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LEGISLATIVE FOREWORD

by Lisa Capers

The 80th Texas Legislature 2007—A *Perfect Storm*

Few analogies better capture the atmosphere at the 80th Texas Legislature regarding juvenile justice in Texas and specifically the Texas Youth Commission (TYC) than the *Perfect Storm*. The *Perfect Storm* most of us are familiar with was a suspenseful movie starring George Clooney that told the story of an October 1991 storm that hit the coast off of Gloucester, Massachusetts, which was stronger than any storm in recorded history. The *Perfect Storm*, as depicted in the movie, was in reality three storms combined into one that created an almost apocalyptic situation in the Atlantic Ocean where boats encountered waves of 100 feet, the height of a ten-story building. The *Perfect Storm* Texas style began in mid February 2007, when a brewing storm hit TYC as details emerged about widespread physical and sexual abuse of youth at TYC facilities and potential cover-ups of the wrongdoing. The story made state and national headlines nightly from CNN to MSNBC, from USA Today to the Washington Post and nearly every other media outlet in between. Texas juvenile justice was in the news...and it was not pretty. Similar to the three storms forming the *Perfect Storm* that ultimately sunk the *Andrea Gail* in the movie, three formidable Texas forces—vocal parents and advocacy groups, the media, and the Texas legislature—combined to form the perfect storm that nearly sank TYC. The 80th Texas Legislature navigated this storm while the entire nation watched in disbelief.

The sequence of events that unfolded during the storm was chaotic as the TYC scandal grew ever more visible. Legislative leadership called for placing TYC in conservatorship, a remedy used in rare situations when a state agency is in such serious trouble many believe it cannot be fixed. A joint select committee of House and Senate members was formed and began meeting and demanding changes be made quickly at TYC. The governing board of TYC was fired and a conservator was appointed by the Governor. Texas Rangers were dispatched to all TYC facilities along with teams of auditors to conduct probing and comprehensive investigations. To compound matters, the U.S. Department of Justice issued its report citing numerous problems at a south Texas TYC facility. Legislators in both houses began drafting numerous pieces of legislation to correct the long list of cited problems at the agency. TYC executive management was promptly replaced and a number of terminations, firings and resignations ultimately ensued and continue. The storm raged on and its volatile combination of sex scandals at TYC facilities, the media, politics, advocacy groups and public outcry resulted in un-

precedented and unforeseen changes to the governance, structure and operations of the Youth Commission. The TYC we once knew is gone...replaced by what we all hope is not just a different leadership team at the central agency in Austin, but a more effective statewide system to treat and rehabilitate our youth in the safe and protective environments that legislators, juvenile justice professionals and the public demand.

Senate Bill 103 by **Senator Juan Hinojosa** became the vehicle of change this session for correcting the serious systemic and cultural problems at TYC. Under the leadership of **Senator Hinojosa** and **Representative Jerry Madden**, the bill had the unanimous support of the members of both houses as it made its way to the Governor's desk. It is a huge bill numbering nearly 95 pages, and contains fundamental changes for TYC and the Texas Juvenile Justice Code.

The fallout from *fixing* TYC has resulted in significant changes to Title 3, the true ramifications of which are not completely known and probably will not be for some time. No longer can misdemeanor offenders be committed to TYC and the agency's jurisdiction over youth extends only to age 19 instead of 21. In the end, community-based juvenile justice practitioners are being asked to do what they do best...step up to the plate and continue to treat and rehabilitate the youth in our communities by providing even more expansive, creative and unique programs and services than ever before. The good news is that much-needed additional resources in very significant amounts are being allocated to local juvenile probation departments through increased appropriations to the Texas Juvenile Probation Commission (TJPC) to help provide community-based services and programming to misdemeanor offenders who can no longer be committed to TYC. While the new laws present a challenge, the new funding will provide counties with exciting opportunities to serve youth in our communities with new and innovative programs created by local juvenile justice professionals who know these children and families best and understand their needs. What a tremendous chance we have to make a real difference in the lives of these kids!

Continuing the tradition of the late Professor Robert Dawson, and as we have done for the past six legislative sessions beginning in 1995, this special legislative issue contains the text of all major bills impacting the juvenile justice system along with commentary explaining the bills and any history of interest. Besides **Senate Bill 103**, the

TYC reform bill, **Representative Harold Dutton** again carried **House Bill 2884**, the omnibus juvenile justice cleanup bill in the house as he has done in previous sessions and **Senator Royce West** sponsored the bill on the Senate side. Thank you to legislative staffers, **Nicole Bates** and **Kelvin Bass** for their dedicated efforts to get the bill through the process to a successful outcome. **HB 2884** contains some technical revisions to the inter-county transfer provisions, expands determinate sentence offenses, and makes many small but significant changes to the juvenile justice code. For those of you who may be assigned the task of training staff on the new legislation, we have included synopsis documents on both **SB 103** and **HB 2884** in the appendix to this issue. I hope it is helpful to you.

There are additional bills of interest discussed in this issue including **SB 6** by **Senator Florence Shapiro** related to sex offenders; **HB 776** by **Representative Harold Dutton** related to the delivery of a child in custody to a school official; **HB 1113** by **Representative Sylvester Turner** related to reporting research on children in the juvenile probation system; **HB 2151** by **Representative Dwayne Bohac** related to prosecuting/adjudicating the offense of graffiti and the payment/use of a juvenile delinquency prevention and graffiti eradication fund; **HB 2532** by **Representative Diane Patrick** related to alternative educational placements; and **HB 3309** by **Representative Valinda Bolton** related to the ability of certain advocacy and support groups to provide services for children confined in TYC facilities. Overall, it was a very busy session. Lawmakers filed 10,293 bills and of those, 5,787 passed.

There are many individuals who I must thank this year. As Professor Dawson told me many times, *If it is worth doing, it is worth delegating*, so I have followed his advice again this year. Fortunately, I have been extremely blessed to have some talented and hardworking helpers with this issue. TJPC's Legal Division has worked tirelessly in drafting, editing and producing this issue. Thank you to Senior Staff Attorney **Nydia Thomas** and Staff Attorneys **Chris Cowan**, **Leigh De La Reza**, and **Chris Hubner** for their work during the session, on the TJPC Post-Legislative Conference in June and especially on this

issue. TJPC's Director of Education Services and Intergovernmental Relations, **Linda Brooke**, graciously contributed commentary on both TJPC appropriations and education related legislation as she has done for the last several sessions—thank you, Linda! It has been my privilege this year to have worked on HB 2884 with Assistant District Attorney, **Riley Shaw**, from Tarrant County. Riley contributed many good ideas to HB 2884 and worked diligently during the session at the capitol to help ensure passage of this bill. Additionally, he has provided commentary on select provisions in the bill. Thanks, Riley. Last, but certainly not least, a huge thank-you to **Kristy Almaguer** and **Debbie Steed** for their technical expertise in producing this issue. Many, many hours go into formatting a publication such as this. As always, we simply could not have done it without you both and this issue is a big one...bigger than the 1995 issue!

A special thanks to our newsletter editor, **Pat Garza**, and section Chair, **Brian Fischer**, for graciously giving our team the opportunity to produce this issue for the Juvenile Law Section. I hope the 2007 Special Legislative Issue is useful to all juvenile justice practitioners statewide. It has been an amazing session like none other and one we soon will not forget. The opportunities on the horizon for the community-based juvenile justice system are even more amazing and TJPC looks forward to assisting all counties in the challenges ahead. Good luck to us all.

Post Stanza: The statutory excerpts provided in this issue are intended as a general reference and should be considered a secondary source. While every effort has been made to accurately include recent legislative changes and provide useful interpretative commentary, it is best to consult the original legislative enactments located on the Texas Legislature Online website at <http://www.capitol.state.tx.us/Search/BillSearch.aspx>.

Casualties of Justice

By Lisa Capers

Courage is not defined by those who fought and did not fall, but by those who fought, fell and rose again.

—Unknown

Bringing needed reforms to the Texas Youth Commission (TYC) was a monumental task this legislative session. It was difficult for many reasons--the serious problems were systemic and it was clear that a true culture change was required to protect the children the State of Texas has entrusted to the agency. But the situation was difficult from yet another perspective as well...how do you correct the problems in an agency and retain the good employees when all employees have been tainted by those who did such very wrong things to children? Can an agency be saved and move forward when the many individual employees who make up its foundation have been implicitly and negatively labeled through the unforgivable actions of a few? Working in the same state office building in Austin where TYC has its central headquarters brought the truth of this difficulty home to each of us daily. The faces of the TYC employees told the story vividly. Pain and uncertainty was etched on their faces as they came to work each day surrounded by armed investigators, Texas Rangers, and executive leadership whom they did not know, each person wondering what would happen next to them and their colleagues. But they came to work each day and every day thereafter, facing the looks, the stares, the whispers and the questioning, unforgiving eyes of the public. These employees exemplified remarkable courage in the face of adversity.

Many individuals at TYC lost their jobs and rightfully so. Swift and severe justice will hopefully come to those who played a part or were complicit in the abuse of children in TYC custody. However, the vast majority of individuals at TYC are hard-working professionals who truly care about the kids they serve and they are the lesser-known casualties in the battle to reform their agency. They are casualties who most will never see or know, but each one has a face and a story and has lived the tragedy of knowing children were hurt and watched their agency battle for its very existence while seeking to redeem its reputation.

My good friend, Neil Nichols, was a casualty of the reforms at TYC. Neil is well known to juvenile justice practitioners statewide and has long been a member of the Juvenile Law Section. Neil served as the General Counsel at TYC for most of his 33 years at the agency and he was a true advocate for children...that was his passion. Professor

Dawson used to say about Neil, "*He's a good man,*" and he is. When Neil was asked to serve as Interim Executive Director of TYC in late February, he agreed as he had done in the past when TYC was in transition between executive directors. Neil did not take the position with any illusions of self-advancement. He knew the price he might ultimately pay for becoming the public face of a deeply troubled agency. Neil was and is a man of courage and he knowingly stepped up to lead his agency through a storm, which his professional career did not survive. Neil resigned from TYC a few weeks later when a complete change of executive management personnel at the agency was demanded by legislative leadership and quickly implemented.

Ironically, Neil was a casualty of the process to bring justice to the youth in TYC...a goal he had spent his entire career and life's work to achieve. But Neil was a willing casualty because he loved his agency and was courageous enough to serve until the end. And Neil loved the kids...no one would demand more justice for the abused, mistreated or neglected youth than Neil. Those in juvenile justice who have known Neil for many years frequently approach me at conferences and other events and inevitably share with me a story about Neil. While the facts of the story are always different, the underlying theme is the same...Neil Nichols advocating for children and their rights. Those who know Neil best understand this was who he was, who he is, and who he will always be.

As TYC changes its direction, recovers from its fall and becomes the agency that we know will one day earn back our trust, let us reflect on the human casualties in the reform process and look toward the future knowing change does not come easily and justice is never free.

Thank you to all the TYC employees who were courageous through it all, who did not give up and who are working for positive change. Thank you, Neil, for nearly 15 years of a truly special friendship and for everything you have taught me. I will miss standing side-by-side with you in the arena of juvenile justice, but I know we will see you around the capitol or the courthouse...a true advocate fights and may fall, but will always rise again.

80th Texas Legislature Appropriations to the Texas Juvenile Probation Commission: Significant Increases in Funding Provide New Challenges and Opportunities

Vicki Spriggs
Executive Director

The Texas Juvenile Probation Commission (TJPC) and juvenile probation departments, juvenile courts, prosecutors, and defense attorneys were challenged this session with law changes related to Texas Youth Commission (TYC) commitments. These law changes resulted in a significant increase (19%) in the Community Corrections line item of TJPC's budget. The new appropriations, totaling more than \$57 million over the biennium, created tremendous opportunities for the creation, expansion and enhancement of community based programs and secure and non-secure residential placements that will divert youth from TYC. The field of juvenile probation has faced many challenges since 1995 when the entire juvenile justice system was reformed. These challenges, like all challenges, were opportunities that resulted new thinking, new programs, and ultimately a decrease in the number of youth being referred to juvenile probation departments across this state. The new challenges of this session will reveal many new opportunities and, as in the past, juvenile justice pro-

fessionals and TJPC will work together to meet the challenge and create new opportunities for Texas' juveniles.

State agencies are required to submit a legislative appropriations request (LAR) to the Legislative Budget Board in August prior to the beginning of the legislative session in January. In August 2006, agencies were required to draft proposed budgets with a 10% reduction in current funding levels. This reduction amounted to \$18,794,030 in general revenue for the Commission. The proposed budget reduction was taken in the budget line items that were specific to the placement of youth in residential facilities and represented the back end of the system (i.e., Local Post-Adjudication Facilities, Level 5, Harris County Boot Camp and Small County Diversionary Placement).

In preparing the LAR, an agency may ask for exceptional items which are above the base request less any reductions required by the Legislature. TJPC's exceptional items request totaled \$48,125,855; the items are listed in order of priority below.

1. Restore 10% Reduction	\$18,794,030
Local Post-Adjudication Facilities	\$8,294,076
Level 5 Secure Placement	\$8,788,872
Harris County Boot Camp	\$1,111,082
Small County Diversionary Placement	\$600,000
2. Increase in Agency Administrative Funds for Staff Salaries	\$605,436
3. Increase in Community Corrections Funding	\$17,346,008
4. Additional Staff (5)	\$568,666
5. Vehicle	\$25,000
6. Increase in JJAEP Reimbursement Rate	\$9,786,715
7. Techshare Project	\$1,000,000

The budget process was in full swing when serious concerns arose over the function and operation of TYC; this stalled the budget process for both TJPC and TYC for months. The Legislature and the Governor placed TYC

under conservatorship, new agency leadership was put into place, and then the Legislature began to make funding decisions for both agencies. The Legislature turned to the network of local probation departments for assistance in

decreasing TYC population so desired changes to TYC could be accomplished. The Legislature provided TJPC a 19% increase in overall funding, an additional \$57,797,384 of new funding for the 2008-09 biennium.

Narrative Summary of TJPC Fiscal Years 2008-2009 Appropriations

The amount biennially appropriated by the Legislature for the Basic Probation Goal was \$95,123,084. The Community Corrections Services Strategy was increased by \$57,893,170. A portion of this amount, \$22,536,670, will be utilized by local juvenile probation departments for enhanced community-based services and programs. The remaining amount of \$35,356,500 is designated for local juvenile probation departments to place youth in secure or non-secure residential facilities as a diversion from commitment to TYC.

There were no changes to the remaining strategies within the Community Corrections Goal over the biennium which was initially designated for the 10% budget reduction required by each state agency. This included funding for 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 (\$3,948,068).

The Legislature approved an increase of five additional staff members (FTEs) for TJPC and the funding for these FTEs was added to the Probation Assistance Goal.

These positions include one mental health professional to assist juvenile probation departments in developing services for mentally ill offenders; one staff attorney to coordinate and respond to public information requests and assist with disciplinary/administrative hearings; one abuse, neglect and exploitation investigator; and two administrative assistants to assist with public information requests and abuse, neglect and exploitation investigations. TJPC also received additional funds of \$25,000 for one vehicle and \$71,096 for replacement of computer equipment.

The Legislature authorized TJPC in the Probation Assistance Goal to recoup \$56,066,840 in federal Title IV-E funds to reimburse counties for qualifying foster care services. It should be noted that federal funds decreased from the previous biennium due to changes in federal regulations.

JJAEP funding was increased by \$5,853,556 over the current biennial amount of \$17,139,096. This increase reflects the projected increase in mandatory student attendance days and the increased daily reimbursement rate from \$59 to \$79 per mandatory attendance day. The rate increase is intended to address the cost of providing educational services for these mandatory students.

There were no funding increases to the Indirect Administration Goal; the amount remained at \$2,153,602.

The following chart reflects the TJPC budget for 2008-2009 biennium.

TJPC Funding 2008-2009 Biennium

Description	FY 2008	FY 2009
A. Goal: Basic Probation (State Aid)		
A.1.1. Strategy: Basic Probation Services	28,241,181	28,441,181
A.1.2. Strategy: Progressive Sanctions Levels 1 - 3	19,220,361	19,220,361
Total, Goal A:	47,461,542	47,661,542
B. Goal: Community Corrections		
B.1.1. Strategy: Community Corrections Services	59,960,926	64,224,427
B.1.2. Strategy: Harris County Boot Camp	1,000,000	1,000,000
B.1.3. Strategy: Level 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	1,974,034	1,974,034
Total, Goal B:	71,476,434	75,739,935
C. Goal: Probation Assistance		
C.1.1. Strategy: Probation Assistance	30,418,119	30,378,013
Total, Goal C:	30,418,119	30,378,013
D. Goal: Juvenile Justice Alternative Education Program		
D.1.1. Strategy: Juvenile Justice Alternative Education Program	11,348,596	11,644,056
Total, Goal D:	11,348,596	11,644,056

E. Goal: Indirect Administration		
E.1.1. Strategy: Central Administration	944,848	944,848
E.1.2. Strategy: Information Resources	131,953	131,953
Total, Goal D:	1,076,801	1,076,801
Total Appropriation	161,781,492	166,500,347

Appropriation 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 the designated key performance target levels associated with each item appropriated. *(Modified due to length)*

	2008	2009
a. Acquisition of Information Resource Technologies		
(1) Laptop and Server Replacement	\$24,696	\$46,400
b. Transportation Item		
(1) Additional Vehicle	25,000	0
Total, Capital Budget	\$49,696	\$46,400
Method of Financing (Capital Budget):		
General Revenue Fund	\$49,696	\$46,400

3. 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.

4. Appropriation of Federal Title IV-E Receipts. The provisions of Title IV-E of the Social Security Act shall be used in order to increase funds available for juvenile justice services. The Juvenile Probation Commission shall certify or transfer state funds to the Texas Department of Family and Protective Services so that federal financial participation can be claimed for Title IV-E services provided by counties. The 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 Juvenile Probation Commission for the purpose of reimbursing counties for services provided to eligible children.

5. 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.

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

6. 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 Youth Commission.

7. Funding for Progressive Sanctions.

a. Out of the funds appropriated above in Strategy A.1.2, Progressive Sanctions Levels 1-3, \$10,200,000 in fiscal year 2008 and \$10,200,000 in fiscal year 2009 can be distributed only to local probation departments for funding juvenile probation services associated with sanction levels described in §§ 59.003(a)(1), 59.003(a)(2), and 59.003(a)(3) of the Family Code, or for salaries of juvenile probation officers hired after the effective date of this Act. These funds may not be used by local juvenile probation departments for salary increases, employee benefits, or other costs (except salaries) associated with the employment of juvenile probation officers hired after the effective date of this Act.

b. Out of the funds appropriated above in Strategy B.1.3, Level 5 Post-adjudication Facilities, \$4,394,436 in fiscal year 2008 and \$4,394,436 in fiscal year 2009 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 Juvenile Probation Commission shall reimburse a county juvenile probation department a specified number of placements under this section, as determined by the Juvenile Probation Commission, after the requirements for reimbursement as outlined herein have been met to the satisfaction of the Juvenile Probation Commission.

c. The 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 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.

8. 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.

9. 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 2008 and \$4,147,038 in fiscal year 2009 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.

10. Juvenile Justice Alternative Education Programs (JJAEP). Out of the funds transferred to the Juvenile Probation Commission pursuant to Texas Education Agency (TEA) Rider 35 and appropriated above in Strategy D.1.1, Juvenile Justice Alternative Education Programs, the Juvenile Probation Commission shall allocate \$1,500,000 at the beginning of each fiscal year to be distributed on the basis of juvenile age population among the 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 fiscal 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 § 37.011(a) Texas Education Code, at the rate of \$79 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 \$79 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 \$79 per student per day.

The Juvenile Probation Commission may expend any remaining funds for summer school programs in counties with a population over 72,000 which are funded as mandated counties in Chapter 37. Funds may be used for any student assigned to a JJAEP. Summer school expenditures may not exceed \$3.0 million in any fiscal year. Unspent balances in fiscal year 2008 shall be appropriated to fiscal year 2009 for the same purposes in Strategy D.1.1.

The amount of \$79 per student day for the JJAEP is an estimated amount and not intended to be an entitlement. Appropriations for JJAEP are limited to the amounts transferred from the Foundation School Program pursuant to TEA Rider 35. The amount of \$79 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 2009 to the Foundation School Fund No. 193.

The 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.

11. 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 fiscal 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 Juvenile Probation Commission at the rate of \$79 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.

12. 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.

13. JJAEP Accountability. Out of funds appropriated above in Strategy D.1.1, Juvenile Justice Alternative Education Programs (JJAEP), the Juvenile Probation Commission shall ensure that Juvenile Justice Alternative Education Programs are held accountable for student academic and behavioral success. The Juvenile Probation Commission shall submit a performance assessment report to the Legislative Budget Board and the Governor by May 1, 2008. The report shall include, but is not limited to, the following:

- a. an assessment of the degree to which each JJAEP enhanced the academic performance and behavioral improvement of attending students;
- b. a detailed discussion on the use of standard measures used to compare program formats and to identify those JJAEPs most successful with attending students;
- c. the percent of eligible JJAEP students statewide and by program demonstrating academic growth in the Texas Assessment of Knowledge and Skills (TAKS);
- d. standardized cost reports from each JJAEP and their contracting independent school district(s) to determine differing cost factors and actual costs per each JJAEP program by school year;
- e. average cost per student attendance day for JJAEP students. The cost per day information shall include an itemization of the costs of providing educational services mandated in the Texas Education Code § 37.011. This itemization shall separate the costs of mandated educational services from the cost of all other services provided in JJAEPs. Mandated educational services include facilities, staff, and instructional materials specifically related to the services mandated in Texas Education Code, § 37.011. All other services in-

clude, but are not limited to, programs such as family, group, and individual counseling, military-style training, substance abuse counseling, and parenting programs for parents of program youth; and

f. 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.

14. Training. From funds appropriated above in Strategy C.1.1, Probation Assistance, the Juvenile Probation Commission shall provide training to local juvenile probation personnel and to local Juvenile Judges to maximize the appropriate placement of juveniles according to the progressive sanction guidelines.

15. Unexpended Balances - Hold Harmless Provision.

Any unexpended balances as of August 31, 2008, 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 \$200,000), above are hereby appropriated to the Juvenile Probation Commission in fiscal year 2009 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.

16. Appropriation: Refunds of Unexpended Balances from Local Juvenile Probation Departments.

The 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 2008 and fiscal year 2009 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 2008 and \$650,000 in fiscal year 2009 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 2008 and \$500,000 in fiscal year 2009 are hereby appropriated to JPC for the Level 5 Secure Correction Placement Program.

17. Reporting Requirements to the Legislative Budget Board (LBB).

The Juvenile Probation Commission shall report juvenile population 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.

18. Special Needs Diversionary Programs. Out of the funds appropriated above in Strategy B.1.5, Special Needs Diversionary Programs, \$1,974,034 in fiscal year 2008 and \$1,974,034 in fiscal year 2009 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.

19. Community Corrections Funding and Residential Facilities. From funds appropriated above in Strategy B.1.1, Community Corrections Services, the Juvenile Probation Commission shall distribute \$11,268,335 in fiscal year 2008 and \$11,268,335 in fiscal year 2009 in General Revenue Funds to local juvenile probation departments for enhanced community-based services including, but not limited to, sex offender treatment, intensive supervision, and specialized supervision.

From funds appropriated above in Strategy B.1.1, Community Corrections Services, the Juvenile Probation Commission shall distribute \$15,646,500 in fiscal year 2008 and \$19,710,000 in fiscal year 2009 in General Revenue Funds to local juvenile probation departments for youth placement in secure or non-secure residential facilities at a rate not to exceed \$90 per youth per day as a diversion from the Youth Commission. These funds may be used only for placement of youth who have been adjudicated for: a violent felony offense; a non-violent felony offense with one or more prior adjudications; or a misdemeanor offense or violation of misdemeanor probation with two or more prior adjudications. These funds may not be used for purposes other than secure or non-secure residential facilities.

These funds shall not be used by local juvenile probation departments for salary increases or costs associated with the employment of staff hired prior to September 1, 2007. These funds shall not be used to supplant existing expenditures associated with programs, services, and residential placement of youth within the local juvenile probation departments.

80th Texas Legislature Appropriations to the Texas Youth Commission: TYC Overhaul Prompts Significant Investment in Youth

Dimitria Pope
Interim Executive Director

Problems in the Texas Youth Commission (TYC) captured many of the headlines in the 80th Legislative Session. A scandal at the agency's West Texas State School helped spotlight troubles that affected every aspect of the Commission. The Legislature passed sweeping reforms and appropriated the needed money to begin fixing the broken agency.

At first glance, funding might appear roughly neutral. The total biennial appropriation for TYC for 2008-2009 is just under \$489 million, a slight decrease from the agency's 2006-2007 allocation of \$490 million. However, a closer look actually reveals a significant increase in money for the Commission primarily because the 80th Legislative Session reforms that require TYC to decrease its population from about 5,000 beds to 3,151 beds. The driving factor in the Commission's budget is the youth population. The reduced population will occur as TYC reconfigures existing facilities to serve smaller numbers of youth and when the agency either closes or transfers to the Texas Department of Criminal Justice (TDCJ) facilities that are not effective in serving a youth population in need of rehabilitation. The smaller population will allow the agency to operate at a

higher staff-per-youth ratio, which should increase safety and treatment effectiveness.

The agency's approved exceptional funding item requests demonstrate the Legislature's commitment to making improvements in the agency. These items reflect the most critical needs facing TYC. Here are the highlights:

- \$28.9 million (in general revenue funds) to reduce the juvenile correctional officer to youth ratio to 1:12 from as high as 1:24 in some cases.
- \$25 million (in bond funds) to construct a new facility in a large metropolitan area which will begin operations in FY 2011.
- \$2.86 million (in bond funds) for new construction at existing facilities to improve safety and living conditions for youth and staff.

- \$29.82 million (in bond funds) to repair existing TYC facilities.
- \$1.78 million (in general revenue funds) to install video surveillance systems at TYC facilities to upgrade outdated or broken equipment and to expand surveillance capabilities.
- \$6.81 million (in general revenue funds) to increase contract care capacity to meet LBB projections.
- \$21.36 million (in general revenue funds) to increase medical care oversight, implement an electronic medical record system, and cover rate increases in medical and psychiatric services.
- \$1.56 million (in general revenue funds) to create an office of inspector general with law enforcement capability to investigate crimes occurring in TYC.
- \$4.52 million (in general revenue funds) to increase case manager salaries.
- \$1.42 million (in general revenue funds) to increase to from 80 to 300 the number of training hours required of all TYC direct care staff.
- \$5.53 million (in general revenue funds) to add new staff positions including: chaplains, family liaisons, workforce development specialists, education counselors, physical education teachers and aides, internal auditors, and maintenance managers.
- \$2.66 million (in general revenue funds) to implement an incident, complaint, and abuse reporting call center.
- \$1.24 million (in general revenue funds) to maintain the current level of drug treatment program due to the termination of the VOI/TIS Grant in FY 2007.
- \$1.2 million (in general revenue funds) to eliminate toll charges and provide free telephone service to youth when calling parents or family members.

