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CHAIR'S MESSAGE
by Anne Hazlewood

I want to extend a big thank you to all of you for either renewing your membership in the juvenile law section, or for joining the section for the first time. You are now getting one of the perks of your membership in receiving this special legislative edition of the newsletter. Much hard work has gone into this edition, and there is a wealth of valuable information contained herein. Although we are still feeling the loss of Professor Dawson, and of course, we always will, this last legislative session leaves us with still more of his profound understanding of the juvenile justice system, as his final changes and suggestions were implemented into law. Many people have stepped up to assume new responsibilities so that the void left by Professor Dawson's passing won't seem so great, and this edition of the newsletter is an example of that extra dedication. Thanks to all those individuals who worked so tirelessly, so that the rest of us could benefit from your knowledge. Please take time to read this edition carefully, so that you will be aware of the new changes, and will be able to practice juvenile law to the best of your ability. The youth of Texas are depending on you.

EDITOR'S FOREWORD
by Pat Garza

Special Legislative Issue. This is the sixth Special Legislative Issue of the Juvenile Law Section Newsletter. It contains articles about the 79th legislature, the text of each amendment to the juvenile law and commentaries on those amendments.

Special recognition to the gang of four. Among the many who contributed to the Special Legislative Issue of 2005, special recognition must be made to Lisa A. Capers, Neil Nichols and Wesley Shackelford. Their tireless hard work and resolve can be seen throughout the Issue. Thank you, on behalf of myself and the Juvenile Law Section and its members, to all that contributed to this Issue.

A special thanks also goes out to Professor Robert Dawson. While he is no longer with us, his memory and aura can truly be seen in the work and dedication of the gang of four.

In addition to those who wrote or contributed to writing the section-by-section commentaries, three persons contributed special articles. Vicki Spriggs, Executive Director of the Texas Juvenile Probation Commission, contributed an article on the legislative appropriation process and its impact on the system. Dwight Harris, Executive Director of the Texas Youth Commission, contributed a similar article on the legislative appropriation process and its impact on TYC. And Carey Cockerell, Commissioner, Texas Department of Family and Protective Services, contributed an article on DPRS funding and programs.

LEGISLATIVE FOREWORD
by *The Gang of Four*

As all of you know by now, we lost Professor Robert Dawson midway through the 79th Texas legislative session when he died on February 26, 2005. He was active in the session right up until the end and two days before he died, he was still asking whether the juvenile justice bill was moving through the process. As this special legislative issue was prepared, all of us truly felt the loss of his leadership, guidance and insight, but we have attempted to keep the ball rolling as he would have wanted. As his last contributions are included in this issue, we dedicate this special legislative issue to him. Thank you, Professor Dawson. We really miss you!

This special legislative issue, as in sessions past, contains the text of all major bills affecting the juvenile justice system and ancillary systems along with commentary explaining the provision and any history of interest. **House Bill 1575** authored by **Representative Harold Dutton** and **Representative Toby Goodman** was the omnibus juvenile justice bill this session and contains the last work of Professor Dawson on juvenile justice legislation. This bill contains a new system for transferring probation supervision between counties, which replaces the current procedure known as courtesy supervision.

House Bill 867 by **Representative Ray Allen** and **Senator Florence Shapiro** rewrote Chapter 62 of the Code of Criminal Procedure related to sex offender registration. This is a large bill (50 pages) and is not included in its entirety herein but can be downloaded at www.capitol.state.tx.us. Juvenile sex offender registration procedures were kept in tact but were significantly reorganized for the better. Those excerpted provisions are included in this issue. **House bill 2036**, also by **Representative Ray Allen** and **Senator Florence Shapiro**, regulates sex offender treatment providers and the treatment of sex offenders and selected excerpts of this bill are also provided. **House Bill 1068** by **Representative Joe Driver** and **Senator Juan Hinojosa** relating to DNA records is also a significant bill (25 pages) and we have included only the excerpts applicable to juvenile offenders.

There were several other significant pieces of legislation this session including **Senate Bill 6** by **Senator Jane Nelson** and **Representative Suzanna Hupp,** which is the omnibus Texas Department of Family and Protective Services (TDFPS) reform bill. This is also a huge bill (86 pages) and the full text is not included in this issue but can be downloaded at the legislature's website listed above. However, a synopsis of the key provisions of the bill prepared by TDFPS is included.

All together, there are around 25 bills discussed in this issue. Other key areas include bills related to education, justice and municipal court, child abuse and neglect, victims, sex offenders, the mental health system and open government issues. Complete listings of all bills passed during the session may be found at the legislature's website under the "Legislative Reports" heading.

Professor Dawson had written much of the commentary on several sections within HB 1575 prior to his death and those sections have been updated by Lisa Capers and include both their names on the commentary sections. The Gang of Four had some great helpers with this issue and we want to acknowledge their efforts and contributions. We send a huge *THANK YOU* to each of these individuals. **Ryan Turner** (General Counsel for the Texas Municipal Court Education Center), **Linda Brooke** (TJPC Director of Education Services), **Nydia Thomas** (TJPC Senior Staff Attorney) and **John Gonzales** (TJPC Staff Attorney) assisted in writing commentary for this issue. Executive Directors **Vicki Spriggs** (TJPC), **Carey Cockerell** (TDFPS) and **Dwight Harris** (TYC) wrote the budget overviews for their respective agencies. TJPC staff attorneys, **Nydia Thomas**, **John Gonzales** and **Pierre Williams,** assisted with proofing and organization of this issue. Thanks also to our newsletter editor, **Judge Pat Garza** for his patience and belief in us that we really would get this issue produced since this was his first special legislative issue. We did it! Last, but certainly not least, we could never produce this issue without the technical expertise of **Debbie Steed** and **Kristy Almager**. These ladies make it all possible. We thank you all.

The Gang of Four
Lisa A. Capers, Neil Nichols and Wesley Shackelford

79th Texas Legislature Appropriations to the Texas Juvenile Probation Commission: A Successful Session with Slight Increase in Funding

Vicki Spriggs
Executive Director

On May 30, 2005, the 79th Texas Legislature adjourned. Juvenile justice was not a focal point of this session; thus, new laws or modifications to existing laws affecting the Juvenile Justice Code were minimal. The most significant revisions were contained in House Bill 1575 which is discussed elsewhere in this issue. The Texas Juvenile Probation Commission (TJPC) budget was also approved with no decreases in those line items affecting juvenile probation departments. In fact, a slight increase was approved in the budget to address the state's increasing juvenile age population.

Budget

There were major considerations facing legislative leadership when the session began. These included: the school finance system, child and adult protective services reform and an overcrowded prison system. Each of these areas required additional appropriations to provide the reforms needed. With only a $600 million surplus in the state's budget and billions needed to address the areas identified above, every state agency was required to reduce their budget by 5% when submitting their Legislative Appropriations Request (LAR). The Progressive Sanctions Level 1, 2, 3 Program dollars was where the Commission designated its reduction. As discussed later in this article, this funding was ultimately restored in its entirety.

Hearings on agency budgets began in both the House and the Senate during the fall of 2004 preceding the session. Considering the state's fiscal reality, the goal of the Commission was to maintain current funding for all probation departments and to prevent any reduction in agency staff.

Even before the session began, the Commission realized that the funding appropriated for the Juvenile Justice Alternative Education Programs (JJAEPs) did not appear to be adequate due to the dramatic increase in the student population; thus, a supplemental appropriation would be required. This request, to reimburse the cost of mandatory JJAEP student attendance, for an additional $2.1 million dollars was based on the following: historically, the mandatory JJAEP population increased approximately 6.3% each year. However, during the 2003-2004 school year, the population increased by 21% and during the first few months of the 2004-2005 school year, the population increased another 45% above the increase of the previous year. This unprecedented growth was not anticipated and the original funding level was not adequate to reimburse the cost of mandatory student attendance for the entire school year.

In January 2005 a supplemental appropriations request was filed. The Commission continued to monitor the JJAEP mandatory student population and noticed a decline in the number of mandatory students expelled to JJAEPs during those months of normally high expulsions (i.e., March, April, and May). As a result, the Commission reduced the supplemental appropriations request from $2.1 million to $400,000. This amount was appropriated.

Narrative Summary of TJPC Fiscal Years 2006-2007 Appropriations

The legislature approved a total TJPC biennial budget of $94,665,119 in the Basic Probation Goal. This is an increase of slightly more than $2.1 million dollars. This funding was appropriated to address the state's increase in juvenile age population. The goal also contains the Progressive Sanctions Level 1, 2, 3 Program dollars which were completely restored to their original amount of $37,987,141.

There were no funding increases in the Community Corrections strategy which remains at $91,771,162 over the biennium. This includes funding for five strategies: Community Corrections ($68,740,148); the Harris County Boot Camp ($2,000,000); Level 5 Post-Adjudication Facilities ($8,788,872); Local Post-Adjudication Facilities ($8,294,076); and the Special Needs Diversionary Programs (3,948,066). The Commission was notified in March 2005 that the $2,400,000 funding previously received from the Governor's Criminal Justice Division (CJD) for Family Preservation and Substance Abuse Prevention programs was not going to be available for the 2006-2007 biennium.

In the Probation Assistance Goal, the Legislature authorized the recoupment of $64,765,476 million in federal Title IV-E funds to reimburse counties for qualifying foster care services.

JJAEP funding was increased by $2,139, 096 over the current biennium amount of $15,000,000. As noted earlier, this increase is designed to address the increase in JJAEP mandatory student attendance. Because of the recent fluctuations in student attendance, both the Commission and legislative leadership are aware that another

supplemental appropriations request might be required during this upcoming biennium.

The last goal, which includes both the Indirect Administration and Information Resources Strategies, was decreased by $60,460 to a total of $2,153,602 for the Commission's administration.

The following chart reflects the TJPC budget for the 2006-2007 biennium.

TJPC Funding
2006-2007 Biennium

Description	FY - 2006	FY - 2007
A. Goal: Basic Probation (State Aid)		
A.1.1. Strategy: Basic Probation Services	28,000,007	28,667,971
A.1.2. Strategy: Progressive Sanctions Levels 1-3	18,933,570	18,993,571
Total, Goal A:	**46,993,577**	**47,661,542**
B. Goal: Community Corrections		
B.1.1. Strategy: Community Corrections Services	34,370,074	34,370,074
B.1.2. Strategy: Harris County Boot Camp	1,000,000	1,000,000
B.1.3. Strategy: LVL 5 Post-Adjudication Facilities	4,394,436	4,394,436
B.1.4. Strategy: Local Post-Adjudication Facilities	4,147,038	4,147,038
B.1.5. Strategy: Special Needs Diversionary Programs	1,974,033	1,974,033
Total, Goal B:	**45,885,581**	**45,885,581**
C. Goal: Probation Assistance		
C.1.1. Strategy: Probation Assistance	32,382,738	32,382,738
Total, Goal C:	**32,382,738**	**32,382,738**
D. Goal: Juvenile Justice Alternative Ed Program		
D.1.1. Strategy: Juvenile Justice Alternative Ed Pgm.	8,187,641	8,951,455
Total, Goal D:	**8,187,641**	**8,951,455**
E. Goal: Indirect Administration		
E.1.1. Strategy: Central Administration	944,848	944848
E.1.2. Strategy: Information Resources	*131,953*	*131,953*
Total, Goal D:	**1,076,801**	**1,076,801**
Total Appropriation	**134,526,338**	**135,958,117**

Appropriations Riders to TJPC Budget

1. ***Performance Measure Targets.*** It is the intent of the Legislature that appropriations made by this Act be utilized in the most efficient and effective manner possible to achieve the intended mission of the Juvenile Probation Commission. In order to achieve the objectives and service standards established by this Act, the Juvenile Probation Commission shall make every effort to attain designated key performance target levels associated with each item appropriated. *(Modified due to length)*

2. ***Restriction, State Aid***. None of the funds appropriated above in Strategy A.1.1, Basic Probation Services, 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 B.1.2, Harris County Boot Camp, 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 Goal A, Basic Probation, and Goal B, 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.1.2. Progressive Sanctions Level 1-3, $10,200,000 in fiscal year 2006 and $10,200,000 in fiscal year 2007 can be distributed only to local probation departments for funding juvenile probation services associated with sanction levels described in §§ 59.003(a)(1), 59.003(a)(2), and 59.003(a)(3) of the Family Code, or for salaries of juvenile probation officers hired after the effective date. 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.

   b. Out of the funds appropriated above in Strategy B.1.3, Level 5 Post-adjudication Facilities, $4,394,436 in fiscal year 2006 and $4,394,436 in fiscal year 2007 can be used only for the purpose of funding secure post-adjudication placements for

      (1) juveniles who have a progressive sanction guideline level of 5 or higher as described by §§ 59.003(a)(5), 59.003(a)(6), and 59.003(a)(7);
      (2) are adjudicated for a felony offense that includes as an element of the offense the possession, carrying, using or exhibiting of a deadly weapon;
      (3) the juvenile court's order of adjudication contains a finding that the child committed a felony offense and the child used or exhibited a deadly weapon during the commission of the conduct or during immediate flight from commission of the conduct; or
      (4) are adjudicated for a sex offense of the grade of felony that requires registration under the Texas Sexual Offender Registration Program.

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

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

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

8. ***Local Post-adjudication Facilities***. Out of the funds appropriated above in Strategy B.1.4. Local Post-Adjudication Facilities, the amount of $4,147,038 in fiscal year 2006 and $4,147,038 in fiscal year 2007 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 37 and appropriated above in Strategy D.1.1, Juvenile Justice Alternative Education Programs, the Texas Juvenile Probation Commission shall allocate $1,500,000 at the beginning of each fiscal year to be distributed on the basis of juvenile age population among the mandated

counties identified in Chapter 37, Texas Education Code, and those counties with populations between 72,000 and 125,000 which choose to participate under the requirements of Chapter 37.

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

The remaining funds shall be allocated for distribution to the counties mandated by the §37.011(a) Texas Education Code, at the rate of $59 per student per day of attendance in the JJAEP for students who are required to be expelled as provided under § 37.007, Texas Education Code, and are intended to cover the full cost of providing education services to such students. Counties are not eligible to receive these funds until the funds initially allocated at the beginning of each fiscal year have been expended at the rate of $59 per student per day of attendance. Counties in which populations exceed 72,000, but are 125,000 or less, may participate in the JJAEP, and are eligible for state reimbursement at the rate of $59 per student per day.

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

Unspent balances in fiscal year 2006 shall be appropriated to fiscal year 2007 for the same purposes in Strategy D.1.1.

The allocations made in this rider for the JJAEP are estimated amounts and not intended to be an entitlement and are limited to the amounts transferred from the Foundation School Program pursuant to TEA Rider 44. The amount of $59 per student per day may vary depending on the total number of students actually attending the JJAEPs. Any unexpended or unobligated appropriations shall lapse at the end of fiscal year 2007 to the Foundation School Program.

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 D.1.1. Juvenile Justice Alternative Education Programs, a maximum of $500,000 in each year (for a maximum of 90 attendance days per child), is allocated for counties with a population of at least 72,000 which operate a JJAEP under the standards of Chapter 37, Texas Education Code. The county is eligible to receive funding from the Texas Juvenile Probation Commission at the rate of $59 per day per student for students who are required to be expelled under § 37.007, Texas Education Code, and who are expelled from a school district in a county that does not operate a JJAEP.

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

12. ***JJAEP Accountability***. Out of funds appropriated above in Strategy D.1.1, 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, 2006. The report shall include, but is not limited to, the following:

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

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

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

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

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

13. ***Training***. It is the intent of the Legislature that the Texas Juvenile Probation Commission provide training to local juvenile probation personnel and to local Juvenile Judges to maximize the appropriate place-

ment of juveniles according to the progressive sanction guidelines.

14. ***Unexpended Balances - Hold Harmless Provision***. Any unexpended balances as of August 31, 2006 in Strategy A.1.1. Basic Probation Services (estimated to be $200,000), and in Strategy B.1.1. Community Corrections Services (estimated to be $200,00), above are hereby appropriated to the Juvenile Probation Commission in fiscal year 2007 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 2006 and fiscal year 2007 refunds received from local juvenile probation departments by JPC are appropriated above in Strategy B.1.1, Community Corrections Services. Any Basic Probation refunds received in excess of $650,000 in fiscal year 2006 and $650,000 in fiscal year 2007 are hereby appropriated to JPC for the Level 5 Secure Correction Placement Program. Any Community Corrections refunds received in excess of $500,000 in fiscal year 2006 and fiscal year 2007 are hereby appropriated to JPC for the Level 5 Secure Correction Placement Program.

16. ***Reporting Requirements to the Legislative Budget Board (LBB)***. The Juvenile Probation Commission shall report juvenile probation data as requested by the Legislative Budget Board on a monthly basis for the most recent month available. JPC shall report to the Legislative Budget Board on all populations specified by the LBB, including, but not limited to, additions, releases, and end-of-month populations. End of fiscal year data shall be submitted indicating each reporting county to the LBB no later than two months after the close of each fiscal year.

17. ***Special Needs diversionary Programs***. Out of the funds appropriated above in Strategy B.1.5. Special Needs Diversionary Programs, $1,974,033 in fiscal year 2006 and $1,974,033 in fiscal year 2007 shall be used for specialized mental health caseloads. The agency shall use these funds to work in coordination with the Texas Correctional Office on Offenders with Medical or Mental Impairments (TCOOMMI), and local mental health services agencies, to provide specialized supervision caseloads to youth with mental illness.

79th Texas Legislature Appropriations to the Texas Youth Commission: TYC Must Tighten Belt, but Gets Some Appropriations Help

Dwight Harris
Executive Director

Reworking the funding formula for Texas schools and infusing additional money into Child Protective Services captured the appropriations headlines during the 79th legislative session. Those issues also absorbed most of the breathing room in the state's overall $139 billion budget for the 2006-2007 biennium.

The Texas Youth Commission (TYC) began the appropriations process by submitting a baseline budget that was 5% lower than the already tight 2003 budget. This reduction was required by the Governor and the Legislative Budget Board (LBB) for most state agencies. The good news is some of that funding was recovered, but not all. For the entire 2006-2007 biennium, lawmakers allocated a total of $490 million to TYC. Though the total fiscal year 2006 TYC budget will see an increase of about $12.1 million dollars, it is for specific uses and not general operations. In fact, the agency expects to have about $6.4 million dollars less for regular appropriations from the General Revenue Fund for fiscal year 2006, compared to the current fiscal year 2005 budget.

Eleven of TYC's 15 exceptional funding item requests were approved, enabling the agency to address specific and critical needs. Here are some of the highlights:

- $13.7 million to cover expenses for additional capacity. Between the time the agency's initial 2006-2007 base-line budget request was prepared and the time it was approved, the LBB's population projection for TYC increased by nearly 200 youth.

- $3 million for additional contract capacity to help establish a rate of 97.5% occupancy for youth populations in agency institutions. This occupancy level is similar to the Texas Department of Criminal Justice (TDCJ) funding assumptions and allows flexibility for managing populations and responding to unanticipated events, including emergency situations.

- $1.6 million for parole capacity was restored after the LBB had initially removed it from the introduced bill.

- $2.5 million was allocated for completion of a radio system upgrade.

- An estimated $9.8 million was approved for infrastructure repairs.

- Money was approved to create a professional development training academy to provide staff adequate training before being placed in direct youth care roles. This initiative is designed to strengthen behavioral intervention skills and help reduce employee turnover.

- An additional 9 positions at just under $1 million were approved for student vocational training facility programs and teachers. This item will help restore program services cut in previous sessions when 31 education positions were eliminated.

Exceptional items that were not approved include a telephone system upgrade and a request for funding for 20 additional substitute teachers. A special agency rider (Rider 21) allows for the funding of two exceptional items if the agency does not spend all of the money appropriated to it for contract care beds – maintenance and replacement of computers and enhancement of the caseworker career ladder.

Rider 21 requires TYC to average a rate of 97.5% occupancy in state-owned beds before contracting for bed space from outside sources over 350 beds for special purpose services (transitional beds, foster care, independent living, mother/baby beds) that cannot be provided within TYC institutions. The rider also allows the agency to contract for more beds in the event of emergencies (such as natural disasters, severe staffing shortages, and youth riots) that would otherwise result in unsafe operating conditions in TYC-operated facilities.

On a positive note, TYC employees will receive legislatively approved raises for state employees, 4% in FY 2006 and 3% in fiscal year 2007, with minimum raises of $100 per month and $50 per month, respectively.

The agency is always careful with expenditures, but this next biennium will be a special challenge requiring some cut-backs. As TYC develops the operating budget for fiscal year 2006, the hope is the agency will be able to spread the necessary cuts across enough spending categories so that no one area experiences a considerable reduction and no single TYC service to the citizens of Texas is jeopardized.

79th Texas Legislature Appropriations to the Department of Family and Protective Services: Juvenile Delinquency Prevention Services Information

Carey Cockerell
Commissioner

As a result of the 79th Legislature's appropriations, the Texas Department of Family and Protective Services (TDFPS) will receive significant funding increases for child abuse and juvenile delinquency prevention programs for Fiscal Years 2006 and 2007 (FY 06 and FY 07). The funding increase will be used to strengthen existing prevention programs as well as develop and support new community-based prevention programs. The Prevention and Early Intervention Division (PEI) of TDFPS will manage both the existing and newly developed programs.

The table below illustrates the agency's estimate of changes that will take place from FY 05 to FY 06 as a result of the recently passed state appropriation:

Program	***Funding***			***Clients Served***		
	FY 05	FY 06	Change	FY 04[1]	FY 06	Change
STAR	$17,981,566	$21,030,805	+16.96%	27,409	32,058	+16.96%
CYD	$ 6,685,992	$ 7,897,598	+18.12	22,026	26,017	+18.12%
Other At-Risk Prevention Services[2]	N/A[3]	$ 4,672,801	N/A	N/A	N/A	N/A

[1] FY 04 client data is used for comparison since FY 05 data is not yet available

[2] A new budget strategy to fund other child abuse and/or juvenile delinquency prevention programs

[3] During FY 2005, the Dan Kubiak Buffalo Soldiers Program was funded at $250,000. In FY 06, providers of those services may choose to compete for funding in the newly created "Other At-Risk Prevention Services" budget strategy.

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 under the age of 18 who experience conflict at home, have been truant or delinquent, or have run away. In addition, the STAR program supports a variety of universal child abuse prevention activities. STAR services are currently available in all 254 Texas counties.

Community Youth Development (CYD)

The CYD program contracts with local agencies and organizations to develop juvenile delinquency prevention programs in ZIP code areas that have high juvenile crime rates. 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. TDFPS has awarded contracts to 15 targeted communities. DFPS provides ongoing training and technical assistance for all local CYD programs.

Other At-Risk Prevention Programs

TDFPS will competitively procure other community-based child abuse prevention and juvenile delinquency prevention services. The Department anticipates a variety of agencies and organizations will compete for the funding under this strategy, including current providers of Dan Kubiak Buffalo Soldiers services.

1. Title 3 and Related Provisions

Family Code § 51.02. Definitions.

(16) "Traffic offense" means:

(A) a violation of a penal statute cognizable under Chapter 729, Transportation Code, except for conduct for which the person convicted may be sentenced to imprisonment or confinement in jail[~~:~~

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

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

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

[~~(iv) 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 Ryan Kellus Turner

Source: HB 1575
Effective Date: September 1, 2005
Applicability: Conduct that occurs on or after the effective date.
Summary of Changes: Section 51.02(16), Family Code, to redefine "traffic offense" in the Juvenile Justice Code by excluding from its definition any offense that is punishable by incarceration.

While most "traffic offenses" are fine-only offenses, some are punishable by incarceration. Yet, "traffic offenses" (with a few statutory exceptions) have historically been excluded from the jurisdiction of juvenile courts. This resulted in problematic situations where no court would have apparent jurisdiction of certain "jailable" traffic offenses involving juveniles. This was recently illustrated in Texas Attorney General Opinion GA-0157 where, through debatable construction, it was opined that municipal and justice courts had jurisdiction of street racing offenses involving juveniles even though they were not fine-only offenses. In an effort to appease critics of Attorney General Opinion GA-0157, and to prevent similar jurisdictional problems in the future, this amendment makes it clear that juvenile courts have jurisdiction of all traffic offenses that are not fine-only offenses.

§ 51.03. Delinquent Conduct; Conduct Indicating A Need For Supervision.

(d) It is an affirmative defense to an allegation of conduct under Subsection (b)(2) that one or more of the absences required to be proven under that subsection have been excused by a school official or [~~should be excused~~] by the court or that one or more of the absences were [~~was~~] involuntary, but only if there is an insufficient number of unexcused or voluntary absences remaining to constitute conduct under Subsection (b)(2). The burden is on the respondent to show by a preponderance of the evidence that the absence has been or should be excused or that the absence was involuntary. A decision by the court to excuse an absence for purposes of this subsection does not affect the ability of the school district to determine whether to excuse the absence for another purpose.

Commentary by Ryan Kellus Turner

Source: HB 1575
Effective Date: September 1, 2005
Applicability: Conduct that occurs on or after the effective date.
Summary of Changes: This provision amends Section 51.03(d), Family Code, to clarify that the affirmative defense of excused absences or involuntary absences in a civil truancy proceeding in a juvenile court is effective only when there are insufficient unexcused or voluntary absences remaining to constitute a violation of law.

Similarly, Section 37 of the bill amends Section 25.094(f), Education Code, to conform to the change in Section 2 of the bill to clarify that in criminal failure to attend school charges (filed in municipal, justice, or other designated courts in which proceedings are governed by Chapter 45 of the Code of Criminal Procedure), the affirmative defense of excused absences or involuntary absences applies to defeat the charges only when there are insufficient unexcused and voluntary absences remaining to constitute a violation of law.

Section 53 of the Bill.

The legislature finds in relationship to Section 51.07, Family Code, as amended by this Act, and Sections 51.071, 51.072, 51.073, 51.074, and 51.075, Family Code, as added by this Act, that:

(1) children and families in Texas are becoming increasingly mobile and children on probation frequently move to other counties in the state;

(2) when children on probation move from one county to another, it is in the interests of the child, the child's family, and society that probation supervision continue with as little interruption as possible;

(3) if a child on probation in a county to which probation has been transferred violates a condition of probation, the transfer should not impede appropriate legal consequences for the violation;

(4) numerous issues are raised by transfer of probation between counties that are not currently addressed by law but that should be resolved;

(5) the county to which supervision has been transferred should provide similar supervision and services to
transferred children as is provided to children adjudicated in that county; and

(6) the current informal system of courtesy supervision provides neither the assistance to the child nor the
protection of the public that should be provided.

Commentary by Robert Dawson and Lisa Capers

Source: HB 1575
Effective Date: September 1, 2005
Applicability: Conduct occurring on or after the effective date.
Summary of Changes: These legislative findings in Section 53 of the bill are designed to aid officials who operate the juvenile justice system and the trial and appellate courts in interpreting the new provisions in the Family Code regarding interim and permanent supervision, the new procedures replacing courtesy supervision in Texas.

§ 51.07. Transfer To Another County For Disposition.

[~~(a)~~] When a child has been found to have engaged in delinquent conduct or conduct indicating a need for supervision under Section 54.03 [~~of this code~~], the juvenile court[~~, with the consent of the child and appropriate adult given in accordance with Section 51.09 of this code,~~] may transfer the case and transcripts of records and documents to the juvenile court of the county where the child resides for disposition of the case under Section 54.04 [~~of this code~~]. Consent by the court of the county where the child resides is not required.

[~~(b) When a child who is on probation moves with his family from one county to another, the juvenile court may transfer the case to the juvenile court in the county of the child's new residence if the transfer is in the best interest of the child. In all other cases of transfer, consent of the receiving court is required. The transferring court shall forward transcripts of records and documents in the case to the judge of the receiving court.~~]

Commentary by Robert O. Dawson & Lisa Capers

Source: HB 1575
Effective Date: September 1, 2005
Applicability: Transfers applicable to conduct that occurs on or after the effective date.
Summary of Changes: This section is amended to speak only to transfer of cases to a different county for disposition. The first amendment in old Subsection (a) eliminates the requirement that the child consent to transfer for disposition in the child's county of residence. The second amendment restates current law: The county of residence to which a case is transferred for disposition has no right to refuse to receive the transfer.

Subsection (b) is repealed, since it is the subject of the next few new sections.

§ 51.071. Transfer Of Probation Supervision Between Counties: Courtesy Supervision Prohibited.

Except as provided by Section 51.075, a juvenile court or juvenile probation department may not engage in the practice of courtesy supervision of a child on probation.

