corrects a citation to the child care facility licensing requirements.

The deletion of Subsection (a)(5) removes from TJPC the mandate to develop rules for the Progressive Sanctions Model. Amendments to Chapter 59 of the Texas Family Code removed the requirement of the written reporting of deviations from the model, so the need for TJPC rulemaking authority in this area is now unnecessary.

Subsection (d) was amended to change the required inspection of secure juvenile pre-adjudcation detention and post-adjuciation correctional facilities by TJPC from an annual basis to a biennial basis (i.e., once every two years).

The repeal of Subsection (f) removes the requirement for TJPC to monitor juvenile board referral plans created under Section 53.01 of the Family Code. This is truly an issue of local control and the state has no significant need to monitor these plans.

Subsection (g) requires juvenile boards and probation departments to adhere to TJPC data collection requirements even if they choose not to accept state funding. Currently, all probation departments in Texas report juvenile justice data to TJPC electronically using the Electronic Data Interchange Specifications found in Title 37, Texas Administrative Code Subchapter H Section 341.47 et. seq. The intent of this amendment was for this electronic reporting to continue even if a local juvenile board elects not to receive state funding through grants from TJPC. The accurate and timely receipt of juvenile justice data by TJPC is essential for state legislators and policy makers and this data is needed from all counties regardless of whether or not they accept state financial aid. Currently, all counties accept state financial assistance through TJPC.

Human Resources Code § 141.049. Complaints Relating to Juvenile Boards.

(a) The commission shall keep an information file about each complaint filed with the commission relating to a juvenile board funded by the commission. The commission shall investigate the allegations in the complaint and make a determination of whether there has been a violation of the commission's rules relating to juvenile probation programs, services, or facilities.

Commentary by Lisa Capers

Source: HB 2319.
Effective Date: September 1, 2003.
Applicability: Conduct occurring on or after effective date.
Summary of Changes: The Texas Juvenile Probation Commission (TJPC) receives complaints against local juvenile boards made by the public. These complaints often involve issues outside the jurisdiction of the agency. Frequently a parent will call the Commission to complain about a disposition given their child in a juvenile court and seek assistance from the Commission. Clearly, this is outside the scope of the agency's responsibility and authority. This amendment attempts to clarify that the investigation performed by TJPC upon receipt of a complaint against a local juvenile board is limited to determining whether there is a noncompliance with a Commission standard (i.e., administrative rule) as those standards relate to juvenile board oversight of the provision of juvenile probation programs, services or facilities.

Human Resources Code § 141.061. Minimum Standards for Probation Officers.

(a) To be eligible for appointment as a probation officer, a person who was [~~has~~] not [~~been~~] employed as a probation officer before [~~since~~] September 1, 1981, must:

(1) be of good moral character;

(2) 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;

(3) have either:

(A) one year of graduate study in criminology, corrections, counseling, law, social work, psychology, sociology, or other field of instruction approved by the commission; or

(B) one year of experience in full-time case work, counseling, or community or group work:

(i) in a social service, community, corrections, or juvenile agency that deals with offenders or disadvantaged persons; and

(ii) that the commission determines provides the kind of experience necessary to meet this requirement;

(4) have satisfactorily completed the course of preservice training or instruction required by the commission;

(5) have passed the tests or examinations required by the commission; and

(6) possess the level of certification required by the commission.

Commentary by Lisa Capers

Source: HB 2319.
Effective Date: September 1, 2003.
Applicability: Conduct occurring on or after effective date.

Summary of Changes: Section 141.061 of the Human Resources Code details the minimum requirements that must be met for an individual to become a juvenile probation officer. This amendment clarifies that probation officers hired on or after September 1, 1981 must have a bachelor's degree and meet other related educational or work experience requirements. Officers who were hired and working prior to September 1, 1981 are "grandfathered" in and do not have to be degreed if those individuals are still employed as juvenile probation officers and have maintained their certification as a probation officer through the Texas Juvenile Probation Commission.

Penal Code § 22.11. Harrassment by Persons in Certain Correctional Facilties

(a) A person commits an offense if the person, while imprisoned or confined in a [~~secure~~] correctional or detention facility [~~or a facility operated by or under contract with the Texas Youth Commission~~] and with intent to harass, alarm, or annoy another person, causes the other person to contact the blood, seminal fluid, vaginal fluid, saliva, urine, or feces of the actor or any other person.

(d) In this section, "correctional or detention facility" means:

(1) a secure correctional facility; or

(2) a "secure correctional facility" or a "secure detention facility" as defined by Section 51.02, Family Code, operated by or under contract with a juvenile board or the Texas Youth Commission or any other facility operated by or under contract with that commission.

Commentary by Lisa Capers

Source: HB 274.
Effective Date: September 1, 2003.
Applicability: Conduct occurring on or after effective date.
Summary of Changes: In 1999, the Texas legislature added Section 22.11 to the Penal Code to create an offense of harassment by a person incarcerated in a correctional or detention facility if that person caused another individual to come into contact with the blood, seminal fluid, feces or urine of any person. The bill was commonly referred to as the "chunking" bill. The offense is a 3rd degree felony and carries a penalty of two to 10 years in prison and an optional fine of up to $10,000. The bill was intended to protect prison and jail employees from contact with unsanitary and hazardous bodily fluids thrown on them by inmates.