A major TYC oversight component created independently of the agency is the new Office of Ombudsman for TYC. This separate office is charged with monitoring the care and treatment of youth in TYC, investigating and responding to complaints made by youth, families, advocates, staff, volunteers, or members of the public.

The above funding changes, additions, and approved exceptional items are just the beginning of overhaul at TYC. More changes and improvements are expected as the agency looks forward to the 81st Legislative Session in 2009. During the interim, TYC will undergo its regularly scheduled sunset review.

1. Title 3 and Related Provisions

Family Code

Family Code Sec. 51.03. DELINQUENT CONDUCT; CONDUCT INDICATING A NEED FOR SUPERVISION.

(b) Conduct indicating a need for supervision is:

(1) subject to Subsection (f), conduct, other than a traffic offense, that violates:

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

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

(2) the absence of a child on 10 or more days or parts of days within a six-month period in the same school year or on three or more days or parts of days within a four-week period from school;

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

(4) conduct prohibited by city ordinance or by state law involving the inhalation of the fumes or vapors of paint and other protective coatings or glue and other adhesives and the volatile chemicals itemized in Section 485.001 [484.002], Health and Safety Code;

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

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

Commentary by Lisa Capers

Source: HB 2884

Effective Date: September 1, 2007

Applicability: Conduct that occurs on or after the effective date.

Summary of Changes: This is a technical change that corrects the citation to the appropriate chapter of the Health and Safety Code. Chapter 484 regarding inhalant abuse and the list of volatile chemicals in Section 484.002 was repealed in 2001 and replaced by Chapter 485. Section 485.001 defines abusable volatile chemicals.

Family Code Sec. 51.0412. JURISDICTION OVER INCOMPLETE PROCEEDINGS.

The court retains jurisdiction over a person, without regard to the age of the person, who is a respondent in an adjudication proceeding, a disposition proceeding, ~~or~~ a proceeding to modify disposition, or a motion for transfer of determinate sentence probation to an appropriate district court if:

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

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

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

Commentary by Lisa Capers and Riley Shaw

Source: HB 2884

Effective Date: September 1, 2007

Applicability: Transfers for conduct on or after the effective date.

Summary of Changes: HB 2884 amends Section 51.0412 to provide the juvenile court with jurisdiction in a motion to transfer determinate sentence probation to adult court for a juvenile age 18 or older who has fled the jurisdiction before a transfer hearing can be held. The juvenile court retains jurisdiction if the motion for transfer was filed timely prior to the juvenile turning 18 and the prosecutor has exercised due diligence to complete the transfer proceeding prior to the probationer's 18th birthday.

A determinate sentence probation term can extend for up to ten years and often extend long after a probationer's 18th birthday. Prior law required that, in order for the probation to continue to its scheduled conclusion post-18, there must be a hearing before the probationer's 18th birthday in which the juvenile court orders the transfer to adult court. The hearing must be concluded before the probationer's 18th birthday, otherwise the juvenile court loses jurisdiction over the matter and the probation expires by operation of law on the probationer's 18th birthday. This change to Section 51.0412 was necessary because the law did not make an exception for when a child has *gone on the run* prior to age 18 in order to avoid just such a transfer. It is also necessary in those situations when it does not become apparent that a transfer to adult court is justified until shortly before the child's 18th birthday. This change allows for the possibility of transfer under the above circumstances, but only if the prosecutor has filed a motion prior to the probationer's 18th birthday and can show that due diligence was exercised in attempting to complete the proceeding prior to the probationer's 18th birthday.

Family Code Sec. 51.095. ADMISSIBILITY OF A STATEMENT OF A CHILD.

(f) A magistrate who provides the warnings required by Subsection (a)(5) for a recorded ~~[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 recording ~~[videotape]~~ to the magis-

trate at the conclusion of the process of questioning. The magistrate may then view the recording [videotape] with the child or have the child view the recording [videotape] to enable the magistrate to determine whether the child's statements were given voluntarily. The magistrate's determination of voluntariness shall be reduced to writing and signed and dated by the magistrate. 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 Lisa Capers

Source: HB 2884

Effective Date: September 1, 2007

Applicability: Statements taken on or after the effective date.

Summary of Changes: Section 51.095(f) is amended to change the terms *videotape* and *videotaped* to *recording* and *recorded* respectively in order to reflect and authorize the use of digital media recordings in addition to videotapes. Further, the amendment clarifies that the magistrate's determination of voluntariness of a juvenile's statement must be reduced to writing, signed and dated by the magistrate.

Family Code Sec. 51.12. PLACE AND CONDITIONS OF DETENTION.

(b-1) A pre-adjudication secure detention facility may be operated only by:

(1) a governmental unit in this state as defined by Section 101.001, Civil Practice and Remedies Code; or

(2) a private entity under a contract with a governmental unit in this state.

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

(1) current monitoring and inspection reports and any noncompliance citation reports issued by the Texas Juvenile Probation Commission, including the report provided under Subsection (c-1), and the status of any required corrective actions;

(2) current governmental inspector certification regarding the facility's compliance with local fire codes;

(3) current building inspector certification regarding the facility's compliance with local building codes;

(4) for the 12-month period preceding the inspection, the total number of allegations of abuse, neglect, or exploitation reported by the facility and a summary of the findings of any investigations of abuse, neglect, or exploitation conducted by the facility, a local law enforcement agency, and the Texas Juvenile Probation Commission;

(5) the availability of health and mental health services provided to facility residents;

(6) the availability of educational services provided to facility residents; and

(7) the overall physical appearance of the facility, including the facility's security, maintenance, cleanliness, and environment.

(c-1) The Texas Juvenile Probation Commission shall annually inspect each public or private juvenile pre-adjudication secure detention facility. The Texas Juvenile Probation Commission shall provide a report to each juvenile court judge presiding in the same county as an inspected facility indicating whether the facility is suitable or unsuitable for the detention of children in accordance with:

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

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

(i) Except for [a facility operated or certified by the Texas Youth Commission or] a facility as provided by Subsection (l), a governmental unit or private entity that operates or contracts for the operation of a juvenile pre-adjudication secure detention facility under Subsection (b-1) [or a juvenile post-adjudication secure correctional facility] in this state shall:

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

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

(m) The Texas Juvenile Probation Commission may deny, suspend, or revoke the registration of any facility required to register under Subsection (i) if the facility fails to:

(1) adhere to all applicable minimum standards for the facility; or

(2) timely correct any notice of noncompliance with minimum standards

Commentary by Lisa Capers

Source: SB 103

Effective Date: June 8, 2007, at 6:50 p.m. Central Standard Time

Applicability: All pre-adjudication secure detention facilities put into operation or inspected on or after the effective date.

Summary of Changes: Section 51.12 is amended by adding Subsections (b-1) and (m) and amending Subsections (c) and (i) related to secure juvenile pre-adjudication detention facilities. The new language in this provision was originally found in HB 2884 and HB 2043. As it became evident that SB 103 was going to pass, various portions of other bills that were lagging slightly behind were amended into SB 103 to ensure their passage. The changes to 51.12 were among those tagged into SB 103 toward the end of the session.

One of the main changes in this section was to limit Section 51.12 to pre-adjudication detention facilities. Thus, all references to post-adjudication facilities were removed. New Section 51.125 (discussed below) governs post-adjudication secure correctional facilities.

Subsection (b-1) clarifies that a pre-adjudication secure detention facility for juvenile offenders may only be operated by a governmental unit in this state or a private entity under a contract with a governmental unit in this state. A private corporation or individual cannot operate a detention facility where juveniles are incarcerated if not affiliated and under contract with a governmental unit. The term *governmental unit* is defined in Texas Civil Practice and Remedies Code Section 101.001.

Subsection (c) was originally in HB 2043 and requires a governmental unit or private entity that operates or contracts for the operation of a juvenile pre-adjudication secure detention facility to register the facility annually with the Texas Juvenile Probation Commission (TJPC) and to adhere to all applicable minimum standards. This subsection clarifies two key points: 1) TJPC must now inspect all facilities annually instead of every two years; and 2) juvenile boards and juvenile court judges who inspect and certify a facility as suitable for the detention of youth must now consider seven statutory factors in their decision. The factors are intended to give guidance to officials on whether a facility is suitable or not. Frequently, juvenile boards and juvenile judges have expressed hesitation regarding their inspection of these facilities and liability issues have made these inspections a source of great concern. Clearly, these officials should not be required to conduct a detailed inspection of these facilities and determine compliance with applicable standards that number in the hundreds. TJPC is the designated state agency with the responsibility to determine standard compliance by conducting in-depth monitoring and inspections. In the official's determination of suitability, however, review of TJPC monitoring reports is critical and is therefore one of the listed factors. All the factors are important and if officials adhere to this statutory checklist, this should demonstrate due diligence in discharging their administrative duties to inspect and determine the suitability of the facility, thus minimizing their liability to the extent possible. Subsection (c) also deletes references to post-adjudication secure cor-

rectional facilities which become the subject of new Section 51.125.

Subsection (i) is amended to delete references to post-adjudication secure correctional facilities which become the subject of new Section 51.125 and cross-reference new Subsection (b-1).

New Subsection (m) authorizes TJPC to deny, suspend, or revoke the registration of any secure pre-adjudication juvenile detention facility if the facility fails to adhere to all applicable minimum standards or fails to timely correct any notice of noncompliance with minimum standards.

Family Code Sec. 51.125. POST-ADJUDICATION CORRECTIONAL FACILITIES.

(a) A post-adjudication secure correctional facility for juvenile offenders may be operated only by:

(1) a governmental unit in this state as defined by Section 101.001, Civil Practice and Remedies Code; or

(2) a private entity under a contract with a governmental unit in this state.

(b) In each county, each judge of the juvenile court and a majority of the members of the juvenile board shall personally inspect all public or private juvenile post-adjudication secure correctional facilities that are not operated by the Texas Youth Commission and that are located in the county at least annually and shall certify in writing to the authorities responsible for operating and giving financial support to the facilities and to the Texas Juvenile Probation Commission that the facility or facilities are suitable or unsuitable for the confinement of children. In determining whether a facility is suitable or unsuitable for the confinement of children, the juvenile court judges and juvenile board members shall consider:

(1) current monitoring and inspection reports and any noncompliance citation reports issued by the Texas Juvenile Probation Commission, including the report provided under Subsection (c), and the status of any required corrective actions; and

(2) the other factors described under Sections 51.12(c)(2)-(7).

(c) The Texas Juvenile Probation Commission shall annually inspect each public or private juvenile post-adjudication secure correctional facility that is not operated by the Texas Youth Commission. The Texas Juvenile Probation Commission shall provide a report to each juvenile court judge presiding in the same county as an inspected facility indicating whether the facility is suitable or unsuitable for the confinement of children in accordance with minimum professional standards for the confinement of children in post-adjudication secure confinement promulgated by the Texas Juvenile Probation Commission or, at the election of the juvenile board of the county in which the facility is located, the current standards promulgated by the American Correctional Association.

(d) A governmental unit or private entity that operates or contracts for the operation of a juvenile post-

adjudication secure correctional facility in this state under Subsection (a), except for a facility operated by or under contract with the Texas Youth Commission, shall:

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

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

(e) The Texas Juvenile Probation Commission may deny, suspend, or revoke the registration of any facility required to register under Subsection (d) if the facility fails to:

(1) adhere to all applicable minimum standards for the facility; or

(2) timely correct any notice of noncompliance with minimum standards.

Commentary by Lisa Capers

Source: SB 103

Effective Date: June 8, 2007, at 6:50 p.m. Central Standard Time

Applicability: All post-adjudication secure correctional facilities put into operation or inspected on or after the effective date.

Summary of Changes: SB 103 amends Chapter 51, by adding new Section 51.125 related to juvenile secure post-adjudication correctional facilities. The language in this provision was originally found in HB 2884 and HB 2043. As it became evident that SB 103 was going to pass, various portions of other bills that were lagging slightly behind were amended into SB 103 to ensure their passage. The creation of new Section 51.125 within HB 2884 was among those provisions tagged onto SB 103 toward the end of the session.

Subsection (a) requires that a post-adjudication secure correctional facility for juvenile offenders may only be operated by a governmental unit in this state or a private entity under a contract with a governmental unit in this state.

Subsection (b) requires that in each county, the juvenile court judges and a majority of the juvenile board must personally inspect all public and private secure juvenile post-adjudication correctional facilities annually and certify whether or not the facilities are suitable for the detention of children in accordance with either standards promulgated by the Texas Juvenile Probation Commission (TJPC) or the American Correctional Association.

Subsection (c) was originally in HB 2043 and requires a governmental unit or private entity that operates or contracts for the operation of a juvenile post-adjudication secure correctional facility to register the facility annually with TJPC and must adhere to all applicable minimum standards. This subsection clarifies two key points: 1) TJPC must now inspect all facilities annually instead of every two years; and 2) juvenile boards and juvenile court judges who inspect and certify a facility as suitable for the confinement of youth must now consider seven statutory factors in their decision. The factors are intended to give

guidance to officials on whether or not a facility is suitable. Frequently, juvenile boards and juvenile judges have expressed hesitation regarding their inspection of these facilities and liability issues have made these inspections a source of great concern. Clearly, these officials should not be required to conduct a detailed inspection of these facilities and determine compliance with applicable standards that number in the hundreds. TJPC is the designated state agency with the responsibility to determine standard compliance by conducting in-depth monitoring and inspections. In the official's determination of suitability, however, review of TJPC monitoring reports is critical and is therefore one of the listed factors. All the factors are important and if officials adhere to this statutory checklist, this should demonstrate due diligence in discharging their administrative duties to inspect and determine the suitability of the facility, thus minimizing their liability to the extent possible.

Subsection (d) authorizes TJPC to deny, suspend, or revoke the registration of any secure post-adjudication juvenile correctional facility if the facility fails to adhere to all applicable minimum standards or fails to timely correct any notice of noncompliance with minimum standards.

Family Code Sec. 51.17. PROCEDURE AND EVIDENCE.

(c) Except as otherwise provided by this title, the Texas Rules of Evidence apply [applicable] to criminal cases and Articles 33.03 and 37.07 and Chapter 38, Code of Criminal Procedure, apply in a judicial proceeding under this title.

(h) Articles 57.01 and 57.02, Code of Criminal Procedure, relating to the use of a pseudonym by a victim in a criminal case, apply in a proceeding held under this title.

(i) Except as provided by Section 56.03(f), the state is not required to pay any cost or fee otherwise imposed for court proceedings in either the trial or appellate courts.

Commentary by Lisa Capers and Riley Shaw

Source: HB 2884

Effective Date: September 1, 2007

Applicability: Judicial proceedings that occur on or after the effective date.

Summary of Changes: Amends Section 51.17, by amending Subsection (c) and adding new Subsections (h) and (i) related to procedure and evidence in juvenile cases.

Subsection (c) was amended to clarify that Code of Criminal Procedure Articles 33.03 (*Presence of Defendant*) and 37.07 (*Verdict Must be General; Separate Hearing on Proper Punishment*) are applicable to juvenile court proceedings. Article 33.03 allows an adult criminal trial to reach conclusion if the defendant voluntarily absents him or herself from trial. This amendment brings the procedure in juvenile cases in line with the adult rules and allows for a more efficient proceeding if a juvenile decides to abscond

after trial has started. Additionally, this provision removes the incentive for the child to flee during a trial that is going badly in the hope that things will go better next time or that witnesses will no longer be available to testify against the child. Article 37.07 allows the admission of extraneous offenses at the punishment phase of an adult criminal trial. This change was prompted by *In re C.J.M.*, 167 S.W.3d 892 (Tex.App. -- Fort Worth 2005, pet. denied). *C.J.M.* held that extraneous offenses may not be introduced in the dispositional (punishment) phase of a juvenile proceeding that is tried to a jury. Such extraneous offenses are permitted to be considered when the disposition hearing is tried to a judge per Family Code Section 54.04(b), and at the motion-to-modify-disposition hearing per Section 54.05(e). As noted above, they are also admissible during the punishment phase of a criminal trial. This change ensures consistency in the law in juvenile cases.

New Subsection (h) clarifies that Code of Criminal Procedure Articles 57.01 and 57.02 related to the use of a pseudonym by a victim in a criminal case apply to juvenile court proceedings. This protects the identity of the crime victim from the general public by allowing the State to use a "Jane Doe" or "John Doe"-type identifier for the victim in all of its pleadings and court papers, while still providing the accused with the correct full identity of the victim so that he or she can mount a proper defense.

New Subsection (i) exempts the State from paying any cost or fee imposed for trial and appellate courts except for an appeal of a determinate sentence case in which the state pays all costs of appeal, other than the respondent's attorney fees. This addition brings consistency to the State's general exemption from having to pay filing fees and other court costs in law enforcement-related activities by including juvenile proceedings under such exemption (the State is currently exempt from paying fees in criminal cases and parental termination cases). The State does not have to pay filing fees and other court costs (e.g., fees for service of process, court reporter's fees, etc.) in a criminal case. Nor does the State have to pay filing fees and other court costs in a parental termination case (See Human Resources Code Section 40.062). Currently, payment for juvenile filing fees and other court costs must be approved by the county commissioners courts. This amendment eases the workload of the county commissioners courts, which currently must approve payment for juvenile filing fees and court costs incurred by the local prosecutor. These fees include filing fees, fees for service of process, extension fees in the courts of appeals, etc. An example of a fee that will be eliminated is a \$10 fee for filing an extension motion in the court of appeals.

Family Code Sec. 52.02. RELEASE OR DELIVER TO COURT.

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

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

(2) bring the child before the office or official designated by the juvenile board if there is probable cause to believe that the child engaged in delinquent conduct, conduct indicating a need for supervision, or conduct that violates a condition of probation imposed by the juvenile court;

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

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

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

(6) dispose of the case under Section 52.03; or

(7) if school is in session and the child is a student, bring the child to the school campus to which the child is assigned if the principal, the principal's designee, or a peace officer assigned to the campus agrees to assume responsibility for the child for the remainder of the school day.

Commentary by Lisa Capers

Source: HB 776

Effective Date: September 1, 2007

Applicability: Custody events occurring on or after the effective date.

Summary of Changes: Family Code Section 52.02 details the specific places where a child who has been taken into custody may be delivered. Under current law, law enforcement and probation officers do not have the authority to transport a juvenile from a location where the juvenile was taken into custody to the juvenile's school and release the child at the school. The amendment to Section 52.02 authorizes *a person* who takes a child into custody to bring the child to the school campus where the child is assigned if the principal, the principal's designee, or a peace officer assigned to the campus agrees to assume responsibility for the child for the remainder of the school day. And while this section, read alone, would seem to imply that a probation officer has this authority, it is not the case when you read this amendment in conjunction with the amendment to Section 52.026(a) discussed below. Section 52.026(a) as amended places the duty on the law enforcement officer taking a child into custody to take the child to the school campus to where the child is assigned per the new authority granted by new Subsection (7) of Section 52.02(a). Thus, it appears that only law enforcement officers, not probation officers, are authorized to take a child in custody to the school and release the child to an appropriate person. Realistically, this section will be used primarily by law enforcement so the exclusion of probation officers in Section 52.026(a) appears to make sense.

Family Code Sec. 52.026. RESPONSIBILITY FOR TRANSPORTING JUVENILE OFFENDERS.

(a) It shall be the duty of the law enforcement officer who has taken a child into custody to transport the child to the appropriate detention facility or to the school campus to which the child is assigned as provided by Section 52.02(a)(7) if the child is not released to the parent, guardian, or custodian of the child.

Commentary by Lisa Capers

Source: HB 776

Effective Date: September 1, 2007

Applicability: Custody events occurring on or after the effective date.

Summary of Changes: Family Code Section 52.02 details the specific places where a child who has been taken into custody may be delivered. Under current law, law enforcement and probation officers do not have the authority to transport a juvenile from a location where the juvenile was taken into custody to the juvenile's school and release the child at the school. The amendment to Section 52.02 authorizes a person who takes a child into custody to bring the child to the school campus where the child is assigned if the principal, the principal's designee, or a peace officer assigned to the campus agrees to assume responsibility for the child for the remainder of the school day. And while this section, read alone, would seem to imply that a probation officer has this authority, it is not the case when you read this amendment in conjunction with the amendment to Section 52.026(a). Section 52.026(a) as amended places the duty on the law enforcement officer taking a child into custody to take the child to the school campus to where the child is assigned per the new authority granted by new Subsection (7) of Section 52.02(a). Thus, it appears that only law enforcement officers, not probation officers, are authorized to take a child in custody to the school and release the child to an appropriate person.

Family Code Sec. 53.045. VIOLENT OR HABITUAL OFFENDERS

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

- (1) Section 19.02, Penal Code (murder);
- (2) Section 19.03, Penal Code (capital murder);
- (3) Section 19.04, Penal Code (manslaughter);
- (4) Section 20.04, Penal Code (aggravated kidnapping);
- (5) Section 22.011, Penal Code (sexual assault) or Section 22.021, Penal Code (aggravated sexual assault);

(6) Section 22.02, Penal Code (aggravated assault);

(7) Section 29.03, Penal Code (aggravated robbery);

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

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

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

(11) Section 15.03, Penal Code (criminal solicitation);

(12) Section 21.11(a)(1), Penal Code (indecent with a child);

(13) Section 15.031, Penal Code (criminal solicitation of a minor);

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

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

(16) Section 49.08, Penal Code (intoxication manslaughter); or

(17) Section 15.02, Penal Code (criminal conspiracy), if the offense made the subject of the criminal conspiracy includes a violation of any of the provisions referenced in Subdivisions (1) through (16).

(d) If the grand jury approves of the petition, the fact of approval shall be certified to the juvenile court, and the certification shall be entered in the record of the case. For the purpose of the transfer of a child to the Texas Department of Criminal Justice ~~Corrections~~ as provided by Section 61.084(c), Human Resources Code, a juvenile court petition approved by a grand jury under this section is an indictment presented by the grand jury.

Commentary by Lisa Capers and Riley Shaw

Source: HB 2884

Effective Date: September 1, 2007

Applicability: Conduct that occurs on or after the effective date.

Summary of Changes: This provision amends Sections 53.045(a) and (d) related to determinate sentencing. Subsection (a) was amended to include the offense of criminal conspiracy to commit any of the enumerated determinate sentence offenses. This expansion of the list of offenses was intended to fill a gap in the law that currently allows determinate sentencing of certain enumerated offenses, but only of the person who actually carries out the listed violent offense (unless the child is criminally responsible for

that person's actions) and only if the offense is successfully carried out (except for murder, capital murder and "3(g)" offenses in which attempt is a covered offense). For instance, a child who conspires with another to commit murder and takes steps to carry out that murder (i.e., steps short of an actual attempt), but who is caught before the murder is carried out would not be eligible for a determinate sentence because he/she got caught "too soon." Also, a child who conspires with another to commit murder and takes steps in furtherance of that agreement, but who does not personally carry out the murder and who does not otherwise qualify as being *criminally responsible* for the actual killer's conduct (even though the murder was successfully carried out as planned) would not be eligible for a determinate sentence. This amendment rectifies that situation and plugs the gap in current law. This is consistent with current law, that allows for determinate sentencing of a person who engaged in criminal solicitation with regard to any of these offenses under Penal Code Section 15.03, and for *criminal attempt* of certain offenses under Penal Code Section 15.01, and for persons who have acted as an *accomplice* (now called being criminally responsible for the conduct of another) under Penal Code Sections 7.01 and 7.02.

Subsection (d) is amended to delete *Corrections* and refer to the Texas Department of Criminal Justice as the agency is now titled.

Family Code Sec. 54.032. DEFERRAL OF ADJUDICATION AND DISMISSAL OF CERTAIN CASES ON COMPLETION OF TEEN COURT PROGRAM.

(h) Notwithstanding Subsection (e) or (g), a juvenile court that is located in the Texas-Louisiana border region, as defined by Section 2056.002, Government Code, may charge a fee of \$20 under those subsections.

Commentary by Lisa Capers

Source: HB 2949

Effective Date: September 1, 2007

Applicability: Fees relating to a request for a teen court program made on or after the effective date.

Summary of Changes: Under current Section 54.032(e), a juvenile court may charge a child who requests teen court a fee not to exceed \$10 to cover the costs of administering the teen court program. Additionally, under Section 54.032(g), the juvenile court can charge an additional fee not to exceed \$10 to cover the cost to the teen court for performing its duties. New Subsection (h) authorizes a juvenile court in the Texas-Louisiana border region (18 counties) to charge a fee of \$20 for teen court programs under both Subsections (e) and (g), so the total fee could be \$40. Government Code Section 2056.002 states that the *Texas-Louisiana border region* means the area consisting of Bowie, Camp, Cass, Delta, Franklin, Gregg, Harrison, Hopkins, Lamar, Marion, Morris, Panola, Red River, Rusk, Smith, Titus, Upshur, and Wood Counties. The bill analysis for HB 2949 noted that inflation and other cost increases have eroded the buying power of the current \$10

fees and that the fees have not been increased since their original authorization. However, there was no discussion about why the legislation was limited to this region of the state. This is a companion change to the one made to Code of Criminal Procedure Article 45.052.

Family Code Sec. 54.04. DISPOSITION HEARING.

(a) The disposition hearing shall be separate, distinct, and subsequent to the adjudication hearing. There is no right to a jury at the disposition hearing unless the child is in jeopardy of a determinate sentence under Subsection (d)(3) or (m), in which case, the child is entitled to a jury of 12 persons to determine the sentence, but only if the child so elects in writing before the commencement of the voir dire examination of the jury panel. If a finding of delinquent conduct is returned, the child may, with the consent of the attorney for the state, change the child's election of one who assesses the disposition.

(b) At the disposition hearing, the juvenile court, notwithstanding the Texas Rules of Evidence or Chapter 37, Code of Criminal Procedure, may consider written reports from probation officers, professional court employees, or professional consultants in addition to the testimony of witnesses. Prior to the disposition hearing, the court shall provide the attorney for the child with access to all written matter to be considered in disposition. The court may order counsel not to reveal items to the child or the child's parent, guardian, or guardian ad litem if such disclosure would materially harm the treatment and rehabilitation of the child or would substantially decrease the likelihood of receiving information from the same or similar sources in the future.