Commentary by Robert O. Dawson and Lisa Capers

Source: HB 1575
Effective Date: September 1, 2005
Applicability: Courtesy supervision is prohibited for conduct that occurs on or after the effective date.
Summary of Changes: In the summer of 2004, the Texas Juvenile Probation Commission (TJPC) sponsored an interim workgroup to address the issues surrounding courtesy supervision of probationers in Texas. This workgroup was co-chaired by the late Professor Robert Dawson and Chief Juvenile Probation Officer Mike Meade from Ft. Bend County. The workgroup met in Austin three times during the summer of 2004 and was composed of approximately 42 juvenile justice professionals including probation officers, prosecutors, defense attorneys, judges and agency staff. The workgroup analyzed the use of courtesy supervision in Texas and the related issues and problems surrounding its use.

In calendar year 2003, there were 1712 cases placed under informal courtesy supervision arrangements and 647 transfers of jurisdiction to supervise probation in Texas. Thus, in 2003 almost 2400 children were placed on supervision in a county other than the county where they were originally placed on probation. In that same year, over 3700 children were being supervised by courtesy supervision or transfer of supervision.

In reviewing the statistics and analyzing the courtesy supervision process, the workgroup brought to light many problems with the current law. In some situations because of the lack of legal regulation of this process, children on probation were residing in a county without probation supervision from either the county where they were placed on probation or the county where they were currently residing. These children were not absconders, but fell through the cracks of the system and were not being provided the supervision and services they should

have received. The workgroup addressed all these concerns in their proposed statutory package. The recommendations of this workgroup were presented to legislators in the proposed juvenile justice omnibus bill which became HB 1575.

This section is the first of several new sections in the courtesy supervision re-write and it abolishes the use of the practice commonly known as courtesy supervision for offenses or conduct engaged in on or after September 1, 2005, the effective date of this legislation. Courtesy supervision and transfer of probation supervision will be replaced then by a new system composed of a combination of interim supervision and permanent supervision, as spelled out in the sections that follow.

§ 51.072. Transfer of Probation Supervision Between Counties: Interim Supervision.

(a) In this section:

(1) "Receiving county" means the county to which a child on probation has moved or intends to move.

(2) "Sending county" means the county that:

(A) originally placed the child on probation; or

(B) assumed permanent supervision of the child under an inter-county transfer of probation supervision.

(b) When a child on probation moves or intends to move from one county to another and intends to remain in the receiving county for at least 60 days, the juvenile probation department of the sending county shall request that the juvenile probation department of the receiving county provide interim supervision of the child.

(c) The juvenile probation department of the receiving county may refuse the request to provide interim supervision only if:

(1) the residence of the child in the receiving county is in a residential placement facility arranged by the sending county; or

(2) the residence of the child in the receiving county is in a foster care placement arranged by the Department of Family and Protective Services.

(d) The juvenile probation department of the sending county shall initiate the request for interim supervision by electronic communication to the probation officer designated as the inter-county transfer officer for the juvenile probation department of the receiving county or, in the absence of this designation, to the chief juvenile probation officer.

(e) The juvenile probation department of the sending county shall provide the juvenile probation department of the receiving county with the following information in the request for interim supervision initiated under Subsection (d):

(1) the child's name, sex, age, and date of birth;

(2) the name, address, date of birth, and social security or driver's license number of the person with whom the child proposes to reside or is residing in the receiving county;

(3) the offense for which the child is on probation;

(4) the length of the child's probation term;

(5) a brief summary of the child's history of referrals;

(6) a brief statement of any special needs of the child; and

(7) the reason for the child moving or intending to move to the receiving county.

(f) Not later than five business days after a receiving county has agreed to provide interim supervision of a child, the juvenile probation department of the sending county shall provide the juvenile probation department of the receiving county with a copy of the following documents:

(1) the petition and the adjudication and disposition orders for the child, including the child's thumbprint;

(2) the child's conditions of probation;

(3) the social history report for the child;

(4) any psychological or psychiatric reports concerning the child;

(5) the Department of Public Safety CR 43J form or tracking incident number concerning the child;

(6) any law enforcement incident reports concerning the offense for which the child is on probation;

(7) any sex offender registration information concerning the child;

(8) any juvenile probation department progress reports concerning the child and any other pertinent documentation for the child's probation officer;

(9) case plans concerning the child;

(10) the Texas Juvenile Probation Commission standard assessment tool results for the child;

(11) the computerized referral and case history for the child, including case disposition;

(12) the child's birth certificate;

(13) the child's social security number or social security card, if available;

(14) the name, address, and telephone number of the contact person in the sending county's juvenile probation department;

(15) Title IV-E eligibility screening information for the child, if available;

(16) the address in the sending county for forwarding funds collected to which the sending county is entitled;

(17) any of the child's school or immunization records that the juvenile probation department of the sending county possesses; and

(18) any victim information concerning the case for which the child is on probation.

(g) The juvenile probation department of the receiving county shall supervise the child under the probation conditions imposed by the sending county and provide services similar to those provided to a child placed on probation under the same conditions in the receiving county. On request of the juvenile probation department of the receiving county, the juvenile court of the receiving county may modify the original probation conditions and impose new conditions using the procedures in Section 54.05. The juvenile court of the receiving county may not modify a financial probation condition imposed by the juvenile court of the sendingcounty or the length of the child's probation term. The juvenile court of the receiving county shall designate a cause number for identifying the modification proceedings.

(h) The juvenile court of the sending county may revoke probation for a violation of a condition imposed by the juvenile court of the sending county only if the condition has not been specifically modified or replaced by the juvenile court of the receiving county. The juvenile court of the receiving county may revoke probation for a violation of a condition of probation that the juvenile court of the receiving county has modified or imposed.

(i) If a child is reasonably believed to have violated a condition of probation imposed by the juvenile court of the sending county, the juvenile court of the sending or receiving county may issue a directive to apprehend or detain the child in a certified detention facility, as in other cases of probation violation. In order to respond to a probation violation under this subsection, the juvenile court of the receiving county may:

(1) modify the conditions of probation or extend the probation term; or

(2) require that the juvenile probation department of the sending county resume direct supervision for the child.

(j) On receiving a directive from the juvenile court of the receiving county under Subsection (i)(2), the juvenile probation department of the sending county shall arrange for the prompt transportation of the child back to the sending county at the expense of the sending county.

(k) The juvenile probation department of the receiving county is entitled to any probation supervision fees collected from the child or the child's parent while providing interim supervision for the child.

(l) The sending county is financially responsible for any special treatment program or placement that the juvenile court of the sending county requires as a condition of probation if the child's family is financially unable to pay for the program or placement.

(m) Except as provided by Subsection (n), a period of interim supervision may not exceed 180 days. Permanent supervision automatically transfers to the juvenile probation department of the receiving county after the expiration of the period of interim supervision. The juvenile probation department of the receiving county may request permanent supervision from the juvenile probation department of the sending county at any time before the 180-day interim supervision period expires.

(n) Notwithstanding Subsection (m), the period of interim supervision of a child who is placed on probation under Section 54.04(q) does not expire until the child has satisfactorily completed one-third of the term of probation, including one-third of the term of any extension of the probation term ordered under Section 54.05. Permanent supervision automatically transfers to the probation department of the receiving county after the expiration of the period of interim supervision under this subsection. The juvenile court of the sending county may order transfer of the permanent supervision before the expiration of the period of interim supervision under this subsection.

(o) At least once every 90 days during the period of interim supervision, the juvenile probation department of the receiving county shall provide the juvenile probation department of the sending county with a progress report of supervision concerning the child.

Commentary by Robert O. Dawson and Lisa Capers

Source: HB 1575
Effective Date: September 1, 2005
Applicability: Conduct that occurs on or after the effective date.
Summary of Changes: The biggest change made by this proposal is to replace courtesy supervision and transfer of supervision with interim supervision and permanent supervision. The task facing the workgroup and ultimately the legislature was to determine when a child "becomes" the child of the supervising county because of a change of residence. Even though the delinquent conduct or CINS was committed elsewhere, when is it fair to impose the burdens and expenses of supervision on the county of residence?

At the workgroup's recommendation, the legislature settled on 180 days as the appropriate time. If a child on probation has moved to a different county and has lived there for 180 days, then it becomes fair to regard that child as "belonging" to the county of his or her new residence. That means it is fair to require that county to assume the burdens and financial responsibilities of permanent supervision. Until that time, however, the residence arrangement is regarded as tentative or transient and the child will be supervised under an arrangement for interim supervision.

It is contemplated that all cases of permanent supervision will begin as cases of interim supervision but will be automatically converted to cases of permanent supervision after 180 days. An exception is made for youth on determinate sentence probation in the sending county for whom automatic transfer of permanent supervision does not occur until after satisfactory completion of one third of the probation term per Subsection (n).

New Section 51.072 contains the mechanics of the new system and spells out in detail how the new proce-

dures work. Subsection (a) defines sending county and receiving county. The sending county can be either the county that originally placed the child on probation or the county that assumes permanent supervision under an inter-county transfer when the child moves.

Subsection (b) obligates a juvenile probation department supervising a child to request another probation department to provide interim supervision of a probationer who has moved into the county or intends to move into the county. The statute provides an exception for brief stays in another county of less than 60 days from this requirement to exclude arrangements such as summer visits with a parent or grandparent, time in another county in a camp, etc. In stays of such short duration, the county of original jurisdiction can supervise the child indirectly. Except for stays of less than 60 days, it is mandatory that the sending county request that the receiving county provide interim supervision of the child. No child should be residing in a county for more than two months without direct supervision being provided by the local probation department.

Subsection (c) obligates the receiving county to provide interim supervision whether the child has moved to the county with his family or not. The county is permitted to refuse interim supervision only under the narrow circumstances identified by Subdivisions (1) and (2) which include if the child is in a residential placement facility or a foster care placement through the Texas Department of Family and Protective Services (TDFPS).

Subsection (d) requires that the request for interim supervision must be initiated by electronic communication, including telephone, email, or fax. The request should be directed to the probation officer designated by the chief juvenile probation officer as the "inter-county transfer officer" or, in the absence of such a designation, to the chief. TJPC will provide a state-wide web-based database of contact information for officers designated as inter-county transfer officers. This information will be available on the TJPC website at www.tjpc.state.tx.us shortly after September 1, 2005.

Subsection (e) specifies the information that must accompany the request, while subsection (f) specifies those documents from the clerk's file and the probation department's files that must be sent to the receiving county once it has agreed to accept interim supervision of the child. This transfer of information must happen within 5 days of agreeing to provide interim supervision.

Subsection (g) provides that the ground rules for interim supervision are the conditions of probation established by a juvenile court in the sending county unless and until they are changed by a juvenile court in the receiving county. In the courtesy supervision informal practice, the supervising department was stuck with the conditions imposed by the sending county, whether they fit current needs or not. However, under interim supervision, the probation department can ask the juvenile court to modify or supplement those conditions with conditions of its own. Under this authorization, the juvenile court in the receiving county could replace all of the sending county's probation conditions with those of its own, many of which might be identical. The judicial mechanism for modifying these conditions is a motion to modify under Section 54.05. The child is entitled to be represented by counsel at a hearing under Section 54.05, but counsel is not mandatory since revocation is not being sought. Under Section 54.05, it would also be possible for the child and a parent to waive a court hearing on the modification request.

Subsection (h) allocates authority to revoke probation. If the violation was of an unmodified and unreplaced condition imposed by the sending county, only a court in that sending county has the authority to revoke. If the violation was of a condition modified or imposed by the receiving county, then only that receiving court can revoke.

Subsection (i) provides that if the violation is of a sending county probation condition, the sending or receiving county can detain the child in its facility, as in other cases of probation violation. The receiving county may respond to the violation by modifying or extending the probation term (but not by revocation) or may require the sending county to resume direct supervision of the child. In the latter event, the sending county must resume custody of the child and, as provided in Subsection (j), transport him or her back to the sending county.

If the violation is of a probation condition modified or imposed by the receiving county, then normal procedures for detention and modification/revocation apply, as in any other case of violation of a condition of probation.

Subsection (k) entitles the receiving county to any probation supervision fees collected from the child or the child's parent while providing interim supervision of the child.

Subsection (l) obligates the sending county to pay for any special treatment or placement it has required by its own probation conditions.

Subsection (m) terminates interim supervision at 180 days. After the child has resided in the receiving county for 180 days, permanent supervision automatically transfers to the receiving county. Section 51.073 sets out the features of permanent supervision. An exception is made in Subsection (n) for youth on determinate sentence probation for whom permanent supervision does not transfer until after satisfactory completion of one-third of the probation term, including one-third of the term of any extensions. The sending court is given the discretion to order an earlier transfer.

Subsection (o) requires that a progress report must be provided to the sending county every ninety days during interim supervision.

§ 51.073. Transfer Of Probation Supervision Between Counties: Permanent Supervision.

(a) In this section:

(1) "Receiving county" means the county to which a child on probation has moved or intends to move.

(2) "Sending county" means the county that:

(A) originally placed the child on probation; or

(B) assumed permanent supervision of the child under an inter-county transfer of probation supervision.

(b) On transfer of permanent supervision of a child under Section 51.072(m) or (n), the juvenile court of the sending county shall order the juvenile probation department of the sending county to provide the juvenile probation department of the receiving county with the order of transfer. On receipt of the order of transfer, the juvenile probation department of the receiving county shall ensure that the order of transfer, the petition, the order of adjudication, the order of disposition, and the conditions of probation are filed with the clerk of the juvenile court of the receiving county.

(c) The juvenile court of the receiving county shall require that the child be brought before the court in order to impose conditions of probation. The child shall be represented by counsel as provided by Section 51.10.

(d) Once permanent supervision is transferred to the juvenile probation department of the receiving county, the receiving county is fully responsible for selecting and imposing conditions of probation, providing supervision, modifying conditions of probation, and revoking probation. The sending county has no further jurisdiction over the child's case.

(e) This section does not affect the sending county's jurisdiction over any new offense committed by the child in the sending county.

Commentary by Robert O. Dawson and Lisa Capers

Source: HB 1575
Effective Date: September 1, 2005
Applicability: Conduct that occurs on or after the effective date.
Summary of Changes: Compared to interim supervision, the terms of permanent supervision are easy to state. The entire responsibility for supervising the probationer is assumed by the receiving county, as in the case of transfer of jurisdiction under current law. Thereafter, all legal relationship between the sending county and the supervision of the child is permanently severed. This section attempts to streamline the process of transferring permanent supervision.

Subsection (a) defines the sending and receiving counties. The receiving county is the county to where the child on probation moves or intends to move. The sending county is either the county that originally placed the child on probation or the county that assumed permanent supervision of the child under an inter-county transfer of probation supervision.

Subsection (b) requires the juvenile court to enter an order of transfer to be sent by the sending juvenile probation department to the juvenile probation department in the receiving county. Upon receipt, the probation department must file the necessary documents with the juvenile court's clerk of court.

Subsection (c) requires an "arraignment" of the child before the juvenile court of the receiving county. At that proceeding, the juvenile court will impose conditions of permanent supervision. Since this is a dispositional proceeding under Section 54.04, there is a mandatory right to counsel at that proceeding. At the conclusion of that court appearance, the child "belongs" to the receiving county.

Subsection (d) provides that full authority and responsibility thereafter rests with the receiving county and the sending county has no further legal relationship to the case.

§ 51.074. Transfer Of Probation Supervision Between Counties: Deferred Prosecution.

A juvenile court may transfer interim supervision, but not permanent supervision, to the county where a child on deferred prosecution resides.

Commentary by Robert O. Dawson and Lisa Capers

Source: HB 1575
Effective Date: September 1, 2005
Applicability: Conduct that occurs on or after the effective date.
Summary of Changes: This section permits interim supervision to be transferred when a child on deferred prosecution resides in or moves to a different county. Permanent supervision is not authorized, since the maximum term of deferred prosecution is 180 days.

§ 51.075. Collaborative Supervision Between Adjoining Counties.

(a) If a child who is on probation in one county spends substantial time in an adjoining county, including residing, attending school, or working in the adjoining county, the juvenile probation departments of the two counties may enter into a collaborative supervision arrangement regarding the child.

(b) Under a collaborative supervision arrangement, the juvenile probation department of the adjoining county may authorize a probation officer for the county to provide supervision and other services for the child as an agent of the juvenile probation department of the county in which the child was placed on probation. The probation officer providing supervision and other services for the child in the adjoining county shall provide the probation officer supervising the child in the county

in which the child was placed on probation with periodic oral, electronic, or written reports concerning the child.

(c) The juvenile court of the county in which the child was placed on probation retains sole authority to modify, amend, extend, or revoke the child's probation.

Commentary by Robert O. Dawson and Lisa Capers

Source: HB 1575
Effective Date: September 1, 2005
Applicability: Collaborative supervision agreements for conduct that occurs on or after the effective date.
Summary of Changes: This section authorizes a limited form of "courtesy supervision" that addresses a special situation in which the child is being supervised by the probation department in one county but spends substantial time in an adjoining county. The child and society benefit if the child is being supervised in the county where he spends his time as well as in the county that placed him on probation. Currently, these collaborative arrangements are handled informally as a species of courtesy supervision. But because courtesy supervision is abolished by Section 51.071(b), it was necessary to give statutory recognition to this beneficial practice. Because we are dealing with adjoining counties, there is no justification for a transfer of supervision from one county to another—effective direct supervision can be provided by the county that placed the child on probation even if a substantial part of his or her time is spent in an adjoining county.

Under this section, the probation departments in two adjoining counties can agree that the county wherein the child spends time agrees to provide collaborative supervision of a child. The probation officer providing the collaborative supervision must provide the home county with periodic reports (i.e., oral, electronic or written) on the child. The county that placed the child on probation is the only county that can modify the probation terms.

§ 51.095. Admissibility of a Statement of a Child.

(a) Notwithstanding Section 51.09, the statement of a child is admissible in evidence in any future proceeding concerning the matter about which the statement was given if:

(1) the statement is made in writing under a circumstance described by Subsection (d) and:

(A) the statement shows that the child has at some time before the making of the statement received from a magistrate a warning that:

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

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

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

(iv) the child has the right to terminate the interview at any time;

(B) and:

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

(ii) the magistrate must be fully convinced that the child understands the nature and contents of the statement and that the child is signing the same voluntarily, and if a statement is taken, the magistrate must sign a written statement verifying the foregoing requisites have been met;

(C) the child knowingly, intelligently, and voluntarily waives these rights before and during the making of the statement and signs the statement in the presence of a magistrate; and

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

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

(3) the statement was res gestae of the delinquent conduct or the conduct indicating a need for supervision or of the arrest;

(4) the statement is made:

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

(B) before a grand jury considering a petition, under Section 53.045, that the child engaged in delinquent conduct; or

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

(5) subject to Subsection (f), the statement is made orally under a circumstance described by Subsection (d) and the statement is recorded by an electronic

recording device, including a device that records images, and:

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

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

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

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

(f) A magistrate who provides the warnings required by Subsection (a)(5) for a videotaped statement may at the time the warnings are provided request by speaking on the tape recording that the officer return the child and the videotape to the magistrate at the conclusion of the process of questioning. The magistrate may then view the videotape with the child or have the child view the videotape to enable the magistrate to determine whether the child's statements were given voluntarily. If a magistrate uses the procedure described by this subsection, a child's statement is not admissible unless the magistrate determines that the statement was given voluntarily.

Commentary by Ryan Kellus Turner

Source: HB 1575
Effective Date: September 1, 2005
Applicability: Conduct that occurs on or after the effective date.
Summary of Changes: This provision amends Section 51.095, Family Code by adding Subsection (f), to authorize a magistrate who is giving juvenile warnings for a videotaped interrogation to require the law enforcement officer to return the child and videotape to the magistrate for a determination of voluntariness. If a magistrate uses this procedure, a child's statement is not admissible unless the magistrate determines that the statement was given voluntarily.

Under the former law, children whose confessions were recorded by mechanical means were not provided the benefit of a magistrate's determination of voluntariness. Such determinations are made when a juvenile's confession is made in writing. Subsection (f) permits, but does not require, a magistrate who is giving juvenile warnings for a videotaped interrogation to require the officer to return the child and videotape to the magistrate for a determination of voluntariness. It is anticipated that magistrates will use this authority sparingly and only in cases where there may be reason for concern about the child's capacity for making a voluntary statement.

§ 51.17. Procedure and Evidence.

(g) Articles 21.07, 26.07, 26.08, 26.09, and 26.10, Code of Criminal Procedure, relating to the name of an adult defendant in a criminal case, apply to a child in a proceeding held under this title.

Commentary by Lisa Capers

Source: HB 1575
Effective Date: September 1, 2005
Applicability: Pleadings for conduct that occurs on or after the effective date.
Summary of Changes: This new Subsection (g) provides that certain articles in the Code of Criminal Procedure now apply in a juvenile proceeding. These provisions relate to names alleged in a pleading, ensuring that failure to disclose a true name cannot be used as a defense. The specific articles include Articles 21.07 [Allegation of Name], 26.07 [Name as Stated in Indictment], 26.08 [If Defendant Suggests Different Name], 26.09 [If Accused Refuses to Give His Real Name], and 26.10 [Where Name is Unknown].

§ 51.20. Physical or Mental Examination.

(c) If, while a child is under deferred prosecution supervision or court-ordered probation, a qualified professional determines that the child has a mental illness or mental retardation and the child is not currently receiving treatment services for the mental illness or mental retardation, the probation department shall refer the child to the local mental health or mental retardation authority for evaluation and services.

(d) A probation department shall report each referral of a child to a local mental health or mental retardation authority made under Subsection (b) or (c) to the Texas Juvenile Probation Commission in a format specified by the commission.

(e) At any stage of the proceedings under this title, the juvenile court may order a child who has been referred to the juvenile court or who is alleged by the petition or found to have engaged in delinquent conduct or conduct indicating a need for supervision to be subjected to a physical examination by a licensed physician.

Commentary by Lisa Capers

Source: HB 1575
Effective Date: September 1, 2005
Applicability: Examinations and referrals that are made on or after the effective date without regard to whether any prior event connected to the proceeding, action, or decision occurred before the effective date.
Summary of Changes: The additions in Subsections (c) and (d) require the juvenile probation department to refer a child to the local mental health or mental retardation authority if it is determined by a mental health professional (e.g., in a psychological exam prior to placement,

school records, etc.) that the child has a mental illness or mental retardation. TJPC will collect data on how many of these referrals are made to the local mental health and mental retardation authority to compare against the mental health agencies' data in an effort to determine what percentage of these youth with documented treatment needs are being served. The data will be collected electronically by TJPC using Caseworker and the Electronic Data Interchange (EDI) specifications for counties that do not utilize Caseworker.

Subsection (e) corrects an erroneous deletion of a previous section in the Texas Family Code. When Section 51.20 was amended in 2003 to conform to changes made in the Code of Criminal Procedure dealing with competency to stand trial for adults, the legislature inadvertently repealed language that specifically authorized the juvenile court to order physical examinations of children in the system. The amendment adding Subsection (e) recodifies the inherent authority of juvenile courts to order physical examinations, which are necessary in admitting children to programs, such as correctional boot camps, that require physical endurance.

§ 51.21. Mental Health Screening and Referral.

(a) A probation department that administers the mental health screening instrument or clinical assessment required by Section 141.042(e), Human Resources Code, shall refer the child to the local mental health authority for assessment and evaluation if:

(1) the child's scores on the screening instrument or clinical assessment indicate a need for further mental health assessment and evaluation; and

(2) the department and child do not have access to an internal, contract, or private mental health professional.

(b) A probation department shall report each referral of a child to a local mental health authority made under Subsection (a) to the Texas Juvenile Probation Commission in a format specified by the commission.

Commentary by Lisa Capers

Source: HB 1575
Effective Date: September 1, 2005
Applicability: Referrals that are made on or after the effective date without regard to whether any prior event connected to the proceeding, action, or decision occurred before the effective date.
Summary of Changes: New Section 51.21 requires a juvenile probation department to refer a youth to the local mental health authority if the youth's scores on the required mental health screening instrument (i.e., MAYSI-2) or clinical assessment indicate the need for further assessment and if the probation department or the youth do not have access to another mental health professional. The probation department must notify TJPC of each such referral. The screening instrument data will be collected electronically by TJPC using Caseworker and the Electronic Data Interchange (EDI) specifications for counties that do not utilize Caseworker. Data related to clinical assessments will be collected in a format to be specified by TJPC before September 1, 2005.

§ 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;

(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; or

(6) by a probation officer if there is probable cause to believe that the child has violated a condition of release imposed by the juvenile court or referee under Section 54.01.

Commentary by Robert O. Dawson and Lisa Capers

Source: HB 1575
Effective Date: September 1, 2005
Applicability: Custody events applicable to conduct that occurs on or after the effective date.
Summary of Changes: This new subsection authorizes a probation officer to take a child into custody for a violation of conditions of release from detention imposed by the juvenile court or the referee. Where the associate judge or judge releases a juvenile upon certain conditions under Section 54.01, a probation officer is now able to take the child into custody if there is probable cause to believe the child violated the conditions of release, without having to first obtain a directive to apprehend. The detention intake officer then has an opportunity to reassess whether the child should be detained under the detain-or-release criteria, given the violation of the conditions.

This is consistent with the probation officer's authority under Section 52.01 to take a child into custody with probable cause to believe a probation condition had

been violated. Requiring the officer to write an affidavit related to a violation of a condition or release from detention and deliver it to a court to obtain a directive slows down the process, adds no protections for the child, and burdens a system already overburdened with paperwork that detracts from field work.

§ 52.0151. Bench Warrant; Attachment of Witness in Custody.

(a) If a witness is in a placement in the custody of the Texas Youth Commission, a juvenile secure detention facility, or a juvenile secure correctional facility, the court may issue a bench warrant or direct that an attachment issue to require a peace officer or probation officer to secure custody of the person at the placement and produce the person in court. Once the person is no longer needed as a witness, the court shall order the peace officer or probation officer to return the person to the placement from which the person was released.

(b) The court may order that the person who is the witness be detained in a certified juvenile detention facility if the person is younger than 17 years of age. If the person is at least 17 years of age, the court may order that the person be detained without bond in an appropriate county facility for the detention of adults accused of criminal offenses.

Commentary by Neil Nichols

Source: HB 1575
Effective Date: September 1, 2005
Applicability: Bench warrants issued on or after the effective date without regard to whether any prior event connected with them occurred before the effective date.
Summary of Changes: This new section expressly authorizes the issuance of a bench warrant for securing youth witnesses who are confined in TYC or in other secure correctional facilities or in secure detention facilities. This is the usual practice for securing inmate witnesses from adult prisons and jails. A law enforcement or probation officer is responsible for transportation to and from the facility. Subsection (b) expressly authorizes the youth to be held in the county juvenile detention facility or, if at least age 17, in the county jail pending appearance as a witness. The same provision was added in Article 24.011, Code of Criminal Procedure.

§ 53.03. Deferred Prosecution.

(k) In deciding whether to grant deferred prosecution under Subsection (i), the court may consider professional representations by the parties concerning the nature of the case and the background of the respondent. The representations made under this subsection by the child or counsel for the child are not admissible against the child at trial should the court reject the application for deferred prosecution.

Commentary by Neil Nichols

Source: HB 1575
Effective Date: September 1, 2005
Applicability: Judicial proceedings on or after the effective date without regard to whether any prior event connected with them occurred before the effective date.
Summary of Changes: Under provisions enacted in 2003, the juvenile court was authorized to place a youth on deferred prosecution for up to a year. This new subsection permits the court to learn about the offense and the youth when asked to enter such an order. The information must be obtained before jeopardy attaches in the case. Any representations made by the youth or the youth's attorney are inadmissible against the youth at trial should the court deny the deferred prosecution.

§ 54.01. Detention Hearings.

(q-1) The juvenile board may impose an earlier deadline than the specified deadlines for filing petitions under Subsection (q) and may specify the consequences of not filing a petition by the deadline the juvenile board has established. The juvenile board may authorize but not require the juvenile court to release a respondent from detention for failure of the prosecutor to file a petition by the juvenile board's deadline.

Commentary by Neil Nichols

Source: HB 1575
Effective Date: September 1, 2005
Applicability: Juvenile board directives on or after the effective date without regard to whether any prior event connected with them occurred before the effective date.
Summary of Changes: This new subsection authorizes the juvenile board to impose shorter filing deadlines than those provided in this section (generally 30 days for first degree felonies and 15 days for other offenses) when a youth has not been released after an initial detention hearing has been held and a petition has not yet been filed. It may specify consequences for not meeting its deadline. It may authorize, but not require, a juvenile court to release a youth from detention if the deadlines are not met.

§ 54.012. Interactive Video Recording of Detention Hearing.