This amendment adds vaginal fluid and saliva to the list of bodily fluids in Section 22.11 since both of these are equally as dangerous to the health and safety of correctional officers. Additionally, and most importantly, this amendment expanded the coverage of Section 22.11 to include secure juvenile pre-adjudication detention and post-adjudication correctional facilities where juveniles are held. The protections afforded adult correctional officers and jailers were equally as necessary in the juvenile justice system. The inclusion of juvenile facilities in the chunking bill was overlooked in 1999 and attempts to correct this in the 2001 legislative session did not pass because the bill was filed too late.

Health and Safety Code § 533.014. Designation of Single Portal Authorities

(a) The board shall adopt rules that:

(1) relate to the responsibility of the local mental health authorities to make recommendations relating to the most appropriate and available treatment alternatives for individuals in need of mental health services, including individuals who are in contact with the criminal justice system and individuals detained in local jails and juvenile detention facilities;

(2) govern commitments to a local mental health authority;

(3) govern transfers of patients that involve a local mental health authority; and

(4) provide for emergency admission to a department mental health facility if obtaining approval from the authority could result in a delay that might endanger the patient or others.

Commentary by Lisa Capers

Source: SB 1145.
Effective Date: September 1, 2003.
Applicability: None stated.
Summary of Changes: The former Texas Department of Mental Health and Mental Retardation (TDMHMR) which has now been consolidated under and between two new agencies called the Texas Department of State Health Services (mental health) and the Texas Department of Aging and Disability Services (mental retardation) is responsible for designating a local mental health authority in each service region. This authority is responsible for planning and delivery of mental health services. In 2001, the 77th Texas Legislature established a formalized jail diversion process as a pilot project with funding provided to the Texas Council on Offenders with Mental Impairments (TCOMI). The Texas Juvenile Probation Commission (TJPC) also received additional funding to help juvenile probation departments work jointly with mental health professionals to provide services to juveniles in need of mental health services. During the 2001 session, great attention and focus was placed on the lack of available mental health services to the adult criminal justice and juvenile justice populations.

Senate Bill 1145 was a continuation of the efforts to address the large number of individuals with

mental health needs within the criminal and juvenile justice systems. This bill requires the governing Board of the agency to adopt rules that relate to the responsibility of the local mental health authorities to make recommendations related to the most appropriate and available treatment alternatives for persons in need of mental health services including those individuals in the criminal and juvenile justice systems that are detained in local jails and juvenile detention facilities.

Health and Safety Code § 533.107. Expiration.

This section and Sections 533.101-533.106 expire [~~subchapter expires~~] September 1, 2005.

Commentary by Lisa Capers

Source: SB 1145.
Effective Date: September 1, 2003.
Applicability: None stated.
Summary of Changes: This section contains the expiration date for the statutes related to the jail diversion pilot program established in the Texas Health and Safety Code Sections 533.101-533.106. All sections now expire September 1, 2005 unless extended in the 2005 legislative session.

Health and Safety Code § 533.108. Prioritization of Funding for Diversion of Persons from Incarceration in Certain Counties.

(a) A local mental health or mental retardation authority may develop and may prioritize its available funding for:

(1) a system to divert members of the priority population, including those members with co-occurring substance abuse disorders, before their incarceration or other contact with the criminal justice system, to services appropriate to their needs, including:

(A) screening and assessment services; and

(B) treatment services, including:

(i) assertive community treatment services;

(ii) inpatient crisis respite services;

(iii) medication management services;

(iv) short-term residential services;

(v) shelter care services;

(vi) crisis respite residential services;

(vii) outpatient integrated mental health services;

(viii) co-occurring substance abuse treatment services;

(ix) psychiatric rehabilitation and service coordination services;

(x) continuity of care services; and

(xi) services consistent with the Texas Council on Offenders with Mental Impairments model;

(2) specialized training of local law enforcement and court personnel to identify and manage offenders or suspects who may be members of the priority population; and

(3) other model programs for offenders and suspects who may be members of the priority population, including crisis intervention training for law enforcement personnel.

(b) A local mental health or mental retardation authority developing a system, training, or a model program under Subsection (a) shall collaborate with other local resources, including local law enforcement and judicial systems and local personnel.

(c) A local mental health or mental retardation authority may not implement a system, training, or a model program developed under this section until the system, training, or program is approved by the department.

Commentary by Lisa Capers

Source: SB 1145
Effective Date: September 1, 2003.
Applicability: None stated.
Summary of Changes: Section 533.108 is an entirely new section within the Jail Diversion Program Subchapter and is another attempt to address the large number of individuals needing mental health services. In some counties on any given day, there are more mentally ill individuals in jail than in local mental hospitals. This reality has provided the needed impetus to further address this growing population of persons needing treatment and services.

The addition of Section 533.108 permits a local mental health authority or metal retardation authority to prioritize its funding for jail diversion. The diversion services could include screening and assessment or treatment such as crisis intervention, medication management, community treatment, short-term residential services or shelter, outpatient services, co-occurring substance abuse treatment, service coordination and continuity of care. It could also provide training to law enforcement. A jail diversion program would require approval from the state oversight agency and collaboration with local entities such as law enforcement and the court system.