(d) If the court or jury makes the finding specified in Subsection (c) allowing the court to make a disposition in the case:

(1) the court or jury may, in addition to any order required or authorized under Section 54.041 or 54.042, place the child on probation on such reasonable and lawful terms as the court may determine:

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

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

(i) a suitable foster home; ~~or~~

(ii) a suitable public or private residential treatment facility licensed by a state governmental entity or exempted from licensure by state law [institution or agency], except a facility operated by the Texas Youth Commission; or

(iii) a suitable public or private post-adjudication secure correctional facility that meets the requirements of Section 51.125, except a facility operated by the Texas Youth Commission;

(2) if the court or jury found at the conclusion of the adjudication hearing that the child engaged in delinquent conduct that violates a penal law of this state

or the United States of the grade of felony or, if the requirements of Subsection (s) or (t) are met, of the grade of misdemeanor, and if the petition was not approved by the grand jury under Section 53.045, the court may commit the child to the Texas Youth Commission without a determinate sentence;

(3) if the court or jury found at the conclusion of the adjudication hearing that the child engaged in delinquent conduct that included a violation of a penal law listed in Section 53.045(a) and if the petition was approved by the grand jury under Section 53.045, the court or jury may sentence the child to commitment in the Texas Youth Commission with a possible transfer to the institutional division or the pardons and paroles division of the Texas Department of Criminal Justice for a term of:

(A) not more than 40 years if the conduct constitutes:

- (i) a capital felony;
- (ii) a felony of the first degree; or
- (iii) an aggravated controlled substance felony;

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

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

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

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

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

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

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

(v) A child may be detained in an appropriate detention facility following disposition of the child's case under Subsection (d) or (m) pending:

(1) transportation of the child to the ordered placement; and

(2) the provision of medical or other health care services for the child that may be advisable before transportation, including health care services for children in the late term of pregnancy.

Commentary by Lisa Capers

Source: HB 2884

Effective Date: September 1, 2007

Applicability: Court proceedings and detentions on or after the effective date.

Summary of Changes: This provision amends Section 54.04, by amending Subsections (a), (b), (d), and (j) and adding Subsection (v).

Subsection (a) is amended to require that a child in a determinate sentencing disposition hearing elect a jury trial in writing before the commencement of jury voir dire, as in criminal cases generally. Without this election before voir dire, the parties do not know what issues to cover with the jury and the courts may preclude any discussion of dispositional issues. Upon a finding of delinquent conduct, the child may change the election of who assesses disposition with the consent of the prosecutor.

Subsection (b) is amended to clarify that the juvenile court has wide latitude in considering a full range of evidence at the juvenile disposition hearing notwithstanding the Texas Rules of Evidence or Code of Criminal Procedure Chapter 37 (*Verdict Must Be General; Separate Hearing on Proper Punishment*), which allows the court to hear evidence related to unadjudicated extraneous offenses. Subsection (b) was intended to clarify existing law, which allows for a *wide open* dispositional hearing when a disposition is made by the Court rather than by a jury. This reinforces existing law and makes it clear that the court can and should consider the widest possible range of information in making its decision on what is in the best interests of the child and the community, that the Court should be fully informed in making its decision, and recognizes and affirms the Court's inherent ability to evaluate and weigh different types of evidence in crafting the most appropriate dispositional ruling for each case.

Subsection (d) makes no substantive change in the law. It simply clarifies that any residential placement of a child as a condition of probation must be in either: 1) a facility licensed by a state governmental entity or exempt from licensure under state law; or 2) a post-adjudication secure correctional facility that meets the requirements of Section 51.125 regarding operation, registration and certification, except a TYC facility. Texas law regarding licensure of non-secure residential placement facilities and child care facilities is found in Human Resources Code Chapter 42. This chapter details which facilities must be licensed and any exceptions to licensure.

Currently, the Family Code requires that a child's thumbprint actually be on the Court's order finding the child delinquent. Subsection (j) is amended to clarify that the requirement that a juvenile's fingerprint be affixed to the disposition order can be met by attaching a document that contains the fingerprint. This change facilitates the use of a fingerprint card, which provides the necessary high resolution needed for imaging documents into a paperless system, thus facilitating electronic storage of such information. More and more counties are beginning to image documents into paperless systems and the Family Code needed to adapt to this new trend and the new technology. Thumbprints on regular paper do not image with a high enough resolution for fingerprint examiners to match at a later date when needed to prove the identity of the person convicted or adjudicated. However, fingerprints on fingerprint cards do image with the necessary resolution for later use.

Subsection (v) is added to expressly clarify the authority for a child to be detained in a local detention facility after the disposition hearing in which the juvenile court ordered a placement in a residential facility or commitment to the Texas Youth Commission. The child can be held in detention pending transport to the ordered facility. Additionally, the child can be held pending the provision of advisable or needed medical care before transportation, including girls in their third trimester of pregnancy. The authority to detain children following disposition pending their transport to a post-adjudication placement has always been implicit in the law. Subsection (v) now expressly provides that authority. It also clarifies that when medical or other healthcare services are advisable prior to transportation, the child may be detained for the period of time required for provision of these services. One of the possible healthcare services expressly included is the provision of healthcare for children in the late term of pregnancy. Due to the girls' young age and often fragile health, these may be high-risk pregnancies that can be further complicated by the stress of long-distance transportation and the institutional environment of the future placement. During the late stages of pregnancy, the girls' focus is understandably on the impending birth and not on their rehabilitative treatment and assessment. The medical staff at the receiving placement may not know the girls' prenatal history and may not be as prepared to provide appropriate care for the mother and baby. In these cases, it may be medically advisable to delay transportation to the new placement until after the baby's birth.

Family Code Sec. 54.04. DISPOSITION HEARING.

(d) If the court or jury makes the finding specified in Subsection (c) allowing the court to make a disposition in the case:

(1) the court or jury may, in addition to any order required or authorized under Section 54.041 or 54.042, place the child on probation on such reasonable and lawful terms as the court may determine:

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

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

(i) a suitable foster home; or

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

(2) if the court or jury found at the conclusion of the adjudication hearing that the child engaged in delinquent conduct that violates a penal law of this state or the United States of the grade of felony ~~[or, if the requirements of Subsection (s) or (t) are met, of the grade of misdemeanor]~~ and if the petition was not approved by the grand jury under Section 53.045, the court may commit the child to the Texas Youth Commission without a determinate sentence;

(3) if the court or jury found at the conclusion of the adjudication hearing that the child engaged in delinquent conduct that included a violation of a penal law listed in Section 53.045(a) and if the petition was approved by the grand jury under Section 53.045, the court or jury may sentence the child to commitment in the Texas Youth Commission with a possible transfer to the ~~[institutional division or the pardons and paroles division of the]~~ Texas Department of Criminal Justice for a term of:

(A) not more than 40 years if the conduct constitutes:

(i) a capital felony;

(ii) a felony of the first degree; or

(iii) an aggravated controlled substance felony;

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

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

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

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

Commentary by Lisa Capers

Source: SB 103

Effective Date: June 8, 2007, at 6:50 p.m. Central Standard Time. SB 103 had an immediate effective date provided the bill received at least a 2/3 majority vote in both houses. The legislation earned unanimous approval in both houses and became effective upon the Governor's signature. Governor Perry signed the bill mid-afternoon on June 8, 2007, and the bill was recorded in the Secretary of State's office at 6:50 p.m. Central Standard Time on June 8, 2007, which is the true effective date/time of the bill. *Galveston v. I.O. Lynch*, 55 S.W. 389 (Tex. App 1899) holds that when dealing with fractions of a day, the legislation is effective at the time when officially recorded by the Secretary of State. The full text of this case is included in Appendix C.

Applicability: Judicial proceedings on or after the effective date. All misdemeanor commitments made to TYC on June 8, 2007, prior to 6:50 p.m. Central Standard Time will be accepted.

Summary of Changes: The amendment to Section 54.04(d)(2) is part of the comprehensive Texas Youth Commission (TYC) reforms. This deletion is one of a series of similar amendments clarifying that the only offenders who may be committed to TYC after the effective date of SB 103 are those adjudicated for felony offenses. Misdemeanor offenders may not be committed to TYC under any circumstances.

The deletion in Subsection (d)(3) related to determine sentencing removes the reference to the Texas Department of Criminal Justice institutional and the pardons

and parole division but makes no substantive change in the law.

Family Code Sec. 54.04. DISPOSITION HEARING.

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

Commentary by Lisa Capers

Source: SB 103

Effective Date: June 8, 2007, at 6:50 p.m. Central Standard Time. SB 103 had an immediate effective date provided the bill received at least a 2/3 majority vote in both houses. The legislation earned unanimous approval in both houses and became effective upon the Governor's signature. Governor Perry signed the bill mid-afternoon on June 8, 2007, and the bill was recorded in the Secretary of State's office at 6:50 p.m. Central Standard Time on June 8, 2007 which is the true effective date/time of the bill. *Galveston v. I.O. Lynch*, 55 S.W. 389 (Tex. App 1899) holds that when dealing with fractions of a day, the legislation is effective at the time when officially recorded by the Secretary of State. The full text of this case is included in Appendix C.

Applicability: Judicial proceedings on or after the effective date. All misdemeanor commitments made to TYC on June 8, 2007 prior to 6:50 p.m. Central Standard Time will be accepted.

Summary of Changes: The amendment to Section 54.04(u) is part of the comprehensive TYC reforms. This deletion is one of a series of similar amendments clarifying that the only offenders who may be committed to TYC after the effective date of SB 103 are those adjudicated for felony offenses. Misdemeanor offenders may not be committed to TYC under any circumstances.

Family Code Sec. 54.04. DISPOSITION HEARING.

~~(s) The court may make a disposition under Subsection (d)(2) for delinquent conduct that violates a penal law of the grade of misdemeanor if:~~

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

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

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

~~(t) The court may make a disposition under Subsection (d)(2) for delinquent conduct that violates a penal law of the grade of misdemeanor if:~~

~~(1) the child has been adjudicated as having engaged in delinquent conduct violating a penal law of the grade of felony on at least one previous occasion; and~~

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

Commentary by Lisa Capers

Source: SB 103

Effective Date: June 8, 2007, at 6:50 p.m. Central Standard Time. SB 103 had an immediate effective date provided the bill received at least a 2/3 majority vote in both houses. The legislation earned unanimous approval in both houses and became effective upon the Governor's signature. Governor Perry signed the bill mid-afternoon on June 8, 2007, and the bill was recorded in the Secretary of State's office at 6:50 p.m. Central Standard Time on June 8, 2007, which is the true effective date/time of the bill. *Galveston v. I.O. Lynch*, 55 S.W. 389 (Tex. App 1899) holds that when dealing with fractions of a day, the legislation is effective at the time when officially recorded by the Secretary of State. The full text of this case is included in Appendix C.

Applicability: Judicial proceedings on or after the effective date. All misdemeanor commitments made to TYC on June 8, 2007, prior to 6:50 p.m. Central Standard Time will be accepted.

Summary of Changes: The deletion of Subsections 54.04(s) and (t) is part of the comprehensive TYC reforms. This deletion is one of a series of similar amendments that make clear that the only offenders who may be committed to TYC after the effective date of SB 103 are those adjudicated for felony offenses. Misdemeanor offenders may not be committed to TYC under any circumstances.

Family Code Sec. 54.0401. COMMUNITY-BASED PROGRAMS.

(a) This section applies only to a county that has a population of at least 335,000.

(b) A juvenile court of a county to which this section applies may require a child who is found to have engaged in delinquent conduct that violates a penal law of the grade of misdemeanor and for whom the requirements of Subsection (c) are met to participate in a community-based program administered by the county's juvenile board.

(c) A juvenile court of a county to which this section applies may make a disposition under Subsection (b) for delinquent conduct that violates a penal law of the grade of misdemeanor:

(1) if:

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

(B) of the previous adjudications, the conduct that was the basis for one of the adjudications,

cations occurred after the date of another previous adjudication; and

(C) the conduct that is the basis of the current adjudication occurred after the date of at least two previous adjudications; or

(2) if:

(A) the child has been adjudicated as having engaged in delinquent conduct violating a penal law of the grade of felony on at least one previous occasion; and

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

(d) The Texas Juvenile Probation Commission shall establish guidelines for the implementation of community-based programs described by this section. The juvenile board of each county to which this section applies shall implement a community-based program that complies with those guidelines.

(e) The Texas Juvenile Probation Commission shall provide grants to selected juvenile boards to assist with the implementation of a system of community-based programs under this section.

(f) Not later than January 1, 2009, the Texas Juvenile Probation Commission shall prepare and deliver to the governor, the lieutenant governor, and each member of the legislature a report describing the implementation and effectiveness of the community-based programs described by this section. The report must include information relating to the cost of requiring a child to participate in a community-based program. This subsection expires February 1, 2009.

Commentary by Lisa Capers

Source: SB 103

Effective Date: June 8, 2007, at 6:50 p.m. Central Standard Time

Applicability: Community-based programs created on or after the effective date.

Summary of Changes: New Section 54.0401 relates to the creation of new community-based programs designed primarily to serve the chronic, habitual misdemeanor offender that no longer can be committed to the Texas Youth Commission (TYC). The section only applies to counties with a population of at least 335,000 which includes: Harris, Dallas, Tarrant, Bexar, Travis, El Paso, Hidalgo, Collin, Denton, Ft. Bend and Cameron Counties.

The Texas Juvenile Probation Commission (TJPC) was provided additional funding to help select county juvenile boards with the creation and implementation of these programs. Juvenile courts in the counties to which this section applies may order youth to participate in these new program initiatives. The target population for these programs is detailed in Subsection (c) and includes all youth who previously could have been committed to TYC under the old *misdemeanor commitment rules*.

TJPC is required to establish guidelines for these programs and has the discretion to select from among the 11 counties those counties that will be funded for the pilot programs. The top five counties (i.e., Harris, Dallas, Tarrant, Bexar, Travis) have been selected to receive a grant up to \$225,000 to create and implement their programs. Each county will be required to submit a detailed description and budget for their proposed program. TJPC will require certain performance measures on each program along with data collection requirements. The remaining six counties may compete for two grants of \$75,000 each to establish programs under the same TJPC requirements.

Not later than January 1, 2009, TJPC must prepare a report for the legislature describing the implementation and effectiveness of these new community-based programs, including cost data about the program.

Family Code Sec. 54.046. CONDITIONS OF PROBATION FOR DAMAGING PROPERTY WITH GRAFFITI.

(a) If a juvenile court places on probation under Section 54.04(d) a child adjudicated as having engaged in conduct in violation of Section 28.08, Penal Code, in addition to other conditions of probation, the court:

(1) may order the child to:

(A) reimburse the owner of the property for the cost of restoring the property; or

(B) [] with consent of the owner of the property, [order the child as a condition of probation to] restore the property by removing or painting over any markings made by the child on the property; and

(2) if the child made markings on public property, a street sign, or an official traffic-control device in violation of Section 28.08, Penal Code, may order the child to:

(A) make to the political subdivision that owns the public property or erected the street sign or official traffic-control device restitution in an amount equal to the lesser of the cost to the political subdivision of replacing or restoring the public property, street sign, or official traffic-control device; or

(B) with the consent of the political subdivision, restore the public property, street sign, or official traffic-control device by removing or painting over any markings made by the child on the property, sign, or device.

(a-1) For purposes of Subsection (a), "official traffic-control device" has the meaning assigned by Section 541.304, Transportation Code.

Commentary by Chris Hubner

Source: HB 2151

Effective Date: September 1, 2007

Applicability: Conduct occurring on or after effective date.

Summary of Changes: Amended Section 54.046 expands the authority of a juvenile court placing a child on probation for the offense of graffiti to order the child, in addition

to other conditions of probation, to reimburse the property owner for the cost of restoring the property. If the child made markings on public property, a street sign or an official traffic-control device, the court may also order the child to make restitution to the affected political subdivision or, with the consent of the political subdivision, to restore the affected property.

Family Code Sec. 54.046. CONDITIONS OF PROBATION FOR DAMAGING PROPERTY WITH GRAFFITI.

(c) If a juvenile court orders a child to make restitution under Subsection (a) and the child, child's parent, or other person responsible for the child's support is financially unable to make the restitution, the court may order the child to perform a specific number of hours of community service to satisfy the restitution.

Commentary by Chris Hubner

Source: HB 2151

Effective Date: September 1, 2007

Applicability: Conduct occurring on or after effective date.

Summary of Changes: New Subsection (c) authorizes a juvenile court to order a child to perform a specific number of community service hours to satisfy restitution if the child, the child's parent or other responsible person is financially unable to pay restitution. It is unclear whether the legislature intended these hours of community service to be limited to, or in addition to, not more than 500 hours as mandated by Family Code Section 54.044(c).

Family Code Sec. 54.0461. PAYMENT OF JUVENILE DELINQUENCY PREVENTION FEES.

(a) If a child is adjudicated as having engaged in delinquent conduct that violates Section 28.08, Penal Code, the juvenile court shall order the child, parent, or other person responsible for the child's support to pay to the court a \$50 [~~\$5~~] juvenile delinquency prevention fee as a cost of court.

Commentary by Chris Hubner

Source: HB 2151

Effective Date: September 1, 2007

Applicability: Conduct occurring on or after effective date.

Summary of Changes: Amended Subsection (a) makes a conforming change that raises the mandatory juvenile delinquency prevention fee assessed as a court cost in graffiti cases from \$5 to \$50.

Family Code Sec. 54.0481. RESTITUTION FOR DAMAGING PROPERTY WITH GRAFFITI.

(a) A juvenile court, in a disposition hearing under Section 54.04 regarding a child who has been adjudicated to have engaged in delinquent conduct that violates Section 28.08, Penal Code:

(1) may order the child or a parent or other person responsible for the child's support to make restitution by:

(A) reimbursing the owner of the property for the cost of restoring the property; or

(B) with the consent of the owner of the property, personally restoring the property by removing or painting over any markings the child made; and

(2) if the child made markings on public property, a street sign, or an official traffic-control device in violation of Section 28.08, Penal Code, may order the child or a parent or other person responsible for the child's support to:

(A) make to the political subdivision that owns the public property or erected the street sign or official traffic-control device restitution in an amount equal to the lesser of the cost to the political subdivision of replacing or restoring the public property, street sign, or official traffic-control device; or

(B) with the consent of the political subdivision, restore the public property, street sign, or official traffic-control device by removing or painting over any markings made by the child on the property, sign, or device.

(b) If a juvenile court orders a child to make restitution under Subsection (a) and the child, child's parent, or other person responsible for the child's support is financially unable to make the restitution, the court may order the child to perform a specific number of hours of community service to satisfy the restitution.

(c) For purposes of Subsection (a), "official traffic-control device" has the meaning assigned by Section 541.304, Transportation Code.

Commentary by Chris Hubner

Source: HB 2151

Effective Date: September 1, 2007

Applicability: Conduct occurring on or after effective date.

Summary of Changes: New Section 54.0481 authorizes a juvenile court during a disposition hearing in a graffiti case to order a child, the child's parent or other responsible person to make restitution by reimbursing the cost of restoring the damaged property or, with the owner's consent, personally restoring the damaged property. If the child made markings on public property, a street sign or an official traffic-control device, the court may also order the child to make restitution to the affected political subdivision or, with the consent of the political subdivision, to restore the affected property.

Subsection (b) authorizes a juvenile court to order a child to perform a specific number of community service hours to satisfy restitution if the child, the child's parent or other responsible person is financially unable to pay restitution. It is unclear whether the legislature intended these hours of community service to be limited to, or in addition

to, not more than 500 hours as mandated by Family Code Section 54.044(c).

Family Code Sec. 54.0481. TREATMENT OF RESTITUTION PAYMENTS.

(a) A juvenile probation department that receives a payment to a victim as the result of a juvenile court order for restitution shall immediately:

(1) deposit the payment in an interest-bearing account in the county treasury; and

(2) notify the victim by certified mail, sent to the last known address of the victim, that a payment has been received.

(b) The juvenile probation department shall promptly remit the payment to a victim who has been notified under Subsection (a) and makes a claim for payment.

(c) On or before the fifth anniversary of the date the juvenile probation department receives a payment for a victim that is not claimed by the victim, the department shall make and document a good faith effort to locate and notify the victim that an unclaimed payment exists, including:

(1) confirming, if possible, the victim's most recent address with the Department of Public Safety; and

(2) making at least one additional certified mailing to the victim.

(d) A juvenile probation department satisfies the good faith requirement under Subsection (c) by sending by certified mail to the victim, during the period the child is required by the juvenile court order to make payments to the victim, a notice that the victim is entitled to an unclaimed payment.

(e) If a victim claims a payment on or before the fifth anniversary of the date on which the juvenile probation department mailed a notice to the victim under Subsection (a), the juvenile probation department shall pay the victim the amount of the original payment, less any interest earned while holding the payment.

(f) If a victim does not claim a payment on or before the fifth anniversary of the date on which the juvenile probation department mailed a notice to the victim under Subsection (a), the department:

(1) has no liability to the victim or anyone else in relation to the payment; and

(2) shall transfer the payment from the interest-bearing account to a special fund of the county treasury, the unclaimed juvenile restitution fund.

(g) The county may spend money in the unclaimed juvenile restitution fund only for the same purposes for which the county may spend juvenile state aid.

Commentary by Lisa Capers

Source: HB 2884

Effective Date: September 1, 2007

Applicability: Applies only to a payment of restitution under a juvenile court order received by a juvenile probation department on or after the effective date.

Summary of Changes: This new Section 54.0481 is one of two new sections with the same number. The above section relates to victim restitution payments collected by local juvenile probation departments. The statute clarifies the procedure for collecting and processing these payments and ultimately addresses the use of these funds if unclaimed by victims.

Subsection (a) requires the juvenile probation department (JPD) that receives restitution funds under a juvenile court order to deposit the funds in an interest bearing account in the county treasury and to provide the victim notice by certified mail that the funds have been received. The victim's last known address is to be used. If the victim claims the payment, the JPD must promptly send the funds to the victim. The victim has five years from the date the original notice was received to claim the funds.

The JPD must make a good faith effort to locate and notify victims of unclaimed restitution payments. In addition to the initial notice regarding the funds, the JPD must send at least one additional certified mailing to the victim. If the victim does not claim a payment on or before the fifth anniversary of the date on which the original notice was mailed, the JPD has no liability to the victim or anyone else related to the funds and the monies must be transferred to a special fund of the county treasury called the *unclaimed juvenile restitution fund*. The county may spend the money in this fund only for the same purposes for which the county can spend State Aid funding received from the state via the Texas Juvenile Probation Commission, which includes juvenile probation department services, programs, and facilities.

Family Code Sec. 54.05. HEARING TO MODIFY DISPOSITION.

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

Commentary by Lisa Capers

Source: SB 103

Effective Date: June 8, 2007, at 6:50 p.m. Central Standard Time. SB 103 had an immediate effective date provided the bill received at least a 2/3 majority vote in both houses. The legislation earned unanimous approval in both houses and became effective upon the Governor's signature. Governor Perry signed the bill mid-afternoon on June 8, 2007, and the bill was recorded in the Secretary of State's office at 6:50 p.m. Central Standard Time on June 8, 2007, which is the true effective date/time of the bill. *Galveston v. I.O. Lynch*, 55 S.W. 389 (Tex. App. 1899) holds that when dealing with fractions of a day, the legislation is effective at the time when officially recorded by the Secretary of State. The full text of this case is included in Appendix C.

Applicability: Judicial proceedings on or after the effective date. All misdemeanor commitments made to TYC on June 8, 2007, prior to 6:50 p.m. Central Standard Time will be accepted.

Summary of Changes: The amendment to Section 54.05(f) is part of the comprehensive TYC reforms. This deletion is one of a series of similar amendments clarifying that the only offenders who may be committed to TYC after the effective date of SB 103 are those adjudicated for felony offenses. Misdemeanor offenders may not be committed to TYC under any circumstances. The additional deletion in Subsection (f) related to determinate sentencing removes the reference to the TDCJ Institutional Division and Parole Division but makes no substantive change in the law.

Family Code Sec. 54.05. HEARING TO MODIFY DISPOSITION.

~~(k) The court may modify a disposition under Subsection (f) that is based on an adjudication that the child engaged in delinquent conduct that violates a penal law of the grade of misdemeanor if:~~

~~(1) the child has been adjudicated as having engaged in delinquent conduct violating a penal law of the grade of felony or misdemeanor on at least one previous occasion before the adjudication that prompted the disposition that is being modified; and~~

~~(2) the conduct that was the basis of the adjudication that prompted the disposition that is being modified occurred after the date of the previous adjudication.~~

Commentary by Lisa Capers

Source: SB 103

Effective Date: June 8, 2007, at 6:50 p.m. Central Standard Time. SB 103 had an immediate effective date provided the bill received at least a 2/3 majority vote in both houses. The legislation earned unanimous approval in both houses and became effective upon the Governor's signature. Governor Perry signed the bill mid-afternoon on June

8, 2007, and the bill was recorded in the Secretary of State's office at 6:50 p.m. Central Standard Time on June 8, 2007, which is the true effective date/time of the bill. *Galveston v. I.O. Lynch*, 55 S.W. 389 (Tex. App. 1899) holds that when dealing with fractions of a day, the legislation is effective at the time when officially recorded by the Secretary of State. The full text of this case is included in Appendix C.

Applicability: Judicial proceedings on or after the effective date. All misdemeanor commitments made to TYC on June 8, 2007, prior to 6:50 p.m. Central Standard Time will be accepted.

Summary of Changes: The amendment to delete Section 54.05(k) is part of the comprehensive Texas Youth Commission (TYC) reforms. This deletion is one of a series of similar amendments clarifying that the only offenders who may be committed to TYC after the effective date of SB 103 are those adjudicated for felony offenses. Misdemeanor offenders may not be committed to TYC under any circumstances.

Family Code Sec. 54.052. CREDIT FOR TIME SPENT IN DETENTION FACILITY FOR CHILD WITH DETERMINATE SENTENCE.

(a) This section applies only to a child who is committed to the Texas Youth Commission under a determinate sentence under Section 54.04(d)(3) or (m) or Section 54.05(f).

(b) The judge of the court in which a child is adjudicated shall give the child credit on the child's sentence for the time spent by the child, in connection with the conduct for which the child was adjudicated, in a secure detention facility before the child's transfer to a Texas Youth Commission facility.

(c) If a child appeals the child's adjudication and is retained in a secure detention facility pending the appeal, the judge of the court in which the child was adjudicated shall give the child credit on the child's sentence for the time spent by the child in a secure detention facility pending disposition of the child's appeal. The court shall endorse on both the commitment and the mandate from the appellate court all credit given the child under this subsection.