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

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

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

Commentary by Neil Nichols

Source: HB 1575
Effective Date: September 1, 2005
Applicability: Detention hearings on or after the effective date without regard to whether any prior event connected with them occurred before the effective date.
Summary of Changes: In light of the protections required to authorize video recording of detention hearings under this section, including waiver of the right to an in-person hearing by the youth and his/her attorney, there is no reason not to authorize video hearings for initial detention hearings as well as subsequent ones.

§ 54.0408. Referral of Child Exiting Probation to Mental Health or Mental Retardation Authority.

A juvenile probation officer shall refer a child who has been determined to have a mental illness or mental retardation to an appropriate local mental health or mental retardation authority at least three months before the child is to complete the child's juvenile probation term unless the child is currently receiving treatment from the local mental health or mental retardation authority of the county in which the child resides.

Commentary by Lisa Capers

Source: HB 1575
Effective Date: September 1, 2005
Applicability: Mental Health referrals that are made on or after the effective date without regard to whether any prior event connected to the proceeding, action, or decision occurred before the effective date.
Summary of Changes: New Section 54.0408 requires the juvenile probation department to refer a child with a mental illness or mental retardation to the local mental health or mental retardation authority at least three months prior to the term of probation expiring unless the child is already being treated by the local mental health or mental retardation authority in the county where the child resides. The goal here is to transition the youth into the community and secure the link to community based mental health or mental retardation services the youth will need after exiting probation.

§ 54.05. Hearing to Modify Disposition.

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

(1) shall include in the court's order a determination that:

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

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

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

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

Commentary by Wesley Shackelford

Source: HB 1575
Effective Date: September 1, 2005
Applicability: Modification hearings held on or after the effective date without regard to whether any prior event connected to the proceeding, action, or decision occurred before the effective date.
Summary of Changes: This amendment requires the inclusion of certain findings in a juvenile court modification order that places a child on probation outside the home or commits the child to TYC. Currently these findings are required to be made by a judge in a disposition hearing under Section 54.04 prior to removing a child from home. This amendment requires these same findings be made by a judge when modifying a prior disposition to order the child's removal from home. Former Justice Schneider, of the Supreme Court of Texas, made a recommendation that this change be made by the legislature in a concurring opinion joined by Justices O'Neill and Jefferson. See *In the Matter of J.P.*, 136 S.W.3d 629 (Tex. 2004).

Additionally, the findings required by this amendment are required under federal law as a basis of eligibility for reimbursement of residential placement expenses under the Title IV-E Foster Care program. This is an important source of funding for counties (through the Texas Juvenile Probation Commission) and the Texas Youth Commission. Inclusion of the findings may allow more reimbursements to be collected from the federal government.

§ 58.003. Sealing of Records.

(a) Except as provided by Subsections (b) and (c), on the application of a person who has been found to have engaged in delinquent conduct or conduct indicating a need for supervision, or a person taken into custody to determine whether the person engaged in delinquent conduct or conduct indicating a need for supervision, on the juvenile court's own motion [~~or on receipt of a certification from the Department of Public Safety of the State of Texas that the records of a person are eligible for sealing under this section,~~] the court shall order the sealing of the records in the case if the court finds that:

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

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

(g-1) Any records collected or maintained by the Texas Juvenile Probation Commission, including statistical data
submitted under Section 141.044, Human Resources Code, are not subject to a sealing order issued under this section.

(o) An agency or official named in the order that cannot seal the records because the information required in the order under Subsection (p) [~~there~~] is incorrect or insufficient [~~information in the order~~] shall notify the court issuing the order before the 61st day after the date the agency or official receives the order. The court shall notify the person who made the application or who is the subject of the records named in the motion, or the attorney for that person, before the 61st day after the date the court receives the notice that the agency or official cannot seal the records because there is incorrect or insufficient information in the order.

(p) A person who is eligible to seal records may file an application for the sealing of records in a juvenile court of the county in which the proceedings occurred. The application and sealing order entered on the application must include the following information or an explanation for why one or more of the following is not included:

(1) the applicant's:

(A) full name;

(B) sex;

(C) race or ethnicity;

(D) date of birth;

(E) driver's license or identification card number; and

(F) social security number;

(2) the offense charged against the applicant or for which the applicant was referred to the juvenile justice system;

(3) the date on which and the county where the offense was alleged to have been committed; and

(4) if a petition was filed in the juvenile court, the cause number assigned to the petition and the court and county in which the petition was filed.

Commentary by Lisa Capers

Source: HB 1575
Effective Date: September 1, 2005
Applicability: Applications for sealing orders and sealing orders issued on or after the effective date without regard to whether any prior event connected to the proceeding, action, or decision occurred before the effective date.

Summary of Changes: This provision amends Subsection (a) to delete the requirement that the Texas Department of Public Safety (DPS) certify to the juvenile court that records are eligible for sealing. In view of the added burdens on DPS in administering the restricted access system, and the correspondingly less importance of sealing of records, the legislature felt DPS should be relieved of the burden of certifying that records are eligible for sealing. Records can still be sealed by petition of the respondent or self-initiated action by the juvenile court.

New Subsection (g-1) makes any records collected or maintained by TJPC, including statistical data, not subject to a sealing order. This allows TJPC to maintain all juvenile justice records for statistical purposes. Currently there is no provision to allow for sealed records to be retained for statistical purposes, thus impacting historical trends and information.

This provision also amends Subsection (o) and adds Subsection (p) to require that an application for sealing of juvenile records and an order for sealing include the applicant's full name, gender, race or ethnicity, date of birth, driver's license or identification card number, and social security number and include the offense for which the applicant was charged or referred, the date of the offense and county of occurrence, and the cause number and county of any petition filed. An explanation must be included for any missing information. DPS needs the information required by Subsection (p) to properly identify the records to be sealed. These requirements are derived from those in adult expunction cases under Chapter 55 of the Code of Criminal Procedure.

§ 58.0072. Dissemination Of Juvenile Justice Information.

(a) Except as provided by this section, juvenile justice information collected and maintained by the Texas Juvenile Probation Commission for statistical and research purposes is confidential information for the use of the commission and may not be disseminated by the commission.

(b) Juvenile justice information consists of information of the type described by Section 58.104, including statistical data in any form or medium collected, maintained, or submitted to the Texas Juvenile Probation Commission under Section 141.044, Human Resources Code.

(c) The Texas Juvenile Probation Commission may grant the following entities access to juvenile justice information for research and statistical purposes or for any other purpose approved by the commission:

(1) criminal justice agencies as defined by Section 411.082, Government Code;

(2) the Texas Education Agency;

(3) any agency under the authority of the Health and Human Services Commission; or

(4) a public or private university.

(d) The Texas Juvenile Probation Commission may grant the following entities access to juvenile justice information only for a purpose approved by the commission:

(1) a person working on a research or statistical project that:

(A) is funded in whole or in part by state funds; or

(B) meets the requirements of 28 C.F.R. Part 22 and is approved by the commission; or

(2) a governmental entity that has a specific agreement with the commission, if the agreement:

(A) specifically authorizes access to information;

(B) limits the use of information to the purposes for which the information is given;

(C) ensures the security and confidentiality of the information; and

(D) provides for sanctions if a requirement imposed under Paragraph (A), (B), or (C) is violated.

(e) The Texas Juvenile Probation Commission shall grant access to juvenile justice information for legislative purposes under Section 552.008, Government Code.

(f) The Texas Juvenile Probation Commission may not release juvenile justice information in identifiable form, except for information released under Subsection (c)(1), (2), or (3) or under the terms of an agreement entered into under Subsection (d)(2). For purposes of this subsection, identifiable information means information that contains a juvenile offender's name or other personal identifiers or that can, by virtue of sample size or other factors, be reasonably interpreted as referring to a particular juvenile offender.

(g) The Texas Juvenile Probation Commission is not required to release or disclose juvenile justice information to any person not identified under this section.

Commentary by Lisa Capers

Source: HB 1575
Effective Date: September 1, 2005
Applicability: Requests for access that occur on or after the effective date.
Summary of Changes: New Subsection 58.0072 provides for the dissemination of juvenile justice information between the Texas Juvenile Probation Commission (TJPC) and specified public and private entities. The purpose of this provision is to clarify with whom TJPC is able to share juvenile justice information and for what purposes. The subchapter also allows for the release of identified data under certain limited circumstances.

This section specifically clarifies that TJPC information in any form or medium that is collected and maintained for statistical and research purposes is confidential and may not be disseminated by the commission except for research and statistical purposes or other purposes approved by the commission to criminal justice agencies, the Texas Education Agency (TEA), a Health and Human Services agency, or a public or private university. Access may be granted by the Commission for approved purposes to a researcher working on a state or federally funded project or a governmental entity with an agreement authorizing access for limited purposes that ensures confidentiality of the information and provides sanctions for violations. TJPC must grant access to information for legislative purposes in accordance with legal requirements. Except for listed state agencies and governmental entities with an agreement, TJPC may not release information in an identifiable form. TJPC is not required to release or disclose information to any person not identified under this section.

§ 58.104. Types of Information Collected.

(f) Records maintained by the department in the depository are subject to being sealed under Section 58.003. [~~The department shall send to the appropriate juvenile court its certification of records that the department determines, according to the department's records, are eligible for sealing under Section 58.003(a).~~]

Commentary by Lisa Capers

Source: HB 1575
Effective Date: September 1, 2005
Applicability: DPS records determined eligible for sealing on or after the effective date without regard to whether any prior event connected to the proceeding, action, or decision occurred before the effective date.
Summary of Changes: This provision amends Section 58.104 (f) to remove the requirement that DPS notify local juvenile courts when it certifies a juvenile record is eligible for sealing according to its (i.e., DPS) records.

§ 58.203. Certification.

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

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

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

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

(4) the department has not received a report in its criminal history system that the person was granted deferred adjudication for or convicted of a felony or a

misdemeanor punishable by confinement in jail for an offense committed after the person became 17 years of age.

(b) If the department's records relate to a juvenile court with multicounty jurisdiction, the department shall issue the certification described by Subsection (a) to each juvenile probation department that serves the court. On receipt of the certification, each juvenile probation department shall determine whether it received the referral and, if it received the referral, take the restrictive action notification required by law.

(c) The department may issue the certification described by Subsection (a) by electronic means, including by electronic mail.

Commentary by Lisa Capers

Source: HB 1575
Effective Date: September 1, 2005
Applicability: DPS notices of restricted access eligibility issued on or after the effective date without regard to whether any prior event connected to the proceeding, action, or decision occurred before the effective date.
Summary of Changes: These amendments simplify the job of DPS in providing restricted access notices to the juvenile justice field. Subsection (a) requires that the notices are to go directly to the juvenile probation department, rather than to the juvenile court. That will promote efficiency, since the probation department is actually responsible for providing further notice to local agencies.

In the event the probation department's records relate to a juvenile court with multi-county jurisdiction, Subsection (b) requires the certification to go to each juvenile probation department that serves that court. It is up to the lead probation department to sort out whether it handled the case or another probation department did.

Subsection (c) provides that the certification will be by e-mail, rather than by postal service delivery of hard copy. DPS plans to utilize the TJPC email address for all juvenile probation departments in the state to send these notices.

§ 58.207. Juvenile Court Orders on Certification.

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

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

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

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

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

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

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

(2) the juvenile probation department to make a reasonable effort to notify the person who is the subject of records for which access has been restricted of the action restricting access and the legal significance of the action for the person, but only if the person has requested the notification in writing and has provided the juvenile probation department with a current address.

Commentary by Lisa Capers

Source: HB 1575
Effective Date: September 1, 2005
Applicability: Records placed on restricted access on or after the effective date without regard to whether any prior event connected to the proceeding, action, or decision occurred before the effective date.
Summary of Changes: This provision amends Section 58.207(a)(1) to remove the requirement that records maintained by any agency that provided care or custody of a child under order or arrangement of the juvenile court be included in a juvenile court's restricted access to records order. The requirement that the juvenile probation department notify all agencies that provided care or custody of the child has proved to be burdensome and unnecessary. All records maintained by such agencies are made confidential anyway by Section 58.005.

The section also amends Subsection (a)(2) to require notice to the person who is the subject of records for which access has been restricted only if the person has requested such notification in writing and has provided a current address. This amendment reduces the burden on local juvenile probation departments to provide notification of restricted access to those cases in which the juvenile or his family have requested notification and provided a current address to which it should be sent. This is similar to the notification required under the victims' rights provisions of Chapter 57. See Section 57.004.

§ 58.208. Information to Child on Discharge.

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

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

(2) a copy of this subchapter; and

(3) a statement that if the child wishes to receive notification of an action restricting access to the child's records under Section 58.207(a), the child must before the child's 21st birthday provide the juvenile pro-

bation department with a current address where the child can receive notification.

Commentary by Lisa Capers

Source: HB 1575
Effective Date: September 1, 2005
Applicability: Final discharges from probation that occurs on or after the effective date.
Summary of Changes: This provision amends Section 58.208 to add to the information required to be given a child on final discharge regarding automatic restricted access to records. This notice must now include notice that if the child wishes to receive notification of action restricting access, the child must before the child's 21st birthday provide the juvenile probation department with a current address where the child can receive such notification. This amendment implements the policy of Section 58.207(a) (2) which, as amended, requires the probation department to notify the subject of restricted access only if it has been provided with an address for the subject.

§ 58.211. Rescinding Restricted Access.

(a) If the department has notified a juvenile probation department that a record has been placed on restricted access and the department later receives information in the department's criminal history system that the subject of the records has been convicted of or placed on deferred adjudication for a felony or a misdemeanor punishable by confinement in jail for an offense committed after the person reached the age of 17, the person's juvenile records are no longer subject to restricted access. The department shall notify the appropriate local juvenile probation departments in the manner described by Section 58.203 that the person's records are no longer subject to restricted access.

(b) On receipt of the notification described by Subsection (a), the juvenile probation department shall notify the agencies that maintain the person's juvenile records under Section 58.207(b) that the person's records are no longer subject to restricted access.

Commentary by Lisa Capers

Source: HB 1575
Effective Date: September 1, 2005
Applicability: Records placed on restricted access on or after the effective date without regard to whether any prior event connected to the proceeding, action, or decision occurred before the effective date.
Summary of Changes: This provision adds a new Section 58.211 which requires DPS to notify local juvenile probation departments that records that were previously placed on restricted access are no longer restricted because the subject has been convicted or received deferred adjudication for an offense that would have initially disqualified the person from restricted access. Local probation departments are required to notify the agencies they previously notified of restricted access to tell them that access is no longer restricted. Per the new amendments to Section 58.203, DPS may use electronic notification and currently plans to utilize the TJPC statewide email addresses for local juvenile probation departments.

§ 58.301. Definitions.

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

Commentary by Lisa Capers

Source: HB 1575
Effective Date: September 1, 2005
Applicability: Local juvenile justice information systems operational on or after the effective date.
Summary of Changes: This provision amends Section 58.301(5) to eliminate certain mandatory language from this section related to the establishment of local juvenile justice information systems (JJIS) to make the statutory framework more flexible with regard to partner agencies and components of the system. The original JJIS statutes were patterned after the JJIS actually created in Dallas County. This is the first of a series of amendments to the local juvenile justice information system statutes in Chapter 58. This amendment was needed specifically by Bexar County, which is in the process of establishing a local juvenile justice information system. In trying to utilize this subchapter to establish their local JJIS, Bexar County identified some mandatory terms that made the previous statutory scheme problematic and unusable by their jurisdiction. As amended, this statute now provides the needed flexibility for counties who undertake development of their own JJIS.

§ 58.303. Local Juvenile Justice Information System.

(b) A local juvenile justice information system may [~~must~~] contain the following components:

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

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

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

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

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

(5) [~~(1)~~] electronic filing of complaints or petitions;

(6) [~~(2)~~] electronic offense and intake processing;

(7) [~~(3)~~] case docket management and calendaring;

(8) [~~(4)~~] communications by email or other electronic communications between partner agencies;

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

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

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

(12) [~~(8)~~] warrant management and confirmation capabilities.

Commentary by Lisa Capers

Source: HB 1575
Effective Date: September 1, 2005
Applicability: Local juvenile justice information systems operational on or after the effective date.
Summary of Changes: This provision amends Section 58.303(b) and (c) to eliminate certain mandatory language from this section related to the establishment of local juvenile justice information systems to make the statutory framework more flexible with regard to partner agencies and components of the system. This amendment is part of a series of amendments designed to provide more flexibility to counties who undertake development of their own JJIS. See the discussion in commentary to Section 58.301.

§ 58.305. Partner Agencies.

(a) A local juvenile justice information system shall to the extent possible [~~for a single county shall~~] include the following partner agencies within that county:

(1) the juvenile court;

(2) justice of the peace and municipal courts;

(3) the county juvenile probation department;

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

(5) law enforcement agencies;

(6) each public school district in the county;

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

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

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

(1) governmental service providers; and

(2) governmental placement facilities.

Commentary by Lisa Capers

Source: HB 1575
Effective Date: September 1, 2005
Applicability: Local juvenile justice information systems operational on or after the effective date.
Summary of Changes: This provision amends Section 58.305 to eliminate certain mandatory language from this section related to the establishment of local juvenile justice information systems to make the statutory framework more flexible with regard to partner agencies and components of the system. This amendment is part of a series of amendments designed to provide more flexibility to counties who undertake development of their own JJIS. See the discussion in commentary to Section 58.301.

§ 61.0031. Transfer Of Order Affecting Parent Or Other Eligible Person To County Of Child's Residence.

(a) This section applies only when:

(1) a juvenile court has placed a parent or other eligible person under a court order under this chapter;

(2) the child who was the subject of the juvenile court proceedings in which the order was entered:

(A) resides in a county other than the county in which the order was entered;

(B) has moved to a county other than the county in which the order was entered and intends to remain in that county for at least 60 days; or

(C) intends to move to a county other than the county in which the order was entered and to remain in that county for at least 60 days; and

(3) the parent or other eligible person resides or will reside in the same county as the county in which the child now resides or to which the child has moved or intends to move.

(b) A juvenile court that enters an order described by Subsection (a)(1) may transfer the order to the juvenile court of the county in which the parent now resides or to which the parent has moved or intends to move.

(c) The juvenile court shall provide the parent or other eligible person written notice of the transfer. The notification must identify the court to which the order has been transferred.

(d) The juvenile court to which the order has been transferred shall require the parent or other eligible person to
appear before the court to notify the person of the existence and terms of the order. Failure to do so renders the order
unenforceable.

(e) If the notice required by Subsection (d) is provided, the juvenile court to which the order has been transferred may modify, extend, or enforce the order as though the court originally entered the order.

Commentary by Lisa Capers

Source: HB 1575
Effective Date: September 1, 2005
Applicability: Orders affecting parents for conduct that occurs on or after the effective date.
Summary of Changes: This provision adds new Section 61.0031 which is a corollary statute to the courtesy supervision re-write. When a child has moved to a different county and interim or permanent supervision has been established in the new county of residence, this section authorizes, but does not require, the juvenile court that entered an order against a parent or other eligible person to transfer the court order to the new county if the parent or other eligible person will reside in the same county as the child.

For an order against the parent(s) to be effective in the receiving county, there are two specific requirements that must be met. Subsection (c) requires that the juvenile court must provide the parent or other eligible person written notice of the transfer, including identification of the court to which the order has been transferred. Subsection (d) requires that the court to which the order is transferred must require the parent or other eligible person to appear before the court to notify the person of the order's existence and terms. Failure to do so renders the order unenforceable. As long as the receiving court actually has the parent(s) appear, the court may modify, extend, or enforce the order as though it originally entered the order.

§ 261.101. Persons Required to Report; Time to Report.

(b) If a professional has cause to believe that a child has been abused or neglected or may be abused or neglected, or that a child is a victim of an offense under Section 21.11, Penal Code, and the professional has cause to believe that the child has been abused as defined by Section 261.001 or 261.401, the professional shall make a report not later than the 48th hour after the hour the professional first suspects that the child has been or may be abused or neglected or is a victim of an offense under Section 21.11, Penal Code. A professional may not delegate to or rely on another person to make the report. In this subsection, "professional" means an individual who is licensed or certified by the state or who is an employee of a facility licensed, certified, or operated by the state and who, in the normal course of official duties or duties for which a license or certification is required, has direct contact with children. The term includes teachers, nurses, doctors, day-care employees, employees of a clinic or health care facility that provides reproductive services, juvenile probation officers, and juvenile detention or correctional officers.

Commentary by Lisa Capers

Source: HB 1575
Effective Date: September 1, 2005
Applicability: Mandatory abuse, neglect and exploitation reports by professionals occurring on or after the effective date.
Summary of Changes: This provision amends Section 261.101 (b) to expand the special abuse or neglect reporting requirements for certain professionals to include the definition of abuse and neglect contained in Section 261.401 that relates to state agency investigations in certain facilities such as secure juvenile justice facilities. The statutorily mandated reporting of abuse, neglect and exploitation references the definitions of these terms in Section 261.001. However, there are additional definitions of abuse, neglect and exploitation contained in Section 261.401 related to certain facilities. The definition in 261.401 is specifically directed at situations that occur in facilities where youth are confined:

> (1) "Abuse" means an intentional, knowing, or reckless act or omission by an employee, volunteer, or other individual working under the auspices of a facility that causes or may cause emotional harm or physical injury to, or the death of, a child served by the facility as further described by rule or policy.
>
> (2) "Exploitation" means the illegal or improper use of a child or of the resources of a child for monetary or personal benefit, profit, or gain by an employee, volunteer, or other individual working under the auspices of a facility as further described by rule or policy.
>
> (3) "Neglect" means a negligent act or omission by an employee, volunteer, or other individual working under the auspices of a facility, including failure to comply with an individual treatment plan, plan of care, or individualized service plan, that causes or may cause substantial emotional harm or physical injury to, or the death of, a child served by the facility as further described by rule or policy.

§ 261.405. Investigations in Juvenile Justice Programs and Facilities.

(e) As soon as practicable after a child is taken into custody or placed in a juvenile justice facility or juvenile justice program, the facility or program shall provide the child's parents with:

(1) information regarding the reporting of suspected abuse, neglect, or exploitation of a child in a juvenile justice facility or juvenile justice program to the Texas Juvenile Probation Commission; and

(2) the commission's toll-free number for this reporting.

Commentary by Lisa Capers

Source: HB 1575
Effective Date: September 1, 2005
Applicability: Custody and placement events for conduct that occurs on or after the effective date.
Summary of Changes: This provision adds new Subsection (e) to require that as soon as practicable after a child is taken into custody or placed in a juvenile justice facility or program, the child's parents be provided with information regarding the reporting suspected abuse, neglect or exploitation in a program or facility to the Texas Juvenile Probation Commission (TJPC) and the Commission's toll-free number for this reporting.

It is important to note that this section does not apply to custody events by law enforcement since TJPC has no investigation power related to any abuse, neglect or exploitation of a child that occurs while in the custody of law enforcement. However, once the child is brought to a juvenile justice program or facility, TJPC does have jurisdiction to investigate. This section would clearly apply to situations where a juvenile probation officer takes a child into custody and also when a detention officer has custody of a youth from a facility (e.g., transport officer takes youth from a facility to court).

A brochure for parents and the public that provides the required information about reporting abuse, neglect or exploitation of a child may be downloaded from the TJPC website at www.tjpc.state.tx.us.

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

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

Commentary by Ryan Kellus Turner

Source: HB 1575
Effective Date: September 1, 2005
Applicability: Conduct that occurs on or after the effective date.
Summary of Changes: This provision amends Section 106.041(f), Alcoholic Beverage Code, to not allow a minor who is at least 17 years of age to receive deferred adjudication for driving under the influence of alcohol by a minor if the minor has been previously convicted of the same offense twice before.

This amendment is a non-substantive clarification intended to alleviate confusion relating to how prior adjudications in juvenile court and deferred dispositions in municipal and justice court relate to the length of drivers license suspensions incurred as a result of a subsequent conviction in DUI cases. It also makes the Texas DUI statute uniform with other Alcohol Beverage Code offenses involving minors (i.e., purchase of alcohol by a minor, attempt to purchase alcohol by a minor, consumption of alcohol by a minor, possession of alcohol by a minor, misrepresentation of age by a minor) by denying defendants with two DUI convictions from being eligible for either deferred disposition or deferred adjudication.

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

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

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

(2) a prior [~~an~~] order of deferred disposition for an offense alleged under this section is considered a conviction [~~of an offense under this section~~].

(i) A defendant who is not a child and who has been previously convicted at least twice of an offense to which this section applies is not eligible to receive a deferred [~~deferral of final~~] disposition or deferred adjudication [~~of a subsequent offense~~].

Commentary by Ryan Kellus Turner

Source: HB 1575
Effective Date: September 1, 2005
Applicability: Conduct that occurs on or after the effective date.
Summary of Changes: This provision amends Section 106.071(f) and (i), Alcoholic Beverage Code, but does not change the law. Rather, it attempts to restate the law so that fewer people will misconstrue it. This amendment is a non-substantive clarification intended to alleviate confusion relating to how prior adjudications in juvenile court and deferred dispositions in municipal and justice court relate to the length of drivers license suspensions incurred as a result of a subsequent conviction.

The rule is as follows: in municipal and justice court, deferred dispositions for the status offenses contained in Chapter 106 of the Alcoholic Beverage Code never result in the suspension of the defendant's driver's

license. Deferred disposition(s) only become pertinent administratively once a defendant is subsequently convicted (i.e., there must be final judgment of guilty entered against the defendant). In such instances, DPS will then, and only then, treat any prior deferred disposition or deferred adjudication as a conviction for the purpose of determining the duration of the driver's license suspension.

~~[Alcoholic Beverage Code § 106.11. Parent Or Guardian At Trial.~~

~~(a) Except as provided in Subsection (d) of this section, no person under 18 years of age may be convicted of an offense under this chapter unless his parent or legal guardian is present in court.~~

~~(b) If the parent or legal guardian of a person under 18 years of age accused of a violation of this chapter resides within the jurisdiction of the court before whom the case is to be heard, the court shall summon the parent or legal guardian to appear in court and shall require him to be present at all proceedings in the case.~~

~~(c) If the parent or legal guardian of a person under 18 years of age accused of a violation of this chapter resides outside the jurisdiction of the court before whom the case is to be heard, the court shall give written notice of the charge against the person to the parent or legal guardian.~~

~~(d) If the court is unable to locate or to compel the presence of the person's parent or legal guardian after diligent~~
~~effort, the court may waive the requirement of presence of a parent or legal guardian.]~~

Commentary by Ryan Kellus Turner

Source: HB 1575
Effective Date: September 1, 2005
Applicability: Repeal occurs on effective date.
Summary of Changes: Repeals Section 106.11, Alcoholic Beverage Code, relating to the requirement that parents or legal guardians be present when a person under age 18 is convicted of an offense under the chapter, and repeals Section 729.003, Transportation Code, relating to the requirement in cases involving traffic offenses by minors that the court report to DPS when the person does not appear in court and when there is final disposition of those cases.

Section 106.11 of the Alcohol Beverage Code conflicted with the provisions relating to the appearance of parents contained in Article 45.0215 of the Code of Criminal Procedure that states that upon reaching age 17, parents are not required to attend court with their child. This amendment conforms the Alcoholic Beverage Code to the general rule in Chapter 45.

Code of Criminal Procedure Article 15.27. Notification to Schools Required.

(i) A person may substitute electronic notification for oral notification where oral notification is required by this article. If electronic notification is substituted for oral notification, any written notification required by this article is not required.

Commentary by Ryan Kellus Turner

Source: HB 1575
Effective Date: September 1, 2005
Applicability: Notifications made on or after the effective date without regard to whether any prior event connected to the proceeding, action, or decision occurred before the effective date.
Summary of Changes: This provision amends Article 15.27, Code of Criminal Procedure, by adding Subsection (i) to authorize electronic notification to schools of offenses alleged to have been committed by students, instead of oral notice followed by written notice.

Code of Criminal Procedure Article 45.0215. Plea by Minor and Appearance by Parent.

(d) A justice or municipal court shall endorse on the summons issued to a parent an order to appear personally at a hearing with the child. The summons must include a warning that the failure of the parent to appear may result in arrest and is a Class C misdemeanor.

Commentary by Ryan Kellus Turner

Source: HB 1575
Effective Date: September 1, 2005
Applicability: Summons issued on or after the effective date without regard to whether any prior event connected to the proceeding, action, or decision occurred before the effective date.
Summary of Changes: This provision amends Article 45.0215, Code of Criminal Procedure, by adding Subsection (d) to require a parent to attend justice and municipal court proceedings against the parent's child.

This amendment is non-substantive and merely mirrors a similar and related law contained in Article 45.057 (e). Chapter 45 is clarified by having similar language in both articles.

Code of Criminal Procedure Article 45.0216. Expunction of Certain Conviction Records of Children.

(i) The justice or municipal court shall [~~may not~~] require a person who requests expungement under this article to pay a [~~any~~] fee in the amount of $30 to defray the cost of notifying state agencies of orders of expungement under this article [~~or court costs~~].

Commentary by Ryan Kellus Turner

Source: SB 1426
Effective Date: September 1, 2005
Applicability: Applications for expunction that occur on or after the effective date.
Summary of Changes: This provision amends Article 45.0216(i), Code of Criminal Procedure, to require the court to assess a $30 fee for an application for an expunction for a conviction for a penal offense.

Code of Criminal Procedure Article 45.055. Expunction of Conviction and Records in Failure to Attend School Cases.

(d) The court shall [~~may not~~] require an individual who files an application under this article to pay a [~~any~~] fee in the amount of $30 to defray the cost of notifying state agencies of orders of expunction under this article [~~or court costs for seeking expunction~~].

Commentary by Ryan Kellus Turner

Source: SB 1426
Effective Date: September 1, 2005
Applicability: Applications for expunction filed on or after the effective date.
Summary of Changes: This provision amends Article 45.055(d), Code of Criminal Procedure, to require the court to assess a $30 fee for an application for an expunction for a conviction for the offense of failure to attend school.

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 county court, [~~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 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.

(c) A county or justice court on approval of the commissioners court or a municipal court on approval of the city council may employ one or more full-time juvenile case managers to assist the court in administering the court's juvenile docket and in supervising its court orders in juvenile cases.

(d) Pursuant to Article 102.0174, the court may pay the salary and benefits of the juvenile case manager from the juvenile case manager fund.

(e) A juvenile case manager employed under Subsection (c) shall work primarily on cases brought under Sections 25.093 and 25.094, Education Code.

Commentary by Ryan Kellus Turner

Source: HB 1575
Effective Date: September 1, 2005
Applicability: Conduct that occurs on or after the effective date.
Summary of Changes: This provision amends Article 45.056(a) and adds Subsections (c), (d) and (e) to the Code of Criminal Procedure, to authorize a justice or county court, on approval of the commissioners court, or a municipal court, on approval of the city council, to employ juvenile case managers to assist the court in monitoring its orders. The bill also authorizes the salaries to be paid from the juvenile case manager fund authorized in Section 35 of the bill. If further provides that juvenile case managers shall work primarily on criminal cases alleging failure to attend school (Section 25.094, Education Code) or parent contributing to nonattendance (Section 25.093, Education Code).

Education Code § 25.094. Failure to Attend School.

(f) It is an affirmative defense to prosecution under this section that one or more of the absences required to be proven under Subsection (a) were [~~was~~] excused by a school official or [~~should be excused~~] by the court or that one or more of the absences were involuntary, but only if there is an insufficient number of unexcused or voluntary absences remaining to constitute an offense under this section. The burden is on the defendant to show by a preponderance of the evidence that the absence has been [~~or should be~~] excused or that the absence was involuntary. A decision by the court to excuse an absence for purposes of this section does not affect the ability of the school district to determine whether to excuse the absence for another purpose.

Commentary by Neil Nichols

Source: HB 1575
Effective Date: September 1, 2005
Applicability: Conduct that occurs on or after the effective date
Summary of Changes: This section and Section 51.03, Family Code, are amended to make it clear that the affirmative defense of excused absences or involuntary absences applies to defeat the charges only when there are insufficient unexcused and voluntary absences remaining to constitute a violation of law.

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 within seven school days of the student's last absence:

(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.

(d) A court shall dismiss a complaint or referral made by a school district under this section that is not made in compliance with this section.

Commentary by Ryan Kellus Turner

Source: HB 1575
Effective Date: September 1, 2005
Applicability: Conduct that occurs on or after the effective date.
Summary of Changes: This provision amends Section 25.0951(a) and adds Subsection (d), Education Code, to require that a court dismiss a complaint or referral regarding a student's failure to attend school or a parent's contributing to the child's nonattendance when a school district fails to file the complaint or referral within seven school days of the student's last absence.

This amendment came about as a result of the failure of some school districts to file school attendance within the time guidelines mandated by the Legislature in 2001. Judges and parents have reported instances where school districts waited as long as an entire semester before filing a single complaint alleging nonattendance. By this time, the school year is practically a loss for the student (i.e., credit cannot be earned, courts are left with voluminous complaints, and defendants are potentially left facing expensive fines and courts costs).

While the initial draft of this amendment would have prescribed criminal penalties for school officials who failed to comply with the mandatory filing laws, school districts opposed such penalties. Furthermore, questions were raised to as whether prosecutors would pursue such prosecutions.

As amended, the law mandates judges to dismiss any complaint(s) that are not filed within the time guidelines.

Government Code §102.061. Additional Court Costs on Conviction in Statutory County Court.

The clerk of a statutory county court shall collect fees and costs on conviction of a defendant as follows:

(1) a jury fee (Article 102.004, Code of Criminal Procedure) . . . $20;

(2) a fee for services of the clerk of the court (Article 102.005, Code of Criminal Procedure) . . . $40;

(3) a records management and preservation services fee (Article 102.005, Code of Criminal Procedure) . . . $20;

(4) a security fee on a misdemeanor offense (Article 102.017, Code of Criminal Procedure) . . . $3;

(5) a graffiti eradication fee (Article 102.0171, Code of Criminal Procedure) . . . $5; [~~and~~]

(6) a court cost on conviction in Comal County (Section 152.0522, Human Resources Code) . . . $4; and

(7) a juvenile case manager fee (Article 102.0174, Code of Criminal Procedure) . . . $5.

Commentary by Ryan Kellus Turner

Source: HB 1575
Effective Date: September 1, 2005 (see below)
Applicability: Court costs applicable to conduct that occur on or after the effective date.
Summary of Changes: This provision amends Section 102.061, Government Code, to require the clerks of a statutory county court to collect as court costs any juvenile case manager fees created by units of local government under Section 35 of the bill.

As stated in the commentary related to the amendments made to Code of Criminal Procedure Article 102.074, local government may not begin collecting court costs for the juvenile case manger fund until January 1, 2006.

Government Code §102.081. Additional Court Costs on Conviction in County Court.

The clerk of a county court shall collect fees and costs on conviction of a defendant as follows:

(1) a jury fee (Article 102.004, Code of Criminal Procedure) . . . $20;

(2) a fee for clerk of the court services (Article 102.005, Code of Criminal Procedure) . . . $40;

(3) a records management and preservation services fee (Article 102.005, Code of Criminal Procedure) . . . $20;

(4) a security fee on a misdemeanor offense (Article 102.017, Code of Criminal Procedure) . . . $3; [~~and~~]

(5) a graffiti eradication fee (Article 102.0171, Code of Criminal Procedure) . . . $5; and

(6) a juvenile case manager fee (Article 102.0174, Code of Criminal Procedure) . . . $5.

Commentary by Ryan Kellus Turner

Source: HB 1575
Effective Date: September 1, 2005 (see below)
Applicability: Court costs applicable to conduct that occurs on or after the effective date.
Summary of Changes: This provision amends Section 102.081, Government Code, to require the clerks of a county court to collect as court costs any juvenile case manager fees created by units of local government under Section 35 of the bill.

As stated in the commentary related to the amendments made to Code of Criminal Procedure Article 102.074, local government may not begin collecting court costs for the juvenile case manger fund until January 1, 2006.

Government Code § 411.148. MANDATORY DNA RECORD [~~RECORDS OF CERTAIN INMATES~~].

(a) This section applies to:

(1) an individual who is:

(A) ordered by a magistrate or court to provide a sample under Section 411.150 or 411.154 or other law; or

(B) confined in a penal institution operated by or under contract with the Texas Department of Criminal Justice; or

(2) a juvenile who is, after an adjudication for conduct constituting a felony, confined in a facility operated by or under contract with the Texas Youth Commission.

(b) An individual described by Subsection (a) [~~inmate serving a sentence for a felony in the institutional division~~] shall provide one or more DNA [~~blood~~] samples [~~or other specimens~~] for the purpose of creating a DNA record.

(c) A criminal justice agency shall collect a sample ordered by a magistrate or court in compliance with the order.

(d) If an individual described by Subsection (a)(1)(B) is received into custody by the Texas Department of Criminal Justice, that department [~~(b) The institutional division~~] shall collect [~~obtain~~] the sample [~~or specimen~~] from the individual [~~an inmate of the division~~] during the diagnostic process or at another time determined by the Texas Department of Criminal Justice.

(e) If an individual described by Subsection (a)(2) is received into custody by the Texas Youth Commission, the youth commission shall collect the sample from the individual during the initial examination or at another time determined by the youth commission.

(f) [~~The institutional division shall obtain the sample or specimen from an inmate confined in another penal institution as soon as practicable if the Board of Pardons and Paroles informs the division that the inmate is likely to be paroled before being admitted to the division. The administrator of the other penal institution shall cooperate with the institutional division as necessary to allow the institutional division to perform its duties under this section.~~

[~~(c) The institutional division shall:~~

[~~(1) preserve each blood sample or other specimen collected;~~

[~~(2) maintain a record of the collection of the sample or specimen; and~~

[~~(3) send the sample or specimen to the director for scientific analysis under this subchapter.~~

[~~(d) An inmate may not be held past a statutory release date if the inmate fails or refuses to provide a blood sample or other specimen under this section. A penal institution may take other lawful administrative action against the inmate.~~

[~~(e)~~] The Texas Department of Criminal Justice [~~institutional division~~] shall notify the director that an individual [~~inmate~~] described by Subsection (a) is to be released from custody [~~the institutional division~~] not earlier than the 120th day before the individual's [~~inmate's~~] release date and not later than the 90th day before the individual's [~~inmate's~~] release date. The Texas Youth Commission shall notify the director that an individual described by Subsection (a) is to be released from custody not earlier than the 10th day before the individual's release date. The Texas Department of Criminal Justice and the Texas Youth Commission, in consultation with the director, shall determine the form of the notification described by this subsection.

(g) [~~(f)~~] A medical staff employee of a criminal justice agency [~~the institutional division~~] may collect [~~obtain~~] a voluntary sample [~~or specimen~~] from an individual at any time [~~inmate~~].

(h) [~~(g)~~] An employee of a criminal justice agency [~~the institutional division~~] may use force against an individual [~~inmate~~] required to provide a DNA sample under this section when and to the degree the employee reasonably believes the force is immediately necessary to collect [~~obtain~~] the sample [~~or specimen~~].

(i)(1) [~~(h)~~] The Texas Department of Criminal Justice as soon as practicable shall cause a sample to be collected from an individual described by Subsection (a)(1)(B) if:

(A) the individual is confined in another penal institution after sentencing and before admission to the department; and

(B) the department determines that the individual is likely to be released before being admitted to the department.

(2) The administrator of the other penal institution shall cooperate with the Texas Department of Criminal Justice as necessary to allow the Texas Department of Criminal Justice to perform its duties under this subsection.

(j)(1) The Texas Youth Commission as soon as practicable shall cause a sample to be collected from an individual described by Subsection (a)(2) if:

(A) the individual is detained in another juvenile detention facility after adjudication and before admission to the youth commission; and

(B) the youth commission determines the individual is likely to be released before being admitted to the youth commission.

(2) The administrator of the other juvenile detention facility shall cooperate with the Texas Youth Commission as necessary to allow the youth commission to perform its duties under this subsection [~~may contract with an individual or entity for the provision of phlebotomy services under this section~~].

(k) When a criminal justice agency of this state agrees to accept custody of an individual from another state or jurisdiction under an interstate compact or a reciprocal agreement with a local, county, state, or federal agency, the acceptance is conditional on the individual providing a DNA sample under this subchapter if the individual was convicted of a felony.

(l) If, in consultation with the director, it is determined that an acceptable sample has already been received from an individual, additional samples are not required unless requested by the director.

[~~(i) Notwithstanding Subsection (a), if at the beginning of a fiscal year the executive director of the Texas Department of Criminal Justice determines that sufficient funds have not been appropriated to the department to obtain a sample from each inmate otherwise required to provide a sample under Subsection (a), the executive director shall direct the institutional division to give priority to obtaining samples from inmates ordered by a court to give the sample or specimen or serving sentences for:~~

[~~(1) an offense:~~

[~~(A) under Section 19.02, Penal Code (murder), or Section 22.02, Penal Code (aggravated assault);~~

[~~(B) under Section 30.02, Penal Code (burglary), if the offense is punishable under Subsection (c)(2) or (d) of that section; or~~

[~~(C) for which the inmate is required to register as a sex offender under Chapter 62, Code of Criminal Procedure; or~~

[~~(2) any offense if the inmate has previously been convicted of or adjudicated as having engaged in:~~

[~~(A) an offense described in Subdivision (1); or~~

[~~(B) an offense under federal law or laws of another state that involves the same conduct as an offense described by Subdivision (1).~~]

Commentary by Neil Nichols

Source: HB 1068
Effective Date: September 1, 2005
Applicability: DNA samples taken from youth who have been adjudicated for a felony offense and who, on or after the effective date, are residing in a TYC-operated or contracted facility.

Summary of Changes: Under current law, TYC is required to take DNA samples from youth who are committed to the commission for the offenses of murder, aggravated assault, burglary and other offenses that make an offender eligible for sex offender registration. The samples are sent to the Department of Public Safety (DPS) for inclusion in the DNA database. The new amendment in Subsection (a) (2) expands the requirement to include the taking of DNA samples from all youth residing in TYC-operated or contracted residential facilities that have ever been adjudicated for any felony offense. If it is determined that an acceptable sample has already been received by DPS, an additional one is not required. TYC is required to notify DPS of the release of these youth no earlier than the 10th day before their release date.

The amendment in Subsection (k) imposes another new requirement regarding the acceptance of custody of persons through an interstate compact or other reciprocal agreement who have been convicted of a felony offense. The acceptance must be conditioned on the individual's providing a DNA sample. This provision does not apply to acceptance of courtesy probation or parole supervision of youth through the interstate compact on juveniles, since the state is not assuming custody of them in a TYC-operated or contracted residential facility.

Also, implementation of the new provision in Subsection (j)(1), related to juvenile detention facilities taking DNA samples from youth who have been committed to TYC for a felony offense, is not likely to ever be required since these youth are not likely to be released before being admitted to the commission.

The current law that requires a DNA sample from youth placed on probation for an offense for which the youth are required to register as a sex offender is unchanged [see Family Code Section 54.0405 (a) (2)].

Health and Safety Code § 161.255. Expungement of Conviction.

(a) An individual convicted of an offense under Section 161.252 may apply to the court to have the conviction expunged. If the court finds that the individual satisfactorily completed the tobacco awareness program or tobacco-related community service ordered by the court, the court shall order the conviction and any complaint, verdict, sentence, or other document relating to the offense to be expunged from the individual's record and the conviction may not be shown or made known for any purpose.

(b) The court shall charge an applicant a fee in the amount of $30 for each application for expungement filed under this section to defray the cost of notifying

state agencies of orders of expungement under this section.

Commentary by Ryan Kellus Turner

Source: SB 1426
Effective Date: September 1, 2005
Applicability: Applications for expunction filed on or after the effective date.
Summary of Changes: This provision amends Section 161.255, Health and Safety Code, by adding Subsection (b) to require the court to assess a $30 fee for an application for an expunction for a conviction a tobacco offense under Section 161.252.

Human Resources Code §61.0432. Student Trust Fund; Contraband Money.

(a) Except as provided by Subsection (b), money [~~Money~~] belonging to a child committed to the commission in excess of the amount the commission allows in a child's possession shall be deposited in a trust fund established by the facility operated by the commission to which the child is assigned. The commission shall adopt rules governing the administration of the trust fund.

(b) Money possessed by a child committed to the commission that is determined to be contraband money as defined by commission rule shall be deposited in the student benefit fund described by Section 61.0431. The commission shall notify each child committed to the commission that the possession of contraband money is subject to confiscation by the commission under this subsection.

Commentary by Neil Nichols

Source: HB 1575
Effective Date: September 1, 2005
Applicability: Confiscation of contraband money on or after the effective date without regard to whether any prior event connected with it occurred before the effective date.
Summary of Changes: This amendment to TYC's enabling act requires that any money possessed by youth in TYC facilities in violation of agency rules be deposited in the facility's student benefit fund (i.e., a fund established by statute to provide education, recreation and entertainment to the youth) and not in the youth's own account, as is currently required. Depriving youth of the personal benefit of this medium of exchange is important in stemming the presence of other contraband in the facilities, particularly of drugs. Agency rules implementing this provision will include procedures for ensuring that the youth had notice of the prohibition and is provided the opportunity to defend the allegation.

Human Resources Code §61.079. Referral of Violent and Habitual Offenders for Transfer.

(c) If a child is released under supervision, a juvenile court adjudication that the child engaged in delinquent conduct constituting a felony offense, a criminal court conviction of the child for a felony offense, or a determination under Section 61.075(4) revoking the child's release under supervision is required before referral of the child to the juvenile court under Subsection (a).

Commentary by Neil Nichols

Source: HB 1575
Effective Date: September 1, 2005
Applicability: Conduct that occurs on or after the effective date
Summary of Changes: This amendment to TYC's enabling act authorizes TYC to refer a paroled youth with a determinate sentence to the juvenile court for a prison transfer hearing if there is a juvenile court adjudication or a criminal court conviction of a felony offense while the youth was on parole and the youth meets the other criteria for referral (the conduct indicates the welfare of the community requires the transfer). Currently, TYC is required to conduct a parole revocation hearing and revoke the youth's parole before it may make such a referral under these circumstances.

Human Resources Code §61.081. Release Under Supervision.

(i) Notwithstanding Subsection (f), if a child is committed to the commission under a determinate sentence under Section 54.04(d)(3), Section 54.04(m), or Section 54.05(f), Family Code, the commission may release the child under supervision without approval of the juvenile court that entered the order of commitment if not more than nine months remain before the child's discharge under Section 61.084(b).

Commentary by Neil Nichols

Source: HB 1575
Effective Date: September 1, 2005
Applicability: Release of youth committed to TYC under a determinate sentence for conduct that occurs on or after the effective date.
Summary of Changes: This amendment to TYC's enabling act authorizes TYC to release a youth with a determinate sentence on parole without court approval at any time during the last 9 months of the youth's sentence. As a practical matter, this affects only youth who are sentenced for a term that is equal to or less than the period established in Subsection (f) of this section, which is related to the minimum period of confinement during which court approval is required for release of the youth on parole (at least 10 years for youth sentenced for capital murder, 3 years for first degree felonies, etc.). For

youth who discharge their sentences prior to reaching the end of this minimum confinement period, there is usually no opportunity for transition or supervised parole back into the community and the youth has had no incentive while in the institution to apply himself or herself to the education and treatment programs.

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 and[,] detention[~~, and corrections~~] officers and for the enforcement of that code;

(3) appropriate educational, preservice and in-service training, and certification standards for probation and [,] 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); and

(5) 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.

(e) Juvenile probation departments shall use the mental health screening instrument selected by the commission for the initial screening of children under the jurisdiction of probation departments who have been formally referred to the department. The commission shall give priority to training in the use of this instrument in any preservice or in-service training that the commission provides for probation officers. A clinical assessment by a licensed mental health professional may be substituted for the mental health screening instrument selected by the commission if the clinical assessment is performed in the time prescribed by the commission. Juvenile probation departments shall report data from the use of the screening instrument or the clinical assessment to the commission in a format and in the time prescribed by the commission.

Commentary by Lisa Capers

Source: HB 1575
Effective Date: September 1, 2005
Applicability: Clinical assessments for conduct that occurs on or after the effective date.
Summary of Changes: This provision amends Section 141.042(a) and (e) to delete a reference to "corrections" officer in this section dealing with TJPC training and certification standards. TJPC consolidated the two categories of "detention" and "corrections" officers into one category of "detention" officer several years ago.

The amendment in Subsection (e) authorizes a timely clinical assessment by a licensed mental health professional to substitute for the required mental health screening instrument selected by TJPC for the initial screening of youth by juvenile probation departments. This change allows probation departments that have mental health professionals on staff (e.g., urban areas typically) and that prefer to do a clinical assessment (which is much more comprehensive than the screening instrument) to substitute their clinical assessment for the MAYSI-2 screening instrument. TJPC needs to be able to collect the data from both.

Human Resources Code §141.0611. Minimum Standards for Detention Officers.

To be eligible for appointment as a detention officer, a person who was not employed as a detention officer before September 1, 2005, must:

(1) be of good moral character;

(2) be at least 21 years of age;

(3) have acquired a high school diploma or its equivalent;

(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 1575
Effective Date: September 1, 2005
Applicability: Appointments made on or after the effective date.
Summary of Changes: This provision adds new Section 141.0611 to TJPC's enabling legislation in the Human Resources Code related to minimum standards for detention officers and merely codifies what is currently found in TJPC administrative rules. To be eligible for appointment as a juvenile detention officer, a person not employed as a detention officer before September 1, 2005 must be of good moral character, be at least 21 years of age, have a high school diploma or its equivalent, have satisfactorily completed TJPC's preservice training or other instruction it requires, have passed the tests or examinations it requires, and possess the level of

certification it requires. This provision was patterned after Texas Human Resources Code Section 141.0611 which details the minimum standards for probation officers. Current law has no corollary provision for detention officers.

Human Resources Code § 141.065. Persons Who May Not Act as Chief Administrative, Juvenile Probation, or Detention[~~, or Corrections~~] Officers.

(a) A peace officer, prosecuting attorney, or other person who is employed by or who reports directly to a law enforcement or prosecution official may not act as a chief administrative, juvenile probation, or detention [~~, or corrections~~] officer or be made responsible for supervising a juvenile on probation.

(b) For purposes of this section, a chief administrative officer, regardless of title, is the person who is:

(1) hired or appointed by or under contract with the juvenile board; and

(2) responsible for the oversight of the operations of the juvenile probation department or any juvenile justice program operated by or under the authority of the juvenile board.

Commentary by Lisa Capers

Source: HB 1575
Effective Date: September 1, 2005
Applicability: Situations arising on or after the effective date.
Summary of Changes: This provision amends Section 141.065 to clarify that the chief administrative officer of a juvenile probation department may not be a person who is employed by or who reports directly to a law enforcement or prosecution official. This changes attempts to clarify that the chief administrative officer of a juvenile probation department may not be a law enforcement officer, regardless of what that person's title may be.

A chief administrative officer, regardless of title, is defined as a person hired or appointed by or under contract with a juvenile board and responsible for the oversight of the operations of a juvenile probation department or any juvenile justice program operated by or under the authority of the juvenile board.

Also, the reference to "corrections" officer has been deleted since the two categories of "detention" and "corrections" officers have been combined into one category of "detention" officer by TJPC administratively several years ago.

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 conduct for which the person convicted may be sentenced to imprisonment or confinement in jail[~~:~~

[~~(A) an offense under Section 521.457, Transportation Code;~~

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

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

[~~(D) 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 Ryan Kellus Turner

Source: HB 1575
Effective Date: September 1, 2005
Applicability: Conduct that occurs on or after the effective date.
Summary of Changes: This provision amends Section 8.07(a), Penal Code, to except traffic violations for which the person convicted may be sentenced to imprisonment or confinement in jail from the list of traffic offense violations (Chapter 729, Transportation Code) for which a person may be prosecuted or convicted when the violations are committed when the person is younger than 15 years of age.

While HB 1575 gives juvenile courts jurisdiction over all traffic offense which are not fine-only offenses

(see Section 1 of the bill), this amendment ensures that such offenses are not filed in criminal courts that ordinarily hear "jailable" traffic offenses (i.e., county and district courts).

Penal Code § 22.04. Injury to a Child, Elderly Individual, or Disabled Individual.

(k) [~~(1)~~] It is a defense to prosecution under this section that the act or omission consisted of:

(1) [~~(A)~~] reasonable medical care occurring under the direction of or by a licensed physician; or

(2) [~~(B)~~] emergency medical care administered in good faith and with reasonable care by a person not licensed in the healing arts.

(l) [~~(2)~~] It is an affirmative defense to prosecution under this section:

(1) that the act or omission was based on treatment in accordance with the tenets and practices of a recognized religious method of healing with a generally accepted record of efficacy;

(2) [~~. It is an affirmative defense to prosecution~~] for a person charged with an act of omission [~~under this section~~] causing to a child, elderly individual, or disabled individual a condition described by Subsection (a)(1), (2), or (3) that:

(A) there is no evidence that, on the date prior to the offense charged, the defendant was aware of an incident of injury to the child, elderly individual, or disabled individual and failed to report the incident; and

(B) the person:

(i) was a victim of family violence, as that term is defined by Section 71.004, Family Code, committed by a person who is also charged with an offense against the child, elderly individual, or disabled individual under this section or any other section of this title;

(ii) did not cause a condition described by Subsection (a)(1), (2), or (3); and

(iii) did not reasonably believe at the time of the omission that an effort to prevent the person also
charged with an offense against the child, elderly individual, or disabled individual from committing the offense would have an effect; or

(3) that:

(A) the actor was not more than three years older than the victim at the time of the offense; and

(B) the victim was a child at the time of the offense.

Commentary by Wesley Shackelford

Source: HB 1575
Effective Date: September 1, 2005
Applicability: Conduct that occurs on or after the effective date.

Summary of Changes: This provision amends Section 22.04 to authorize youth charged with injury to a child to assert a defense to the charges when they were no more than three years older than the victim and the victim was a child 14 years of age or younger at the time of the offense. This change recognizes that the offense of injury to a child is predicated on the actor being a dominant adult figure that harms a child. The new language would cover instances where the conduct was between youth of similar age and exclude it from the increased penalty ranges under the injury to a child statute. In these cases, the assault and aggravated assault statutes could be charged in cases where bodily injury or serious bodily injury is caused to a child. This situation often arises in the case of fights between youths and the serious felony penalties (State Jail Felony to 1st Degree) of the injury to a child statute are not appropriate.

Penal Code § 38.11. Prohibited Substances and Items in Adult or Juvenile Correctional or Detention Facility or on Property of Texas Department of Criminal Justice or Texas Youth Commission.

(a) A person commits an offense if the person provides:

(1) an alcoholic beverage, controlled substance, or dangerous drug to an inmate of a correctional facility or to a person in the custody of a secure correctional facility or secure detention facility for juveniles, except on the prescription of a physician or practitioner, as defined in Section 551.003, Occupations Code;

(2) a deadly weapon to an inmate of a correctional facility or to a person in the custody of a secure correctional facility or secure detention facility for juveniles; or

(3) a cellular telephone, cigarette, tobacco product, or money to an inmate of a correctional facility operated by or under contract with the Texas Department of Criminal Justice or to a person in the custody of a secure correctional facility or secure detention facility for juveniles, except for money that is provided for the benefit of the juvenile in accordance with facility rules.

(b) A person commits an offense if the person takes an alcoholic beverage, controlled substance, or dangerous drug into a correctional facility or a secure correctional facility or secure detention facility for juveniles, except for delivery to a [~~correctional~~] facility warehouse, pharmacy, or physician.

(c) A person commits an offense if the person takes a controlled substance or dangerous drug on property owned, used, or controlled by the Texas Department of Criminal Justice, the Texas Youth Commission, or a secure correctional facility or secure detention facility for juveniles, except for delivery to a warehouse, pharmacy, or physician on property owned, used, or controlled by the department, the commission, or the facility.

(d) A person commits an offense if the person:

(1) possesses a controlled substance or dangerous drug while:

(A) on property owned, used, or controlled by the Texas Department of Criminal Justice, the Texas Youth Commission, or a secure correctional facility or secure detention facility for juveniles; or

(B) in a correctional facility or a secure correctional facility or secure detention facility for juveniles; or

(2) possesses a deadly weapon while in a correctional facility or in a secure correctional facility or secure detention facility for juveniles.

(e) It is an affirmative defense to prosecution under Subsection (d)(1) of this section that the person possessed the controlled substance or dangerous drug pursuant to a prescription issued by a practitioner or while delivering the substance or drug to a warehouse, pharmacy, or physician on property owned, used, or controlled by the department, the Texas Youth Commission, or by the operator of a secure correctional facility or secure detention facility for juveniles. It is an affirmative defense to prosecution under Subsection (d)(2) of this section that the person possessing the deadly weapon is a peace officer or is an officer or employee of the correctional facility authorized to possess the deadly weapon while on duty or traveling to or from the person's place of assignment.

(f) In this section:

(1) "Practitioner" has the meaning assigned by Section 481.002, Health and Safety Code.

(2) "Prescription" has the meaning assigned by Section 481.002, Health and Safety Code.