(d) The Texas Youth Commission shall grant any credit under this section in computing the child's eligibility for parole and discharge.

Commentary by Lisa Capers

Source: SB 103

Effective Date: June 8, 2007, at 6:50 p.m. Central Standard Time. SB 103 had an immediate effective date provided the bill received at least a 2/3 majority vote in both houses. The legislation earned unanimous approval in both houses and became effective upon the Governor's signature. Governor Perry signed the bill mid-afternoon on June 8, 2007, and the bill was recorded in the Secretary of State's office at 6:50 p.m. Central Standard Time on June

8, 2007, which is the true effective date/time of the bill. *Galveston v. I.O. Lynch*, 55 S.W. 389 (Tex. App. 1899) holds that when dealing with fractions of a day, the legislation is effective at the time when officially recorded by the Secretary of State.

Applicability: Conduct for which a child is adjudicated on or after the effective date.

Summary of Changes: This new section applies only to determinate sentenced offenders per Subsection (a).

Subsection (b) requires a juvenile court judge to give credit on a child's TYC sentence for time spent in detention before the child's transfer to TYC.

Subsection (c) also requires that the child be given credit for time spent in detention during the pendency of an appeal. The court is required to endorse on both the commitment and the mandate from the appellate court all credit given to the child.

Subsection (d) requires TYC to give the child credit for time spent in detention pending court and/or pending an appeal under this section when computing the child's eligibility for parole and discharge.

Family Code Sec. 55.43. RESTORATION HEARING.

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

- (1) the child is found unfit to proceed as a result of mental illness or mental retardation; and
- (2) the child:
 - (A) is not:
 - (i) ordered by a court to receive inpatient mental health services;
 - (ii) committed by a court to a residential care facility; or
 - (iii) ordered by a court to receive treatment on an outpatient basis; or
 - (B) is discharged or currently on furlough [~~furloughed~~] from a mental health facility or outpatient center before the child reaches 18 years of age.

Commentary by Lisa Capers and Riley Shaw

Source: HB 2884

Effective Date: September 1, 2007

Applicability: Restoration hearings on or after the effective date.

Summary of Changes: This provision amends Section 55.43(a) to clarify that the prosecuting attorney may file a motion for a restoration hearing of a juvenile if the juvenile is not currently on furlough from a mental health facility or outpatient center. This provision clarifies that past furloughs will not prohibit the filing for a restoration hearing. This change, and the identical change in Section 55.44, is intended to avoid any confusion about when the legislature meant to prohibit either: (1) the restoration of the juvenile to competency status; or (2) the transfer of the juvenile to adult court at age 18.

In January 2001, Tarrant County tried to transfer C.C.P., a (former) juvenile charged with capital murder, to adult court. *In re C.C.P.*, Nos. 323-62256J-98 and 323-62257J-98. Several years before 2001, C.C.P. had been found incompetent to stand trial and was sent to Mexia. Mexia released the juvenile for an extended visit to his family in Tarrant County. Mexia declared that their extended release of the juvenile was not a *furlough* because Mexia did not call the release a *furlough*. The juvenile was returned to Mexia and the State later sought to transfer the juvenile to adult criminal court. The trial court ruled that regardless of what Mexia called the release it was in fact a furlough. The trial court also ruled that although the juvenile was now in Mexia, the fact that he had been furloughed for a period in the past prohibited the juvenile from ever being transferred to adult court. The amendment to Section 55.44 discussed below clarifies that past furloughs will not forbid transfer to adult court.

Family Code Sec. 55.44. TRANSFER TO CRIMINAL COURT ON 18TH BIRTHDAY OF CHILD.

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

- (1) the child is not discharged or currently on furlough [~~furloughed~~] from the facility before reaching 18 years of age; and
- (2) the child is alleged to have engaged in delinquent conduct that included a violation of a penal law listed in Section 53.045 and no adjudication concerning the alleged conduct has been made.

Commentary by Lisa Capers and Riley Shaw

Source: HB 2884

Effective Date: September 1, 2007

Applicability: Restoration hearings on or after the effective date.

Summary of Changes: This provision amends Section 55.44(a) to clarify that the juvenile court in a restoration hearing shall transfer the proceedings to criminal court if the juvenile is not currently on furlough from a mental health facility. This provision clarifies that past furloughs will not prohibit transfer of the proceedings to criminal court. This change, and the identical change in Section 55.43, is intended as a technical cleanup to avoid any confusion about when the legislature meant to prohibit either: (1) the restoration of the juvenile to competency status; or (2) the transfer of the juvenile to adult court at age 18.

In January 2001, Tarrant County tried to transfer C.C.P., a (former) juvenile charged with capital murder, to adult court. *In re C.C.P.*, Nos. 323-62256J-98 and 323-62257J-98. Several years before 2001, C.C.P. had been found incompetent to stand trial and was sent to Mexia. Mexia released the juvenile on an extended visit to his fam-

ily in Tarrant County. Mexia declared that their extended release of the juvenile was not a *furlough* because Mexia did not call the release a *furlough*. The juvenile was returned to Mexia and the State later sought to transfer the juvenile to adult criminal court. The trial court ruled that regardless of what Mexia called the release it was in fact a furlough. The trial court also ruled that although the juvenile was now in Mexia, the fact that he had been furloughed for a period in the past prohibited the juvenile from ever being transferred to adult court. The amendment clarifies that past furloughs will not forbid transfer to adult court.

Family Code Sec. 55.45. STANDARDS OF CARE; NOTICE OF RELEASE OR FURLOUGH.

(c) If the referred child, as described in Subsection (b), is alleged to have committed an offense listed in Section 3g, Article 42.12, Code of Criminal Procedure, the administrator of the residential care facility shall apply, in writing, by certified mail, return receipt requested, to the juvenile court that ordered commitment of the child or that referred the case to a court that ordered commitment of the child and show good cause for any release of the child from the facility for more than 48 hours. Notice of this request must be provided to the prosecuting attorney responsible for the case. The prosecuting attorney, the juvenile, or the administrator may apply for a hearing on this application. If no one applies for a hearing, the trial court shall resolve the application on the written submission. The rules of evidence do not apply to this hearing. An appeal of the trial court's ruling on the application is not allowed. The release of a child described in this subsection without the express approval of the trial court is punishable by contempt.

Commentary by Lisa Capers

Source: HB 2884

Effective Date: September 1, 2007

Applicability: Notices on or after the effective date.

Summary of Changes: This provision adds Subsection (c) to Section 55.45 to require a mental health residential care facility that is providing mental health services to a juvenile who has been found to be unfit to proceed to apply in writing, by certified mail, return receipt requested, to the juvenile court that ordered commitment of the child and show good cause for any release of the juvenile from the facility for more than 48 hours if the juvenile is alleged to have committed an offense listed in Section 3g, Article 42.12, Code of Criminal Procedure. Notice of this request must be sent to the prosecutor responsible for the case. Any party may apply for a hearing on the application and if no one applies, the trial court must resolve the application. Rules of evidence do not apply and there is no appeal of the court's ruling. Release of the child without the express approval of the trial court is punishable by contempt.

The purpose of this provision was to ensure that the trial court gets to decide whether incompetent juveniles charged with the worst offenses get released. In the adult

criminal context, the trial court plays a similar role under Texas Code of Criminal Procedure Articles 46B.072 and 46B.073. Practitioners have stated that Mexia has been known to avoid even the minimal notice requirements of Section 55.44(b) by simply refusing to call their release of a juvenile a *furlough*.

Family Code Sec. 58.0051. INTERAGENCY SHARING OF RECORDS

(e) The Texas Juvenile Probation Commission may, in conformity with Section 58.0072 of this code and Section 37.084, Education Code, enter into an interagency agreement to share educational information for research, audit, and analytical purposes with the:

- (1) Texas Education Agency;
- (2) Texas Youth Commission; and
- (3) Texas Department of Criminal Justice.

Commentary by Lisa Capers

Source: HB 2884

Effective Date: September 1, 2007

Applicability: Interagency agreements executed on or after the effective date.

Summary of Changes: Section 58.0051 is the provision of the Family Code that deals with the sharing of education records between schools and juvenile justice agencies as authorized by federal law (FERPA). New Subsection (e) authorizes the Texas Juvenile Probation Commission to enter into interagency agreements to share educational information received from local juvenile probation departments for research, audit, and analytical purposes with the Texas Education Agency, the Texas Youth Commission and the Texas Department of Criminal Justice.

Family Code Sec. 58.007. PHYSICAL RECORDS OR FILES.

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

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and
- (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapters [Subchapter] B, D, and E.

Commentary by Lisa Capers

Source: HB 2884

Effective Date: September 1, 2007

Applicability: Records maintained on or after the effective date.

Summary of Changes: Current Subsection (c) authorizes law enforcement records and files concerning a child to be maintained on a local basis only and not sent to any central state or federal depository except for the Juvenile Justice Information System (JJIS) at the Texas Department of Public Safety which is referenced in Subchapter B. However, Subchapter C authorizes the local juvenile justice information system model which includes law enforcement records. This amendment clarifies that law enforcement records can be maintained in three specific locations as referenced in Subchapters B, D and E: (1) the DPS system (JJIS); (2) local juvenile justice information system (JIS) which is currently in existence in the Dallas/Fort Worth-metropolitan region of north Texas; and 3) the new statewide Juvenile Case Management System (JCMS) under development.

Family Code Sec. 58.007. PHYSICAL RECORDS OR FILES.

(e) Law enforcement records and files concerning a child may be inspected or copied by a juvenile justice agency as that term is defined by Section 58.101, ~~and~~ a criminal justice agency as that term is defined by Section 411.082, Government Code, the child, and the child's parent or guardian.

Commentary by Lisa Capers

Source: HB 1960

Effective Date: September 1, 2007

Applicability: Inspections or copies requested on or after the effective date.

Summary of Changes: This amendment allows a child and the child's parent or guardian to inspect or request copies of law enforcement records concerning a child that are in the possession of a law enforcement entity. The custodian of the records must redact any personally identifiable information about a juvenile suspect, offender, victim, or witness who is not the child and any information that is sheltered from release under the Public Information Act. See Subsection 58.007(j) discussed below.

Probably the most requested document for parents will be an offense report. While general basic information about an arrested person, an arrest, or a crime can be disclosed under the Public Information Act, there are some notable exceptions that apply specifically to law enforcement records. Government Code Section 552.108 contains the specific law enforcement exceptions. The basic and most frequently utilized exception pertains to exempting from disclosure all information that would interfere with the detection, investigation, or prosecution of crime. There are several other exemptions listed in this section.

HB 1960 as originally filed would have permitted the child and parents to have access to the records of the juvenile probation department, prosecutor, clerk of

court and the juvenile court. This provision was ultimately removed from the bill.

Family Code Sec. 58.007. PHYSICAL RECORDS OR FILES.

(j) Before a child or a child's parent or guardian may inspect or copy a record or file concerning the child under Subsection (e), the custodian of the record or file shall redact:

(1) any personally identifiable information about a juvenile suspect, offender, victim, or witness who is not the child; and

(2) any information that is excepted from required disclosure under Chapter 552, Government Code, or other law.

Commentary by Lisa Capers

Source: HB 1960

Effective Date: September 1, 2007

Applicability: Inspections or copies requested on or after the effective date.

Summary of Changes: New Subsection (j) is the companion change to the amendment to 58.007(e) discussed above which allows a child and the child's parent or guardian to inspect or request copies of law enforcement records concerning a child. Subsection (j) requires the custodian of the records to redact any personally identifiable information about a juvenile suspect, offender, victim, or witness who is not the child and any information that is sheltered from release under the Public Information Act. See the full discussion above.

Family Code Sec. 58.0072. PHYSICAL RECORDS OR FILES.

(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, as authorized under Section 37.084, Education Code;

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

(4) a public or private university.

Commentary by Lisa Capers

Source: HB 2884

Effective Date: September 1, 2007

Applicability: Requests for information submitted on or after the effective date.

Summary of Changes: Subsection (c) clarifies that the Texas Juvenile Probation Commission (TJPC) is authorized to share information with the Texas Education Agency as authorized by Education Code Section 37.084. Section 37.084 authorizes the commissioner of education, pursuant

to federal law (FERPA) to share information with juvenile justice agencies including TJPC.

Family Code Sec. 58.0072. PHYSICAL RECORDS OR FILES.

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

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

(A) is funded in whole or in part by state or federal funds; and ~~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.

Commentary by Lisa Capers

Source: HB 2884

Effective Date: September 1, 2007

Applicability: Requests for information submitted on or after the effective date.

Summary of Changes: Subsection (d) is amended to clarify that the Texas Juvenile Probation Commission (TJPC) may grant access to juvenile justice information to certain entities if the purpose of the information sharing is beneficial to the TJPC. This amendment further clarifies the authorization to share information with persons working on research or statistical projects funded in whole or in part with federal funds. The amendment deletes the reference to 28 C.F.R. Part 22.

This amendment clarifies that access to data for a proposed research project may only be approved if it is beneficial to the work of TJPC or to the juvenile justice system. Other than the specific agencies or entities enumerated in Section 58.0072, Subsection (d) clarifies that TJPC may disseminate data only to individuals working on research projects that are funded in whole or in part by state or federal funds and that comply with the federal law that protects the confidentiality of research and statistical information. This change was necessary to address the recent increase in the volume of requests and the limited staff resources to assist individuals to ensure understanding of the data and to review all research prior to publication.

Family Code Sec. 58.106. CONFIDENTIALITY.

(a) Except as otherwise provided by this section, information contained in the juvenile justice information

system is confidential information for the use of the department and may not be disseminated by the department except:

(1) with the permission of the juvenile offender, to military personnel of this state or the United States;

(2) to a person or entity to which the department may grant access to adult criminal history records as provided by Section 411.083, Government Code;

(3) to a juvenile justice agency; ~~and~~

(4) to ~~[the Criminal Justice Policy Council]~~ the Texas Youth Commission~~;~~ and the Texas Juvenile Probation Commission for analytical purposes; and

(5) to the office of independent ombudsman of the Texas Youth Commission.

Commentary by Lisa Capers

Source: SB 103

Effective Date: June 8, 2007, at 6:50 p.m. Central Standard Time

Applicability: Requests of information occurring after the effective date.

Summary of Changes: The amendment to Section 58.106 is part of the comprehensive Texas Youth Commission (TYC) reform bill. This provision authorizes the Office of Independent Ombudsman of TYC to have access to the confidential information contained in the Juvenile Justice Information System at the Texas Department of Public Safety. For more discussion on the Office of Independent Ombudsman, see the discussion on Human Resources Code Section 64.151 in Section 8 of this newsletter on TYC provisions.

Family Code Sec. 58.110. REPORTING

(e) Except as otherwise required by applicable state laws or regulations, information required by this chapter to be reported to the department shall be reported promptly. The information shall be reported not later than the 30th day after the date the information is received by the agency responsible for reporting the information, except that a juvenile offender's custody or ~~or~~ detention~~;~~ ~~or referral~~ without previous custody shall be reported to the department not later than the seventh day after the date of the custody or ~~or~~ detention~~;~~ ~~or referral~~.

Commentary by Lisa Capers

Source: HB 2884

Effective Date: September 1, 2007

Applicability: Referrals received on or after the effective date.

Summary of Changes: This provision amends Section 58.110(e) to delete the requirement that the referral of a child's case without a custody event be reported to DPS within 7 days. Non-custody referrals must be reported to DPS within 30 days. This referral to the Texas Department of Public Safety (DPS) must include the fingerprint cards.

Under prior law, non-custodial referrals had to be fingerprinted and sent to DPS within 7 days. For many urban counties that are utilizing electronic fingerprinting technology (i.e., LiveScan), the machinery is frequently in a central location or in a downtown area. Getting a juvenile who is not in custody to a downtown location within 7 days is difficult at best. This amendment relaxes the timeframe to provide local juvenile probation departments with more time to facilitate the non-custodial referrals to be fingerprinted. Allowing 30 days for these non-custodial referrals provides more flexibility and frequently the trip to be fingerprinted can be combined with another required appearance, thus making it easier on the child and family.

Family Code Sec. 58.302. PURPOSES OF SYSTEM.

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

- (1) provide accurate information at the county or regional level relating to children who come into contact with the juvenile justice system;
- (2) assist in the development and delivery of services to children in the juvenile justice system;
- (3) assist in the development and delivery of services to children:
 - (A) who school officials have reasonable cause to believe have committed an offense for which a report is required under Section 37.015, Education Code; or
 - (B) who have been expelled, the expulsion of which school officials are required to report under Section 52.041;
- (4) provide for an efficient transmission of juvenile records from justice and municipal courts to county juvenile probation departments and the juvenile court and from county juvenile probation departments and juvenile court to the state juvenile justice information system created by Subchapter B;
- (5) provide efficient computerized case management resources to juvenile courts, prosecutors, court clerks, county juvenile probation departments, and partner agencies authorized by this subchapter;
- (6) provide a directory of services available to children to the partner agencies to facilitate the delivery of services to children;
- (7) provide an efficient means for municipal and justice courts to report filing of charges, adjudications, and dispositions of juveniles to the juvenile court as required by Section 51.08; and
- (8) provide a method for agencies to fulfill their duties under Section 58.108, including the electronic transmission of information required to be sent to the Department of Public Safety by Section 58.110(f).

Commentary by Lisa Capers

Source: HB 2884

Effective Date: September 1, 2007

Applicability: Local juvenile justice information systems that are operational on or after the effective date.

Summary of Changes: Family Code Chapter 58 governs juvenile justice records and information systems. Subchapter D authorizes local juvenile justice information systems which gather and share information on a local or regional basis. The Dallas County Justice Information System (JIS) was the first regional system of this type. The legislation in Subchapter D authorizes this type of model to be utilized throughout the state. The amendment to Section 58.302 is basically a technical clarification to explicitly include prosecutors and court clerks in the list of entities that can share information in the JIS. Arguably, both entities are already authorized to participate in JIS. Prosecutors are among those defined as *partner agencies* in Section 58.305 and it could be argued that court clerks are an extension of the juvenile court. In any event, these two entities are now specifically and explicitly named.

Family Code Sec. 58.303. LOCAL JUVENILE JUSTICE INFORMATION SYSTEM.

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

- (1) case management resources for juvenile courts, court clerks, 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;
- (4) victim-witness notices required under Chapter 57;
- (5) electronic filing of complaints or petitions, court orders, and other documents filed with the court, including documents containing electronic signatures;
- (6) electronic offense and intake processing;
- (7) case docket management and calendaring;
- (8) communications by email or other electronic communications between partner agencies;
- (9) 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) reporting to schools under Article 15.27, Code of Criminal Procedure, by law enforcement agencies, prosecuting attorneys, and juvenile courts;
- (11) records of adjudications and dispositions, including probation conditions ordered by the juvenile court; and
- (12) warrant management and confirmation capabilities.

Commentary by Lisa Capers

Source: HB 2884

Effective Date: September 1, 2007

Applicability: Local juvenile justice information systems that are operational on or after the effective date.

Summary of Changes: Family Code Chapter 58 governs juvenile justice records and information systems. Subchapter D authorizes local juvenile justice information systems which gather and share information on a local or regional basis. The Dallas County Justice Information System (JIS) was the first regional system of this type. The legislation in Subchapter D authorizes this type of model to be utilized throughout the state. This provision clarifies that court clerks are authorized to participate in local juvenile justice information systems. Further, it clarifies the types of information that may be shared in the system and explicitly includes electronic court orders and documents that contain electronic signatures.

Family Code Sec. 58.304. TYPES OF INFORMATION CONTAINED IN A LOCAL JUVENILE INFORMATION SYSTEM.

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

- (1) the juvenile's name, including other names by which the juvenile is known;
- (2) the juvenile's date and place of birth;
- (3) the juvenile's physical description, including sex, weight, height, race, ethnicity, eye color, hair color, scars, marks, and tattoos;
- (4) the juvenile's state identification number and other identifying information;
- (5) the juvenile's fingerprints and photograph;
- (6) the juvenile's last known residential address, including the census tract number designation for the address;
- (7) the name, address, and phone number of the juvenile's parent, guardian, or custodian;
- (8) the name and identifying number of the agency that took into custody or detained the juvenile;
- (9) each date of custody or detention;
- (10) a detailed description of the conduct for which the juvenile was taken into custody, detained, or referred, including the level and degree of the alleged offense;
- (11) the name and identifying number of the juvenile intake agency or juvenile probation office;
- (12) each disposition by the juvenile intake agency or juvenile probation office;
- (13) the date of disposition by the juvenile intake agency or juvenile probation office;
- (14) the name and identifying number of the prosecutor's office;

- (15) each disposition by the prosecutor;
- (16) the date of disposition by the prosecutor;
- (17) the name and identifying number of the court;
- (18) each disposition by the court, including information concerning custody of a juvenile by a juvenile justice agency or county juvenile probation department;
- (19) the date of disposition by the court;
- (20) any commitment or release under supervision by the Texas Youth Commission, including the date of the commitment or release; ~~and~~
- (21) information concerning each appellate proceeding; and
- (22) electronic copies of all documents filed with the court.

Commentary by Lisa Capers

Source: HB 2884

Effective Date: September 1, 2007

Applicability: Local juvenile justice information systems that are operational on or after the effective date.

Summary of Changes: Family Code Chapter 58 governs juvenile justice records and information systems. Subchapter D authorizes local juvenile justice information systems which gather and share information on a local or regional basis. The Dallas County Justice Information System (JIS) was the first regional system of this type. The legislation in Subchapter D authorizes this type of a model to be utilized throughout the state. This provision brings the Family Code into the technological age by authorizing these data systems to include electronic copies of all documents filed with the court. Most new computerized data systems have the capacity to attach electronic documents to juvenile records in the system and this amendment authorizes this practice.

Family Code Sec. 58.305. PARTNER AGENCIES.

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

- (1) the juvenile court and court clerk;
- (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.

Commentary by Lisa Capers

Source: HB 2884

Effective Date: September 1, 2007

Applicability: Juvenile justice information systems that are operational on or after the effective date.

Summary of Changes: Family Code Chapter 58 governs juvenile justice records and information systems. Subchapter D authorizes local juvenile justice information systems which gather and share information on a local or regional basis. The Dallas County Justice Information System (JIS) was the first regional system of this type. The legislation in Subchapter D authorizes this type of a model to be utilized throughout the state. The amendment to Section 58.305 now includes court clerks in the definition of *partner agencies* with whom information in the electronic juvenile justice information system can be shared.

Family Code Sec. 58.306. ACCESS TO INFORMATION; LEVELS.

(g) Level 3 Access is by:

- (1) the juvenile court and court clerk;
- (2) the prosecuting attorney;
- (3) the county juvenile probation department;
- (4) law enforcement agencies;
- (5) governmental service providers that are partner agencies; and
- (6) governmental placement facilities that are partner agencies.

Commentary by Lisa Capers

Source: HB 2884

Effective Date: September 1, 2007

Applicability: Local juvenile justice information systems that are operational on or after the effective date.

Summary of Changes: Family Code Chapter 58 governs juvenile justice records and information systems. Subchapter D authorizes local juvenile justice information systems which gather and share information on a local or regional basis. The Dallas County Justice Information System (JIS) was the first regional system of this type. The legislation in Subchapter D authorizes this type of model to be utilized throughout the state. The amendment to Section 58.306 specifically authorizes court clerks to have Level 3 access which is the broadest access privilege in the system.

Family Code Sec. 58.307. CONFIDENTIALITY OF INFORMATION.

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

(e) Information in a local juvenile justice information system, including electronic signature systems, shall be protected from unauthorized access by a system of access security and any access to information in a local juvenile information system performed by browser soft-

ware shall be at the level of at least 128-bit encryption. A juvenile board or a regional juvenile board committee shall require all partner agencies to maintain security and restrict access in accordance with the requirements of this title.

Commentary by Lisa Capers

Source: HB 2884

Effective Date: September 1, 2007

Applicability: Local juvenile justice information systems operational on or after the effective date.

Summary of Changes: Family Code Chapter 58 governs juvenile justice records and information systems. Subchapter D authorizes local juvenile justice information systems which gather and share information on a local or regional basis. The Dallas County Justice Information System (JIS) was the first regional system of this type. The legislation in Subchapter D authorizes this type of model to be utilized throughout the state. This provision explicitly brings information gathered in electronic signature systems under the confidentiality provisions of Section 58.307.

SUBCHAPTER D-1. REPORTS ON COUNTY INTERNET WEBSITES

Family Code Sec. 58.351. APPLICABILITY.

This subchapter applies only to a county with a population of 600,000 or more.

Commentary by Lisa Capers

Source: HB 2884

Effective Date: January 1, 2008

Applicability: Commitments on or after the effective date should be included in the reports.

Summary of Changes: New Subchapter D-1 is created in Family Code Chapter 58 regarding juvenile justice records. This subchapter is applicable only to the largest urban counties in Texas and basically requires the juvenile courts in those counties to post information about their TYC commitments on the county's website as discussed below. When legislation references a population number but does not specify a specific reference for the population figure, the Code Construction Act governs. Per Government Code Section 312.001(20), *population* means the population shown by the most recent federal decennial census. The 2000 Census was the most recent census. Per the 2000 census, the following counties are brought under the requirements of this legislation: Harris, Dallas, Tarrant, Bexar, Travis, and El Paso.

Family Code Sec. 58.352. INFORMATION POSTED ON COUNTY WEBSITE.

(a) A juvenile court judge in a county to which this subchapter applies shall post a report on the Internet website of the county in which the court is located. The report must include:

(1) the total number of children committed by the judge to a correctional facility operated by the Texas Youth Commission; and

(2) for each child committed to a facility described by Subdivision (1):

(A) a general description of the offense committed by the child or the conduct of the child that led to the child's commitment to the facility;

(B) the year the child was committed to the facility; and

(C) the age range, race, and gender of the child.

(b) Not later than the 10th day following the first day of each quarter, a juvenile court judge shall update the information posted on a county Internet website under Subsection (a)

Commentary by Lisa Capers

Source: HB 2884

Effective Date: January 1, 2008

Applicability: Commitments on or after the effective date should be included in the reports. The first quarterly report should be posted no later than April 10, 2008, for the quarter ending March 31, 2008.

Summary of Changes: This provision requires the juvenile courts in Harris, Dallas, Tarrant, Bexar, Travis, and El Paso Counties to post a report on the county's website that provides certain information about the number of children committed by each juvenile court to the Texas Youth Commission (TYC). The report must contain the total number of commitments per court in addition to a description of the offense for each child, the year the child was committed, and the age range, race and gender of each child. The report must be updated no later than 10 days following the first day of each calendar quarter. The purpose of this amendment is to allow the public to have easy access to information about the use of TYC commitment as a dispositional option by elected judges. Thus, the data reported should be clearly identified to a specific court and a named judge. Additionally, it appears the information is cumulative and all quarters for a calendar year should be posted. The legislation does not indicate whether multiple years must be posted, but that would certainly be in line with the intent of this bill.