(3) "Cigarette" has the meaning assigned by Section 154.001, Tax Code.

(4) "Tobacco product" has the meaning assigned by Section 155.001, Tax Code.

(5) "Secure correctional facility" and "secure detention facility" have the meanings assigned by Section 51.02, Family Code.

(i) It is an affirmative defense to prosecution under Subsection (b) that the actor:

(1) is a duly authorized member of the clergy with rights and privileges granted by an ordaining authority that includes administration of a religious ritual or ceremony requiring the presence or consumption of an alcoholic beverage; and

(2) takes four ounces or less of an alcoholic beverage into the correctional facility or the secure correctional facility or secure detention facility for juveniles and personally consumes all of the alcoholic beverage or departs from the facility with any portion of the beverage not consumed.

(j) A person commits an offense if the person while an inmate of a correctional facility operated by or under contract with the Texas Department of Criminal Justice or while in the custody of a secure correctional facility or secure detention facility for juveniles possesses a cellular telephone.

Commentary by Neil Nichols

Source: HB 1575
Effective Date: September 1, 2005
Applicability: Conduct that occurs on or after the effective date
Summary of Changes: This amendment makes the offense relating to prohibited substances and items in adult detention and correctional facilities applicable to juvenile facilities as well, where there has been a marked increase in the problem in the last three years. It is a felony of the third degree to:

a. Provide or attempt to provide an alcoholic beverage, controlled substance (except on prescription of a physician or practitioner), dangerous drug, deadly weapon, cellular phone, cigarette, tobacco product or money (except in accordance with facility rules) to a youth in a secure juvenile correctional or detention facility;
b. Take or attempt to take an alcoholic beverage, controlled substance, or dangerous drug into a secure juvenile correctional or detention facility (except for delivery to a warehouse, pharmacy, or physician and except for alcoholic beverage use by clergy in religious ceremonies);
c. Take a controlled substance or dangerous drug on property owned, used, or controlled by TYC or by any secure juvenile correctional or detention facility (except for delivery to a warehouse, pharmacy, or physician);
d. Possess a controlled substance or dangerous drug on property owned, used, or controlled by TYC or by any secure juvenile correctional or detention facility or in any secure juvenile correctional or detention facility (except possession of a personal prescription or possession for delivery to a warehouse, pharmacy, or physician) or possess a deadly weapon in a secure juvenile correctional or detention facility (except by peace officers); and
e. Possess a cellular telephone in a secure juvenile correctional or detention facility, if the phone is possessed by a youth in placement there.

Transportation Code § 521.351. Purchase of Alcohol For Minor or Furnishing Alcohol to Minor: Automatic Suspension; License Denial.

(a) A person's driver's license is automatically suspended on final conviction of an offense under Section 106.06, Alcoholic Beverage Code.

(b) The department may not issue a driver's license to a person convicted of an offense under Section 106.06, Alcoholic Beverage Code, who, on the date of the conviction, did not hold a driver's license.

(c) The period of suspension under this section is the 180 days after the date of a final conviction, and the period of license denial is the 180 days after the date the person applies to the department for reinstatement or issuance of a driver's license, unless the person has previously been denied a license under this section or had a license suspended, in which event the period of suspension is one year after the date of a final conviction, and the period of license denial is one year after the date the person applies to the department for reinstatement or issuance of a driver's license.

Commentary by Ryan Kellus Turner

Source: HB 1357
Effective Date: September 1, 2005
Applicability: Conduct that occurs on or after the effective date.
Summary of Changes: Minors are no longer the only ones who face driver's license suspensions as a consequence of conviction under Chapter 106 of the Alcoholic Beverage Code. House Bill 1357 creates Section 521.351 of the Transportation Code stating that defendants convicted of purchasing or furnishing alcohol to a minor (Section 106.06, a Class A misdemeanor) shall receive a suspension for 180 days. If the defendant does not possess a driver's license at the time of conviction, the suspension does not begin until application is made for a driver's license. Repeat offenders face mandatory suspensions/denials for one year.

Alcoholic Beverage Code § 106.12. Expungement of Conviction of a Minor.

(d) The court shall charge an applicant a fee in the amount of $30 for each application for expungement filed under this section to defray the cost of notifying state agencies of orders of expungement under this section.

Commentary by Ryan Kellus Turner

Source: SB 1426
Effective Date: September 1, 2005
Applicability: Applications for expunction filed on or after the effective date.
Summary of Changes: This amendment creates Section 106.12, Alcoholic Beverage Code, requiring the court to impose a $30 for each application for expunction for an offense involving a minor. This additional fee is imposed to defray the cost of notifying state agencies of orders of expunction under this section. SB 1426 alters several other code sections, such as the Code of Criminal Procedure and the Health & Safety Code, resulting in the widespread addition of a $30 fine for expunction applications for offenses involving minors.

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

(d) If the defendant does not present the required evidence within the prescribed period, the court:

(1) shall order the Department of Public Safety to:

(A) suspend the defendant's driver's license or permit for a period not to exceed six months or, if the defendant does not have a license or permit, to deny the issuance of a license or permit to the defendant for that period; or

(B) if the defendant has been previously convicted of an offense under one or more of the sections listed in Subsection (a), suspend the defendant's driver's license or permit for a period not to exceed one year or, if the defendant does not have a license or permit, to deny the issuance of a license or permit to the defendant for that period; and

Commentary by Ryan Kellus Turner

Source: HB 1357
Effective Date: September 1, 2005
Applicability: Conduct that occurs on or after the effective date.
Summary of Changes: This provision amends Section 106.115 (d), Alcoholic Beverage Code (Attendance at Alcohol Awareness Course; License Suspension) requiring courts to order the Department of Public Safety (DPS) to suspend a minor's driver's license.
As amended, a court shall suspend the license or permit of a minor who has previously been convicted of an alcohol-related crime (described below) for a period not to exceed one year. If the minor does not possess a license or permit, the minor shall be denied issuance of a license or permit for the specified period.
The increased suspension apply to the following offenses: public intoxication (Section 49.02, Penal Code), purchase of alcohol by a minor (Section 106.02, ABC), attempt to purchase alcohol by a minor (Section 1, ABC), consumption of alcohol by a minor (Section 106.04); driving under the influence of alcohol by minor (Section 106.041), possession of alcohol by a minor (Section 106.05); misrepresentation of age by minor (Section 106.07).

2. Education and Juvenile Justice Legislation

Education Code § 25.001. Admission.

(b) The board of trustees of a school district or its designee shall admit into the public schools of the district free of tuition a person who is over five and younger than 21 years of age on the first day of September of the school year in which admission is sought if:

(1) the person and either parent of the person reside in the school district;

(2) the person does not reside in the school district but a parent of the person resides in the school district and that parent is a joint managing conservator or the sole managing conservator or possessory conservator of the person;

(3) the person and the person's guardian or other person having lawful control of the person under a court order reside within the school district;

(4) the person has established a separate residence under Subsection (d);

(5) the person is homeless, as defined by 42 U.S.C. Section 11302, regardless of the residence of the person, of either parent of the person, or of the person's guardian or other person having lawful control of the person;

(6) the person is a foreign exchange student placed with a host family that resides in the school district by a
nationally recognized foreign exchange program, unless the school district has applied for and been granted a waiver by the commissioner under Subsection (e);

(7) the person resides at a residential facility located in the district; [~~or~~]

(8) the person resides in the school district and is 18 years of age or older or the person's disabilities of minority have been removed; or

(9) the person does not reside in the school district but the grandparent of the person:

(A) resides in the school district; and

(B) provides a substantial amount of after-school care for the person as determined by the board.

Commentary by Lisa Capers and Linda Brooke

Source: HB 283
Effective Date: June 18, 2005
Applicability: Admissions occurring on or after the effective date.
Summary of Changes: This provision amends Section 25.001 to require a school district to allow a student who does not reside in the district to enroll if the student's grandparent resides in the district and provides a substantial amount of after-school care. The school board ultimately determines what is substantial.

Education Code § 25.0341. Transfer of Students Involved in Sexual Assault.

(a) This section applies only to:

(1) a student:

(A) who has been convicted of or placed on deferred adjudication for the offense of sexual assault under Section 22.011, Penal Code, or aggravated sexual assault under Section 22.021, Penal Code, committed against another student who, at the time the offense occurred, was assigned to the same campus as the student convicted or placed on deferred adjudication;

(B) who has been adjudicated under Section 54.03, Family Code, as having engaged in conduct described by Paragraph (A);

(C) whose prosecution under Section 53.03, Family Code, for engaging in conduct described by Paragraph (A) has been deferred; or

(D) who has been placed on probation under Section 54.04(d)(1), Family Code, for engaging in conduct described by Paragraph (A); and

(2) a student who is the victim of conduct described by Subdivision (1)(A).

(b) On the request of a parent or other person with authority to act on behalf of a student who is a victim to whom Subsection (a)(2) applies:

(1) the board of trustees of the school district shall transfer the student to:

(A) a district campus other than:

(i) the campus to which the student was assigned at the time the conduct occurred; or

(ii) the campus to which the student who engaged in the conduct is assigned, if the student who engaged in the conduct has been assigned to a different campus since the conduct occurred; or

(B) a neighboring school district, if there is only one campus in the district serving the grade level in which the student is enrolled; or

(2) if the student does not wish to transfer to another campus or district, the board of trustees shall transfer the student who engaged in the conduct to:

(A) a district campus other than the campus to which the student who is the victim of the conduct is assigned; or

(B) the district's disciplinary alternative education program or juvenile justice alternative education
program, if there is only one campus in the district serving the grade level in which the student who engaged in the conduct is enrolled.

(c) A transfer under Subsection (b)(1) must be to a campus or school district, as applicable, agreeable to the parent or other person with authority to act on the student's behalf.

(d) To the extent permitted under federal law, a school district shall notify the parent or other person with

authority to act on behalf of a student who is a victim to whom Subsection (a)(2) applies of the campus or program to which the student who engaged in conduct described by Subsection (a)(1)(A) is assigned.

(e) This section applies regardless of whether the conduct occurred on or off of school property.

(f) Section 25.034 does not apply to a transfer under this section.

(g) A school district is not required to provide transportation to a student who transfers to another campus or school district under this section.

Commentary by Lisa Capers and Linda Brooke

Source: HB 308
Effective Date: June 18, 2005
Applicability: Transfers requested on or after the effective date, the basis of which were sexual assaults that occurred during the 2004-05 school year or later.
Summary of Changes: There have been several instances statewide where a student victim of sexual assault and the perpetrator were enrolled in the same school district and attended the same school campus. This is clearly an undersireable situation in most cases. This transfer provision was passed to ensure that a victim of sexual assault is not further victimized by having to attend the same school as the offender.

New Section 25.0341 describes the transfer process. Subsection (a) defines to whom the section applies to and includes a student who is the victim of sexual assault or aggravated sexual assault and the student perpetrator of these crimes if both the victim and the perpetrator attended the same school campus when the assault took place. This section applies to adult convictions and deferred adjudications and juvenile adjudications and deferred prosecution dispositions.

Subsection (b) requires the school district, on the request of a parent or other person with authority to act on behalf of the student, to transfer the victim to a different school campus within the district or to a neighboring school district. If the victim does not wish to transfer, the school district must transfer the perpetrator. Subsection (c) requires that the student's parent or other person with authority to act on behalf of the student agree to any transfer of the victim student. Subsection (d) requires the school to tell the victim to which campus the perpetrator is transferred if this is a permitted disclosure under federal law (i.e., the Family Educational Rights and Privacy Act - FERPA).

Subsection (e) makes it clear that this transfer provision applies regardless of where the offense occurred; thus, offenses that occur off school property are included in this law.

The school district is not required to provide transportation to an alternate campus in the school district nor to another school district campus. The hearing and appeal provisions of Section 25.034 which are applicable to regular transfer requests by a parent do not apply to transfers due to assaults under this new section.

Education Code § 25.0341. Transfer of Victims of Bullying.

(a) In this section, "bullying" means engaging in written or verbal expression or physical conduct that a school district board of trustees or the board's designee determines:

(1) will have the effect of physically harming a student, damaging a student's property, or placing a student in reasonable fear of harm to the student's person or of damage to the student's property; or

(2) is sufficiently severe, persistent, or pervasive enough that the action or threat creates an intimidating,
threatening, or abusive educational environment for a student.

(b) On the request of a parent or other person with authority to act on behalf of a student who is a victim of bullying, the board of trustees of a school district or the board's designee shall transfer the victim to:

(1) another classroom at the campus to which the victim was assigned at the time the bullying occurred; or

(2) a campus in the school district other than the campus to which the victim was assigned at the time the bullying occurred.

(c) The board of trustees or the board's designee shall verify that a student has been a victim of bullying before
transferring the student under this section.

(d) The board of trustees or the board's designee may consider past student behavior when identifying a bully.

(e) The determination by the board of trustees or the board's designee is final and may not be appealed.

(f) A school district is not required to provide transportation to a student who transfers to another campus under
Subsection (b)(2).

(g) Section 25.034 does not apply to a transfer under this section.

Commentary by Lisa Capers and Linda Brooke

Source: HB 283
Effective Date: June 18, 2005
Applicability: Transfer requests received on or after the effective date.
Summary of Changes: Every year, hundreds of children are victims of bullying on school campuses. This type of behavior impedes student learning in the classroom and creates a threatening and intimidating environment for children in addition to posing health and safety concerns.

Newly created Section 25.0341 allows a student who is a victim of bullying to transfer to another classroom on the same campus or another school campus within the district if requested by a parent or other person with authority to act for the student. The definition of "bullying" is found in Subsection (a) and whether the verbal expression or physical conduct meet this definition is determined by the school district board of trustees or the board's designee. The board of trustees or their designee must verify that the student was in fact a victim of bullying before transferring the student. If the parent requests the transfer and the school district determines the victim was in fact bullied, the transfer is mandatory.

The school board's decision regarding the transfer is mandatory and cannot be appealed. The school district is not required to provide transportation to an alternate campus. The hearing and appeal provisions of Section 25.034 which are applicable to regular transfer requests by a parent do not apply to transfers due to bullying under this new section.

Education Code § 26.013. Student Directory Information.

(a) A school district shall provide to the parent of each district student at the beginning of each school year or on enrollment of the student after the beginning of a school year:

(1) a written explanation of the provisions of the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g), regarding the release of directory information about the student; and

(2) written notice of the right of the parent to object to the release of directory information about the student under the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g).

(b) The notice required by Subsection (a)(2) must contain:

(1) the following statement in boldface type that is 14-point or larger:

"Certain information about district students is considered directory information and will be released to anyone who follows the procedures for requesting the information unless the parent or guardian objects to the release of the directory information about the student. If you do not want [insert name of school district] to disclose directory information from your child's education records without your prior written consent, you must notify the district in writing by [insert date]. [Insert name of school district] has designated the following information as directory information: [Here a school district must include any directory information it chooses to designate as directory information for the district, such as a student's name, address, telephone listing, electronic mail address, photograph, degrees, honors and awards received, date and place of birth, major field of study, dates of attendance, grade level, most recent educational institution attended, and participation in officially recognized activities and sports, and the weight and height of members of athletic teams.]";

(2) a form, such as a check-off list or similar mechanism, that:

(A) immediately follows, on the same page or the next page, the statement required under Subdivision (1); and

(B) allows a parent to record:

(i) the parent's objection to the release of all directory information or one or more specific categories of directory information if district policy permits the parent to object to one or more specific categories of directory information;

(ii) the parent's objection to the release of a secondary student's name, address, and telephone number to a military recruiter or institution of higher education; and

(iii) the parent's consent to the release of one or more specific categories of directory information for a limited school-sponsored purpose if such purpose has been designated by the district and is specifically identified, such as for a student directory, student yearbook, or district publication; and

(3) a statement that federal law requires districts receiving assistance under the Elementary and Secondary Education Act of 1965 (20 U.S.C. Section 6301 et seq.) to provide a military recruiter or an institution of higher education, on request, with the name, address, and telephone number of a secondary student unless the parent has advised the district that the parent does not want the student's information disclosed without the parent's prior written consent.

(c) A school district may designate as directory information any or all information defined as directory information by the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g). Directory information under that Act that is not designated by a district as directory information for that district is excepted from disclosure by the district under Chapter 552, Government Code.

(d) Directory information consented to by a parent for use only for a limited school-sponsored purpose, such as for a student directory, student yearbook, or school district publication, if any such purpose has been designated by the district, remains otherwise confidential and may not be released under Chapter 552, Government Code.

Commentary by Lisa Capers and Linda Brooke

Source: SB 256
Effective Date: June 17, 2005
Applicability: This Act applies beginning with the 2005-2006 school year.
Summary of Changes: The Family Educational Rights and Privacy Act (FERPA) requires school districts to notify parents about directory information and allow parents a reasonable amount of time to request that the

school not disclose directory information about their child. Federal law does not address the means of parental notification. Under current law, school districts do not have the clear ability to determine or designate what will constitute directory information. The Attorney General has been forced to render opinions in light of the state Public Information Act and in the absence of clear state law on the issue. There is no state law which allows a school district to designate use of directory information for a limited purpose such as a yearbook, student directory, or publication.

New Section 26.013 mandates a variety of procedures school districts must now follow relating to releasing student information. Subsection (a) requires the school district to provide each student's parent a written explanation of FERPA as it relates to release of directory information and the parent's right to object to any release of directory information about the student under FERPA. Subsection (b) details what the notice must say and how it must look (i.e., size font, boldface type, etc.). A consent and/or objection form must also be provided to parents.

Subsection (c) states that any information not designated by the school district as directory information under FERPA is not required to be disclosed under the Texas Open Records Act (i.e., Chapter 552 Government Code). Subsection (d) states that directory information consented to by a parent for limited use (e.g., yearbook, student directory, etc.) is confidential and not subject to release under the Open Records Act.

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, 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 alternative education program;

(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;

(7) prohibit bullying, harassment, and making hit lists and ensure that district employees enforce those prohibitions; and

(8) provide, as appropriate for students at each grade level, methods, including options, for:

(A) managing students in the classroom and on school grounds;

(B) disciplining students; and

(C) preventing and intervening in student discipline problems, including bullying, harassment, and making hit lists.

(b) In this section:

(1) "Harassment" means threatening to cause harm or bodily injury to another student, engaging in sexually intimidating conduct, causing physical damage to the property of another student, subjecting another student to physical confinement or restraint, or maliciously taking any action that substantially harms another student's physical or emotional health or safety.

(2) "Hit list" means a list of people targeted to be harmed, using:

(A) a firearm, as defined by Section 46.01(3), Penal Code;

(B) a knife, as defined by Section 46.01(7), Penal Code; or

(C) any other object to be used with intent to cause bodily harm.

(b-1) The methods adopted under Subsection (a)(8) must provide that a student who is enrolled in a special education program under Subchapter A, Chapter 29, may not be disciplined for conduct prohibited in accordance with Subsection (a)(7) until an admission, review, and dismissal committee meeting has been held to review the conduct.

Commentary by Lisa Capers and Linda Brooke

Source: HB 283
Effective Date: June 18, 2005
Applicability: Student codes of conduct applicable to students on or after the effective date.
Summary of Changes: The issue of student bullying has become a national issue and bullying is frequently a catalyst for escalating violence. This provision requires school districts to prohibit bullying, harassment and hit lists in the student code of conduct. School district employees are required to enforce these prohibitions. The

student code of conduct must also provide methods and options for managing students at the school, disciplining students and preventing and intervening in student discipline problems, including bullying, harassment and making hit lists.

Subsection (b) defines "harassment" and "hit list". Subsection (b-1) makes clear that a student enrolled in a special education program may not be disciplined for bullying, harassment and making hit lists until an admission, review and dismissal (ARD) committee meeting has been held.

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, 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 alternative education program;

(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, to:

(A) self-defense;

(B) intent or lack of intent at the time the student engaged in the conduct;

(C) a student's disciplinary history; or

(D) a disability that substantially impairs the student's capacity to appreciate the wrongfulness of the student's conduct;

(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.

(e) Except as provided by Section 37.007(e), this subchapter does not require the student code of conduct to specify a minimum term of a removal under Section 37.006 or an expulsion under Section 37.007.

Commentary by Lisa Capers and Linda Brooke

Source: HB 603
Effective Date: June 17, 2005
Applicability: Student codes of conduct developed and implemented on or after the effective date.
Summary of Changes: Each school year there are a number of students who innocently engaged in a prohibited behavior and are sent to an alternative education setting regardless of their lack of intent. This removal is often because of a school district's zero tolerance policies or the requirement to remove a student under Texas Education Code Sections 37.006 (expulsion or removal to Disciplinary Alternative Education Program) or 37.007 (expulsion to a Juvenile Justice Alternative Education Program).

This new provision allows a school district to consider self-defense, a student's intent or lack of intent and a student's disciplinary history when evaluating an incident. Additionally, the school district may consider a disability that substantially impairs the student's capacity to appreciate the wrongfulness of the student's conduct. It is important to note that the school district is not mandated to consider these factors, but must specify in the student code of conduct whether this consideration is given.

Education Code § 37.002. Removal by Teacher.

(d) A teacher shall remove from class and send to the principal for placement in a disciplinary 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. If the teacher removed the student from class because the student has engaged in the elements of any offense listed in Section 37.006(a)(2)(B) or Section 37.007(a)(2)(A) or (b)(2)(C) against the teacher, the student may not be returned to the teacher's class without the teacher's consent. The teacher may not be coerced to consent.

Commentary by Lisa Capers and Linda Brooke

Source: HB 603
Effective Date: June 17, 2005
Applicability: Placements of removed students back into classrooms occurring on or after the effective date.
Summary of Changes: This provision requires that the teacher who originally removed a student from class for certain offenses must consent to the return of the student to the class. The teacher may not be coerced to consent. The offenses covered are assault with bodily injury (Class A Misdemeanor), aggravated assault, sexual assault and aggravated sexual assault.

Education Code § 37.0051. Placement of Students Committing Sexual Assault Against Another Student.

(a) As provided by Section 25.0341(b)(2), a student shall be removed from class and placed in a disciplinary alternative education program under Section 37.008 or a juvenile justice alternative education program under Section 37.011.

(b) A limitation imposed by this subchapter on the length of a placement in a disciplinary alternative education program or a juvenile justice alternative education program does not apply to a placement under this section.

Commentary by Lisa Capers and Linda Brooke

Source: HB 308
Effective Date: June 18, 2005
Applicability: Transfers requested on or after the effective date, the basis of which were sexual assaults that occurred during the 2004-05 school year or later.
Summary of Changes: New Section 37.0051 is a companion statute to new Section 25.0341 which requires school districts to ensure that a student victim of a sexual assault or aggravated sexual assault committed by a fellow student is not forced to attend the same school campus as the perpetrator of the crime. Any limitation on the length of stay in a disciplinary alternative education program (DAEP) or juvenile justice alternative education program (JJAEP) do not apply to transfers under this section.

Education Code § 37.083. Discipline Management Programs; Sexual Harassment Policies.

(a) Each school district shall adopt and implement a discipline management program to be included in the district improvement plan under Section 11.252. The program must provide for prevention of and education concerning unwanted physical or verbal aggression, sexual harassment, and other forms of bullying in school, on school grounds, and in school vehicles.

Commentary by Lisa Capers and Linda Brooke

Source: HB 283
Effective Date: June 18, 2005
Applicability: Student codes of conduct developed and implemented on or after the effective date.
Summary of Changes: Research has shown that prevention education for school faculty and students can reduce the incidences of bullying and harassment on school campuses. The most effective means of addressing bullying is through comprehensive, school wide education.

This provision adds components to the school district's mandatory discipline management program. Now this program must provide for prevention of and education concerning unwanted physical or verbal aggression, sexual harassment and other forms of bullying.

Education Code § 37.006. Removal for Certain Conduct.

(o) In addition to any notice required under Article 15.27, Code of Criminal Procedure, a principal or a principal's designee shall inform each educator who has responsibility for, or is under the direction and supervision of an educator who has responsibility for, the instruction of a student who has engaged in any violation listed in this section of the student's misconduct. Each educator shall keep the information received under this subsection confidential from any person not entitled to the information under this subsection, except that the educator may share the information with the student's parent or guardian as provided for by state or federal law. The State Board for Educator Certification may revoke or suspend the certification of an educator who intentionally violates this subsection.

Commentary by Lisa Capers and Linda Brooke

Source: HB 603
Effective Date: June 17, 2005
Applicability: Notices sent regarding conduct which occurred on or after the effective date.
Summary of Changes: This section was added to ensure that educators responsible for the instruction and/or supervision of a student are made aware of the behavior a student engaged in that resulted in the placement in a disciplinary alternative education program (DAEP). Ensuring that educators are aware of the reasons students are placed in a DAEP is crucial to student and staff safety.

The new provision applies to those offenses listed in Article 15.27 of the Code of Criminal Procedure. Educators who receive this information must keep it confidential unless they are authorized to release the information to other educators or the student's parent or guardian under state or federal law. A teacher's certification may be revoked or suspended for a violation of this confidentiality provision.

Education Code § 37.007. Expulsion for Serious Offenses.

(g) In addition to any notice required under Article 15.27, Code of Criminal Procedure, a [~~A~~] school district shall inform each educator who has responsibility for, or is under the direction and supervision of an educator who has responsibility for, the instruction [~~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 of the student's misconduct. Each educator [~~A teacher~~] shall keep the in-

formation received under [~~in~~] this subsection confidential from any person not entitled to the information under this subsection, except that the educator may share the information with the student's parent or guardian as provided for by state or federal law. The State Board for Educator Certification may revoke or suspend the certification of an educator [~~a teacher~~] who intentionally violates this subsection.

Commentary by Lisa Capers and Linda Brooke

Source: HB 603
Effective Date: June 17, 2005
Applicability: Notices sent regarding conduct which occurred on or after the effective date.
Summary of Changes: This section was amended to ensure that educators responsible for the instruction and/or supervision of a student are made aware of the behavior a student engaged in that resulted in an expulsion under Section 37.007 and placement in the disciplinary alternative education program (DAEP). Ensuring that educators are aware of the reasons students are placed in a DAEP is crucial to student and staff safety.

The new provision applies to those offenses listed in Article 15.27 of the Code of Criminal Procedure. Educators who receive this information must keep it confidential unless they are authorized to release the information to other educators or the student's parent or guardian under state or federal law. A teacher's certification may be revoked or suspended for a violation of this confidentiality provision.

Education Code § 37.008. Disciplinary Alternative Education Programs.

(j) If a student placed in a disciplinary 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 shall inform each educator who will have responsibility for, or will be under the direction and supervision of an educator who will have responsibility for, the instruction of the student of the contents of the placement order. Each educator shall keep the information received under this subsection confidential from any person not entitled to the information under this subsection, except that the educator may share the information with the student's parent or guardian as provided for by state or federal law. 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.

Commentary by Lisa Capers and Linda Brooke

Source: HB 603
Effective Date: June 17, 2005
Applicability: Notices sent regarding conduct which occurred on or after the effective date.
Summary of Changes: Ensuring that educators are aware of the reasons students are placed in a DAEP is crucial to student and staff safety. The provision requires that when a student who is required to attend a DAEP in one school district moves to another district, the previous school district must inform the educators in the new DAEP of the reason the student was originally placed in a DAEP. Educators receiving this information must keep it confidential unless they are legally allowed to disclose it.

Education Code § 37.012. Funding of Juvenile Justice Alternative Education Programs.

(e) Except as otherwise authorized by law, a juvenile justice alternative education program may not require a student or the parent or guardian of a student to pay any fee, including an entrance fee or supply fee, for participating in the program.

Commentary by Lisa Capers and Linda Brooke

Source: HB 1687
Effective Date: June 18, 2005
Applicability: JJAEP admissions on or after the effective date.
Summary of Changes: Current law does not address the ability of a juvenile justice alternative education program (JJAEP) to collect a fee from a student or the student's parent or guardian for participation in the program. A JJAEP is funded through foundation school funds and students enrolled are considered public education students. This provision makes clear that JJAEPs are not authorized to charge fees to students.

3. Child Abuse and Neglect Legislation

Senate Bill 6 by **Senator Jane Nelson** and **Representative Suzanna Hupp** is the omnibus Texas Department of Family and Protective Services (TDFPS) reform bill. This is a huge bill (86 pages) and the full text is not included in this issue but can be downloaded at the legislature's website at www.capitol.state.tx.us. However, a synopsis of the key provisions of the bill prepared by TDFPS is below.

Senate Bill 6 contains provisions that will affect all agency programs: Child Protective Services (CPS), Adult Protective Services (APS), Child Care Licensing (CCL), and Purchased Client Services (PCS). The following are key provisions in the bill:

CHILDREN AND FAMILIES

Strengthen Investigations:

- A ***Director of Investigations*** has been hired to oversee and direct the investigative functions of CPS. (CPS)
- ***Experienced Staff for Complex Cases (Senior Investigators)***
  A new system will ensure that complex CPS investigations are assigned to staff with forensic investigation experience. (CPS)
- ***Response Time Reduction***
  No later than September 2007, TDFPS must immediately respond to a report that could lead to death or severe harm to a child. Highest priority reports must be responded to within 24 hours. All other reports must be responded to within 72 hours. (CPS, CCL)
- ***False Reports***
  The penalty for a false report, with intent to deceive, will increase from a misdemeanor to a felony, with an increased penalty for previous offenders. (CPS, CCL)

Support Quality Casework:

- ***Caseload Reduction***
  By the end of the biennium, CPS caseloads will drop from an average of 44 daily to an average of 33. (CPS)
  TDFPS will develop a caseworker replacement program to ensure caseworker vacancies are filled in a timely manner. (CPS)
- ***Casework Documentation***
  CPS caseworkers will identify investigative actions that impact child safety and document those actions in the child's file before the end of the next business day. (CPS)
  CPS Caseworkers will identify forms and paperwork that family members may assist in completing. The TDFPS employee will be responsible for ensuring that the paperwork is completed appropriately. (CPS)

Improve Services to Vulnerable Texans:

- ***Child Placement***
  The Relative and Other Designated Caregiver Placement Program will promote continuity for children in TDFPS care and facilitate relative placement by providing assistance and services to caregivers. (CPS)
  The Child Placement Resources Form will be developed to ensure faster placement of children removed from the home. Parents will complete the form with three names of relatives or designated caregivers for a child in the event that a court orders the removal of the child. (CPS)
  TDFPS will conduct background and criminal history checks on the relatives or other individuals identified as potential caregivers. DFPS must evaluate each individual listed on the form to determine the most appropriate substitute caregiver. (CPS)
- ***Attorney Ad Litem***
  Requires attorneys ad litem to meet the child (or the child's caregiver, if the child is younger than four) before each court hearing and to obtain continuing education training in child advocacy. (CPS)
- ***Child Care Licensing***
  Fines and penalties are strengthened for violations that occur in residential facilities. (CCL)
  Qualifications are laid out for persons eligible for child-placing agency administrator's license. (CCL)
  Increases the minimum amount of continuing education required for licensed administrators. (CCL)
  Child care facility staff will receive training on recognizing child abuse and sexual molestation, first aid, and preventing the spread of communicable diseases. (CCL)
  Random inspections will be conducted in agency foster homes and group homes using an inspection checklist. The checklist will be provided to the facility upon completion of the inspection. (CCL, CPS)
  Requires residential child-care facilities to notify parents earlier if TDFPS decides to take adverse action against the facility's license. (CCL)
  Requires facilities to report all serious incidents that threaten the health, safety, or well-being of any

child, including missing children, to Child Care Licensing. (CCL, CPS)

Requires residential child-care facilities to report abuse by a child against another child. (CCL)

Includes the definition of a "controlling person" in a residential facility. If adverse action were taken against a facility, the ability of those people in the facility who are identified as controlling may be limited or prohibited from participating in residential child care. (CCL)

Changes the way a residential child-care license is issued. The criterion that the facilities must be "nearby" one another is replaced with more specific criteria. (CCL)

Requires a residential child-care employee from providing direct care or from having direct access to a child in care before a background check is complete. (CCL)

Requires residential child-care facilities to have a drug-testing policy. (CCL)

Allows CCL to prohibit reapplication by a person or entity following a denial or revocation from two to five years for a residential child-care facility. (CCL)

Allows CCL to prohibit reapplication by a person or entity following a denial for two years for a child day care operation. (CCL)

Allows CCL to deny a residential license to an applicant that has had a residential child-care facility license revoked in another state or if the applicant was barred from operating a residential child-care facility in another state. (CCL)

Increases training requirements for investigation staff and requires TDFPS to provide advanced training in investigative protocols and techniques to residential child-care facility licensing investigators (CCL)

- ***Health and Education Passports***

  An electronic health passport and education passport will be created for every foster child. The health passport will contain medical history information and the education passport will contain educational records. (CPS)

  The passports will become part of DFPS records and will remain with the child while in the care of TDFPS. (CPS)

- ***Preparation for Adult Living (PAL)***

  TDFPS will help foster children facing the challenge of transitioning to independent living. (CPS)

  Foster care eligibility and transition services will be extended to foster youth up to age 22. (CPS)

Build Community Partnerships:

- ***Working with Law Enforcement***

  TDFPS will collaboratively work with law enforcement to conduct joint investigations. Investigations will incorporate the use of forensic methods for determining the occurrence of abuse and neglect. (CPS)

  Joint training will also be conducted to improve interviewing techniques, evidence gathering, and testifying in court for criminal investigations. (CPS, CCL)

  Collocation with law enforcement will improve the efficiency of child abuse investigations. (CPS)

- ***Cultural Awareness***

  Cultural competency training will be given to all direct delivery staff. (CPS)

  The disproportionate representation of any ethnic or racial group will be studied, analyzed and reported to the Legislature. (CPS)

Improve Management and Accountability:

- ***Outsourcing Case Management and Substitute Care Services***

  The outsourcing of case management and substitute care services will be completed on a regional basis. The first region will be completed by December 31, 2007. (CPS, PCS)

  A second and third region will be implemented by December 31, 2009. (CPS, PCS)

  After September 1, 2011 TDFPS may provide substitute care and case management services in an emergency. (CPS, PCS)

- ***Enhanced Technology***

  Mobile technology (tablet PC's) will be developed for use by CPS investigation caseworkers to increase efficiency and allow for daily documentation. (CPS) (CCL)

  The strategic use of technology will continue to be explored as a way of reducing workload, increasing accountability, and enhancing overall efficiency and effectiveness. (CPS) (CCL)

Prevent Maltreatment:

- ***Prevention and Early Intervention***

  Health and Human Services Commission and TDFPS will develop a plan to combine funds with appropriate state agencies and government entities to provide services to prevent children from being placed in foster care. The services may include counseling, parenting skills instruction, support services, crisis services, and more. (PCS)

  The Community-Based Family Services grant program will be established to provide funding to community organization that respond to and help prevent child abuse. (PCS)

  The family protection fee, collected when a couple files for divorce, is established with half of the fee going to the child abuse prevention trust

fund and half of the fee going to counties for prevention programs. (PCS)

Funds county child abuse prevention programs with fines assessed against persons convicted of certain sexual assault offenses. (PCS)

- ***Drug-Related Initiatives***

  The Family Drug Court Program will integrate substance abuse treatment services into child abuse/neglect cases, when necessary. (PCS, CPS)

  The Drug-Endangered Child Initiative will be established to help protect children who are exposed to methamphetamine production. (PCS, CPS)

VULNERABLE ADULTS

Policy and Procedures:

- ***Guardianship Program Transfer***

  The Guardianship Program is transferred to the Department of Aging and Disability Services (DADS). (APS, DADS)

  The transfer will allow TDFPS to focus on its investigative function, identifying cases of abuse, neglect, and exploitation. (APS, DADS)

- APS will develop and implement a ***quality assurance program*** for services provided to APS clients. (APS)
- APS shall maintain an ***investigation unit*** to investigate allegations of abuse, neglect, and exploitation of elderly and disabled persons. (APS)
- ***Experienced Staff for Complex Cases***

  A new system will ensure that complex APS investigations are assigned to the most experienced staff. (APS)

- ***Assessment of Ability***

  TDFPS will ensure that only trained professionals will assess a person's decision-making capacity when the person is in a state of abuse, neglect or exploitation that may pose a threat to life or physical safety. (APS)

Organization and Administration

- ***Caseload Reduction***

  By the end of the biennium, APS caseloads will drop from an average of 35 daily to an average of 28. (APS)

  TDFPS will develop a caseworker replacement program to ensure caseworker vacancies are filled in a timely manner. (APS)

  TDFPS will develop a recruitment program that encourages qualified applicants to apply for direct practice positions. (APS)

  TDFPS will offer an incentive program to encourage retention of qualified staff. (APS)

- ***Enhanced Training for APS Workers***

  Enhanced training will include additional field training, use of risk assessment tools, available legal procedures, best practices for case management, and actual case examples, including specialized training in financial exploitation, self-neglect and working with community organizations, law enforcement, and courts. (APS)

  On-the-job training will require supervisors to accompany workers throughout their first case. (APS)

- ***Enhanced Technology***

  APS caseworkers will receive state of the art technology tools, such as tablet PCs, to increase efficiency. (APS)

  The strategic use of technology will continue to be explored as a way of reducing workload, increasing accountability, and enhancing overall efficiency and effectiveness. (APS)

Working with Community Partners

- APS will implement a statewide ***public awareness campaign*** to educate the public about abuse, neglect, and exploitation of elderly and disabled people. (PCS, APS)
- APS will work with ***special task units*** that will exist in counties with a population that exceeds 250,000. The task units will work together with APS caseworkers and supervisors to resolve complex cases. (APS)

Family Code § 261.103. Report Made to Appropriate Agency.

(a) Except as provided by Subsections [~~Subsection~~] (b) and (c) and Section 261.405, a report shall be made to:

(1) any local or state law enforcement agency;

(2) the department [~~if the alleged or suspected abuse involves a person responsible for the care, custody, or welfare of the child~~];

(3) the state agency that operates, licenses, certifies, or registers the facility in which the alleged abuse or
neglect occurred; or

(4) the agency designated by the court to be responsible for the protection of children.

(c) Notwithstanding Subsection (a), a report, other than a report under Subsection (a)(3) or Section 261.405, must be made to the department if the alleged or suspected abuse or neglect involves a person responsible for the care, custody, or welfare of the child.

Commentary by Lisa Capers

Source: HB 1970
Effective Date: September 1, 2005
Applicability: Reports made on or after the effective date.
Summary of Changes: During the 79th Legislature, one of the key issues was reforming the child protective services system and getting needed additional resources. Section 261.103 details to whom a report of alleged child abuse, neglect or exploitation must be sent. The old law allowed some flexibility to make a report to local law enforcement or the Texas Department of Family and Protective Services (TDPRS) if the abuse or neglect involved a person responsible for the care, custody or welfare of the child (e.g., parent, guardian, custodian, etc.). New Subsection (c) makes clear that such a report must now be made to TDPRS.

Family Code § 261.3012. Completion of Paperwork.
An employee of the department who responds to a report that is assigned the highest priority in accordance with department rules adopted under Section 261.301(d) shall identify, to the extent reasonable under the circumstances, forms and other paperwork that can be completed by members of the family of the child who is the subject of the report. The department employee shall request the assistance of the child's family members in completing that documentation but remains responsible for ensuring that the documentation is completed in an appropriate manner.

Commentary by Lisa Capers

Source: HB 802
Effective Date: May 17, 2005
Applicability: Investigations conducted on or after the effective date.
Summary of Changes: Child Protective Services (CPS) caseworkers are legally required to investigate reports of alleged abuse or neglect to a child. The amount of required documentation associated with an investigation varies with the severity of the case and can include a variety of details from basic information to complex medical histories and home study reporting. This new provision requires caseworkers to request the assistance of the child's family members in completing this paperwork. The purpose of HB 802 was to try to free up the time of these caseworkers so they could devote more of their time to the actual investigation. The caseworker is still ultimately responsible for ensuring the documentation is accurate and complete.

Family Code § 261.406. Investigations in Schools.

(b) The department shall send a written report of the department's investigation, as appropriate, to the Texas Education Agency, the agency responsible for teacher certification, the local school board or the school's governing body, the superintendent of the school district, and the school principal or director, unless the principal or director is alleged to have committed the abuse or neglect, for appropriate action. On request, the department shall provide a copy of the report of investigation to the parent, managing conservator, or legal guardian of a child who is the subject of the investigation and to the person alleged to have committed the abuse or neglect. The report of investigation shall be edited to protect the identity of the persons who made the report of abuse or neglect. Section 261.201(b) applies to the release of confidential information relating to the investigation of a report of abuse or neglect under this section and to the identity of the person who made the report of abuse or neglect.

Commentary by Lisa Capers

Source: HB 1970
Effective Date: September 1, 2005
Applicability: Investigations completed on or after the effective date.
Summary of Changes: This amendment adds the superintendent of the school district to the list of persons entitled to receive a copy of a child abuse and neglect investigation conducted by the Texas Department of Family and Protective Services (TDPRS). Section 261.406 applies to investigations of child abuse or neglect that occurs in a school setting. This does not include juvenile justice alternative education programs (JJAEP) because any allegation of abuse, neglect or exploitation occurring in a juvenile justice program, like a JJAEP, are investigated by the Texas Juvenile Probation Commission (TJPC).

Health and Safety Code Chapter 322. Use of Restraint and Seclusion in Certain Health Care Facilities.

SUBCHAPTER A. GENERAL PROVISIONS

§ 322.001. DEFINITIONS.

In this chapter:

(1) "Facility" means:

(A) a child-care institution, as defined by Section 42.002, Human Resources Code, including a state-operated facility, that is a residential treatment center or a child-care institution serving children with mental retardation;

(B) an intermediate care facility licensed by the Department of Aging and Disability Services under Chapter 252 or operated by that department and exempt under Section 252.003 from the licensing requirements of that chapter;

(C) a mental hospital or mental health facility, as defined by Section 571.003;

(D) an institution, as defined by Section 242.002;

(E) an assisted living facility, as defined by Section 247.002; or

(F) a treatment facility, as defined by Section 464.001.

(2) "Health and human services agency" means an agency listed in Section 531.001, Government Code.

(3) "Seclusion" means the involuntary separation of a resident from other residents and the placement of the resident alone in an area from which the resident is prevented from leaving.

[§§ 322.002-322.050 reserved for expansion]

SUBCHAPTER B. RESTRAINTS AND SECLUSION

§ 322.051. CERTAIN RESTRAINTS PROHIBITED.

(a) A person may not administer to a resident of a facility a restraint that:

(1) obstructs the resident's airway, including a procedure that places anything in, on, or over the resident's mouth or nose;

(2) impairs the resident's breathing by putting pressure on the torso; or

(3) interferes with the resident's ability to communicate.

(b) A person may use a prone or supine hold on the resident of a facility only if the person:

(1) limits the hold to no longer than the period specified by rules adopted under Section 322.052;

(2) uses the hold only as a last resort when other less restrictive interventions have proven to be ineffective; and

(3) uses the hold only when an observer, who is trained to identify the risks associated with positional, compression, or restraint asphyxiation and with prone and supine holds and who is not involved in the restraint, is ensuring the resident's breathing is not impaired.

(c) Small residential facilities and small residential service providers are exempt from Subsection (b)(3).

§ 322.052. ADOPTION OF RESTRAINT AND SECLUSION PROCEDURES.

(a) For each health and human services agency that regulates the care or treatment of a resident at a facility, the executive commissioner of the Health and Human Services Commission shall adopt rules to:

(1) define acceptable restraint holds that minimize the risk of harm to a facility resident in accordance with this subchapter;

(2) govern the use of seclusion of facility residents; and

(3) develop practices to decrease the frequency of the use of restraint and seclusion.

(b) The rules must permit prone and supine holds only as transitional holds for use on a resident of a facility.

(c) A facility may adopt procedures for the facility's use of restraint and seclusion on a resident that regulate, more restrictively than is required by a rule of the regulating health and human services agency, the use of restraint and seclusion.

§ 322.053. NOTIFICATION.

The executive commissioner of the Health and Human Services Commission by rule shall ensure that each resident at a facility regulated by a health and human services agency and the resident's legally authorized representative are notified of the rules and policies related to restraints and seclusion.

§ 322.054. RETALIATION PROHIBITED.

(a) A facility may not discharge or otherwise retaliate against:

(1) an employee, client, resident, or other person because the employee, client, resident, or other person files a complaint, presents a grievance, or otherwise provides in good faith information relating to the misuse of restraint or seclusion at the facility; or

(2) a client or resident of the facility because someone on behalf of the client or resident files a complaint,
presents a grievance, or otherwise provides in good faith information relating to the misuse of restraint or seclusion at the facility.

(b) A health and human services agency that registers or otherwise licenses or certifies a facility may:

(1) revoke, suspend, or refuse to renew the license, registration, or certification of a facility that violates Subsection (a); or

(2) place on probation a facility that violates Subsection (a).

(c) A health and human services agency that regulates a facility and that is authorized to impose an administrative penalty against the facility under other law may impose an administrative penalty against the facility for violating Subsection (a). Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty. The amount of the penalty may not exceed the maximum amount that the agency may impose against the facility under the other law. The agency must follow the procedures it would follow in imposing an administrative penalty against the facility under the other law.

(d) A facility may contest and appeal the imposition of an administrative penalty under Subsection (c) by following the same procedures the facility would follow in contesting or appealing an administrative penalty imposed against the facility by the agency under the other law.

§ 322.055. MEDICAID WAIVER PROGRAM.

A Medicaid waiver program provider, when providing supervised living or residential support, shall comply with this chapter and rules adopted under this chapter.

Commentary by Lisa Capers

Source: SB 325
Effective Date: September 1, 2005
Applicability: Restraints and seclusion used on or after the effective date.
Summary of Changes: SB 325 was the comprehensive restraint and seclusion bill filed by Senator Judith Zaffarini during the legislative session. The use of restraints and seclusion on residents in facilities was and will continue to be an area of intense scrutiny. The official bill analysis for this bill included the following information explaining the bill's intent:

> *Injuries and deaths following a personal restraint have gained media attention throughout the country. Deaths involving the use of emergency interventions, particularly a personal or mechanical restraint, have occurred on airplanes, in schools, and in residential facilities. Although the use of behavioral interventions are sometimes necessary and appropriate to protect an individual or someone else, considering the possible unintended consequences to staff as well as residents, it is appropriate for the State to make an effort to better understand the context in which these interventions are used, and to assist providers in using less restrictive alternatives whenever possible.*
>
> *While state agencies all indicate a desire to reduce the use of restraints and seclusions, few have systems by which to collect and analyze data on the frequency of usage. The development of a data collection system that can be used across agencies and over time requires a common language, common data collection techniques, and uniform minimum standards. The purpose of this legislation is to begin the dialogue that could lead to that type of a system being developed.*

Senate Bill 325 addresses the use of restraint and seclusion in a variety of institutions and facilities. Section 1 of the bill addresses several key areas discussed separately below.

Section 322.001 of the Texas Health and Safety Code contains three important definitions. Subsection (1) defines "facility" to include various facilities. Secure juvenile pre-adjudication detention facilities and juvenile post-adjudication correctional facilities registered with the Texas Juvenile Probation Commission (TJPC) are not included in this particular definition. Subsection (2) defines "health and human services agency" and does not include TJPC since TJPC was removed from the Health and Human Services Commission (HHSC) umbrella several sessions ago. Subsection (3) defines "seclusion".

Section 322.051 prohibits the administration of certain restraints on a resident in a facility as defined in Section 322.001. The prohibited restraints are those that obstruct a resident's airway, impair a resident's breathing, and interfere with a resident's communication. Additionally, specified limitations are placed on prone or supine holds. These holds may contribute to positional, compression or restraint asphyxiation and are therefore dangerous to residents if applied improperly.

Section 322.052 requires the executive commissioner of the HHSC to adopt rules that define acceptable restraint holds that minimize harm to residents and rules that govern the use of seclusion in a facility. Additionally the commission is required to develop practices to decrease the frequency of the use of restraint and seclusion in facilities. Facilities may adopt rules stricter than the HHSC rules on an individual facility basis if they choose. These HHSC rules shall be adopted by June 1, 2006.

Section 322.053 requires the HHSC commissioner by rule to require each facility to notify a resident and the resident's legally authorized representative of the rules and policies related to restraints and seclusion. The statute states no required timeframe for this notice, but presumably the HHSC rules will address this issue.

Section 322.054 prohibits retaliation against any person who in good faith files a complaint, grievance or otherwise provides information relating to the misuse of restraint or seclusion in a facility. If a facility violates this provision, the facility may face revocation or suspension of the facility license or the facility may not be able to renew a license. The health and human services agency that regulates the facility may also place the facility on probation and may impose monetary administrative penalties.

Section 322.055 makes it clear that all the rules and policies developed by the HHSC apply to a Medicaid waiver program provider when providing supervised living or residential support.

Health and Safety Code § 242.0373. Restraint and Seclusion.

A person providing services to a resident of an institution shall comply with Chapter 322 and the rules adopted under that chapter.

Health and Safety Code § 247.0255. Restraint and Seclusion.

A person providing services to a resident of an assisted living facility shall comply with Chapter 322 and the rules adopted under that chapter.

Health and Safety Code § 252.0085. Restraint and Seclusion.

A person providing services to a resident of a facility licensed by the department under this chapter or operated by the department and exempt under Section 252.003 from the licensing requirements of this chapter shall comply with Chapter 322 and the rules adopted under that chapter.

Health and Safety Code § 464.0095. Restraint and Seclusion.
A person providing services to a client at a treatment facility shall comply with Chapter 322 and the rules adopted under that chapter.

Health and Safety Code § 571.0067. Restraint and Seclusion.
A person providing services to a patient of a mental hospital or mental health facility shall comply with Chapter 322 and the rules adopted under that chapter.

Human Resources Code § 42.0422. Restraint and Seclusion.
A person providing services to a resident of a child-care institution, including a state-operated facility that is a residential treatment center or a child-care institution serving children with mental retardation, shall comply with Chapter 322, Health and Safety Code, and the rules adopted under that chapter.

Commentary by Lisa Capers

Source: SB 325
Effective Date: September 1, 2005
Applicability: Restraints and seclusion used on or after the effective date.
Summary of Changes: Section 242.0373, 247.0255, 252.0085, 464.0095, 571.0067, and 42.0422, governs child care facilities licensed or regulated by the Texas Department of Family and Protective Services (TDFPS). These amendment requires any person providing services to a resident of a facility (as defined in Section 322.001) to comply with Chapter 322 governing the use of restraints and seclusion. Any rules adopted by HHSC are also applicable to the persons providing services. This would obviously include any persons employed by the facility, but it would also include any persons associated with the facility who come into the facility to provide a service (e.g., counselors, therapists, medical personnel, etc.).

Section 8 of the Bill.

(a) In this section:

(1) "Emergency" means a situation in which attempted preventive de-escalatory or redirection techniques have not effectively reduced the potential for injury and it is immediately necessary to intervene to prevent:

(A) imminent probable death or substantial bodily harm to the person because the person overtly or continually threatens or attempts to commit suicide or threatens or attempts to commit serious bodily harm; or

(B) imminent physical harm to another because the person overtly or continually makes or commits threats, attempts, or other acts.

(2) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(3) "Facility" means:

(A) a facility as defined by Section 322.001, Health and Safety Code, as added by this Act;

(B) a facility under the jurisdiction of the Texas Youth Commission; or

(C) a public or private juvenile detention or correctional facility regulated by the Texas Juvenile Probation Commission under Chapter 141, Human Resources Code.

(4) "Health and human services agency" means a health and human services agency listed in Section 531.001, Government Code, that regulates the care or treatment of a resident of a facility.

(b) The executive commissioner shall establish a work group to recommend best practices in policy, training, safety, and risk management for the Texas Youth Commission, the Texas Juvenile Probation Commission, or a health and human services agency to adopt to govern the management of facility residents' behavior.

(c) The executive commissioner shall determine the number of members to serve on the work group. The executive commissioner shall appoint as members of the work group:

(1) a representative of the Department of State Health Services;

(2) a representative of the Department of Aging and Disability Services;

(3) a representative of the Department of Family and Protective Services;

(4) a representative of the Texas Youth Commission;

(5) a representative of the Texas Education Agency;

(6) a representative of the Texas Juvenile Probation Commission;

(7) a representative of this state's protection and advocacy system established as required by 42 U.S.C. Section 15043 who is appointed by the administrative head of that system; and

(8) additional members who are recognized experts or who represent the interests of facility residents, including advocates, family members, physicians, representatives of hospitals licensed under Chapter 241 or 577, Health and Safety Code, social workers, and psychiatric nurses.

(d) The work group shall study and make recommendations on:

(1) the development of a comprehensive reporting system that:

(A) collects and analyzes data related to the use of:

(i) physical, behavioral, and de-escalation interventions by employees of a facility to manage the behavior of facility residents in an emergency; and

(ii) medication administered by employees to a facility resident without the resident's consent in an emergency;

(B) complies with federal reporting requirements;

(C) documents the death or serious injury of a facility resident related to physical intervention, seclusion, or restraint, including the administration of medication, by an employee; and

(D) documents the death or serious injury of an employee during a physical intervention, seclusion, or restraint;

(2) the prevention of the death of or serious injury to facility residents related to physical intervention or restraint;

(3) de-escalation techniques and minimum standards to manage the behavior of facility residents in an emergency situation;

(4) best practices for physical, behavioral, and de-escalation interventions by employees that include specific holds and techniques for the physical restraint of facility residents;

(5) best practices related to specific populations, including any consideration that should be given to a facility's community or institutional setting; and

(6) best practices related to seclusion of facility residents.

(e) In recommending the best practices, the work group shall:

(1) focus on the physical, behavioral, and de-escalation interventions used by facility employees to manage the behavior of facility residents in an emergency; and

(2) support uniformity in definitions, reporting, and training used by the Texas Youth Commission, the Texas Juvenile Probation Commission, and health and human services agencies.

(f) The executive commissioner shall:

(1) not later than November 1, 2005, establish the work group under Subsection (b) of this section;

(2) not later than June 1, 2006, adopt rules necessary to implement Chapter 322, Health and Safety Code, as added by this Act;

(3) not later than July 1, 2006, file with the appropriate committees of the senate and the house of representatives a report that describes the work group's recommended best practices;

(4) not later than November 1, 2006, adopt rules necessary to implement the best practices recommended by the work group; and

(5) not later than January 1, 2007, file with the appropriate committees of the senate and the house of representatives for consideration by the 80th Legislature a report that describes the actions taken by the Texas Youth Commission, the Texas Juvenile Probation Commission, and health and human services agencies to implement the best practices recommended by the work group.

Commentary by Lisa Capers

Source: SB 325
Effective Date: September 1, 2005
Applicability: Restraints and seclusion used on or after the effective date.
Summary of Changes: Section 8 of SB 325 is a very important provision, especially for juvenile justice practitioners. Whereas the bulk of SB 325 does not apply to secure juvenile justice facilities nor TJPC directly, Section 8 does apply to both. The specific sections are discussed separately below.

Subsection (a) defines three key terms including "emergency", "executive commissioner" and "facility". Most important is the definition of "facility" which in Subsection (a) (3) (C) includes a public or private secure juvenile detention or correctional facility regulated by TJPC.

Subsection (b) requires HHSC to establish a work group to develop and recommend best practices in policy, training, safety and risk management for adoption by health and human service agencies, the Texas Youth Commission (TYC) and TJPC. Subsection (c) requires the commissioner to appoint a variety of representatives from state agencies, advocacy groups and other experts who have an interest in protecting facility residents. TJPC was included in this workgroup because the agency has been progressive and proactive in adopting protective standards related to restraints. Secure juvenile facilities have been subject to TJPC's administrative rules (i.e., facility standards) for several years related to the use of physical, mechanical and chemical restraints. TJPC also collects data regarding the use of restraints in secure juvenile facilities. See 37 Texas Administrative Code Chapter 343.

Subsection (d) provides a laundry list of topics and issues that the work group is mandated to study and upon which to develop recommendations.

Subsection (e) requires that the work group focus on de-escalation interventions that may be used and other issues. Key among these issues is the development of uniformity in definitions, reporting and training as well as a data reporting system to capture the data regarding the use of seclusion and restraint.

Subsection (f) provides all the mandatory time frames for development of the HHSC workgroup, rules development and adoption, and various reporting deadlines to legislative leadership.

4. Municipal and Justice Court Proceedings Legislation

Code of Criminal Procedure Article 102.0173. Court Costs; Justice Court Technology Fund.

(a) The commissioners court of a county by order shall [~~may~~] create a justice court technology fund. A defendant convicted of a misdemeanor offense in justice court shall pay a $4 justice court technology fee as a cost of court for deposit in the fund [~~and may require a defendant convicted of a misdemeanor offense in a justice court to pay a technology fee not to exceed $4 as a cost of court~~].

(d) A fund designated by this article may be used only to finance:

(1) the cost of continuing education and training for justice court judges and clerks regarding technological
enhancements for justice courts; and

(2) the purchase and maintenance of technological enhancements for a justice court, including:

(A) [~~(1)~~] computer systems;
(B) [~~(2)~~] computer networks;
(C) [~~(3)~~] computer hardware;
(D) [~~(4)~~] computer software;
(E) [~~(5)~~] imaging systems;
(F) [~~(6)~~] electronic kiosks;
(G) [~~(7)~~] electronic ticket writers; and
(H) [~~(8)~~] docket management systems.