Family Code Sec. 58.353. CONFIDENTIALITY.

A record posted on a county Internet website under this subchapter may not include any information that personally identifies a child.

(c) The changes in law made by this section apply only to a child committed to a correctional facility operated by the Texas Youth Commission on or after January 1, 2008.

Commentary by Lisa Capers

Source: HB 2884

Effective Date: January 1, 2008

Applicability: Commitments on or after the effective date should be included in the reports.

Summary of Changes: This provision makes clear that the Internet reports must protect the child's identity. No information that may personally identify the child may be included in the reports. Therefore, the *general description* of the offense or conduct that is required in the report must be written with care, especially in high profile cases in which it may be possible for the child to be easily identified.

SUBCHAPTER E. STATEWIDE JUVENILE INFORMATION AND CASE MANAGEMENT SYSTEM **Family Code Sec. 58.401. DEFINITIONS.**

In this subchapter:

(1) "Commission" means the Texas Juvenile Probation Commission.

(2) "Criminal justice agency" has the meaning assigned by Section 411.082, Government Code.

(3) "Juvenile justice agency" means an agency that has custody or control over juvenile offenders.

(4) "Partner agencies" means those agencies described in Section 58.305 as well as private service providers to the juvenile justice system.

(5) "System" means an automated statewide juvenile information and case management system.

Commentary by Lisa Capers

Source: HB 2884

Effective Date: September 1, 2007

Applicability: Juvenile case management systems operational on or after the effective date.

Summary of Changes: This provision amends Chapter 58 of the Family Code by adding new Subchapter E related to a juvenile information and case management system known as the Juvenile Case Management System (JCMS). JCMS is a new state of the art integrated computer system being developed by the Texas Conference of Urban Counties' Techshare Program. The counties of Bexar, Dallas, and Tarrant County and the Texas Juvenile Probation Commission (TJPC) are building the first version of the system. While the counties have authority to create and operate the system, it is not clear that TJPC does have that authority. Subchapter E was added to provide TJPC the statutory authorization for participating in JCMS. JCMS is a collaborative effort between the parties and is a unique state/local partnership to create a state of the art technological system for use by Texas juvenile probation departments. By sharing design and development costs, the participating entities are leveraging state and local resources to create a unique, robust technology solution which will facilitate information sharing by juvenile justice entities statewide.

JCMS is being designed and constructed in modules. There is a base case management module, a cross-jurisdictional data sharing module, and specialty modules for institutions, courts, programs, and juvenile justice alter-

native education programs. The base module is planned to be the replacement and next generation of the current CASEWORKER/5 system provided to all juvenile probation departments by TJPC. All probation departments will be provided access to the base module with costs covered by TJPC. TJPC is seeking state and federal funding to assist in securing the cross-jurisdictional data sharing module for all probation departments. The specialty modules are available for purchase to all counties and TJPC plans to seek additional funding in the future to purchase one or more of these modules for probation departments if possible.

Section 58.401 defines key terms in this subchapter including *Commission*, *Criminal justice agency*, *juvenile justice agency*, *partner agencies*, and *system*.

Family Code Sec. 58.402. PURPOSES OF SYSTEM.

The purposes of the system are to:

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

(2) facilitate communication and information sharing between authorized entities in criminal and juvenile justice agencies and partner agencies regarding effective and efficient identification of and service delivery to juvenile offenders; and

(3) provide comprehensive juvenile justice information and case management abilities that will meet the common data collection, reporting, and management needs of juvenile probation departments in this state and provide the flexibility to accommodate individualized requirements.

Commentary by Lisa Capers

Source: HB 2884

Effective Date: September 1, 2007

Applicability: Juvenile case management systems operational on or after the effective date.

Summary of Changes: Section 58.402 states the purpose of JCMS: 1) to provide accurate statewide information relating to children in the juvenile justice system; 2) to facilitate communication and information sharing between authorized entities in the criminal and juvenile justice agencies, and partner agencies regarding effective identification and service delivery to juvenile offenders; and 3) to provide flexible and comprehensive juvenile justice information and case management capabilities for local juvenile probation departments statewide.

Family Code Sec. 58.403. JUVENILE INFORMATION SYSTEM.

The commission in partnership with local counties may participate and assist in the creation and maintenance of a statewide system to:

(1) aid in processing the cases of children under this title;

(2) facilitate the delivery of services to children in the juvenile justice system;

(3) aid in the early identification of at-risk and delinquent children; and

(4) facilitate cross-jurisdictional sharing of information related to juvenile offenders between authorized criminal and juvenile justice agencies and partner agencies.

Commentary by Lisa Capers

Source: HB 2884

Effective Date: September 1, 2007

Applicability: Juvenile case management systems operational on or after the effective date.

Summary of Changes: Section 58.403 authorizes TJPC and local counties to create and maintain a statewide data system to aid in the processing of juvenile cases, facilitate service delivery, and aid in the identification of children; and probably most importantly, to facilitate cross-jurisdictional sharing of information between authorized probation departments, law enforcement, prosecutors, courts and other entities.

Family Code Sec. 58.404. INFORMATION COLLECTED BY COMMISSION.

The commission may collect and maintain all information related to juvenile offenders and all offenses committed by a juvenile offender, including all information collected and maintained under Subchapters B and D.

Commentary by Lisa Capers

Source: HB 2884

Effective Date: September 1, 2007

Applicability: Juvenile case management systems operational on or after the effective date.

Summary of Changes: Section 58.404 authorizes TJPC to collect and maintain all information related to juvenile offenders, including all information collected and maintained under Subchapter B (Juvenile Justice Information System at the Department of Public Safety) and Subchapter D (Local Juvenile Justice Information System).

Family Code Sec. 58.405. AUTHORITY CUMULATIVE.

The authority granted by this subchapter is cumulative of all other authority granted by this chapter to a county, the commission, or a juvenile justice agency and nothing in this subchapter limits the authority of a county, the commission, or a juvenile justice agency under this chapter to create an information system or to share information related to a juvenile.

Commentary by Lisa Capers

Source: HB 2884

Effective Date: September 1, 2007

Applicability: Juvenile case management systems created on or after the effective date.

Summary of Changes: Section 58.405 was added to ensure the creation of authority in Subchapter E for TJPC to participate in JCMS does not impact nor limit the authority counties currently have.

Family Code Sec. 59.003. SANCTION LEVEL ASSIGNMENT MODEL.

(a) Subject to Subsection (e), after a child's first commission of delinquent conduct or conduct indicating a need for supervision, the probation department or prosecuting attorney may, or the juvenile court may, in a disposition hearing under Section 54.04 or a modification hearing under Section 54.05, assign a child one of the following sanction levels according to the child's conduct:

(1) for conduct indicating a need for supervision, other than conduct described in Section 51.03(b)(4) or (5) ~~[51.03(b)(5)]~~ or a Class A or B misdemeanor, the sanction level is one;

(2) for conduct indicating a need for supervision under Section 51.03(b)(4) or (5) ~~[51.03(b)(5)]~~ or a Class A or B misdemeanor, other than a misdemeanor involving the use or possession of a firearm, or for delinquent conduct under Section 51.03(a)(2), the sanction level is two;

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

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

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

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

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

Commentary by Lisa Capers

Source: HB 2884

Effective Date: September 1, 2007

Applicability: Conduct on or after the effective date.

Summary of Changes: Amends Family Code Section 59.003(a) to elevate inhalant abuse to Sanction Level Two of the Progressive Sanctions Guidelines, thus reflecting the seriousness of this offense. Sanction Level Two recommends a disposition of *Deferred Prosecution* as opposed to *Supervisory Caution* at Sanction Level One.

According to the Partnership for a Drug Free America website, 5 million teens (21 percent of the teen population) have tried inhalants. While the number of referrals in Texas for inhalant offenses is relatively low (i.e., 76 referrals in 2005), the juveniles who are ultimately caught and referred to juvenile probation may in fact be some of the most serious abusers, facing serious health risks and even death.

Section 51.03(b)(4) defines inhalant abuse as *conduct indicating a need for supervision* (CINS). For adult offenders, inhalant abuse is a Class B Misdemeanor. However, because inhalant abuse is a CINS offense, juveniles cannot face commitment to the Texas Youth Commission for this Sanction Level One offense, which carries a recommended sanction of *Supervisory Caution*, the most limited type of intervention. Inhalant abuse, however, is a serious offense in terms of the potential physical damage done to abusers. *Huffing* can damage a child's brain in a shorter period of time than many other drugs; treating it as a CINS offense may send an inappropriate message that the offense is less severe than it is in reality. Since it is currently a Level One offense, fewer programs and services are ordered and/or available for these offenders. However, early intervention with inhalant abusers is critical. Thus, this proposed change retains the CINS character of the offense (i.e., no TYC commitment) but places inhalant abuse at Sanctions Level Two in the hope that this will encourage a higher level of intervention, programs and services for these youth.

Family Code Sec. 261.201. CONFIDENTIALITY AND DISCLOSURE OF INFORMATION.

(i) Notwithstanding Subsection (a), the Texas Youth Commission shall release a report of alleged or suspected abuse or neglect made under this chapter if:

(1) the report relates to a report of abuse or neglect involving a child committed to the commission during the period that the child is committed to the commission; and

(2) the commission is not prohibited by Chapter 552, Government Code, or other law from disclosing the report.

(j) The Texas Youth Commission shall edit any report disclosed under Subsection (i) to protect the identity of:

(1) a child who is the subject of the report of alleged or suspected abuse or neglect;

(2) the person who made the report; and

(3) any other person whose life or safety may be endangered by the disclosure.

Commentary by Lisa Capers

Source: SB 103

Effective Date: June 8, 2007, at 6:50 p.m. Central Standard Time

Applicability: Reports and allegations received after the effective date.

Summary of Changes: Family Code Chapter 261 is the chapter that generally governs the investigation of reports of child abuse or neglect. This chapter applies to all state agencies that investigate these reports. Subchapter C governs the confidentiality protections regarding investigations. The addition of new Subsections (i) and (j) govern reports of abuse and neglect made to the Texas Youth Commission (TYC). Generally, Section 261.201(a) specifically exempts reports of alleged abuse and neglect of a child made to the Texas Department of Family and Protective Services from disclosure under the Public Information Act. The confidentiality provisions protect reports made to the Texas Juvenile Probation Commission and any reports made under Chapter 261 generally. New Subsection (i) changes this general rule and makes a report of abuse and neglect a public record, but only if it is an allegation of abuse or neglect involving a child committed to TYC that occurs during the time the child is in TYC custody. The only exception to this is if the Public Information Act or any other law prohibits the disclosure.

Specifically, Subsection (j) requires TYC to edit any disclosed report to protect the identity of the child victim, the reporter and any other person whose life or safety may be endangered by the disclosure.

These changes were part of the massive TYC reforms this session. The intent in making these reports public is to bring transparency to the process and to ensure that no reports slip through the cracks. Inspection of these reports by the public, advocacy groups, and external oversight agencies should help insure greater protections for youth.

Family Code Sec. 261.401. AGENCY INVESTIGATION.

(a) Notwithstanding Section 261.001, in this section:

(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 or program that causes or may cause emotional harm or physical injury to, or the death of, a child served by the facility or program 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 or program 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 or program, 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 or program as further described by rule or policy.

(b) A state agency that operates, licenses, certifies, or registers a facility in which children are located or

provides oversight of a program that serves children shall make a prompt, thorough investigation of a report that a child has been or may be abused, neglected, or exploited in the facility or program. The primary purpose of the investigation shall be the protection of the child.

Commentary by Lisa Capers

Source: HB 2884

Effective Date: September 1, 2007

Applicability: Investigations on or after the effective date.

Summary of Changes: This provision amends Family Code Section 261.401(a) and (b) to expand the definitions of *abuse*, *neglect* and *exploitation* to include situations that occur in a non-residential program. As currently written, these definitions refer only to abuse, neglect and exploitation that occur in a residential facility setting. Subsection (b) expressly authorizes and mandates the Texas Juvenile Probation Commission (TJPC) to investigate abuse, neglect and exploitation in juvenile justice programs. This amendment simply clarifies in the definitional section TJPC's authority to conduct investigations in all juvenile justice programs in addition to juvenile justice facilities. The amendment makes no substantive change in the law as TJPC clearly has the authority to investigate in all juvenile justice programs and facilities per Section 261.405. This amendment brings the definitions in Section 261.401 into conformity with the law as stated in Section 261.405.

Family Code Sec. 261.405. INVESTIGATIONS IN JUVENILE JUSTICE PROGRAMS AND FACILITIES.

(a) In this section:

(1) "Juvenile justice facility" means a facility operated wholly or partly by the juvenile board, by another governmental unit, or by a private vendor under a contract with the juvenile board, ~~the~~ county, or other governmental unit that serves juveniles under juvenile court jurisdiction. The term includes:

(A) a public or private juvenile pre-adjudication secure detention facility, including a hold-over facility;

(B) a public or private juvenile post-adjudication secure correctional facility except for a facility operated solely for children committed to the Texas Youth Commission; and

(C) a public or private non-secure juvenile post-adjudication residential treatment facility that is not licensed by the Department of Protective and Regulatory Services or the Texas Commission on Alcohol and Drug Abuse.

(2) "Juvenile justice program" means a program or department operated wholly or partly by the juvenile board or by a private vendor under a contract with a juvenile board that serves juveniles under juvenile court jurisdiction. The term includes:

(A) a juvenile justice alternative education program; ~~and~~

(B) a non-residential program that serves juvenile offenders under the jurisdiction of the juvenile court; and

(C) a juvenile probation department.

Commentary by Lisa Capers

Source: HB 2884

Effective Date: September 1, 2007

Applicability: Investigations on or after the effective date.

Summary of Changes: This provision amends Family Code Section 261.405(a) to include in the definition of *juvenile justice facility* those facilities operated by governmental units other than local juvenile boards. It also expands the definition of *juvenile justice program* to expressly include local juvenile probation departments. These amendments are meant to clarify and make explicit the authority of TJPC to investigate allegations of abuse, neglect and exploitation in all juvenile justice facilities and programs.

Government Code

Government Code Sec. 41.102. EMPLOYMENT OF ASSISTANTS AND PERSONNEL.

(c) The attorney general may offer to assist a prosecuting attorney in the prosecution of criminal offenses concerning the Texas Youth Commission.

Commentary by Lisa Capers

Source: SB 103

Effective Date: June 8, 2007, at 6:50 p.m. Central Standard Time

Applicability: Offers of assistance on or after the effective date.

Summary of Changes: Government Code Chapter 41 deals with prosecuting attorneys. Section 41.102 governs the employment of assistant prosecutors and other personnel. Current law in Subsection (b) authorizes a prosecuting attorney to request the assistance of the attorney general in prosecuting criminal cases and allows the prosecutor to appoint assistant attorney generals as assistant prosecuting attorneys for this purpose.

New Subsection (c) authorizes the attorney general to offer to assist a prosecutor in a case involving crimes concerning TYC. During the legislative session, there was much discussion about why certain criminal conduct at TYC facilities was not prosecuted. This provision is one of several amendments designed to provide assistance to local prosecutors, who are frequently handling many serious cases with limited local resources, to help ensure that crimes at TYC facilities get aggressively prosecuted.

SUBCHAPTER E. SPECIAL PROSECUTION UNIT

Government Code Sec. 41.301. DEFINITIONS.

In this subchapter:

(1) "Board of directors" means the board of directors of the unit.

(2) "Commission" means the Texas Youth Commission.

(3) "Department" means the Texas Department of Criminal Justice.

(4) "Executive board" means the executive board governing the board of directors of the unit.

(5) "Prosecuting attorney" means a district attorney, a criminal district attorney, or a county attorney representing the state in criminal matters before the district or inferior courts of the county.

(6) "Unit" means the special prosecution unit.

Commentary by Lisa Capers

Source: SB 103

Effective Date: June 8, 2007, at 6:50 p.m. Central Standard Time

Applicability: Operation of the Special Prosecution Unit on or after the effective date.

Summary of Changes: This provision contains the definitions related to the Special Prosecution Unit at the Texas Department of Criminal Justice (TDCJ).

Government Code Sec. 41.302. GENERAL FUNCTION OF SPECIAL PROSECUTION UNIT.

The special prosecution unit is an independent unit that cooperates with and supports prosecuting attorneys in prosecuting offenses and delinquent conduct described by Article 104.003(a), Code of Criminal Procedure.

Commentary by Lisa Capers

Source: SB 103

Effective Date: June 8, 2007, at 6:50 p.m. Central Standard Time

Applicability: Operation of the Special Prosecution Unit on or after the effective date.

Summary of Changes: New Section 41.302 makes it clear that the Special Prosecution Unit is an independent unit that cooperates with and supports local criminal prosecutors in prosecuting crimes and delinquent conduct as described in Code of Criminal Procedure Article 104.003(a). Subsection (a) refers to criminal offenses or delinquent conduct committed on property of the Texas Youth Commission or Texas Department of Criminal Justice or by persons in TYC or TDCJ custody performing a duty off TYC or TDCJ property. The article requires the state to reimburse the county for expenses, in an amount the court determines to be reasonable, for payment of certain costs incurred in the prosecution of a criminal case. These expenses include interpreters, expert witnesses, witness travel, juror expenses, witness compensation, document

costs (e.g., statement of facts, transcript), inquest expenses, prosecutor staff expenses, court reporter fees, and security officers.

Government Code Sec. 41.303. BOARD OF DIRECTORS.

(a) The unit is governed by a board of directors composed of each prosecuting attorney who represents the state in criminal matters before a court in a county in which one or more facilities owned or operated by or under contract with the department or the commission are located.

(b) A prosecuting attorney described by Subsection (a) shall serve on the board of directors in addition to the other duties of the prosecuting attorney assigned by law.

Commentary by Lisa Capers

Source: SB 103

Effective Date: June 8, 2007, at 6:50 p.m. Central Standard Time

Applicability: Operation of the Special Prosecution Unit on or after the effective date.

Summary of Changes: New Section 41.303 requires a board of directors to govern the Special Prosecution Unit at TDCJ. The board of directors is comprised of each criminal prosecutor in a county in which one or more TDCJ or TYC facilities are located (including contract facilities). Serving on the governing board is a legal duty of the prosecutor's office.

Currently, there are 74 counties in Texas that have at least one TDCJ or TYC facility in their county. This includes counties with either an institution or halfway house. On the TYC and TDCJ websites, halfway houses are listed under their facilities and/or institutions, but it is not clear if board members will be included from counties with only half-way houses. Presumably, TDCJ will notify the prosecutors in applicable counties of their required service on this board of directors.

Because there are mandatory actions that the board of directors must take by September 30, 2007, it is anticipated that this board will meet in late summer possibly or early September.

Government Code Sec. 41.304. EXECUTIVE BOARD.

(a) The board of directors is governed by an executive board composed of 11 members elected by the membership of the board of directors on a majority vote from among that membership, as follows:

(1) one member of the executive board who represents the state in criminal matters before a court in a county in which one or more facilities owned or operated by or under contract with the commission are located shall be elected on a majority vote of the members of the board of directors to serve a term expiring in an even-numbered year;

(2) an additional four members of the executive board shall be elected on a majority vote of the members of the board of directors to serve terms expiring in even-numbered years;

(3) one member of the executive board who represents the state in criminal matters before a court in a county in which one or more facilities owned or operated by or under contract with the commission are located shall be elected on a majority vote of the members of the board of directors to serve a term expiring in an odd-numbered year; and

(4) an additional five members of the executive board shall be elected on a majority vote of the members of the board of directors to serve terms expiring in odd-numbered years.

(b) If a vacancy on the executive board occurs, the board of directors shall elect a person to serve the remainder of the vacating member's term in the manner provided by Subsection (a). To be eligible for election under this subsection, a person must meet any qualifications required of the vacating member for service on the executive board.

Commentary by Lisa Capers

Source: SB 103

Effective Date: June 8, 2007, at 6:50 p.m. Central Standard Time

Applicability: Operation of the Special Prosecution Unit on or after the effective date.

Summary of Changes: New Section 41.304 details the operation of the executive board, the entity that governs the full board of directors of the Special Prosecution Unit. The executive board is comprised of 11 members elected by a majority vote of the board of directors.

At least one member of the executive board must be a prosecutor from a county where a TYC facility (including contract facilities) is located and this individual will serve a term expiring in even-numbered years. Four additional members serve terms expiring in even-numbered years and can be from either a county where a TDCJ or TYC facility is located or a county that has both. One member must be from a county with a TYC facility (including contract facilities) and shall serve a term expiring in an odd-numbered year. The remaining five members have terms expiring in odd-numbered years and can include a prosecutor from a county that has either a TYC or TDCJ facility or both.

The board of directors must fill any vacancy in keeping with the above parameters.

Not later than September 30, 2007 the board of directors must elect the executive board.

Government Code Sec. 41.305. OFFICERS.

(a) The members of the board of directors, on a majority vote, shall elect from among the membership of the executive board a presiding officer and an assistant presiding officer. The presiding officer serves as the pre-

siding officer of the board of directors and the executive board, and the assistant presiding officer serves as the assistant presiding officer of the board of directors and the executive board.

(b) The presiding officer and the assistant presiding officer serve terms of one year.

(c) The assistant presiding officer serves as presiding officer of the board of directors and the executive board in the presiding officer's absence or if a vacancy occurs in that office until a new presiding officer is elected as provided by Subsection (d).

(d) If a vacancy occurs in the office of presiding officer or assistant presiding officer, the board of directors shall elect a person to serve the remainder of the vacating officer's term in the manner provided by Subsection (a).

Commentary by Lisa Capers

Source: SB 103

Effective Date: June 8, 2007, at 6:50 p.m. Central Standard Time

Applicability: Operation of the Special Prosecution Unit on or after the effective date.

Summary of Changes: This provision requires the election of a presiding officer and an assistant presiding officer for the Special Prosecution Unit. These officers must be elected on a majority vote from the membership of the 11 member executive board. The presiding officer will preside over the full board of directors and the executive board; the assistant presiding officer will preside as the assistant over both the full board of directors and the executive board.

The presiding officer and assistant presiding officer serve one-year terms. The assistant presiding officer presides in the absence of the presiding officer. The board of directors must fill any vacancy in the term of the presiding officer or assistant presiding officer.

Not later than September 30, 2007 the board of directors must elect the presiding officer and the assistant presiding officer of the board of directors.

Government Code Sec. 41.306. MEMBERSHIP ON BOARD OF DIRECTORS OR EXECUTIVE BOARD NOT A CIVIL OFFICE OF EMOLUMENT.

A position on the board of directors or the executive board may not be construed to be a civil office of emolument for any purpose, including those purposes described in Section 40, Article XVI, Texas Constitution.

Commentary by Lisa Capers

Source: SB 103

Effective Date: June 8, 2007, at 6:50 p.m. Central Standard Time

Applicability: Operation of the Special Prosecution Unit on or after the effective date.

Summary of Changes: This provision clarifies that a position on the board of directors or the executive board is not

to be construed as a civil office of emolument as described in the Texas Constitution. Section 40, Article 16 of the Constitution addresses holding more than one office and states that no person shall hold or exercise at the same time, more than one civil office of emolument.

Government Code Sec. 41.307. REIMBURSEMENT FOR EXPENSES.

A member of the board of directors or executive board is not entitled to compensation for service on the board of directors or executive board, if applicable, but is entitled to be reimbursed for necessary expenses incurred in carrying out the duties and responsibilities of a member of the board of directors and the executive board, if applicable, as provided by the General Appropriations Act.

Commentary by Lisa Capers

Source: SB 103

Effective Date: June 8, 2007, at 6:50 p.m. Central Standard Time

Applicability: Operation of the Special Prosecution Unit on or after the effective date.

Summary of Changes: New Section 41.307 states that members of the board of directors or the executive board of the Special Prosecution Unit are not entitled to compensation for serving on the board. However, members will receive reimbursement for necessary expenses of serving on the board and carrying out the duties and responsibilities of the board.

Government Code Sec. 41.308. CHIEF OF SPECIAL PROSECUTION UNIT; ADDITIONAL EMPLOYEES.

The board of directors, on a majority vote, shall employ a person to serve as chief of the unit and additional persons to accomplish the unit's purposes. The board of directors may determine the compensation of the unit's employees.

Commentary by Lisa Capers

Source: SB 103

Effective Date: June 8, 2007, at 6:50 p.m. Central Standard Time

Applicability: Operation of the Special Prosecution Unit on or after the effective date.

Summary of Changes: New Section 41.308 requires the board of directors of the Special Prosecution Unit to employ a person to serve as chief of the unit. The board may also employ additional staff to accomplish the unit's purpose; the board of directors determines the compensation of the employees.

Government Code Sec. 41.309. ELECTION OF COUNSELLOR.

(a) The executive board, on a majority vote, shall elect a counselor.

(b) To be eligible to serve as a counselor, a person must:

(1) be certified in criminal law by the Texas Board of Legal Specialization;

(2) have at least five years of experience as a lawyer assisting prosecuting attorneys in prosecuting offenses or delinquent conduct committed on state property used for the custody of persons charged with or convicted of offenses or used for the custody of children charged with or adjudicated as having engaged in delinquent conduct or conduct indicating a need for supervision; or

(3) have served for at least five years as a prosecuting attorney or as a judge of a district court, a court of appeals, or the court of criminal appeals.

Commentary by Lisa Capers

Source: SB 103

Effective Date: June 8, 2007, at 6:50 p.m. Central Standard Time

Applicability: Operation of the Special Prosecution Unit on or after the effective date.

Summary of Changes: This provision requires the executive board of the Special Prosecution Unit to elect, by a majority vote, a counselor for the unit. The person must be board certified in criminal law. Additionally, this person must have at least five years experience as a lawyer assisting prosecutors in handling offenses committed on TDCJ or TYC property, or have served at least five years as a prosecutor or judge.

Government Code Sec. 41.310. DUTIES OF COUNSELLOR.

(a) The counselor elected in accordance with Section 41.309:

(1) shall coordinate prosecution issues in and monitor each case involving an offense or delinquent conduct described by Article 104.003(a), Code of Criminal Procedure, that concerns the commission;

(2) shall work with criminal justice analysts employed by the Legislative Budget Board and other persons who monitor cases involving offenses or delinquent conduct described by Article 104.003(a), Code of Criminal Procedure; and

(3) may conduct an investigation of any alleged illegal or improper conduct by commission officers, employees, or contractors that the counselor reasonably believes:

(A) jeopardizes the health, safety, and welfare of children in the custody of the commission; and

(B) could constitute an offense described by Article 104.003(a), Code of Criminal Procedure.