Commentary by Ryan Kellus Turner

Source: HB 1418
Effective Date: September 1, 2005
Applicability: Offenses committed on or after the effective date.
Summary of Changes: This provision amends Article 102.0173, Code of Criminal Procedure to repeal the September 1, 2005 expiration date on the court costs for the justice court technology fund. It also makes the justice court technology fund fee a standard mandatory court cost and allows expenditures from the technology fund for judges and clerks to receive training on technological enhancements for courts.

Government Code §102.101. Additional Court Costs on Conviction in Justice Court.

A clerk of a justice court shall collect fees and costs on conviction of a defendant as follows:

(1) a jury fee (Article 102.004, Code of Criminal Procedure) . . . $3;

(2) a fee for withdrawing request for jury less than 24 hours before time of trial (Article 102.004, Code of Criminal Procedure) . . . $3;

(3) a jury fee for two or more defendants tried jointly (Article 102.004, Code of Criminal Procedure) ... one jury fee of $3;

(4) a security fee on a misdemeanor offense (Article 102.017, Code of Criminal Procedure) ... $3;

(5) a fee for technology fund on a misdemeanor offense (Article 102.0173, Code of Criminal Procedure) ... not to exceed $4; [~~and~~]

(6) a court cost on conviction in Comal County (Section 152.0522, Human Resources Code) ... $1.50; and

(7) a juvenile case manager fee (Article 102.0174, Code of Criminal Procedure) ... $5.

Commentary by Ryan Kellus Turner

Source: HB 1575
Effective Date: September 1, 2005 (see below)
Applicability: Court costs applicable to conduct that occurs on or after the effective date.
Summary of Changes: This provision amends Section 102.101, Government Code, to require the clerks of a justice court to collect as court costs any juvenile case manager fees created by units of local government under Section 35 of the bill.

As stated in the commentary related to the amendments made to Code of Criminal Procedure Article 102.074, local government may not begin collecting court costs for the juvenile case manger fund until January 1, 2006.

Government Code §102.121. Additional Court Costs on Conviction in Municipal Court.

The clerk of a municipal court shall collect fees and costs on conviction of a defendant as follows:

(1) a jury fee (Article 102.004, Code of Criminal Procedure) . . . $3;

(2) a fee for withdrawing request for jury less than 24 hours before time of trial (Article 102.004, Code of Criminal Procedure) . . . $3;

(3) a jury fee for two or more defendants tried jointly (Article 102.004, Code of Criminal Procedure) . . . one jury fee of $3;

(4) a security fee on a misdemeanor offense (Article 102.017, Code of Criminal Procedure) . . . $3; [~~and~~]

(5) a fee for technology fund on a misdemeanor offense (Article 102.0172, Code of Criminal Procedure) . . . not to exceed $4; and

(6) a juvenile case manager fee (Article 102.0174, Code of Criminal Procedure) . . . $5.

Commentary by Ryan Kellus Turner

Source: HB 1575
Effective Date: September 1, 2005 (see below)
Applicability: Court costs applicable to conduct that occurs on or after the effective date.
Summary of Changes: This provision amends Section 102.121, Government Code, to require the clerks of a municipal court to collect as court costs any juvenile case manager fees created by units of local government under Section 35 of the bill.

These amendments to Chapter 102 of the Government Code were misconstrued by at least one statewide organization in a widely circulated publication. All readers should be mindful that the dollar amount to be collected for the juvenile case manager fund is determined by the local government and is only effective after the passage of an appropriate ordinance or regulation. Some city and counties will certainly opt not to create juvenile case manager fund. In no instance can the amount exceed five dollars.

As stated in the commentary related to the amendments made to Code of Criminal Procedure Article 102.074, local government may not begin collecting court costs for the juvenile case manger fund until January 1, 2006.

Code of Criminal Procedure Article 102.174. Court Costs; Juvenile Case Manager Fund.

(a) In this article, "fund" means a juvenile case manager fund.

(b) The governing body of a municipality by ordinance may create a juvenile case manager fund and may require a defendant convicted of a fine-only misdemeanor offense in a municipal court to pay a juvenile case manager fee not to exceed $5 as a cost of court.

(c) The commissioners court of a county by order may create a juvenile case manager fund and may require a defendant convicted of a fine-only misdemeanor offense in a justice court, county court, or county court at law to pay a juvenile case manager fee not to exceed $5 as a cost of court.

(d) The ordinance or order must authorize the judge or justice to waive the fee required by Subsection (b) or (c) in a case of financial hardship.

(e) In this article, a defendant is considered convicted if:

(1) a sentence is imposed on the defendant;

(2) the defendant receives deferred disposition, including deferred proceedings under Article 45.052 or 45.053; or

(3) the defendant receives deferred adjudication in county court.

(f) The clerks of the respective courts shall collect the costs and pay them to the county or municipal treasurer, as applicable, or to any other official who discharges the duties commonly delegated to the county or municipal treasurer for deposit in the fund.

(g) A fund created under this section may be used only to finance the salary and benefits of a juvenile case manager employed under Article 45.056.

(h) A fund must be administered by or under the direction of the commissioners court or under the direction of the governing body of the municipality.

Commentary by Ryan Kellus Turner

Source: HB 1575
Effective Date: September 1, 2005 (see below)
Applicability: Court costs applicable to conduct that occurs on or after the effective date.
Summary of Changes: This provision amends Subchapter A, Chapter 102, Code of Criminal Procedure, by adding Article 102.0174 to authorize a city council or commissioners court to create a juvenile case manager fund for the salaries and benefits of juvenile case managers employed by the local governmental entity under Article 45.056, Code of Criminal Procedure. The bill authorizes a local governmental entity to require a person convicted of a fine-only misdemeanor offense in a municipal court, county or justice court to pay a juvenile case manager fee of up to $5 as a cost of court, which the judge may waive in the case of financial hardship. The provision also requires the respective court clerks to collect the fees and pay them to the appropriate treasurer.

While this bill goes into effect September 1, 2005, a constitutional amendment passed after the last session provides that, unless excepted, court costs go into effect January 1 of the year following session. Accordingly, local governments should not begin collecting the juvenile case manager fee until January 1, 2006.

Family Code § 51.08. Transfer from Criminal Court.

(e) A juvenile court may not refuse to accept the transfer of a case brought under Section 25.094, Education Code, for a child described by Subsection (b)(1) if a prosecuting attorney for the court determines under Section 53.012 that the case is legally sufficient under Section 53.01 for adjudication in juvenile court.

Commentary by Ryan Kellus Turner

Source: HB 3010
Effective Date: September 1, 2005
Applicability: Transfers to juvenile court made on or after the effective date.
Summary of Changes: This provision amends Section 51.08 of the Family Code (Transfer from Criminal Court) by adding Subsection (e), prohibiting a juvenile court from refusing to accept the transfer of a case brought under Section 25.094 (Failure to Attend School)

of the Education Code, subject to the juvenile court prosecutor determining under Section 53.012, Family Code (Review by Prosecutor) that the case is legally sufficient under Section 53.01, Family Code (Preliminary Investigation and Determinations; Notice to Parents) for adjudication.

While the number of juvenile cases adjudicated by municipal and justice courts has increased in the last decade, many municipal and justice courts complain that some juvenile courts are unresponsive in instances where the law either requires or authorizes the child's case to be transferred to juvenile court. The intent of this law is to ensure that juvenile courts do not ignore school attendance cases transferred from criminal to juvenile court.

Government Code § 27.004. Records and Other Property.

(a) Each justice shall arrange and safely keep all dockets, books, and papers transmitted to the justice by the justice's predecessors in office, and all papers filed in a case in justice court, subject to the public access requirements prescribed by Rule 12, Rules of Judicial Administration [~~inspection of any interested party at reasonable times~~].

(a-1) If a person vacates the office of justice of the peace, the person shall transfer all court records, documents,
property, and unfinished business to the person's successor on the date the successor takes office. After the transfer, the business of the office must be completed as if the successor had begun the business.

(b) A person who has possession of dockets, books, or papers belonging to the office of any justice of the peace shall deliver them to the justice on demand. If the person refuses to deliver them, on a motion supported by an affidavit, the person [~~he~~] may be attached and imprisoned by the order of the county judge until the person makes delivery. The county judge may issue the order in termtime or vacation. [~~The motion must be supported by affidavit.~~] The person against whom the motion is made must be given three days' notice of the motion before the person may be attached.

Commentary by Ryan Kellus Turner

Source: SB 436
Effective Date: September 1, 2005
Applicability: Motions filed on or after the effective date.
Summary of Changes: This provision amends Section 27.004, Government Code, to require that a predecessor justice of the peace transfer all court records, documents, property, and any documents relating to the court's business to the successor justice of the peace. If the predecessor justice of the peace does not transfer the aforementioned documentation, such former justice of the peace may be imprisoned until such documentation is delivered to the successor justice.

This amendment specifies that documents must be made available to the public pursuant to Rule 12 of the Rules of Judicial Administration and repeals language referencing "inspection of any interested party at a reasonable times." The repeal of such language, however, should be considered in light of the general common law right of inspection.

5. Mental Health Legislation

Health and Safety Code § 462.0025. Court Hours.

(a) The probate court or court having probate jurisdiction shall be open [~~at all times~~] for proceedings under this chapter during normal business hours.

(b) The probate judge or magistrate shall be available at all times at the request of a person taken into custody or detained under Subchapter C or a proposed patient under Subchapter D.

Commentary by Lisa Capers

Source: SB 348
Effective Date: May 3, 2005
Applicability: Court hours beginning on and after the effective date.
Summary of Changes: Chapter 462 of the Health and Safety Code governs alcohol and substance abuse programs. This amendment allows courts with probate jurisdiction to be open during normal business hours instead of at all times. However, the probate judge or magistrate must be available at all times at the request of a person taken into custody or detained under Subchapter C (emergency detention of chemically dependent persons) or a proposed patient under Subchapter D (court-ordered treatment for chemically dependent persons).

Health and Safety Code § 572.004. Discharge.

(i) On receipt of a written request for discharge from a patient admitted under Section 572.002(3)(B) who is younger than 18 years of age, a facility shall consult with [~~notify~~] the patient's parent, managing conservator, or guardian regarding the discharge. If the parent, managing conservator, or guardian objects in writing to the patient's discharge, the facility shall continue treatment of the patient as a voluntary patient [~~of the request~~].

Commentary by Lisa Capers

Source: HB 224
Effective Date: May 17, 2005
Applicability: Requests for discharge by patients under age 18 on or after the effective date.
Summary of Changes: The 78th Legislature in 2003 enacted HB 21 that allowed the parents of minors between the ages of 16 and 18 to voluntarily admit their children to inpatient mental health facilities. This bill also required the facility to notify the parent when the minor requested a discharge. A patient voluntarily admitted for mental health services can refuse the administration of psychoactive drugs if 16 or older.

This amendment would prevent 16 and 17 year olds who had been admitted for voluntary inpatient treatment by a parent, guardian or managing conservator from discharging themselves if the parent, guardian, or conservator objected in writing. The facility would also have to consult with, rather than simply notify, the parent, guardian, or conservator of a minor patient requesting discharge.

Health and Safety Code § 576.025. Administration of Psychoactive Medication.

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

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

(2) the patient is younger than 16 years of age, or the patient is younger than 18 years of age and is a patient admitted for voluntary mental health services under Section 572.002(3)(B), and the patient's parent, managing conservator, or guardian consents to the administration on behalf of the patient;

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

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

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

(A) Chapter 46B or Article 46.03, Code of Criminal Procedure; or

(B) Chapter 55, Family Code.

Commentary by Lisa Capers

Source: HB 224
Effective Date: May 17, 2005
Applicability: Administration of medication to eligible patients on or after the effective date.
Summary of Changes: The 78th Legislature in 2003 enacted HB 21 that allowed the parents of minors between the ages of 16 and 18 to voluntarily admit their children to inpatient mental health facilities. This bill also required the facility to notify the parent when the minor requested a discharge. A patient voluntarily admitted for mental health services can refuse the administration of psychoactive drugs if 16 or older.

This provision makes it clear that 16 and 17 year old patients admitted voluntarily by their parent, managing conservator, or guardian can not refuse the administration of psychoactive medication if the guardian had given consent for it.

6. Sex Offender and Victims Legislation

House Bill 867 by **Representative Ray Allen** and **Senator Florence Shapiro** rewrote Chapter 62 of the Code of Criminal Procedure related to sex offender registration. Chapter 62 was reorganized and renumbered in this bill. This is a significant and large bill (50 pages) and is not included in its entirety herein but can be downloaded at www.capitol.state.tx.us. Juvenile sex offender registration procedures were basically kept in-tact but were significantly reorganized for the better. Below are excerpts from HB 867 and several other bills related to sex offenders and victims that are most pertinent to the juvenile justice system.

Code of Criminal Procedure Article 13.30. Failure To Comply With Sex Offender Registration Statute.

An offense under Chapter 62 may be prosecuted in:

(1) any county in which an element of the offense occurs;

(2) the county in which the person subject to Chapter 62 last registered, verified registration, or otherwise complied with a requirement of Chapter 62;

(3) the county in which the person required to register under Chapter 62 has indicated that the person intends to reside; or

(4) any county in which the person required to register under Chapter 62 is placed under custodial arrest for an offense subsequent to the person's most recent reportable conviction or adjudication under Chapter 62.

Commentary by John Gonzales

Source: HB 867
Effective Date: September 1, 2005

Applicability: Conduct engaged in on or after the effective date.

Summary of Changes: This provision details the venue for prosecuting failure to comply with the sex offender registration statute in Chapter 62, Code of Criminal Procedure. An offense may be prosecuted in any county in which an element of the offense occurs, the county in which the sex offender last registered, verified registration, or otherwise complied with a requirement of Chapter 62, the county in which the person required to register has indicated that the person intends to reside, or any county in which the person is placed under custodial arrest for an offense subsequent to the person's most recent reportable conviction or adjudication.

Code of Criminal Procedure Article 56.02. Crime Victims Rights.

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

(1) the right to receive from law enforcement agencies adequate protection from harm and threats of harm arising from cooperation with prosecution efforts;

(2) the right to have the magistrate take the safety of the victim or his family into consideration as an element in fixing the amount of bail for the accused;

(3) the right, if requested, to be informed:

(A) by the attorney representing the state of relevant court proceedings, including appellate proceedings, and to be informed if those proceedings have been canceled or rescheduled prior to the event; and

(B) by an appellate court of decisions of the court, after the decisions are entered but before the decisions are made public;

(4) the right to be informed, when requested, by a peace officer concerning the defendant's right to bail and the procedures in criminal investigations and by the district attorney's office concerning the general procedures in the criminal justice system, including general procedures in guilty plea negotiations and arrangements, restitution, and the appeals and parole process;

(5) the right to provide pertinent information to a probation department conducting a presentencing investigation concerning the impact of the offense on the victim and his family by testimony, written statement, or any other manner prior to any sentencing of the offender;

(6) the right to receive information regarding compensation to victims of crime as provided by Subchapter B, including information related to the costs that may be compensated under that subchapter and the amount of compensation, eligibility for compensation, and procedures for application for compensation under that subchapter, the payment for a medical examination under Article 56.06 for a victim of a sexual assault, and when requested, to referral to available social service agencies that may offer additional assistance;

(7) the right to be informed, upon request, of parole procedures, to participate in the parole process, to be notified, if requested, of parole proceedings concerning a defendant in the victim's case, to provide to the Board of Pardons and Paroles for inclusion in the defendant's file information to be considered by the board prior to the parole of any defendant convicted of any crime subject to this subchapter, and to be notified, if requested, of the defendant's release;

(8) the right to be provided with a waiting area, separate or secure from other witnesses, including the offender and relatives of the offender, before testifying in any proceeding concerning the offender; if a separate waiting area is not available, other safeguards should be taken to minimize the victim's contact with the offender and the offender's relatives and witnesses, before and during court proceedings;

(9) the right to prompt return of any property of the victim that is held by a law enforcement agency or the attorney for the state as evidence when the property is no longer required for that purpose;

(10) the right to have the attorney for the state notify the employer of the victim, if requested, of the necessity of the victim's cooperation and testimony in a proceeding that may necessitate the absence of the victim from work for good cause;

(11) the right to counseling, on request, regarding acquired immune deficiency syndrome (AIDS) and human immunodeficiency virus (HIV) infection and testing for acquired immune deficiency syndrome (AIDS), human immunodeficiency virus (HIV) infection, antibodies to HIV, or infection with any other probable causative agent of AIDS, if the offense is an offense under Section 21.11(a) (1), 22.011, or 22.021, Penal Code;

(12) the right to request victim-offender mediation coordinated by the victim services division of the Texas Department of Criminal Justice; [~~and~~]

(13) the right to be informed of the uses of a victim impact statement and the statement's purpose in the criminal justice system, to complete the victim impact statement, and to have the victim impact statement considered:

(A) by the attorney representing the state and the judge before sentencing or before a plea bargain agreement is accepted; and

(B) by the Board of Pardons and Paroles before an inmate is released on parole; and

(14) except as provided by Article 56.06(a), for a victim of a sexual assault, the right to a forensic medical examination if the sexual assault is reported to a law enforcement agency within 96 hours of the assault.

Code of Criminal Procedure Article 56.06. Medical Examination For Sexual Assault Victim; Costs [~~Of Medical Examination~~].

(a) If a sexual assault is reported to a law enforcement agency within 96 hours of the assault, the law en-

forcement agency, with the consent of the victim, a person authorized to act on behalf of the victim, or an employee of the Department of Family and Protective Services, shall request a medical examination of the victim of the alleged assault for use in the investigation or prosecution of the offense. A law enforcement agency may decline to request a medical examination under this subsection only if the person reporting the sexual assault has made one or more false reports of sexual assault to any law enforcement agency and if there is no other evidence to corroborate the current allegations of sexual assault.

(b) If a sexual assault is not reported within the period described by Subsection (a), on receiving the consent described by that subsection the law enforcement agency may request a medical examination of a victim of an alleged sexual assault as considered appropriate by the agency.

Commentary by Lisa Capers and John Gonzales

Source: HB 544
Effective Date: September 1, 2005
Applicability: Sexual assault reported on or after the effective date.
Summary of Changes: This new provision adds to the list of victim's rights. Under this provision, a victim of sexual assault has a right to a forensic medical examination if the sexual assault is reported to a law enforcement agency within 96 hours of the assault. Law enforcement is required, after obtaining proper consent, to request a medical examination of the victim of the alleged assault for use in the investigation or prosecution of the offense. The bill also authorizes a law enforcement agency to decline to request a medical examination only if the person reporting the sexual assault has made one or more false reports of sexual assault to any law enforcement agency and if there is no other evidence to corroborate the current allegations of sexual assault. If a sexual assault is not reported within the 96 hours, law enforcement may, on receiving the necessary consent, request a medical examination of a victim of an alleged sexual assault as considered appropriate by the agency.

Code of Criminal Procedure Article 62.001 [~~62.01~~]. DEFINITIONS.

In this chapter:

(1) "Department" means the Department of Public Safety.

(2) "Local law enforcement authority" means the chief of police of a municipality or the sheriff of a county in this state.

(3) "Penal institution" means a confinement facility operated by or under a contract with any division of the Texas Department of Criminal Justice, a confinement facility operated by or under contract with the Texas Youth Commission, or a juvenile secure pre-adjudication or post-adjudication facility operated by or under a local juvenile probation department, or a county jail.

(4) "Released" means discharged, paroled, placed in a nonsecure community program for juvenile offenders, or placed on juvenile probation, community supervision, or mandatory supervision.

(5) "Reportable conviction or adjudication" means a conviction or adjudication, including an adjudication of delinquent conduct or a deferred adjudication, [~~regardless of the pendency of an appeal,~~] that, regardless of the pendency of an appeal, is a conviction for or an adjudication for or based on:

(A) [~~a conviction for~~] a violation of Section 21.11 (Indecency with a child), 22.011 (Sexual assault), 22.021 (Aggravated sexual assault), or 25.02 (Prohibited sexual conduct), Penal Code;

(B) [~~a conviction for~~] a violation of Section 43.05 (Compelling prostitution), 43.25 (Sexual performance by a child), or 43.26 (Possession or promotion of child pornography), Penal Code;

(C) [~~a conviction for~~] a violation of Section 20.04(a)(4) (Aggravated kidnapping), Penal Code, if the actor [~~defendant~~] committed the offense or engaged in the conduct with intent to violate or abuse the victim sexually;

(D) [~~a conviction for~~] a violation of Section 30.02 (Burglary), Penal Code, if the offense or conduct is punishable under Subsection (d) of that section and the actor [~~defendant~~] committed the offense or engaged in the conduct with intent to commit a felony listed in Paragraph (A) or (C);

(E) [~~a conviction for~~] a violation of Section 20.02 (Unlawful restraint), 20.03 (Kidnapping), or 20.04 (Aggravated kidnapping), Penal Code, if, as applicable:

(i) the judgment in the case contains an affirmative finding under Article 42.015; or

(ii) the order in the hearing or the papers in the case contain an affirmative finding that the victim or intended victim was younger than 17 years of age;

(F) the second [~~conviction for a~~] violation of Section 21.08 (Indecent exposure), Penal Code, but not if the second violation results in a deferred adjudication;

(G) [~~a conviction for~~] an attempt, conspiracy, or solicitation, as defined by Chapter 15, Penal Code, to commit an offense or engage in conduct listed in Paragraph (A), (B), (C), (D), or (E);

(H) [~~an adjudication of delinquent conduct:~~

[~~(i) based on a violation of one of the offenses listed in Paragraph (A), (B), (C), (D), or (G) or, if the order in the hearing contains an affirmative finding that the victim or intended victim was younger than 17 years of age, one of the offenses listed in Paragraph (E); or~~

[~~(ii) for which two violations of the offense listed in Paragraph (F) are shown;~~

[~~(I) a deferred adjudication for an offense listed in:~~

[~~(i) Paragraph (A), (B), (C), (D), or (G); or~~

[~~(ii) Paragraph (E) if the papers in the case contain an affirmative finding that the victim or intended victim was younger than 17 years of age;~~

[~~(J)~~] a violation of [~~conviction under~~] the laws of another state, federal law, the laws of a foreign country, or the Uniform Code of Military Justice for or based on the violation of an offense containing elements that are substantially similar to the elements of an offense listed under Paragraph (A), (B), (C), (D), (E), or (G), but not if the violation results in a deferred adjudication; or

(I) [~~(K) an adjudication of delinquent conduct under the laws of another state, federal law, or the laws of a foreign country based on a violation of an offense containing elements that are substantially similar to the elements of an offense listed under Paragraph (A), (B), (C), (D), (E), or (G);~~

[~~(L)~~] the second violation of [~~conviction under~~] the laws of another state, federal law, the laws of a foreign country, or the Uniform Code of Military Justice for or based on the violation of an offense containing elements that are substantially similar to the elements of the offense of indecent exposure, but not if the second violation results in a deferred adjudication[~~; or~~

[~~(M) the second adjudication of delinquent conduct under the laws of another state, federal law, or the laws of a foreign country based on a violation of an offense containing elements that are substantially similar to the elements of the offense of indecent exposure~~].

(6) "Sexually violent offense" means any of the following offenses committed by a person 17 years of age or older:

(A) an offense under Section 21.11(a)(1) (Indecency with a child), 22.011 (Sexual assault), or 22.021 (Aggravated sexual assault), Penal Code;

(B) an offense under Section 43.25 (Sexual performance by a child), Penal Code;

(C) an offense under Section 20.04(a)(4) (Aggravated kidnapping), Penal Code, if the defendant committed the offense with intent to violate or abuse the victim sexually;

(D) an offense under Section 30.02 (Burglary), Penal Code, if the offense is punishable under Subsection (d) of that section and the defendant committed the offense with intent to commit a felony listed in Paragraph (A) or (C) of Subdivision (5); or

(E) an offense under the laws of another state, federal law, the laws of a foreign country, or the Uniform Code of Military Justice if the offense contains elements that are substantially similar to the elements of an offense listed under Paragraph (A), (B), (C), or (D).

(7) "Residence" includes a residence established in this state by a person described by Article 62.152(e) [~~62.063(e)~~].

(8) "Public or private institution of higher education" includes a college, university, community college, or technical or trade institute.

(9) "Authority for campus security" means the authority with primary law enforcement jurisdiction over property under the control of a public or private institution of higher education, other than a local law enforcement authority.

(10) "Extrajurisdictional registrant" means a person who:

(A) is required to register as a sex offender under:

(i) the laws of another state with which the department has entered into a reciprocal registration agreement;

(ii) federal law or the Uniform Code of Military Justice; or

(iii) the laws of a foreign country; and

(B) is not otherwise required to register under this chapter because:

(i) the person does not have a reportable conviction for an offense under the laws of the other state, federal law, the laws of the foreign country, or the Uniform Code of Military Justice containing elements that are substantially similar to the elements of an offense requiring registration under this chapter; or

(ii) the person does not have a reportable adjudication of delinquent conduct based on a violation of an offense under the laws of the other state, federal law, or the laws of the foreign country containing elements that are substantially similar to the elements of an offense requiring registration under this chapter.

Commentary by Lisa Capers and John Gonzales

Source: HB 867
Effective Date: September 1, 2005
Applicability: Applies to a person subject to Chapter 62 for an offense or conduct committed or engaged in before, on, or after the effective date unless the change in the law changes the elements of or punishment for conduct constituting a violation of Chapter 62 in which case those changes apply only to conduct engaged in on or after the effective date.
Summary of Changes: This amendment revises the definitional section of Chapter 62. The new definitions make the definitions of reportable conviction or adjudication simpler by redefining it to combine both juvenile and adult adjudications and convictions in one definition. This provision also redefines “residence” and defines “extrajurisdictional resident” which was previously defined as out of state registrant.

Code of Criminal Procedure Article 62.010. Rulemaking Authority.

The Texas Department of Criminal Justice, the Texas Youth Commission, the Texas Juvenile Probation Commission, and the department may adopt any rule necessary to implement this chapter.

Commentary by Lisa Capers and John Gonzales

Source: HB 867
Effective Date: September 1, 2005
Applicability: Applies to a person subject to Chapter 62 for an offense or conduct committed or engaged in before, on, or after the effective date unless the change in the law changes the elements of or punishment for conduct constituting a violation of Chapter 62 in which case those changes apply only to conduct engaged in on or after the effective date.
Summary of Changes: TDCJ, TYC, TJPC AND DPS are given rulemaking authority to adopt any rule necessary for implementation of Chapter 62.

Code of Criminal Procedure Article 62.061. DNA Specimen.

A person required to register under this chapter shall comply with a request for a DNA specimen made by a law enforcement agency under Section 411.1473, Government Code.

Commentary by Lisa Capers and John Gonzales

Source: HB 867
Effective Date: September 1, 2005
Applicability: Applies to a person subject to Chapter 62 for an offense or conduct committed or engaged in before, on, or after the effective date unless the change in the law changes the elements of or punishment for conduct constituting a violation of Chapter 62 in which case those changes apply only to conduct engaged in on or after the effective date.
Summary of Changes: This new provision provides that a person required to register under Chapter 62 shall comply with a request for a DNA specimen made by a law enforcement agency under Section 411.1473, Government Code. Although persons required to register should already have a DNA specimen in the database, some persons required to register fell through the cracks and did not. This new section will allow law enforcement agencies to collect a specimen for the DPS database if it is discovered that the person is not in the database.

Code of Criminal Procedure Article 62.062. Limitation On Newspaper Publication.

(a) Except as provided by Subsection (b), a local law enforcement authority may not publish notice in a newspaper or other periodical or circular concerning a person's registration under this chapter if the only basis on which the person is subject to registration is one or more adjudications of delinquent conduct.

(b) This article does not apply to a publication of notice under Article 62.056.

Commentary by Lisa Capers and John Gonzales

Source: HB 867
Effective Date: September 1, 2005
Applicability: Applies to a person subject to Chapter 62 for an offense or conduct committed or engaged in before, on, or after the effective date unless the change in the law changes the elements of or punishment for conduct constituting a violation of Chapter 62 in which case those changes apply only to conduct engaged in on or after the effective date.
Summary of Changes: Under current law, when local law enforcement receives sex offender registration information for adult offenders, it has the duty to publish sex offender registration information in the newspaper of the greatest paid circulation in the county where person required to register will live. HB 867 deletes existing text relating to the publication of notice in a newspaper, eliminates the requirement for newspaper publication and makes it discretionary in some situations. This provision deletes all references to newspaper publishing but still allows law enforcement to publish in newspaper information on certain offenders who score high on the risk assessment pursuant to Article 62.056 (d). Newspaper publication has always only applied to adults and not to juvenile offenders and this remains the case under the new Section 62.062.

Code of Criminal Procedure Article 62.101. Expiration Of Duty To Register.

(a) Except as provided by Subsection (b) and Subchapter I, the duty to register for a person ends when the person dies if the person has a reportable conviction or adjudication, other than an adjudication of delinquent conduct, for:

(1) a sexually violent offense;

(2) an offense under Section 25.02, 43.05(a)(2), or 43.26, Penal Code;

(3) an offense under Section 21.11(a)(2), Penal Code, if before or after the person is convicted or adjudicated for the offense under Section 21.11(a)(2), Penal Code, the person receives or has received another reportable conviction or adjudication, other than an adjudication of delinquent conduct, for an offense or conduct that requires registration under this chapter;

(4) an offense under Section 20.02, 20.03, or 20.04, Penal Code, if:

(A) the judgment in the case contains an affirmative finding under Article 42.015 or, for a deferred adjudication, the papers in the case contain an

affirmative finding that the victim or intended victim was younger than 17 years of age; and

(B) before or after the person is convicted or adjudicated for the offense under Section 20.02, 20.03, or 20.04, Penal Code, the person receives or has received another reportable conviction or adjudication, other than an adjudication of delinquent conduct, for an offense or conduct that requires registration under this chapter; or

(5) an offense under Section 43.23, Penal Code, that is punishable under Subsection (h) of that section.

(b) Except as provided by Subchapter I, the duty to register for a person otherwise subject to Subsection (a) ends on the 10th anniversary of the date on which the person is released from a penal institution or discharges community supervision or the court dismisses the criminal proceedings against the person and discharges the person, whichever date is later, if the person's duty to register is based on a conviction or an order of deferred adjudication in a cause that was transferred to a district court or criminal district court under Section 54.02, Family Code.

(c) Except as provided by Subchapter I, the duty to register for a person with a reportable conviction or adjudication for an offense other than an offense described by Subsection (a) ends:

(1) if the person's duty to register is based on an adjudication of delinquent conduct, on the 10th anniversary of the date on which the disposition is made or the person completes the terms of the disposition, whichever date is later; or

(2) if the person's duty to register is based on a conviction or on an order of deferred adjudication, on the 10th anniversary of the date on which the court dismisses the criminal proceedings against the person and discharges the person, the person is released from a penal institution, or the person discharges community supervision, whichever date is later.

Commentary by Lisa Capers and John Gonzales

Source: HB 867
Effective Date: September 1, 2005
Applicability: Applies to a person subject to Chapter 62 for an offense or conduct committed or engaged in before, on, or after the effective date unless the change in the law changes the elements of or punishment for conduct constituting a violation of Chapter 62 in which case those changes apply only to conduct engaged in on or after the effective date.
Summary of Changes: New Article 62.101 details when the duty to register expires. Subsection (b) applies to juvenile offenders who are certified as adults and transferred to adult criminal court, in which case registration ends 10 years after discharge.

Code of Criminal Procedure Article 62.351. Motion And Hearing Generally.

(a) During or 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. Notice of the motion and hearing shall be provided to the prosecuting attorney.

(b) The hearing is without a jury and the burden of persuasion is on the respondent to show by a preponderance of evidence that the criteria of Article 62.352(a) have been met. The court at the hearing may make its determination based on:

(1) the receipt of exhibits;

(2) the testimony of witnesses;

(3) representations of counsel for the parties; or

(4) the contents of a social history report prepared by the juvenile probation department that may include the results of testing and examination of the respondent by a psychologist, psychiatrist, or counselor.

(c) All written matter considered by the court shall be disclosed to all parties as provided by Section 54.04(b), Family Code.

(d) If a respondent, as part of a plea agreement, promises not to file a motion seeking an order exempting the respondent from registration under this chapter, the court may not recognize a motion filed by a respondent under this article.

Commentary by Lisa Capers and John Gonzales

Source: HB 867
Effective Date: September 1, 2005
Applicability: Applies to a person subject to Chapter 62 for an offense or conduct committed or engaged in before, on, or after the effective date unless the change in the law changes the elements of or punishment for conduct constituting a violation of Chapter 62 in which case those changes apply only to conduct engaged in on or after the effective date.
Summary of Changes: New Article 62.351 begins Subchapter H of Chapter 62 which deals with exemptions from registration for certain juveniles. Subchapter H replaces the former Article 62.13, Hearing to Determine Need for Registration of a Juvenile. This subchapter restores, reorganizes and renumbers the provisions contained in former Article 62.13, Hearing to Determine Need to Register of a Juvenile, which include the processes known as Un-Registration and De- Registration. This section recodifies current law while reorganizing and renumbering the sections. This article includes the former Article 62.13 Subsections (b), (c), (d), (f) and (m).

Code of Criminal Procedure Article 62.352. Order Generally.

(a) The court shall enter an order exempting a respondent from registration under this chapter if the court determines:

(1) that the protection of the public would not be increased by registration of the respondent under this chapter; or

(2) that any potential increase in protection of the public resulting from registration of the respondent is clearly outweighed by the anticipated substantial harm to the respondent and the respondent's family that would result from registration under this chapter.

(b) After a hearing under Article 62.351 or under a plea agreement described by Article 62.355(b), the juvenile court may enter an order:

(1) deferring decision on requiring registration under this chapter until the respondent has completed treatment for the respondent's sexual offense as a condition of probation or while committed to the Texas Youth Commission; or

(2) requiring the respondent to register as a sex offender but providing that the registration information is not public information and is restricted to use by law enforcement and criminal justice agencies, the Council on Sex Offender Treatment, and public or private institutions of higher education.

(c) If the court enters an order described by Subsection (b)(1), the court retains discretion and jurisdiction to require, or exempt the respondent from, registration under this chapter at any time during the treatment or on the successful or unsuccessful completion of treatment, except that during the period of deferral, registration may not be required. Following successful completion of treatment, the respondent is exempted from registration under this chapter unless a hearing under this subchapter is held on motion of the state, regardless of whether the respondent is 18 years of age or older, 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.

(d) Information that is the subject of an order described by Subsection (b)(2) may not be posted on the Internet or released to the public.

Commentary by Lisa Capers and John Gonzales

Source: HB 867

Effective Date: September 1, 2005

Applicability: Applies to a person subject to Chapter 62 for an offense or conduct committed or engaged in before, on, or after the effective date unless the change in the law changes the elements of or punishment for conduct constituting a violation of Chapter 62 in which case those changes apply only to conduct engaged in on or after the effective date.

Summary of Changes: New Article 62.352 is contained within Subchapter H of Chapter 62 which deals with exemptions from registration for certain juveniles. This section recodifies current law while reorganizing and renumbering the sections. This article includes the former Article 62.13 Subsections (e), (j), and (k).

Code of Criminal Procedure Article 62.353. Motion, Hearing, And Order Concerning Person Already Registered.

(a) A person who has registered as a sex offender for an adjudication of delinquent conduct, regardless of when the delinquent conduct or the adjudication for the conduct occurred, may file a motion in the adjudicating juvenile court for a hearing seeking:

(1) exemption from registration under this chapter as provided by Article 62.351; or

(2) an order under Article 62.352(b)(2) that the registration become nonpublic.

(b) The person may file a motion under Subsection (a) in the original juvenile case regardless of whether the person, at the time of filing the motion, is 18 years of age or older. Notice of the motion shall be provided to the prosecuting attorney. A hearing on the motion shall be provided as in other cases under this subchapter.

(c) Only one subsequent motion may be filed under Subsection (a) if a previous motion under this article has been filed concerning the case.

(d) To the extent feasible, the motion under Subsection (a) shall identify those public and private agencies and organizations, including public or private institutions of higher education, that possess sex offender registration information about the case.

(e) The juvenile court, after a hearing, may:

(1) deny a motion filed under Subsection (a);

(2) grant a motion described by Subsection (a)(1); or

(3) grant a motion described by Subsection (a)(2).

(f) If the court grants a motion filed under Subsection (a), the clerk of the court 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 to each public or 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.

(g) In addition to disseminating the order under Subsection (f), at the request of the person, the clerk of

the court shall by certified mail, return receipt requested, send a copy of the order to each public or private agency or organization that at any time following the initial dissemination of the order under Subsection (f) gains possession of sex offender registration information pertaining to that person, if the agency or organization did not otherwise receive a copy of the order under Subsection (f).

(h) An order under Subsection (f) must require the recipient to conform its records to the court's order either by deleting the sex offender registration information or changing its status to nonpublic, as applicable. A public or private institution of higher education may not be required to delete the sex offender registration information under this subsection.

(i) A private agency or organization that possesses sex offender registration information the agency or organization obtained from a state, county, or local governmental entity is required to conform the agency's or organization's records to the court's order on or before the 30th day after the date of the entry of the order. Unless the agency or organization is a public or private institution of higher education, failure to comply in that period automatically bars the agency or organization from obtaining sex offender registration information from any state, county, or local governmental entity in this state in the future.

Commentary by Lisa Capers and John Gonzales

Source: HB 867
Effective Date: September 1, 2005
Applicability: Applies to a person subject to Chapter 62 for an offense or conduct committed or engaged in before, on, or after the effective date unless the change in the law changes the elements of or punishment for conduct constituting a violation of Chapter 62 in which case those changes apply only to conduct engaged in on or after the effective date.
Summary of Changes: New Article 62.353 is contained within Subchapter H of Chapter 62 which deals with exemptions from registration for certain juveniles. This section recodifies current law while reorganizing and renumbering the sections. This article includes the former Article 62.13 Subsections (l), (m), (n), (o), (p), and (q).

Code of Criminal Procedure Article 62.354. Motion, Hearing, And Order Concerning Person Required To Register Because Of Out-Of-State Adjudication.

(a) 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 Article 62.351 for an order exempting the person from registration under this chapter.

(b) 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 Article 62.353 for an order removing the person from sex offender registries in this state.

(c) On receipt of a petition under this article, the juvenile court shall conduct a hearing and make rulings as in other cases under this subchapter.

(d) An order entered under this article requiring removal of registration information applies only to registration information derived from registration in this state.

Commentary by Lisa Capers and John Gonzales

Source: HB 867
Effective Date: September 1, 2005
Applicability: Applies to a person subject to Chapter 62 for an offense or conduct committed or engaged in before, on, or after the effective date unless the change in the law changes the elements of or punishment for conduct constituting a violation of Chapter 62 in which case those changes apply only to conduct engaged in on or after the effective date.
Summary of Changes: New Article 62.354 pertains to offenders required to register due to out-of-state adjudications. This section was not previously contained in Article 62.13, but provides the mechanism for a juvenile to file a petition to exempt registration in Texas.

Code of Criminal Procedure Article 62.355. Waiver Of Hearing.

(a) The prosecuting attorney may waive the state's right to a hearing under this subchapter and agree that registration under this chapter is not required. A waiver under this subsection must state whether the waiver is entered under a plea agreement.

(b) If the waiver is entered under a plea agreement, the court, without a hearing, shall:

(1) enter an order exempting the respondent from registration under this chapter; or

(2) under Section 54.03(j), Family Code, inform the respondent that the court believes a hearing under this article is required and give the respondent the opportunity to:

(A) withdraw the respondent's plea of guilty, nolo contendere, or true; or

(B) affirm the respondent's plea and participate in the hearing.

(c) If the waiver is entered other than under a plea agreement, the court, without a hearing, shall enter an order exempting the respondent from registration under this chapter.

Commentary by Lisa Capers and John Gonzales

Source: HB 867

Effective Date: September 1, 2005
Applicability: Applies to a person subject to Chapter 62 for an offense or conduct committed or engaged in before, on, or after the effective date unless the change in the law changes the elements of or punishment for conduct constituting a violation of Chapter 62 in which case those changes apply only to conduct engaged in on or after the effective date.
Summary of Changes: New Article 62.355 is contained within Subchapter H of Chapter 62 which deals with exemptions from registration for certain juveniles. This section recodifies current law while reorganizing and renumbering the sections. This article includes the former Article 62.13 Subsection (f).

Code of Criminal Procedure Article 62.356. Effect Of Certain Orders.

(a) A person who has an adjudication of delinquent conduct that would otherwise be reportable under Article 62.001(5) does not have a reportable adjudication of delinquent conduct for purposes of this chapter if the juvenile court enters an order under this subchapter exempting the person from the registration requirements of this chapter.

(b) If the juvenile court enters an order exempting a person from registration under this chapter, the respondent may not be required to register in this or any other state for the offense for which registration was exempted.

Commentary by Lisa Capers and John Gonzales

Source: HB 867
Effective Date: September 1, 2005
Applicability: Applies to a person subject to Chapter 62 for an offense or conduct committed or engaged in before, on, or after the effective date unless the change in the law changes the elements of or punishment for conduct constituting a violation of Chapter 62 in which case those changes apply only to conduct engaged in on or after the effective date.
Summary of Changes: New Article 62.356 is contained within Subchapter H of Chapter 62 which deals with exemptions from registration for certain juveniles. This section recodifies current law while reorganizing and renumbering the sections. This article includes the former Article 62.13 Subsections (a) and (i).

Code of Criminal Procedure Article 62.357. Appeal Of Certain Orders.

(a) Notwithstanding Section 56.01, Family Code, on entry by a juvenile court of an order under Article 62.352(a) exempting a respondent from registration under this chapter, the prosecuting attorney may appeal that order by giving notice of appeal within the time required under Rule 26.2(b), Texas Rules of Appellate Procedure. The appeal is civil and the standard of review in the appellate court is whether the juvenile court committed procedural error or abused its discretion in exempting the respondent from registration under this chapter. The appeal is limited to review of the order exempting the respondent from registration under this chapter and may not include any other issues in the case.

(b) A respondent may under Section 56.01, Family Code, appeal a juvenile court's order under Article 62.352(a) requiring registration in the same manner as the appeal of any other legal issue in the case. The standard of review in the appellate court is whether the juvenile court committed procedural error or abused its discretion in requiring registration.

Commentary by Lisa Capers and John Gonzales

Source: HB 867
Effective Date: September 1, 2005
Applicability: Applies to a person subject to Chapter 62 for an offense or conduct committed or engaged in before, on, or after the effective date unless the change in the law changes the elements of or punishment for conduct constituting a violation of Chapter 62 in which case those changes apply only to conduct engaged in on or after the effective date.
Summary of Changes: New Article 62.357 is contained within Subchapter H of Chapter 62 which deals with exemptions from registration for certain juveniles. This section recodifies current law while reorganizing and renumbering the sections. This article includes the former Article 62.13 Subsections (g) and (h).

Government Code § 411.1473. DNA Records Of Certain Registered Sex Offenders.

(a) This section applies only to a person who is required to register under Chapter 62, Code of Criminal Procedure.

(b) The department by rule shall require a law enforcement agency serving as a person's primary registration authority under Chapter 62, Code of Criminal Procedure, to:

(1) take one or more specimens from a person described by Subsection (a) for the purpose of creating a DNA record; and

(2) preserve the specimen and maintain a record of the collection of the specimen.

(c) A law enforcement agency taking a specimen under this section may either send the specimen to the director or send to the director an analysis of the specimen performed by a laboratory chosen by the agency and approved by the director.

(d) A law enforcement agency is not required to take and a person is not required to provide a specimen under this section if the person is required to and has provided a specimen under this
chapter or other law.

Commentary by Lisa Capers and John Gonzales

Source: HB 867
Effective Date: September 1, 2005
Applicability: Applies to a person subject to Chapter 62 for an offense or conduct committed or engaged in before, on, or after the effective date unless the change in the law changes the elements of or punishment for conduct constituting a violation of Chapter 62 in which case those changes apply only to conduct engaged in on or after the effective date.
Summary of Changes: This new section deals with the DNA records of certain registered sex offenders. It applies only to a person who is required to register under Chapter 62. It requires DPS by rule to require a law enforcement agency serving as a person's primary registration authority to take one or more specimens from a person described by this section for the purpose of creating a DNA record and preserve the specimen and maintain a record of the collection of the specimen. The provision also authorizes a law enforcement agency taking a specimen to either send the specimen to the director of DPS or send to the director an analysis of the specimen performed by a laboratory chosen by the agency and approved by the director. If further provides that a law enforcement agency is not required to take and a person is not required to provide a specimen under this section if the person is required to and has provided a specimen under this chapter or other law.

Occupations Code § 110.301. License [~~Use Of Title; Registration~~] Required.

(a) A person may not provide a rehabilitation service or act as a sex offender treatment provider unless the person is licensed under this chapter.

(b) A person may not claim to be a sex offender treatment provider, or use the title "sex offender treatment provider" or a similar title or an abbreviation that implies the person is a sex offender treatment provider, unless the person is licensed under this chapter [~~listed in the registry~~].

Commentary by Lisa Capers and John Gonzales

Source: HB 2036
Effective Date: September 1, 2005
Applicability: Services provided on or after the effective date.
Summary of Changes: This new provision is part of the new requirements for sex offender treatment providers contained in HB 2036. HB 2036 contains a variety of provisions related to the licensure of these treatment providers. This specific excerpted provision requires that all Sex Offender Treatment Providers be licensed by Texas Council on Sex Offender Treatment.

7. Public Information and Miscellaneous Legislation

Government Code § 551.005. Open Meetings Training.

(a) Each elected or appointed public official who is a member of a governmental body subject to this chapter shall complete a course of training of not less than one and not more than two hours regarding the responsibilities of the governmental body and its members under this chapter not later than the 90th day after the date the member:

(1) takes the oath of office, if the member is required to take an oath of office to assume the person's duties as a member of the governmental body; or

(2) otherwise assumes responsibilities as a member of the governmental body, if the member is not required to take an oath of office to assume the person's duties as a member of the governmental body.

(b) The attorney general shall ensure that the training is made available. The office of the attorney general may provide the training and may also approve any acceptable course of training offered by a governmental body or other entity. The attorney general shall ensure that at least one course of training approved or provided by the attorney general is available on videotape or a functionally similar and widely available medium at no cost. The training must include instruction in:

(1) the general background of the legal requirements for open meetings;

(2) the applicability of this chapter to governmental bodies;

(3) procedures and requirements regarding quorums, notice, and recordkeeping under this chapter;

(4) procedures and requirements for holding an open meeting and for holding a closed meeting under this chapter; and

(5) penalties and other consequences for failure to comply with this chapter.

(c) The office of the attorney general or other entity providing the training shall provide a certificate of course completion to persons who complete the training required by this section. A governmental body shall maintain and make available for public inspection the record of its members' completion of the training.

(d) Completing the required training as a member of the governmental body satisfies the requirements of this section with regard to the member's service on a committee or subcommittee of the governmental body and the

member's ex officio service on any other governmental body.

(e) The training required by this section may be used to satisfy any corresponding training requirements concerning this chapter or open meetings required by law for the members of a governmental body. The attorney general shall attempt to coordinate the training required by this section with training required by other law to the extent practicable.

(f) The failure of one or more members of a governmental body to complete the training required by this section does not affect the validity of an action taken by the governmental body.

(g) A certificate of course completion is admissible as evidence in a criminal prosecution under this chapter. However, evidence that a defendant completed a course of training offered under this section is not prima facie evidence that the defendant knowingly violated this chapter.

Commentary by Lisa Capers and Nydia Thomas

Source: SB 286
Effective Date: January 1, 2006
Applicability: Applies to each elected or appointed official who is a member of a governmental body subject to the Open Meetings Act that has taken oath of office or otherwise assumed responsibilities before January 1, 2006 and requires course completion before January 1, 2007.
Summary of Changes: HB 286 was enacted by the legislature to promote openness and encourage compliance with open government laws. The bill requires, among other things, governmental officials and entities such as juvenile boards to complete a minimum of two-hours of open government training within 90 days of taking the oath of office or assuming responsibilities.

New Section 551.005(a) of the Government Code establishes in subsection (a) requirements for public officials to obtain meetings training. This provision requires the completion of not less than one-hour of educational training on the Open Meetings Act.

Subsection (b) obligates the Office of the Attorney General to make training available and to approve any internal training offered by a governmental body or other alternate providers, with at least one hour of training made widely available on videotape or at no cost. Subsection (b) also outlines the open meetings instructional curriculum which must include basic topics such as general background, procedural requirements for the conduct of meetings and penalties for non-compliance.

Subsections (c)–(e) set forth other obligations of the attorney general and the applicability of completed course hours. Upon completing the training requirement, the governmental body is required to maintain and make available for public inspection a copy of the certificate of course completion provided by the attorney general or training provider.

In subsections (f) and (g), the failure to complete the mandatory training does not impose specific penalties nor does it affect the validity of any action take by a governmental body. The certificate of course completion is admissible as evidence in a criminal prosecution but is not prima facie evidence that a public official knowingly violated the Open Meetings Act.

Government Code § 552.012. Open Records Training.

(a) This section applies to an elected or appointed public official who is:

(1) a member of a multimember governmental body;

(2) the governing officer of a governmental body that is headed by a single officer rather than by a multimember governing body; or

(3) the officer for public information of a governmental body, without regard to whether the officer is elected or appointed to a specific term.

(b) Each public official shall complete a course of training of not less than one and not more than two hours regarding the responsibilities of the governmental body with which the official serves and its officers and employees under this chapter not later than the 90th day after the date the public official:

(1) takes the oath of office, if the person is required to take an oath of office to assume the person's duties as a public official; or

(2) otherwise assumes the person's duties as a public official, if the person is not required to take an oath of office to assume the person's duties.

(c) A public official may designate a public information coordinator to satisfy the training requirements of this section for the public official if the public information coordinator is primarily responsible for administering the responsibilities of the public official or governmental body under this chapter. Designation of a public information coordinator under this subsection does not relieve a public official from the duty to comply with any other requirement of this chapter that applies to the public official. The designated public information coordinator shall complete the training course regarding the responsibilities of the governmental body with which the coordinator serves and of its officers and employees under this chapter not later than the 90th day after the date the coordinator assumes the person's duties as coordinator.

(d) The attorney general shall ensure that the training is made available. The office of the attorney general may provide the training and may also approve any acceptable course of training offered by a governmental body or other entity. The attorney general shall ensure that at least one course of training approved or provided by the attorney general is available on videotape or a functionally similar and widely available medium at no cost. The training must include instruction in:

(1) the general background of the legal requirements for open records and public information;

(2) the applicability of this chapter to governmental bodies;

(3) procedures and requirements regarding complying with a request for information under this chapter;

(4) the role of the attorney general under this chapter; and

(5) penalties and other consequences for failure to comply with this chapter.

(e) The office of the attorney general or other entity providing the training shall provide a certificate of course completion to persons who complete the training required by this section. A governmental body shall maintain and make available for public inspection the record of its public officials' or, if applicable, the public information coordinator's completion of the training.

(f) Completing the required training as a public official of the governmental body satisfies the requirements of this section with regard to the public official's service on a committee or subcommittee of the governmental body and the public official's ex officio service on any other governmental body.

(g) The training required by this section may be used to satisfy any corresponding training requirements concerning this chapter or open records required by law for a public official or public information coordinator. The attorney general shall attempt to coordinate the training required by this section with training required by other law to the extent practicable.

(h) A certificate of course completion is admissible as evidence in a criminal prosecution under this chapter. However, evidence that a defendant completed a course of training offered under this section is not prima facie evidence that the defendant knowingly violated this chapter.

Commentary by Lisa Capers and Nydia Thomas

Source: SB 286
Effective Date: January 1, 2006
Applicability: This section applies to each elected or appointed official or designated public information coordinator of a government body subject to the Public Information Act who has taken oath of office or otherwise assumed responsibilities before January 1, 2006 and requires course completion before January 1, 2007.
Summary of Changes: This section contains provisions substantially similar to those amended in Section 551.005 regarding open meetings training. This provision creates Section 552.012 of the Government Code to require members of a multimember governmental body such as a juvenile board, a governing officer of a body that is headed by a single officer, or a designated public information coordinator to complete Public Information Act training within 90 days of taking the oath of office or assuming responsibilities.

Subsection (b) establishes requirements for public officials to obtain open records training. This provision requires the completion of not less than one nor more than two hours of educational training on the Public Information Act.

Subsection (c) gives the public official the option to designate a public information coordinator to satisfy the course training in his or her place. The coordinator would be required to complete training not later than 90 days after assuming duties as coordinator.

Subsection (d) obligates the Office of the Attorney General to make training available and to approve any internal training offered by a governmental body or other alternate providers, with at least one hour of training made widely available on videotape or at no cost. Subsection (d) also outlines the open records and public information instructional curriculum which must include basic topics such as background, legal requirements, applicability to governmental bodies, procedures and requirements for complying with requests, the role of the attorney general and penalties for non-compliance.

Subsections (e)–(g) set forth other obligations of the attorney general and the applicability of completed course hours. Upon completing the training requirement, the governmental body is required to maintain and make available for public inspection a copy of the public official's or public information coordinator's certificate of course completion provided by the attorney general or training provider.

Subsection (h) provides that the certificate of course completion is admissible as evidence in a criminal prosecution but is not prima facie evidence that a public official knowingly violated the Public Information Act.

Government Code § 614.021. Applicability of Subchapter.

(a) Except as provided by Subsection (b), this [~~This~~] subchapter applies only to a complaint against:

(1) a law enforcement officer of the State of Texas, including an officer of the Department of Public Safety or of the Texas Alcoholic Beverage Commission;

(2) a fire fighter who is employed by this state or a political subdivision of this state [~~not covered by a civil service statute~~]; [~~or~~]

(3) a peace [~~police~~] officer under Article 2.12, Code of Criminal Procedure, or other law who is appointed or employed by a political subdivision of this state; or

(4) a detention officer or county jailer who is appointed or employed by a political subdivision of this state [~~not covered by a civil service statute~~].

(b) This subchapter does not apply to a peace officer or fire fighter appointed or employed by a political subdivision that is covered by a meet and confer or col-

lective bargaining agreement under Chapter 143 or 174, Local Government Code, if that agreement includes provisions relating to the investigation of, and disciplinary action resulting from, a complaint against a peace officer or fire fighter, as applicable.

Commentary by Lisa Capers and Nydia Thomas

Source: HB 639
Effective Date: September 1, 2005
Applicability: Complaints filed on or after the effective date. A complaint filed before the effective date is governed by the law in effect on the date the complaint was filed.
Summary of Changes: Under prior law, any complaint against law enforcement officers, peace officers under Article 2.12 of the Code of Criminal Procedure or certain firefighters was required to be in writing and signed by the complainant. In addition, the statute outlined procedures for the investigation of complaints and related disciplinary action. HB 639 amends Chapter 614 of the Local Government Code to expand the applicability of the statute to include all law enforcement officers and peach officers defined under Article 2.12 of the Code of Criminal Procedure. In particular, this statute now applies to detention officers or county jailers that are appointed or employed by a political subdivision of this state.

The Commission has interpreted the definition of a "juvenile detention officer", as it appears in statute and administrative standards, to mean any individual employed by a local governmental jurisdiction (e.g., juvenile board, county, municipality, etc.) or a private provider that owns or operates a secure pre-adjudication correctional facility under contract with a juvenile board. As such, juvenile detention officers fall within the scope of this provision.

Government Code § 614.023. Copy of Complaint to Be Given to Officer or Employee.

(a) A copy of a signed complaint against a law enforcement officer of this state or a [~~,~~] fire fighter, detention officer, county jailer, or peace [~~police~~] officer appointed or employed by a political subdivision of this state shall be given to the officer or employee within a reasonable time after the complaint is filed.

(b) Disciplinary action may not be taken against the officer or employee unless a copy of the signed complaint is given to the officer or employee.

(c) In addition to the requirement of Subsection (b), the officer or employee may not be indefinitely suspended or terminated from employment based on the subject matter of the complaint unless:

(1) the complaint is investigated; and

(2) there is evidence to prove the allegation of misconduct.

Commentary by Lisa Capers and Nydia Thomas

Source: HB 639
Effective Date: September 1, 2005
Applicability: Complaints filed on or after the effective date. A complaint filed before the effective date is governed by the law in effect on the date the complaint was filed.

Summary of Changes: This provision amends Section 614.023 of the Local Government Code to require in Subsection (a) that a copy of the signed complaint be given to the officer or employee within a reasonable time after the complaint is filed. Although no changes were made to Subsection (b), it requires that disciplinary action may not be taken unless a signed copy of the complaint has been provided to the officer or employee. Subsection (c) specifies that an officer may not be indefinitely suspended or terminated based on the subject matter of a complaint unless the complaint is investigated and there is evidence to prove the allegation or misconduct.