(b) In addition to the duties prescribed by Subsection (a), the counselor shall on a quarterly basis provide the board of directors and the standing committees of the senate and house of representatives with primary jurisdiction

over matters concerning correctional facilities with a report concerning offenses or delinquent conduct prosecuted by the unit on receiving a request for assistance under Section 61.098, Human Resources Code, or a request for assistance otherwise from a prosecuting attorney. A report under this subsection is public information under Chapter 552, Government Code, and the board of directors shall request that the commission publish the report on the commission's Internet website. A report must be both aggregated and disaggregated by individual facility and include information relating to:

(1) the number of requests for assistance received under Section 61.098, Human Resources Code, and requests for assistance otherwise received from prosecuting attorneys;

(2) the number of cases investigated and the number of cases prosecuted;

(3) the types and outcomes of cases prosecuted, such as whether the case concerned narcotics or an alleged incident of sexual abuse; and

(4) the relationship of a victim to a perpetrator, if applicable.

(c) The counselor, in consultation with the board of directors, shall notify the foreman of the appropriate grand jury, in the manner provided by Article 20.09, Code of Criminal Procedure, if:

(1) the counselor receives credible evidence of illegal or improper conduct by commission officers, employees, or contractors that the counselor reasonably believes jeopardizes the health, safety, and welfare of children in the custody of the commission;

(2) the counselor reasonably believes the conduct:

(A) could constitute an offense described by Article 104.003(a), Code of Criminal Procedure; and

(B) involves the alleged physical or sexual abuse of a child in the custody of a commission facility or an investigation related to the alleged abuse; and

(3) the counselor has reason to believe that information concerning the conduct has not previously been presented to the appropriate grand jury.

Commentary by Lisa Capers

Source: SB 103

Effective Date: June 8, 2007, at 6:50 p.m. Central Standard Time

Applicability: Operation of the Special Prosecution Unit on or after the effective date.

Summary of Changes: New Section 41.310 details the duties of the counselor at the TDCJ Special Prosecution Unit. The counselor coordinates prosecution issues and monitors each case involving an offense or delinquent conduct that occurs on TYC property or that involves TYC. The counselor must work with the Legislative Budget Board and other TYC oversight entities. Additionally, the

counselor may conduct investigations into any allegations of illegal or improper conduct by TYC officers, employees or contractors.

On a quarterly basis, the counselor must provide the board of directors and legislative leadership a report concerning cases prosecuted by the unit. This report is public information under the Open Records Act and must be published on TYC's website. The report must contain aggregated statewide data and individual facility data reflecting the number of requests for assistance from local prosecutors, the number of cases investigated and prosecuted, and the types and outcomes of cases prosecuted.

The counselor, in consultation with the board of directors, must also notify the appropriate grand jury if the counselor: 1) receives credible evidence of illegal or improper conduct by TYC officers, employees or contractors; 2) believes the conduct constitutes a felony criminal offense or delinquent conduct and involves the physical or sexual abuse of a child in a TYC facility; and 3) has reason to believe the conduct has not previously been presented to the grand jury.

Government Code Sec. 102.041. ADDITIONAL COURT COSTS ON CONVICTION IN DISTRICT COURT.

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

- (1) a jury fee (Art. 102.004, Code of Criminal Procedure) ... \$20;
- (2) a fee for clerk of the court services (Art. 102.005, Code of Criminal Procedure) ... \$40;
- (3) a records management and preservation services fee (Art. 102.005, Code of Criminal Procedure) ... \$25;
- (4) a security fee on a felony offense (Art. 102.017, Code of Criminal Procedure) ... \$5;
- (5) a security fee on a misdemeanor offense (Art. 102.017, Code of Criminal Procedure) ... \$3;
- (6) a juvenile delinquency prevention and graffiti eradication fee (Art. 102.0171, Code of Criminal Procedure) ... \$50 [55]; and
- (7) a court cost on conviction in Comal County (Sec. 152.0522, Human Resources Code) ... \$4.

Commentary by Chris Hubner

Source: HB 2151

Effective Date: September 1, 2007

Applicability: Conduct occurring on or after effective date.
Summary of Changes: Amended Subsection (6) makes a conforming change requiring a district court clerk to collect a \$50 juvenile delinquency prevention and graffiti eradication fee, rather than a \$5 graffiti eradication fee.

Government Code Sec. 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 (Art. 102.004, Code of Criminal Procedure) ... \$20;
- (2) a fee for services of the clerk of the court (Art. 102.005, Code of Criminal Procedure) ... \$40;
- (3) a records management and preservation services fee (Art. 102.005, Code of Criminal Procedure) ... \$25;
- (4) a security fee on a misdemeanor offense (Art. 102.017, Code of Criminal Procedure) ... \$3;
- (5) a juvenile delinquency prevention and graffiti eradication fee (Art. 102.0171, Code of Criminal Procedure) ... \$50 [55];
- (6) a court cost on conviction in Comal County (Sec. 152.0522, Human Resources Code) ... \$4; and
- (7) a juvenile case manager fee (Art. 102.0174, Code of Criminal Procedure) ... \$5.

Commentary by Chris Hubner

Source: HB 2151

Effective Date: September 1, 2007

Applicability: Conduct occurring on or after effective date.

Summary of Changes: Amended Subsection (5) makes a conforming change requiring the clerk of a statutory county court to collect a \$50 juvenile delinquency prevention and graffiti eradication fee, rather than a \$5 graffiti eradication fee.

Government Code Sec. 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 (Art. 102.004, Code of Criminal Procedure) ... \$20;
- (2) a fee for clerk of the court services (Art. 102.005, Code of Criminal Procedure) ... \$40;
- (3) a records management and preservation services fee (Art. 102.005, Code of Criminal Procedure) ... \$25;
- (4) a security fee on a misdemeanor offense (Art. 102.017, Code of Criminal Procedure) ... \$3;
- (5) a juvenile delinquency prevention and graffiti eradication fee (Art. 102.0171, Code of Criminal Procedure) ... \$50 [55]; and
- (6) a juvenile case manager fee (Art. 102.0174, Code of Criminal Procedure) ... \$5.

Commentary by Chris Hubner

Source: HB 2151

Effective Date: September 1, 2007

Applicability: Conduct occurring on or after effective date.

Summary of Changes: Amended Subsection (5) makes a conforming change requiring the county court clerk to col-

lect a \$50 juvenile delinquency prevention and graffiti eradication fee, rather than a \$5 graffiti eradication fee.

Government Code Sec. 2306.5621. FIRE FIGHTER AND LAW ENFORCEMENT OR SECURITY OFFICER HOME LOAN PROGRAM.

(6) "Corrections officer" means a corrections [an] officer employed by the Texas Department of Criminal Justice or a juvenile correctional officer employed by the Texas Youth Commission.

Commentary by Lisa Capers

Source: HB 280

Effective Date: June 15, 2007

Applicability: Home loan applications on or after the effective date.

Summary of Changes: This provision expands the definition of *corrections officer* to include juvenile correctional officers employed by TYC. Previously, it only included TDCJ corrections officers. This expansion allows TYC correctional officers to participate in the Fire Fighter and Law Enforcement or Security Officer Home Loan Program through the Texas Department of Housing and Community Affairs. For more information on this loan program, visit the agency website at: <http://www.tdhca.state.tx.us/>.

Government Code Sec. 325.0121. STUDY ON TRANSITION TOWARD REGIONALIZED JUVENILE CORRECTIONS.

(a) As part of its review of juvenile corrections for the 81st Legislature, the commission shall study the merits of moving the Texas Youth Commission toward a regionalized structure of smaller facilities and more diversified treatment and placement options, taking into consideration the likely effects of this regionalized structure on:

(1) recidivism;

(2) juvenile and family access to services; and

(3) costs to this state and the counties of this state.

(b) In conducting the study, the commission shall determine whether the existing Texas Youth Commission facilities meet their intended purposes.

(c) The commission shall take into consideration the findings and conclusions of the study in its report to the 81st Legislature and shall include any recommendations it considers appropriate resulting from its consideration of the study.

(d) The commission, in conducting the study, may seek the assistance of nationally recognized experts in the field of juvenile justice.

(e) This section expires September 1, 2009.

Commentary by Lisa Capers

Source: SB 103

Effective Date: June 8, 2007, at 6:50 p.m. Central Standard Time

Applicability: Sunset process beginning on or after the effective date.

Summary of Changes: During the 2007 legislative hearings regarding TYC, there was much discussion of the need for smaller facilities located closer to where a child and the child's family live. The Missouri system that utilizes small, treatment oriented home-type settings was frequently discussed as a more effective alternative to large institutions.

This provision requires the Sunset Commission to study the merits of moving TYC toward a regionalized system of smaller facilities with more diversified treatment and placement options. This study will be conducted in conjunction with the Sunset review process that TYC will be under going beginning in late 2007 and continuing into the 2009 legislative session.

The Sunset Commission must determine whether the existing TYC facilities meet their intended purpose. Additionally, the Commission must consider factors such as recidivism, juvenile and family access to services, and the cost to the state and local counties. In 2009, the Commission must report to the 81st Texas Legislature with any recommendations it deems appropriate. Nationally recognized experts in juvenile justice may be consulted by the Sunset Commission while conducting this study.

Government Code Sec. 325.0122. STUDY ON GOVERNANCE OF TEXAS YOUTH COMMISSION.

(a) The commission shall study the merits of an executive commissioner governing the Texas Youth Commission as compared to a citizen board.

(b) The commission shall make recommendations concerning the governance of the Texas Youth Commission in its report to the legislature under Section 325.012 as part of its review of the Texas Youth Commission, which, as provided by Section 61.020, Human Resources Code, is abolished September 1, 2009, unless continued in existence as provided by this chapter.

(c) This section expires September 1, 2009.

Commentary by Lisa Capers

Source: SB 103

Effective Date: June 8, 2007, at 6:50 p.m. Central Standard Time

Applicability: Sunset process beginning on or after the effective date.

Summary of Changes: This provision requires the Sunset Commission to study the merits of the new TYC governance structure as implemented by SB 103. That bill replaced the former *governing board* structure of the agency with an *advisory board* and an *executive commissioner*. The former *governing board* was appointed by the Governor with the advice and consent of the Senate and the new *advisory board* is appointed by the Governor, Lt. Governor and Speaker of the House. The *executive commissioner* is also appointed by the Governor with the advice and consent of the Senate. The former *executive director* is re-

placed by the *executive commissioner*. The Sunset Commission will have to determine which governance structure is more effective. The Sunset Commission must make a recommendation regarding governance of TYC in its report to the legislature during the 2009 session. If the Sunset Commission does not ratify the current TYC governance structure as enacted by SB 103 by continuing the structure in the Sunset bill, then the governance of TYC will revert back to the former structure (i.e., a governing board and executive director structure).

Government Code Section 411.142. DNA DATABASE.

(g) The DNA database may contain DNA records for the following:

(1) an individual described by this subchapter, including Section 411.1471, 411.148, or 411.154 ~~[411.150]~~;

(2) a biological specimen of a deceased victim of a crime;

(3) a biological specimen that is legally obtained in the investigation of a crime, regardless of origin;

(4) results of testing ordered by a court under this subchapter, Article 64.03, Code of Criminal Procedure, or other law permitting or requiring the creation of a DNA record;

(5) an unidentified missing person, or unidentified skeletal remains or body parts;

(6) a close biological relative of a person who has been reported missing to a law enforcement agency;

(7) a person at risk of becoming lost, such as a child or a person declared by a court to be mentally incapacitated, if the record is required by court order or a parent, conservator, or guardian of the person consents to the record; or

(8) an unidentified person, if the record does not contain personal identifying information.

Commentary by Chris Hubner

Source: HB 3295

Effective Date: June 15, 2007

Applicability: DNA records for certain individuals.

Summary of Changes: Amended Section 411.142(g)(1) authorizes the DNA database to contain records for persons described in Section 411.154 (Enforcement by Court Order) instead of repealed Section 411.150 (DNA Records of Certain Juveniles). The repeal of Section 411.150 removes what is currently a redundant provision.

Government Code Section 411.1471. DNA RECORDS OF PERSONS CHARGED WITH OR CONVICTED OF CERTAIN FELONIES.

(f) A defendant who provides a DNA sample ~~[specimen]~~ under this section is not required to provide a DNA sample ~~[specimen]~~ under Section ~~[411.1472 or provide a sample or specimen under Section]~~ 411.148 ~~[or~~

~~411.150]~~ unless an attorney representing the state in the prosecution of felony offenses establishes to the satisfaction of the director that the interests of justice or public safety require that the defendant provide additional samples ~~[or specimens]~~.

Commentary by Chris Hubner

Source: HB 3295

Effective Date: June 15, 2007

Applicability: DNA records for certain individuals.

Summary of Changes: Amended Section 411.1471(f) clarifies that a defendant, who provides a DNA sample rather than a specimen, is not required to provide another DNA sample under Section 411.148 (DNA Records of Certain Inmates) unless a prosecutor establishes that the interests of justice or public safety require the additional sample.

Government Code Section 411.148. MANDATORY DNA RECORD.

(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) shall provide one or more DNA samples 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 shall collect the sample from the individual 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 Texas Department of Criminal Justice shall notify the director that an individual described by Subsection ~~(a)(1)(B)~~ ~~[(a)]~~ is to be released from custody not earlier than the 120th day before the individual's statutory release date and not later than the 90th day before the individual's statutory release date. An individual described by Subsection (a)(1)(B) may not be held past the individual's statutory release date if the individual fails or refuses

to provide a DNA sample under this section. The Texas Department of Criminal Justice may take lawful administrative action, including disciplinary action resulting in the loss of good conduct time, against an individual described by Subsection (a)(1)(B) who refuses to provide a sample under this section. In this subsection, "statutory release date" means the date on which an individual is discharged from the individual's controlling sentence.

(f-1) The Texas Youth Commission shall notify the director that an individual described by Subsection (a)(2) ~~[(a)]~~ is to be released from custody not earlier than the 120th ~~[40th]~~ day before the individual's release date.

(f-2) 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 Subsections (f) and (f-1) ~~[this subsection]~~.

(g) A medical staff employee of a criminal justice agency may collect a voluntary sample from an individual at any time.

(h) An employee of a criminal justice agency may use force against an individual 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 the sample.

(i)(1) 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.

(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.

Commentary by Chris Hubner

Source: HB 3295

Effective Date: June 15, 2007

Applicability: DNA samples and notification requirements for TDCJ and TYC.

Summary of Changes: Reenacted and amended Section 411.148 applies to a person who is ordered by a magistrate or court to provide a DNA sample under Section 411.154 (Enforcement by Court Order). Subsection (f) requires the Texas Department of Criminal Justice (TDCJ) to notify the director of the Texas Department of Public Safety (DPS) when an inmate is to be released from custody not earlier than 120 days before and not later than 90 days before the statutory release date. The inmate may not be held past the statutory release date if he or she fails or refuses to provide a DNA sample; however, TDCJ may take administrative action, including disciplinary action resulting in loss of good conduct time, if an inmate refuses to provide a sample. Similarly, Subsection (f-1) requires TYC to notify the director of DPS if a juvenile is to be released from custody not earlier than 120 days, instead of 10 days, before the release date. Both TDCJ and TYC, in consultation with DPS, must determine the form of the notification.

Government Code Section 411.153. CONFIDENTIALITY OF DNA RECORDS.

(b) A person commits an offense if the person knowingly discloses to an unauthorized recipient information in a DNA record or information related to a DNA analysis of a sample collected under this subchapter.

Commentary by Chris Hubner

Source: HB 3295

Effective Date: June 15, 2007

Applicability: DNA records and disclosure to unauthorized recipients.

Summary of Changes: Amended Section 411.153(b) makes it an offense to knowingly disclose to *an unauthorized recipient* information in a DNA record related to a sample collected under the DNA database system. The offense is a state jail felony.

Government Code Section 411.150. DNA RECORDS OF CERTAIN JUVENILES.

~~(a) A juvenile who is committed to the Texas Youth Commission shall provide one or more blood samples or other specimens taken by or at the request of the commission for the purpose of creating a DNA record if the juvenile has not already provided the required specimen under other state law and if the juvenile is ordered by a juvenile court to give the sample or specimen or is commit-~~

ted to the commission for an adjudication as having engaged in delinquent conduct that violates:

(1) ~~an offense:~~

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

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

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

~~(2) a penal law if the juvenile has previously been convicted of or adjudicated as having engaged in:~~

~~(A) a violation of a penal law described in Subsection (a)(1); or~~

~~(B) a violation of a penal law under federal law or the laws of another state that involves the same conduct as a violation of a penal law described by Subsection (a)(1).~~

~~(b) The department, in conjunction with the Texas Youth Commission, shall adopt rules regarding the collection, preservation, and shipment of a blood sample or other specimen of a juvenile described by this section.~~

~~(c) The Texas Youth Commission shall:~~

~~(1) obtain blood samples or other specimens from juveniles under this section;~~

~~(2) preserve each sample or other specimen collected;~~

~~(3) maintain a record of the collection of the sample or specimen; and~~

~~(4) send the sample or specimen to the director for scientific analysis under this subchapter.~~

~~(d) A medical staff employee of the Texas Youth Commission may obtain a voluntary sample or specimen from any juvenile.~~

~~(e) An employee of the Texas Youth Commission may use force against a juvenile required to provide a sample under this section when and to the degree the employee reasonably believes the force is immediately necessary to obtain the sample or specimen.~~

~~(f) The Texas Youth Commission may contract with an individual or entity for the provision of phlebotomy services under this section.~~

Commentary by Chris Hubner

Source: HB 3295

Effective Date: June 15, 2007

Applicability: Repeal of DNA records statute pertaining to certain juveniles.

Summary of Changes: Section 411.150 is repealed since the authority to collect DNA samples described in this section was moved to Section 411.148 (Mandatory DNA Record) in 2005, thus removing a redundant provision.

Government Code Sec. 411.1141. ACCESS TO CRIMINAL HISTORY RECORD INFORMATION: TEXAS YOUTH COMMISSION.

(a) The Texas Youth Commission is entitled to obtain from the department criminal history record information maintained by the department that relates to a person described by Section 61.0357(b), Human Resources Code [who is:

~~[(1) an applicant for a position with the Texas Youth Commission;~~

~~[(2) a volunteer or an intern, or an applicant volunteer or intern, with the Texas Youth Commission;~~

~~[(3) a business entity or person who contracts with the Texas Youth Commission to provide direct delivery services to youth;~~

~~[(4) an employee of, or an applicant for employment with, a business entity or person who contracts with the Texas Youth Commission to provide direct delivery of services to youth; or~~

~~[(5) a volunteer or an intern, or an applicant volunteer or intern, with a business entity or person who contracts with the Texas Youth Commission to provide direct delivery of services to youth].~~

Commentary by Lisa Capers

Source: SB 103

Effective Date: June 8, 2007, at 6:50 p.m. Central Standard Time

Applicability: Criminal history checks on or after the effective date.

Summary of Changes: This provision was amended to reference TYC's enabling legislation and new Section 61.0357, which details TYC's authority to request criminal history records checks for certain individuals. Section 61.0357(b) requires the TYC executive commissioner to initially review state (TCIC) and national (NCIC) criminal history records for all current employees, contractors, volunteers, ombudsman, or advocate working for TYC or working in a TYC facility (including contract facilities). Records checks must also be run on any individual who provides direct services to children in TYC custody or who has access to records in TYC facilities or offices.

Government Code Sec. 493.026. INSPECTOR GENERAL REPORT ON CRIMINAL OFFENSES.

(a) In this section, "special prosecution unit" means the special prosecution unit established under Subchapter E, Chapter 41.

(b) The inspector general of the department shall on a quarterly basis prepare and deliver to the board of directors of the special prosecution unit a report concerning any alleged criminal offense concerning the department and described by Article 104.003(a), Code of Criminal Procedure, that occurred during the preceding calendar quarter.

Commentary by Lisa Capers

Source: SB 103

Effective Date: June 8, 2007, at 6:50 p.m. Central Standard Time

Applicability: Operation of TDCJ inspector general on or after effective date.

Summary of Changes: This new provision is added to the enabling legislation of the Texas Department of Criminal Justice (TDCJ). It requires the TDCJ inspector general to report quarterly to the board of directors of the Special Prosecution Unit concerning any criminal offenses occurring at TDCJ facilities or involving TDCJ staff.

Government Code Sec. 497.052. MEMBERSHIP.

(b) The following individuals shall serve as ex officio members of the authority:

(1) a member of the house of representatives designated by the speaker of the house;

(2) a member of the senate designated by the lieutenant governor;

(3) the executive director of the Texas Department of Criminal Justice or the designee of the executive director;

(4) the executive director of the Texas Workforce Commission or the designee of the executive director; and

(5) the executive commissioner ~~[director]~~ of the Texas Youth Commission or the designee of the executive commissioner ~~[director]~~.

Commentary by Lisa Capers

Source: SB 103

Effective Date: June 8, 2007, at 6:50 p.m. Central Standard Time

Applicability: Operation of the Prison Industries Oversight Authority on or after the effective date.

Summary of Changes: This Government Code section refers to the private sector Prison Industries Oversight Authority. The TYC *executive director* was previously a member of this authority but that has been changed to the TYC *executive commissioner* to reflect the new TYC governance structure.

Government Code Sec. 508.156. DETERMINATE SENTENCE PAROLE.

(a) Before the release of a person who is transferred under Section 61.081(f) or 61.084(g) ~~[61.084(f) or (g)]~~, Human Resources Code, to the division for release on parole, a parole panel shall review the person's records and may interview the person or any other person the panel considers necessary to determine the conditions of parole. The panel may impose any reasonable condition of parole on the person that the panel may impose on an adult inmate under this chapter.

Commentary by Lisa Capers

Source: SB 103

Effective Date: June 8, 2007, at 6:50 p.m. Central Standard Time

Applicability: Parole releases on or after the effective date.

Summary of Changes: This is a clarifying amendment. Section 61.084(f) of TYC's enabling legislation was repealed. Section 61.084(g) is the amended provision that requires determinate sentenced youth in TYC custody to be transferred to TDCJ parole at age 19 if not already discharged or transferred.

Government Code Sec. 531.016. EQUAL ACCESS TO FACILITIES, SERVICES, AND TREATMENT.

(a) The commission, the Texas Youth Commission, and the Texas Juvenile Probation Commission shall periodically review, document, and compare the accessibility and funding of facilities, services, and treatment provided to females under 18 years of age to the accessibility and funding of facilities, services, and treatment provided to males in the same age group.

(b) The commission shall coordinate the review, documentation, and comparison required by Subsection (a).

(c) The areas of review required by Subsection (a) must include:

(1) the nature, extent, and effectiveness of services offered for females under 18 years of age within the areas of teen pregnancy, physical and sexual abuse, and alcohol and drug abuse, services for runaway and homeless females, and services for females involved in gangs or other delinquent activity; and

(2) the equity of services offered to persons under 18 years of age with respect to gender within the areas of physical and sexual abuse, alcohol and drug abuse, and services offered to runaway and homeless youth.

(d) Each health and human services agency or other state agency that provides facilities, services, treatment, or funding subject to the review required by Subsection (a) shall identify existing differences within the agency in the allocation and expenditures of money and services for males under 18 years of age in comparison to females in the same age group. Each agency shall submit a report to the commission describing any differences identified.

(e) Each agency described by Subsection (d) shall:

(1) develop a plan to address any lack of services for females under 18 years of age reported by the agency; and

(2) submit a report to the commission on the progress made under the plan.

(f) The commission shall assemble the agency reports submitted under Subsections (d) and (e) and prepare an executive summary to be delivered to the members of the legislature not later than July 1 of each even-numbered year.

(g) This section expires September 1, 2011.

Commentary by Lisa Capers

Source: SB 103

Effective Date: June 8, 2007, at 6:50 p.m. Central Standard Time

Applicability: Mandatory study to be conducted on or after effective date.

Summary of Changes: This new provision requires the Health and Human Services Commission (HHSC), the Texas Youth Commission (TYC) and the Texas Juvenile Probation Commission (TJPC) to periodically review, document and compare the accessibility and funding of facilities, services, and treatment provided to females and males under age 18. HHSC will coordinate this study.

The study must look at the nature, extent and effectiveness of services to females in the areas of teen pregnancy, physical and sexual abuse, alcohol and drug abuse, services for runaway and homeless females and services for females in gangs. Additionally, the study must look at the equity of services provided for youth under 18 with respect to gender.

Subsection (d) requires that each health and human service agency or other state agency report to HHSC and identify existing differences between their services for males and females under age 18. These agencies must develop a plan to address any lack of services found and submit the plan to the HHSC commissioner along with a progress report under the plan.

HHSC must compile the agency reports and prepare an executive summary for the legislature to be delivered no later than July 1st of each even-numbered year.

Government Code Sec. 811.001. DEFINITIONS.

(9) "Law enforcement officer" means a member of the retirement system who:

(A) has been commissioned as a law enforcement officer by the Department of Public Safety, the Texas Alcoholic Beverage Commission, [ø] the Parks and Wildlife Department, or the office of inspector general at the Texas Youth Commission; and

(B) is recognized as a commissioned law enforcement officer by the Commission on Law Enforcement Officer Standards and Education.

Commentary by Lisa Capers

Source: SB 103

Effective Date: June 8, 2007, at 6:50 p.m. Central Standard Time

Applicability: Commissioned law enforcement officers in the TYC Office of Inspector General on or after the effective date.

Summary of Changes: This provision of the Government Code deals with the Employees Retirement System (ERS) of Texas. Added to the definition of *law enforcement officer* are the individuals employed by the Office of Inspector General at TYC, thus bringing these individuals under the ERS.

Government Code Sec. 814.104. ELIGIBILITY OF MEMBER FOR SERVICE RETIREMENT.

(b) A member who is at least 55 years old and who has at least 10 years of service credit as a commissioned peace officer engaged in criminal law enforcement activities of the Department of Public Safety, the Texas Alcoholic Beverage Commission, [ø] the Parks and Wildlife Department, or the office of inspector general at the Texas Youth Commission, or as a custodial officer, is eligible to retire and receive a service retirement annuity.

Commentary by Lisa Capers

Source: SB 103

Effective Date: June 8, 2007, at 6:50 p.m. Central Standard Time

Applicability: Commissioned law enforcement officers in the TYC Office of Inspector General on or after the effective date.

Summary of Changes: This provision of the Government Code deals with the Employees Retirement System (ERS) of Texas. Added to the definition of *law enforcement officer* are the individuals employed by the Office of Inspector General at TYC, thus bringing these individuals under the ERS.

Government Code Sec. 815.505. CERTIFICATION OF NAMES OF LAW ENFORCEMENT AND CUSTODIAL OFFICERS.

Not later than the 12th day of the month following the month in which a person begins or ceases employment as a law enforcement officer or custodial officer, the Public Safety Commission, the Texas Alcoholic Beverage Commission, the Parks and Wildlife Commission, the office of inspector general at the Texas Youth Commission, the Board of Pardons and Paroles, or the Texas Board of Criminal Justice, as applicable, shall certify to the retirement system, in the manner prescribed by the system, the name of the employee and such other information as the system determines is necessary for the crediting of service and financing of benefits under this subtitle.

Commentary by Lisa Capers

Source: SB 103

Effective Date: June 8, 2007, at 6:50 p.m. Central Standard Time

Applicability: Commissioned law enforcement officers in the TYC Office of Inspector General on or after the effective date.

Summary of Changes: This provision of the Government Code deals with the Employees Retirement System (ERS) of Texas. Added to the definition of *law enforcement officer* are the individuals employed by the Office of Inspector General at TYC, thus bringing these individuals under the ERS.

Human Resources Code

Human Resources Code Sec. 42.041. REQUIRED LICENSE OR ACCREDITATION.

(b) This section does not apply to:

- (1) a state-operated facility;
- (2) an agency foster home or agency foster group home;
- (3) a facility that is operated in connection with a shopping center, business, religious organization, or establishment where children are cared for during short periods while parents or persons responsible for the children are attending religious services, shopping, or engaging in other activities on or near the premises, including but not limited to retreats or classes for religious instruction;
- (4) a school or class for religious instruction that does not last longer than two weeks and is conducted by a religious organization during the summer months;
- (5) a youth camp licensed by the Department of State Health Services [~~Texas Department of Health~~];
- (6) a facility licensed, operated, certified, or registered by another state agency;
- (7) an educational facility accredited by the Texas Education Agency or the Southern Association of Colleges and Schools that operates primarily for educational purposes in grades kindergarten and above, an after-school program operated directly by an accredited educational facility, or an after-school program operated by another entity under contract with the educational facility, if the Texas Education Agency or Southern Association of Colleges and Schools has approved the curriculum content of the after-school program operated under the contract;
- (8) an educational facility that operates solely for educational purposes in grades kindergarten through at least grade two, that does not provide custodial care for more than one hour during the hours before or after the customary school day, and that is a member of an organization that promulgates, publishes, and requires compliance with health, safety, fire, and sanitation standards equal to standards required by state, municipal, and county codes;
- (9) a kindergarten or preschool educational program that is operated as part of a public school or a private school accredited by the Texas Education Agency, that offers educational programs through grade six, and that does not provide custodial care during the hours before or after the customary school day;
- (10) a family home, whether registered or listed;
- (11) an educational facility that is integral to and inseparable from its sponsoring religious organization or an educational facility both of which do not provide custodial care for more than two hours maximum per day, and that offers educational programs for children

age five and above in one or more of the following: kindergarten through at least grade three, elementary, or secondary grades;

(12) an emergency shelter facility providing shelter to minor mothers who are the sole support of their natural children under Section 32.201, Family Code, unless the facility would otherwise require a license as a child-care facility under this section;

(13) a juvenile detention facility certified under Section 51.12, Family Code, a juvenile correctional facility certified under Section 51.125, Family Code [~~or Section 141.042(d)~~], a juvenile facility providing services solely for the Texas Youth Commission, or any other correctional facility for children operated or regulated by another state agency or by a political subdivision of the state;

(14) an elementary-age (ages 5-13) recreation program operated by a municipality provided the governing body of the municipality annually adopts standards of care by ordinance after a public hearing for such programs, that such standards are provided to the parents of each program participant, and that the ordinances shall include, at a minimum, staffing ratios, minimum staff qualifications, minimum facility, health, and safety standards, and mechanisms for monitoring and enforcing the adopted local standards; and further provided that parents be informed that the program is not licensed by the state and the program may not be advertised as a child-care facility; or

(15) an annual youth camp held in a municipality with a population of more than 1.5 million that operates for not more than three months and that has been operated for at least 10 years by a nonprofit organization that provides care for the homeless.

Commentary by Lisa Capers

Source: SB 103

Effective Date: June 8, 2007, at 6:50 p.m. Central Standard Time

Applicability: Required licensure on or after the effective date.

Summary of Changes: This provision is a technical cleanup and makes no substantive changes to the law. It amends the statute that governs the licensing of child care facilities and residential placement facilities. Human Resources Code Section 42.041 details the types of facilities that are exempt from the licensing regulations. Juvenile pre-adjudication secure detention and post-adjudication secure correctional facilities have always been exempt under Subsection 13. This amendment corrects the reference to new Family Code Section 51.125, which governs post-adjudication secure correctional facilities and deletes a repealed reference to TJPC's enabling legislation in Human Resources Code Section 141.042(d) that referred to post-adjudication facilities.

Human Resources Code Sec. 42.052. CERTIFICATION, LISTING AND REGISTRATION.

(h) The certification requirements of this section do not apply to a juvenile detention facility certified under Section 51.12, Family Code, or a juvenile correctional facility certified under Section 51.125, Family Code ~~[or Section 141.042(d)]~~.

Commentary by Lisa Capers

Source: SB 103

Effective Date: June 8, 2007, at 6:50 p.m. Central Standard Time

Applicability: Certification requirements on or after the effective date.

Summary of Changes: The provision adds the reference to new Family Code Section 51.125 that was added this session and deals with juvenile post-adjudication secure correctional facilities. This amendment makes no substantive changes in the law, but simply includes a new subsection reference.

Human Resources Code Sec. 152.0721. DUVAL COUNTY.

(f) The Duval County Juvenile Board and the juvenile boards of one or more counties that are adjacent to or in close proximity to Duval County may agree to operate together with respect to all matters, or with respect to certain matters specified by the juvenile boards. Juvenile boards operating together may appoint one fiscal officer to receive and disburse funds for the boards.

Commentary by Lisa Capers

Source: HB 2884

Effective Date: September 1, 2007

Applicability: Juvenile board composition and operation on or after the effective date.

Summary of Changes: This provision authorizes the Duval County Juvenile Board and neighboring counties to operate together as a combined juvenile board.

Human Resources Code Sec. 152.1301. JIM HOGG COUNTY.

(a) The Jim Hogg County Juvenile Board is composed of the county judge, the district judge in Jim Hogg County, and a citizen of Jim Hogg County appointed by the county judge and the district judge. The citizen member of the board serves the same term of office as the district judge in Jim Hogg County.

(b) The district judge is the chairman of the board and its chief administrative officer.

(c) The commissioners court may pay the juvenile board members an annual salary set by the commissioners court at not less than \$1,200 or more than \$3,600 for the added duties imposed on the members. The salary shall be paid in equal monthly installments from the general fund of the county.

(d) The juvenile board shall appoint not more than five persons to serve on an advisory council.

(e) The Jim Hogg County Juvenile Board and the juvenile boards of one or more counties that are adjacent to or in close proximity to Jim Hogg County may agree to operate together with respect to all matters, or with respect to certain matters specified by the juvenile boards. Juvenile boards operating together may appoint one fiscal officer to receive and disburse funds for the boards.

(f) Sections 152.0002, 152.0004, 152.0005, 152.0006, 152.0007, and 152.0008 do not apply to the juvenile board.

Commentary by Lisa Capers

Source: HB 2884

Effective Date: October 1, 2007

Applicability: Juvenile board composition and operation on or after the effective date.

Summary of Changes: This provision details the organization of the Jim Hogg County Juvenile Board. Previously, Jim Hogg County did not have its own juvenile board statute.

Human Resources Code Sec. 152.2201. STARR COUNTY.

(a) The Starr County Juvenile Board is composed of the county judge, the judge of the county court at law in Starr County, and the district judges in Starr County.

(f) The Starr County Juvenile Board and the juvenile boards of one or more counties that are adjacent to or in close proximity to Starr County may agree to operate together with respect to all matters, or with respect to certain matters specified by the juvenile boards. Juvenile boards operating together may appoint one fiscal officer to receive and disburse funds for the boards.

Commentary by Lisa Capers

Source: HB 2884

Effective Date: September 1, 2007

Applicability: Juvenile board composition and operation on or after the effective date.

Summary of Changes: This provision clarifies the membership of the Starr County Juvenile Board, authorizing it and neighboring counties to operate together as a combined juvenile board.

Penal Code

Penal Code Sec. 38.06. ESCAPE.

(a) A person commits an offense if he escapes from custody when he is:

(1) under arrest for, charged with, or convicted of an offense; ~~or~~

(2) in custody pursuant to a lawful order of a court;

(3) detained in a secure detention facility, as that term is defined by Section 51.02, Family Code; or

(4) in the custody of a juvenile probation officer for violating an order imposed by the juvenile court under Section 52.01, Family Code.

Commentary by Lisa Capers

Source: HB 2884

Effective Date: September 1, 2007

Applicability: Conduct that occurs on or after the effective date.

Summary of Changes: This provision amends Penal Code Section 38.06(a) to expand the offense of *escape* to include escape from a secure juvenile pre-adjudication detention facility and escape from the lawful custody of a juvenile probation officer as authorized by Family Code Section 52.01. The amendment makes it an offense for a juvenile to escape from a pre-adjudication detention facility or from the custody of a juvenile probation officer who has taken the juvenile into custody for a violation of either a juvenile court order of probation or conditions of release. The current statutory language is not broad enough to encompass this situation.

Penal Code Sec. 38.07. PERMITTING OR FACILITATING ESCAPE.

(f) In this section, "correctional facility" means:

(1) any place described by Section 1.07(a)(14); or

(2) a "secure correctional facility" or "secure detention facility" as those terms are defined by Section 51.02, Family Code.

Commentary by Lisa Capers

Source: HB 2884

Effective Date: September 1, 2007

Applicability: Conduct that occurs on or after the effective date.

Summary of Changes: This provision amends Penal Code Section 38.07 by adding Subsection (f) to the offense of *Permitting or Facilitating Escape* to expand the definition of *correctional facility* to include a juvenile secure correctional facility and a secure detention facility as those terms are defined in Family Code Section 51.02. This change adds a juvenile secure detention or correctional facility to

the correctional facilities in which introducing or providing an implement for an escape of a detainee is a crime. The current definition of *correctional facility* in Penal Code Section 1.07(a)(14) means a place designated by law for the confinement of a person arrested for, charged with or convicted of a criminal offense. The term includes:

(A) a municipal or county jail;

(B) a confinement facility operated by the Texas Department of Criminal Justice;

(C) a confinement facility operated under contract with any division of the Texas Department of Criminal Justice; and

(D) a community corrections facility operated by a community supervision and corrections department.

Clearly this definition was insufficient to include juvenile facilities, which resulted in this amendment.

Penal Code Sec. 38.09. IMPLEMENTS FOR ESCAPE.

(c) In this section, "correctional facility" means:

(1) any place described by Section 1.07(a)(14); or

(2) a "secure correctional facility" or "secure detention facility" as those terms are defined by Section 51.02, Family Code.

Commentary by Lisa Capers

Source: HB 2884

Effective Date: September 1, 2007

Applicability: Conduct that occurs on or after the effective date.

Summary of Changes: This provision amends Penal Code Section 38.09 by adding Subsection (c) to the offense of *Implements for Escape* to expand the definition of *correctional facility* to include a juvenile secure correctional facility and a secure detention facility as those terms are defined in Family Code Section 51.02. This change adds a juvenile secure detention or correctional facility to the correctional facilities in which introducing or providing an implement for an escape of a detainee is a crime. The current definition of *correctional facility* in Penal Code Section 1.07(a)(14) means a place designated by law for the confinement of a person arrested for, charged with or convicted of a criminal offense. The term includes:

(A) a municipal or county jail;

(B) a confinement facility operated by the Texas Department of Criminal Justice;

(C) a confinement facility operated under contract with any division of the Texas Department of Criminal Justice; and

(D) a community corrections facility operated by a community supervision and corrections department.

Clearly this definition was insufficient to include juvenile facilities, which resulted in this amendment.

Penal Code Sec. 38.111. IMPROPER CONTACT WITH VICTIM.

(e) In this section, "correctional facility" means:

(1) any place described by Section 1.07(a)(14); or

(2) a "secure correctional facility" or "secure detention facility" as those terms are defined by Section 51.02, Family Code.

Commentary by Lisa Capers

Source: HB 2884

Effective Date: September 1, 2007

Applicability: Conduct that occurs on or after the effective date.

Summary of Changes: This provision amends Penal Code Section 38.111 by adding Subsection (e) to the offense of *Improper Contact with Victim* to expand the definition of *correctional facility* to include a juvenile secure correctional facility and a secure detention facility as those terms are defined in Family Code Section 51.02. The current definition of *correctional facility* in Penal Code Section 1.07(a)(14) cited above is insufficient to include juvenile facilities.

Penal Code Sec. 38.114. CONTRABAND IN CORRECTIONAL FACILITY.

(d) In this section, "correctional facility" means:

(1) any place described by Section 1.07(a)(14); or

(2) a "secure correctional facility" or "secure detention facility" as those terms are defined by Section 51.02, Family Code.

Commentary by Lisa Capers

Source: HB 2884

Effective Date: September 1, 2007

Applicability: Conduct that occurs on or after the effective date.

Summary of Changes: This provision amends Penal Code Section 38.114 by adding Subsection (d) to the offense of *Contraband in Correctional Facility* to expand the definition of *correctional facility* to include a juvenile secure correctional facility and a secure detention facility as those terms are defined in Family Code Section 51.02. This change adds a juvenile secure detention or correctional facility to this offense. The current definition of *correctional facility* in Penal Code Section 1.07(a)(14) cited above is insufficient to include juvenile facilities.

Penal Code Sec. 39.04. VIOLATIONS OF THE CIVIL RIGHTS OF PERSON IN CUSTODY; IMPROPER SEXUAL ACTIVITY WITH PERSON IN CUSTODY.

(a) An official of a correctional facility, an employee of a correctional facility, a person other than an employee who works for compensation at a correctional facil-

ity, a volunteer at a correctional facility, or a peace officer commits an offense if the person intentionally:

(1) denies or impedes a person in custody in the exercise or enjoyment of any right, privilege, or immunity knowing his conduct is unlawful; or

(2) engages in sexual contact, sexual intercourse, or deviate sexual intercourse with an individual in custody or, in the case of an individual in the custody of the Texas Youth Commission, employs, authorizes, or induces the individual to engage in sexual conduct or a sexual performance.

(b) An offense under Subsection (a)(1) is a Class A misdemeanor. An offense under Subsection (a)(2) is a state jail felony, except that an offense under Subsection (a)(2) is a felony of the second degree if the individual is in the custody of the Texas Youth Commission.

Commentary by Lisa Capers

Source: SB 103

Effective Date: June 8, 2007, at 6:50 p.m. Central Standard Time

Applicability: Conduct that occurs on or after the effective date.

Summary of Changes: This amendment creates a new second degree felony offense for any TYC employee to employ, authorize or induce an individual in TYC custody to engage in *sexual conduct* or a *sexual performance*. These terms are defined in Penal Code Section 43.25 (*Sexual Performance by a Child*). Under the previous law in this section, it was a state jail felony to have sex or sexual contact with a youth at TYC; it is now a second degree felony. Interestingly, under this section, it is only a state jail felony to have sex or sexual contact with a youth in a county secure pre-adjudication detention or post-adjudication correctional facility. Other Penal Code sections may have higher penalties for this type of conduct.

Penal Code Sec. 39.04. VIOLATIONS OF THE CIVIL RIGHTS OF PERSON IN CUSTODY; IMPROPER SEXUAL ACTIVITY WITH PERSON IN CUSTODY.

(e) In this subsection:

(4) "Sexual conduct" and "performance" have the meanings assigned by Section 43.25.

(5) "Sexual performance" means any performance or part thereof that includes sexual conduct by an individual.

Commentary by Lisa Capers

Source: SB 103

Effective Date: June 8, 2007, at 6:50 p.m. Central Standard Time

Applicability: Conduct that occurs on or after the effective date.

Summary of Changes: Subsections (4) and (5) are added to Section 39.04(e) and provide the definitions of three

terms. Penal Code Section 43.25 is the offense of *Sexual Performance by a Child*.

Penal Code Sec. 39.04. VIOLATIONS OF THE CIVIL RIGHTS OF PERSON IN CUSTODY; IMPROPER SEXUAL ACTIVITY WITH PERSON IN CUSTODY.

(f) An employee of the Texas Department of Criminal Justice, the Texas Youth Commission, or a local juvenile probation department commits an offense if the employee engages in sexual contact, sexual intercourse, or deviate sexual intercourse with an individual who is not the employee's spouse and who the employee knows is under the supervision of the department, commission, or probation department but not in the custody of the department, commission, or probation department.

Commentary by Lisa Capers

Source: HB 2884

Effective Date: September 1, 2007

Applicability: Conduct that occurs on or after the effective date.

Summary of Changes: This provision amends Penal Code Section 39.04(f) to expand the offense of *Violations of the Civil Rights of Person In Custody; Improper Sexual Activity with Person in Custody* to include employees of TYC and local juvenile probation departments. Current law clearly prohibits TDCJ employees from engaging in sexual activity with persons under their supervision but who are not in custody. This amendment adds TYC employees and local juvenile probation departments to the list of professionals who are prohibited from engaging in sexual activity with persons under the jurisdiction of their employing entity. It is important to note that this provision applies to all *employees* of TDCJ, TYC and local juvenile probation departments, so it is not limited simply to probation and parole officers.

Code of Criminal Procedure

Code of Criminal Procedure Art. 2.12. WHO ARE PEACE OFFICERS.

The following are peace officers.

(1) sheriffs, their deputies, and those reserve deputies who hold a permanent peace officer license issued under Chapter 1701, Occupations Code;

(2) constables, deputy constables, and those reserve deputy constables who hold a permanent peace officer license issued under Chapter 1701, Occupations Code;

(3) marshals or police officers of an incorporated city, town, or village, and those reserve municipal police officers who hold a permanent peace officer license issued under Chapter 1701, Occupations Code;

(4) rangers and officers commissioned by the Public Safety Commission and the Director of the Department of Public Safety;

(5) investigators of the district attorneys', criminal district attorneys', and county attorneys' offices;

(6) law enforcement agents of the Texas Alcoholic Beverage Commission;

(7) each member of an arson investigating unit commissioned by a city, a county, or the state;

(8) officers commissioned under Section 37.081, Education Code, or Subchapter E, Chapter 51, Education Code;

(9) officers commissioned by the General Services Commission;

(10) law enforcement officers commissioned by the Parks and Wildlife Commission;

(11) airport police officers commissioned by a city with a population of more than 1.18 million that operates an airport that serves commercial air carriers;

(12) airport security personnel commissioned as peace officers by the governing body of any political subdivision of this state, other than a city described by Subdivision (11), that operates an airport that serves commercial air carriers;

(13) municipal park and recreational patrolmen and security officers;

(14) security officers and investigators commissioned as peace officers by the comptroller;

(15) officers commissioned by a water control and improvement district under Section 49.216, Water Code;

(16) officers commissioned by a board of trustees under Chapter 54, Transportation Code;

(17) investigators commissioned by the Texas Medical [State] Board [~~of Medical Examiners~~];

(18) officers commissioned by the board of managers of the Dallas County Hospital District, the Tarrant County Hospital District, or the Bexar County Hospital District under Section 281.057, Health and Safety Code;

(19) county park rangers commissioned under Subchapter E, Chapter 351, Local Government Code;

(20) investigators employed by the Texas Racing Commission;

(21) officers commissioned under Chapter 554, Occupations Code;

(22) officers commissioned by the governing body of a metropolitan rapid transit authority under Section 451.108, Transportation Code, or by a regional transportation authority under Section 452.110, Transportation Code;

(23) investigators commissioned by the attorney general under Section 402.009, Government Code;

(24) security officers and investigators commissioned as peace officers under Chapter 466, Government Code;

(25) an officer employed by the ~~[Texas]~~ Department of State Health Services under Section 431.2471, Health and Safety Code;

(26) officers appointed by an appellate court under Subchapter F, Chapter 53, Government Code;

(27) officers commissioned by the state fire marshal under Chapter 417, Government Code;

(28) an investigator commissioned by the commissioner of insurance under Section 701.104 [~~Article 1.10D~~], Insurance Code;

(29) apprehension specialists and inspectors general commissioned by the Texas Youth Commission as officers under Sections 61.0451 and [~~Section~~] 61.0931, Human Resources Code;

(30) officers appointed by the executive director of the Texas Department of Criminal Justice under Section 493.019, Government Code;

(31) investigators commissioned by the Commission on Law Enforcement Officer Standards and Education under Section 1701.160, Occupations Code;

(32) commission investigators commissioned by the Texas [~~Commission on~~] Private Security Board under Section 1702.061(f), Occupations Code;

(33) the fire marshal and any officers, inspectors, or investigators commissioned by an emergency services district under Chapter 775, Health and Safety Code; and

(34) officers commissioned by the State Board of Dental Examiners under Section 254.013, Occupations Code, subject to the limitations imposed by that section.

Commentary by Lisa Capers

Source: SB 103

Effective Date: June 8, 2007, at 6:50 p.m. Central Standard Time

Applicability: Inspector generals commissioned by TYC or on after the effective date.

Summary of Changes: This amendment authorizes TYC to commission their inspector generals as law enforcement officers. Inspector generals have the duty to investigate allegations of criminal conduct at TYC institutions.

Code of Criminal Procedure Art. 2.12. WHO ARE PEACE OFFICERS.

The following are peace officers:

(1) sheriffs, their deputies, and those reserve deputies who hold a permanent peace officer license issued under Chapter 1701, Occupations Code;

(2) constables, deputy constables, and those reserve deputy constables who hold a permanent peace officer license issued under Chapter 1701, Occupations Code;

(3) marshals or police officers of an incorporated city, town, or village, and those reserve municipal police officers who hold a permanent peace officer license issued under Chapter 1701, Occupations Code;

(4) rangers and officers commissioned by the Public Safety Commission and the Director of the Department of Public Safety;

(5) investigators of the district attorneys', criminal district attorneys', and county attorneys' offices;

(6) law enforcement agents of the Texas Alcoholic Beverage Commission;

(7) each member of an arson investigating unit commissioned by a city, a county, or the state;

(8) officers commissioned under Section 37.081, Education Code, or Subchapter E, Chapter 51, Education Code;

(9) officers commissioned by the General Services Commission;

(10) law enforcement officers commissioned by the Parks and Wildlife Commission;

(11) airport police officers commissioned by a city with a population of more than 1.18 million that operates an airport that serves commercial air carriers;

(12) airport security personnel commissioned as peace officers by the governing body of any political subdivision of this state, other than a city described by Subdivision (11), that operates an airport that serves commercial air carriers;

(13) municipal park and recreational patrolmen and security officers;

(14) security officers and investigators commissioned as peace officers by the comptroller;

(15) officers commissioned by a water control and improvement district under Section 49.216, Water Code;

(16) officers commissioned by a board of trustees under Chapter 54, Transportation Code;

(17) investigators commissioned by the Texas Medical [~~State~~] Board [~~of Medical Examiners~~];

(18) officers commissioned by the board of managers of the Dallas County Hospital District, the Tarrant County Hospital District, or the Bexar County Hospital District under Section 281.057, Health and Safety Code;

(19) county park rangers commissioned under Subchapter E, Chapter 351, Local Government Code;

(20) investigators employed by the Texas Racing Commission;

(21) officers commissioned under Chapter 554, Occupations Code;

(22) officers commissioned by the governing body of a metropolitan rapid transit authority under Section 451.108, Transportation Code, or by a regional transportation authority under Section 452.110, Transportation Code;

(23) investigators commissioned by the attorney general under Section 402.009, Government Code;

(24) security officers and investigators commissioned as peace officers under Chapter 466, Government Code;

(25) an officer employed by the ~~[Texas]~~ Department of State Health Services under Section 431.2471, Health and Safety Code;

(26) officers appointed by an appellate court under Subchapter F, Chapter 53, Government Code;

(27) officers commissioned by the state fire marshal under Chapter 417, Government Code;

(28) an investigator commissioned by the commissioner of insurance under Section 701.104 [~~Article 1.10D~~], Insurance Code;

(29) apprehension specialists and inspectors general commissioned by the Texas Youth Commission as officers under Sections 61.0451 and [~~Section~~] 61.0931, Human Resources Code;

(30) officers appointed by the executive director of the Texas Department of Criminal Justice under Section 493.019, Government Code;

(31) investigators commissioned by the Commission on Law Enforcement Officer Standards and Education under Section 1701.160, Occupations Code;

(32) commission investigators commissioned by the Texas ~~[Commission on]~~ Private Security Board under Section 1702.061(f), Occupations Code;

(33) the fire marshal and any officers, inspectors, or investigators commissioned by an emergency services district under Chapter 775, Health and Safety Code; and

(34) officers commissioned by the State Board of Dental Examiners under Section 254.013, Occupations Code, subject to the limitations imposed by that section.

Commentary by Lisa Capers

Source: HB 914

Effective Date: June 15, 2007

Applicability: Inspector generals commissioned by TYC or on after the effective date.

Summary of Changes: This provision in HB 914 is identical to the provision in SB 103. The amendment authorizes TYC to commission their inspector generals as law enforcement officers. Inspector generals have the duty to investigate allegations of criminal conduct at TYC institutions.

Code of Criminal Procedure Art. 2.12. WHO ARE PEACE OFFICERS.

The following are peace officers:

(1) sheriffs, their deputies, and those reserve deputies who hold a permanent peace officer license issued under Chapter 1701, Occupations Code;

(2) constables, deputy constables, and those reserve deputy constables who hold a permanent peace officer license issued under Chapter 1701, Occupations Code;

(3) marshals or police officers of an incorporated city, town, or village, and those reserve municip-

pal police officers who hold a permanent peace officer license issued under Chapter 1701, Occupations Code;

(4) rangers and officers commissioned by the Public Safety Commission and the Director of the Department of Public Safety;

(5) investigators of the district attorneys', criminal district attorneys', and county attorneys' offices;

(6) law enforcement agents of the Texas Alcoholic Beverage Commission;

(7) each member of an arson investigating unit commissioned by a city, a county, or the state;

(8) officers commissioned under Section 37.081, Education Code, or Subchapter E, Chapter 51, Education Code;

(9) officers commissioned by the General Services Commission;

(10) law enforcement officers commissioned by the Parks and Wildlife Commission;

(11) airport police officers commissioned by a city with a population of more than 1.18 million that operates an airport that serves commercial air carriers;

(12) airport security personnel commissioned as peace officers by the governing body of any political subdivision of this state, other than a city described by Subdivision (11), that operates an airport that serves commercial air carriers;

(13) municipal park and recreational patrolmen and security officers;

(14) security officers and investigators commissioned as peace officers by the comptroller;

(15) officers commissioned by a water control and improvement district under Section 49.216, Water Code;

(16) officers commissioned by a board of trustees under Chapter 54, Transportation Code;

(17) investigators commissioned by the Texas Medical [~~State~~] Board [~~of Medical Examiners~~];

(18) officers commissioned by the board of managers of the Dallas County Hospital District, the Tarrant County Hospital District, or the Bexar County Hospital District under Section 281.057, Health and Safety Code;

(19) county park rangers commissioned under Subchapter E, Chapter 351, Local Government Code;

(20) investigators employed by the Texas Racing Commission;

(21) officers commissioned under Chapter 554, Occupations Code;

(22) officers commissioned by the governing body of a metropolitan rapid transit authority under Section 451.108, Transportation Code, or by a regional transportation authority under Section 452.110, Transportation Code;

(23) investigators commissioned by the attorney general under Section 402.009, Government Code;

(24) security officers and investigators commissioned as peace officers under Chapter 466, Government Code;

(25) an officer employed by the ~~[Texas]~~ Department of State Health Services under Section 431.2471, Health and Safety Code;

(26) officers appointed by an appellate court under Subchapter F, Chapter 53, Government Code;

(27) officers commissioned by the state fire marshal under Chapter 417, Government Code;

(28) an investigator commissioned by the commissioner of insurance under Section 701.104 ~~[Article 1.10D]~~, Insurance Code;

(29) apprehension specialists commissioned by the Texas Youth Commission as officers under Section 61.0931, Human Resources Code;

(30) officers appointed by the executive director of the Texas Department of Criminal Justice under Section 493.019, Government Code;

(31) investigators commissioned by the Commission on Law Enforcement Officer Standards and Education under Section 1701.160, Occupations Code;

(32) commission investigators commissioned by the Texas ~~[Commission on]~~ Private Security Board under Section 1702.061(f), Occupations Code;

(33) the fire marshal and any officers, inspectors, or investigators commissioned by an emergency services district under Chapter 775, Health and Safety Code; ~~[and]~~

(34) officers commissioned by the State Board of Dental Examiners under Section 254.013, Occupations Code, subject to the limitations imposed by that section; and

(35) investigators commissioned by the Texas Juvenile Probation Commission as officers under Section 141.055, Human Resources Code.

Commentary by Lisa Capers

Source: HB 2884

Effective Date: September 1, 2007

Applicability: TJPC investigators commissioned on or after the effective date.

Summary of Changes: Code of Criminal Procedure Article 2.02 defines which individuals may be defined as *peace officers* in the State of Texas. A variety of state and local agencies and entities that perform law enforcement activities or that are engaged in other types of investigative functions are authorized to commission their employees as peace officers. The Texas Juvenile Probation Commission (TJPC) is the state agency mandated to investigate allegations of abuse, neglect or exploitation of a child in any juvenile justice program or facility (excluding any TYC operated programs or facilities). This amendment defines TJPC investigators as peace officers and the investigators will therefore have all the powers of a peace officer. The amendment also makes some technical corrections to names and law citations. The reference to Human Re-

sources Code Section 141.055 is the companion provision that actually gives TJPC the explicit authority to commission their investigators as peace officers. TYC was also given the authority to commission their inspector generals as peace officers in SB 103.

Code of Criminal Procedure Art. 42.037. RESTITUTION.

(s)(1) If a court orders a defendant convicted of an offense under Section 28.08, Penal Code, to make restitution to the victim of the offense, the court may order the defendant to make restitution as provided by Subsection (b)(1)(B) or by personally restoring the property by removing or painting over any markings the defendant made.

(2) A court shall order a defendant convicted of an offense under Section 28.08, Penal Code, to make restitution to a political subdivision that owns public property or erects a street sign or official traffic-control device on which the defendant makes markings in violation of Section 28.08, Penal Code. The amount of the restitution ordered must be equal to the lesser of the amount of restitution authorized by Subsection (b)(1)(B) or the cost to the political subdivision of restoring the public property, street sign, or official traffic-control device. If the court orders a defendant to make restitution under this subdivision and the defendant is financially unable to make the restitution, the court may order the defendant to perform a specific number of hours of community service, including service restoring the property by removing or painting over any markings the defendant made, to satisfy the restitution. For purposes of this subdivision, "official traffic-control device" has the meaning assigned by Section 541.304, Transportation Code.

Source: HB 2151

Effective Date: September 1, 2007

Applicability: Conduct occurring on or after effective date.
Summary of Changes: Amended Article 42.037 which expands the authority of a court placing a defendant on probation for the offense of graffiti to order the defendant, in addition to other conditions of probation, to reimburse the property owner for the cost of restoring the property. If the defendant made markings on public property, a street sign or an official traffic-control device, the court may also order the defendant to make restitution to the affected political subdivision or, with the consent of the political subdivision, to restore the affected property.

Code of Criminal Procedure Art. 45.052. DISMISSAL OF MISDEMEANOR CHARGE ON COMPLETION OF TEEN COURT PROGRAM.

(i) Notwithstanding Subsection (e) or (g), a justice or municipal court that is located in the Texas-Louisiana border region, as defined by Section 2056.002, Government Code, may charge a fee of \$20 under those subsections.

Commentary by Lisa Capers

Source: HB 2949

Effective Date: September 1, 2007

Applicability: Fees relating to a request for a teen court program made on or after the effective date.

Summary of Changes: Under current Section 54.032(e), a justice or municipal court may charge a child who requests teen court a fee not to exceed \$10 to cover the costs of administering the teen court program. Additionally, under Section 54.032(g), the justice or municipal court can charge an additional fee not to exceed \$10 to cover the cost to the teen court for performing its duties. New Subsection (h) authorizes a juvenile court in the Texas-Louisiana border region (18 counties) to charge a fee of \$20 for teen court programs under both Subsections (e) and (g), so the total fee could be \$40. Government Code Section 2056.002 states that the *Texas-Louisiana border region* means the area consisting of Bowie, Camp, Cass, Delta, Franklin, Gregg, Harrison, Hopkins, Lamar, Marion, Morris, Panola, Red River, Rusk, Smith, Titus, Upshur, and Wood Counties. The bill analysis for HB 2949 notes that inflation and other cost increases have eroded the buying power of the current \$10 fees and that the fees have not been increased since their original authorization. However, there was no discussion of why the legislation was limited to this region of the state. This is a companion change to the one made to Family Code Section 54.032.

Code of Criminal Procedure Art. 45.054. FAILURE TO ATTEND SCHOOL PROCEEDINGS.

(a-2) An order under Subsection (a) may not require a student to attend a juvenile justice alternative education program.

Commentary by Lisa Capers

Source: HB 2884

Effective Date: September 1, 2007

Applicability: Disposition orders issued on or after the effective date.

Summary of Changes: Code of Criminal Procedure Article 45.054 details the dispositional options available to a justice or municipal court when hearing a case against a student for failure to attend school. When juvenile justice alternative education programs (JJAEPs) were created in 1995, they were not intended, then or now, to serve this category of offender. This amendment makes it explicitly clear that justice and municipal courts may not require a student to attend a JJAEP as part of the court's disposition in a failure to attend school case.

Code of Criminal Procedure Art. 61.06. REMOVAL OF RECORDS RELATING TO AN INDIVIDUAL OTHER THAN A CHILD.

(c) In determining whether information is required to be removed from an intelligence database under Subsection (b), the three-year period does not include any

period during which the individual who is the subject of the information is:

(1) confined in the institutional division or the state jail division of the Texas Department of Criminal Justice;

(2) committed to a secure correctional facility operated by or under contract with the Texas Youth Commission, as defined by Section 51.02, Family Code; or

(3) committed to a facility operated by a juvenile board in lieu of being committed to a secure correctional facility operated by or under contract with the Texas Youth Commission.

Commentary by Lisa Capers

Source: SB 103

Effective Date: June 8, 2007, at 6:50 p.m. Central Standard Time

Applicability: Removal of information from database on or after effective date.

Summary of Changes: This provision amends Code of Criminal Procedure Article 61.06 to exempt gang database records from the mandatory removal requirement during the time when a juvenile was confined in a TYC facility or in a local post-adjudication secure correctional facility. Article 61.06 applies to adults and requires a three-year period of good behavior before gang records can be removed from the database. Section 61.07 is the removal requirement applicable to juveniles. Section 61.07 has a two-year period of good behavior before the mandatory records removal and the period does not include time spent in TYC for a felony offense or time spent in TDCJ's institutional or state jail division. Interestingly, Section 61.07 does not toll the two-year clock for time spent in a local post-adjudication secure correctional facility for juveniles but this new amendment does toll the three-year clock for adults who spend time in one of these local post-adjudication facilities.

Code of Criminal Procedure Art. 102.0171. COURT COSTS: JUVENILE DELINQUENCY PREVENTION FUNDS.

(a) A defendant convicted of an offense under Section 28.08, Penal Code, in a county court, county court at law, or district court shall pay a \$50 juvenile delinquency prevention and ~~[\$5]~~ graffiti eradication fee as a cost of court.

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

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

(2) provide educational and intervention programs and materials, including printed educational materials for distribution to primary and secondary school

students, designed to prevent individuals from committing offenses under Section 28.08, Penal Code;

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

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

(5) provide funding for local teen court programs;

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

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

Commentary by Chris Hubner

Source: HB 2151

Effective Date: September 1, 2007

Applicability: Conduct occurring on or after effective date.

Summary of Changes: Amended Subsection (c)(2) mandates that county juvenile delinquency prevention funds may be used only for certain purposes, which include providing educational and intervention programs and materials, such as printed educational materials for distribution to primary and secondary school students, designed to prevent individuals from committing graffiti-related offenses.

Code of Criminal Procedure Art. 104.003. STATE PAYMENT OF CERTAIN PROSECUTION COSTS.

(a) In a prosecution of a criminal offense or delinquent conduct [felony] committed on property owned or operated by or under contract with [while the actor was a prisoner in the custody of] the Texas Department of Criminal Justice or the Texas Youth Commission, or committed by or against a person in the custody of the department or commission while the person is performing a duty away from department or commission property [Corrections or a prosecution of an offense committed in the department by any person under Chapter 21, Acts of 55th Legislature, Regular Session, 1957 (Article 6184m, Vernon's Texas Civil Statutes), or Chapter 481, Health and Safety Code, or Sections 485.031 through 485.035, Health and Safety Code], the state shall reimburse the county for expenses incurred by the county, in an amount that the court determines to be reasonable, for payment of:

(1) salaries and expenses of foreign language interpreters and interpreters for deaf persons whose services are necessary to the prosecution;

(2) consultation fees of experts whose assistance is directly related to the prosecution;

(3) travel expenses for witnesses;

(4) expenses for the food, lodging, and compensation of jurors;

(5) compensation of witnesses;

(6) the cost of preparation of a statement of facts and a transcript of the trial for purposes of appeal;

(7) if the death of a person is an element of the offense, expenses of an inquest relating to the death;

(8) food, lodging, and travel expenses incurred by the prosecutor's staff during travel essential to the prosecution of the offense;

(9) court reporter's fees; and

(10) the cost of special security officers.

Commentary by Lisa Capers

Source: SB 103

Effective Date: June 8, 2007, at 6:50 p.m. Central Standard Time

Applicability: Prosecutions under this section on or after the effective date.

Summary of Changes: This provision requires the State of Texas to reimburse a county for certain expenses that the court determines to be reasonably incurred during the prosecution of a criminal offense or delinquent conduct committed at a TDCJ or TYC facility (including contract facilities) or committed by or against a person in the custody of TDCJ or TYC while performing a duty away from TDCJ or TYC property. These expenses include interpreters, expert witnesses, witness travel, juror expenses, witness compensation, document costs (e.g., statement of facts, transcript), inquest expenses, prosecutor staff expenses, court reporter fees, and security officers

Health and Safety Code

Health and Safety Code Sec. 551.008. TRANSFER OF FACILITIES.

(a) The department may transfer the South Campus of the Vernon State Hospital to the Texas Youth Commission contingent upon the agreement of the governing board of the department and the executive commissioner [governing board] of the Texas Youth Commission.

Commentary by Lisa Capers

Source: SB 103

Effective Date: June 8, 2007, at 6:50 p.m. Central Standard Time

Applicability: Transfers occurring after the effective date.

Summary of Changes: Prior law authorized the state (i.e., the agency formerly known as Texas Department of Mental Health and Mental Retardation) to transfer the South Campus of the Vernon State Hospital to TYC upon agreement of the TDMHMR board and the governing board of TYC. This amendment simply replaces the term *governing board* with *executive commissioner* to reflect the new governance structure of TYC as enacted in SB 103. For the next two years, TYC will have no *governing board* appointed by the Governor but will instead have an *executive commissioner* appointed by the Governor.

Occupations Code

Occupations Code Sec. 110.302. LICENSE REQUIREMENTS.

(c) The Texas Board of Criminal Justice [~~or the governing board of the Texas Youth Commission~~] may vote to exempt employees of the Texas Department of Criminal Justice [~~or the Texas Youth Commission, as appropriate,~~] from a specific licensing requirement imposed under this section if the board determines that the requirement causes financial or operational hardship on the agency. The Texas Youth Commission may not exempt any employee of the commission from a licensing requirement imposed by this section for any reason.

Commentary by Lisa Capers

Source: SB 103

Effective Date: June 8, 2007, at 6:50 p.m. Central Standard Time

Applicability: TYC sex offender treatment providers on or after the effective date.

Summary of Changes: Occupations Code Section 110.301 states that a person may not provide a rehabilitation service or act as a sex offender treatment provider unless the person is licensed. Subsection (a) previously authorized both TDCJ and TYC to exempt their employees from this licensing requirement. The new amendment to Subsection (c) reverses prior law and now prohibits TYC from exempting their employees from being licensed sex offender treatment providers.

SB 103 Applicability and Effective Date Provisions.

SECTION 65. A person committed to TYC on the basis of conduct constituting the commission of an offense of the grade of misdemeanor under Family Code Section 54.04(d)(2), as it existed before the effective date of this Act, must be discharged from the custody of the Texas Youth Commission not later than the person's 19th birthday.

SECTION 66. (a) Not later than November 1, 2007, TJPC shall issue guidelines for the creation of community-based programs required by Family Code Section 54.0401, as added by this Act.

(b) Not later than January 1, 2008, the juvenile board of a county to which Family Code Section 54.0401, as added by this Act, applies shall implement a community-based program that complies with the guidelines established by TJPC.

SECTION 67. The change in law made by Family Code Section 54.052, as added by this Act, and Human Resources Code Section 61.0841(c), as added by this Act, applies only to conduct for which a child is adjudicated on or after the effective date of this Act. A child who is adjudicated before the effective date of this Act is governed by

the law in effect when the child was adjudicated, and the former law is continued in effect for that purpose.

SECTION 68. The change in law made by this Act to Penal Code Section 39.04 applies only to an offense committed on or after September 1, 2007. An offense committed before September 1, 2007, is governed by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before September 1, 2007, if any element of the offense occurred before that date.

SECTION 69. TYC shall develop and adopt a mission statement, as required by Human Resources Code Section 61.0345, as added by this Act, on or before October 1, 2007.

SECTION 70. (a) Human Resources Code Section 61.0356(b), as added by this Act, applies only to a juvenile correctional officer hired by TYC on or after the effective date of this Act. As soon as practicable but not later than six months after the effective date of this Act, TYC shall complete providing the training to juvenile correctional officers hired before the effective date of this Act that is necessary to conform to the requirements of Human Resources Code Section 61.0356(b), as added by this Act.

(b) As soon as practicable after the effective date of this Act, TYC shall ensure that:

(1) each correctional facility operated by the commission that has a dormitory, including an open-bay dormitory, has a ratio of not less than one juvenile correctional officer performing direct supervisory duties for every 12 children committed to the facility, as required by Human Resources Code Section 61.0356(d), as added by this Act; and

(2) children younger than 15 years of age are assigned to separate correctional facility dorms from persons who are at least 17 years of age as required by Human Resources Code Section 61.061, as added by this Act.

SECTION 71. As soon as practicable after the effective date of this Act, the governor shall appoint the executive commissioner of TYC, as required by Human Resources Code Section 61.012, as amended by this Act, with a term of office expiring February 1, 2009.

SECTION 72. As soon as practicable after the effective date of this Act:

(1) the governor shall appoint three members of the advisory board of TYC, as required by Human Resources Code Section 61.013, as amended by this Act;

(2) the speaker of the house of representatives shall appoint three members of the advisory board of TYC, as required by Human Resources Code Section 61.013, as amended by this Act; and

(3) the lieutenant governor shall appoint three members of the advisory board of TYC, as required by Human Resources Code Section 61.013, as amended by this Act.

SECTION 73. A rule adopted by TYC before the effective date of this Act is a rule of the executive commissioner of TYC until superseded, modified, or repealed by the executive commissioner.

SECTION 74. The Health and Human Services Commission, TYC, and TJPC shall jointly establish a timetable for the submission of agency reports required by Government Code Section 531.016, as added by this Act, as soon as practicable after the effective date of this Act.

SECTION 75. Before October 1, 2007, TYC shall certify to the Employees Retirement System of Texas, in the manner prescribed by the retirement system, the name of each person employed by the Office of Inspector General at TYC as a law enforcement officer, as defined by Government Code Section 811.001, as amended by this Act, and any other information the system determines is necessary for the crediting of service and financing of benefits under Government Code Subtitle B, Title 8.

SECTION 76. As soon as practicable after the effective date of this Act, TYC shall, in the manner prescribed by Human Resources Code Section 61.0357, as added by this Act, begin obtaining national criminal history record information for each person who is described by Human Resources Code Section 61.0357(b), as added by this Act.

SECTION 77. (a) Not later than September 30, 2007, the board of directors of the Special Prosecution Unit established by Government Code Subchapter E, Chapter 41, as added by this Act, shall elect the initial members of the executive board of the board of directors as required by Government Code Section 41.304, as added by this Act. In

electing those members, the board of directors shall specify:

(1) which members serve terms expiring in even-numbered years and which serve terms expiring in odd-numbered years; and

(2) the beginning and end dates of the terms served by the members of the executive board.

(b) Not later than September 30, 2007, the board of directors of the Special Prosecution Unit established by Government Code Subchapter E, Chapter 41, as added by this Act, shall elect the presiding officer and the assistant presiding officer of the board of directors and the executive board of the board of directors as required by Government Code Section 41.305, as added by this Act. In electing those officers, the board of directors shall specify the beginning and end dates of the terms served by the officers.

(c) As soon as possible after the effective date of this Act, the executive board of the board of directors of the Special Prosecution Unit established by Government Code Subchapter E, Chapter 41, as added by this Act, shall elect the counselor as required by Government Code Section 41.309, as added by this Act.

Commentary by Lisa Capers

Source: SB 103

Comments: SB 103 had 13 separate applicability date provisions for various portions of the bill. The commentary to each section incorporates the applicability and effective date provisions; however, the actual sections of the bill are provided here for reference purposes.

2. Inter-County Transfer

Family Code, Sec. 51.072. TRANSFER OF PROBATION SUPERVISION BETWEEN COUNTIES: INTERIM 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. If the receiving county and the sending county are member counties within a judicial district served by one juvenile probation department, then a transfer of probation supervision is not required.

(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, race, and date of birth;

(2) the name, address, date of birth, and social security or driver's license number, and telephone number, if available, 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 name and telephone number of the child's school in the receiving county, if available; and

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

(f) Not later than 10 ~~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.

(f-1) The inter-county transfer officers in the sending and receiving counties shall agree on the official start date for the period of interim supervision, which must begin no later than three business days after the date the documents required under Subsection (f) have been received and accepted by the receiving county.

(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. The juvenile probation department in the receiving county shall provide the sending county with supporting written documentation of the incidents of violation of probation on which the request to resume direct supervision is based.

(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. During the period of

interim supervision, the receiving county shall collect and distribute to the victim monetary restitution payments in the manner specified by the sending county. At the expiration of the period of interim supervision, the receiving county shall collect and distribute directly to the victim any remaining payments.

(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. After signing and entry of an order of transfer of permanent supervision by the sending county juvenile court, the juvenile probation department shall, in accordance with Section 51.073(b), promptly send the permanent supervision order and related documents to the receiving county.

(m-1) If a child on interim supervision moves to another county of residence or is otherwise no longer in the receiving county before the expiration of 180 days, the receiving county shall direct the sending county to resume supervision of the child.

(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 the greater of either 180 days or 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. If the state elects to initiate transfer proceedings under Section 54.051, the [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.

Commentary by Nydia D. Thomas

Source: HB 2884

Effective Date: September 1, 2007

Applicability: Transfers occurring on or after the effective date.

Summary of Changes: Last session, the legislature abolished the practice of courtesy supervision and established specific statutory guidelines to facilitate the transfer of probation supervision between counties. During the legislative interim period, juvenile justice personnel responsible for handling supervision transfer cases were asked to identify areas for technical cleanup since the initial enactment of Section 51.072 and related provisions in 2005. The amendments contained in House Bill 2884 are intended to clarify some of the practical and procedural aspects of interim and permanent supervision.

The legislature made a number of specific changes to Section 51.072 relating to documentation, time frames and payment of restitution in order to refine the mechanics of the interim supervision process.

Subsection (b) eliminates the superfluous requirement imposed upon multi-county jurisdictions and judicial districts to request interim supervision from a county served by the same probation department.

Subsection (e) requires the sending county to include, on the forms used to initiate interim supervision, the telephone number of the parent or other eligible person with whom the child will now reside. This subsection also requires that the child's race be specified as an additional means of identification. If available, the sending county is required under this subsection to provide the name and telephone number of the child's school. These changes are necessary to expedite the transfer process by assisting the officer in the receiving county to quickly identify, locate and contact the child and parent in the new county of residence.

Subsection (f) extends the time required to process and return the acceptance of an interim supervision case from five (5) to ten (10) business days. As contemplated in the original statute, five business days seemed an adequate time frame in which to process and accept an interim supervision case. In reality, many departments reported that the process took substantially longer to complete. This amendment provides additional time for the preparation and exchange of the information required to accept and finalize the interim supervision transfer. Subsection (f-1) requires the inter-county transfer officers to establish an official start date for counting the 180-days of interim supervision within three (3) business days of the time that all documents have been received and accepted. Under prior law, the official start date commenced solely upon the agreement of the inter-county transfer officers in the sending and receiving counties. Since the transfer of jurisdiction was linked to the agreed date, juvenile justice professionals and ultimately the legislature determined that a more precise method to determine the actual date of transfer of jurisdiction at the end of interim supervision was needed. As a practice pointer, some have suggested that the official start date should ideally coincide with the date that the receiving county has its initial face-to-face meeting with the child. As envisioned, the amendments to this subsection would require the sending county to provide all mandatory documents, complete the transfer and establish an interim supervision start date within a total of 14 business days.

Subsection (j) requires the receiving county's juvenile probation department to provide the sending county with supporting written documentation of the circumstances relating to the technical or offense violations of probation upon which a directive to resume is based. This documentation provides the sending county with the probable cause to file a modification under Section 54.05 and substantiates the rationale for returning the case to the sending county.

The 2005 statute authorized the receiving county to process and retain probation supervision fees during interim supervision but was silent about which county was responsible for collecting and distributing restitution payments. Subsection (k) clarifies financial matters regarding victim restitution by making it clear that the receiving county is required to collect and distribute monetary restitution payments as specified by the sending county. It also obligates the receiving county to distribute any remaining or unremitted monetary restitution payments directly to the victim or as required by law (See Section 54.04581 commentary, *infra*) after interim supervision expires and supervision of the case becomes permanent.

Subsection (m) requires the juvenile probation department (after signing and entering an order of automatic or early transfer of permanent supervision by the sending county court) to promptly send the permanent supervision transfer order and any related documents to the receiving county in accordance with Section 51.073 (b).

Inter-county transfer officers around the state expressed concerns about the inability to send a case back to the sending county when a child moved to a third county, other than the sending or receiving county, prior to the expiration of interim supervision. Subsection (m-1) is intended to provide the receiving county with a mechanism to notify the sending county, by means of a directive to resume, that the child has moved to a third county prior to the expiration of the 180-day period of interim supervision. This amendment allows the receiving county to close out and return the case to the sending county. This subsection further affirms that during the period of interim supervision, the sending county actually retains jurisdiction over a child and is required to resume supervision of the case or initiate a request for supervision in the child's new county of residence, if appropriate.

The original statute did not set a lower limit on the duration of interim supervision for determinate sentence probation. Subsection (n) clarifies that the period of interim supervision for determinate sentence probation cannot be less than 180 days. The change further clarifies that Section 54.051 regarding Transfer of Determinate Sentence Probation to Appropriate District Court is the basis upon which an early request for permanent supervision of determinate sentence probation can be sought.

Family Code, Sec. 51.073. TRANSFER OF PROBATION SUPERVISION BETWEEN COUNTIES: PERMANENT SUPERVISION.

(c) The juvenile court of the receiving county shall require that the child be brought before the court in order to impose new or different conditions of probation than those originally ordered by the sending county or ordered by the receiving county during the period of interim supervision. The child shall be represented by counsel as provided by Section 51.10.

(d-1) On the final transfer of a case involving a child who has been adjudicated as having committed an offense for which registration is required under Chapter 62,

Code of Criminal Procedure, the receiving county shall have jurisdiction to conduct a hearing under that chapter. This subsection does not prohibit the receiving county juvenile court from considering the written recommendations of the sending county juvenile court.

Commentary by Nydia D. Thomas

Source: HB 2884

Effective Date: September 1, 2007

Applicability: Transfers occurring on or after the effective date.

Summary of Changes: Juvenile justice professionals expressed concerns relating to the necessity and efficiency of the permanent supervision hearing required under Section 51.073. Subsection (c) eliminates the need for a permanent supervision hearing when there are no changes to the terms originally ordered by the sending county or those ordered by the receiving county during the period of interim supervision. As such, the transfer or permanent supervision can be finalized by filing and entering under the receiving county's cause number, an agreed permanent supervision order along with the restatement of the existing terms and conditions of probation. Dispensing with the requirement of a formal hearing would alleviate the necessity and expense of hiring an attorney to represent the child when the terms and conditions of the court have been communicated to the child in a prior proceeding and have not changed. However, if new or different terms are imposed at the time supervision becomes permanent, a formal hearing must be held in accordance with Section 51.10 since this hearing is tantamount to a dispositional hearing.

Subsection (e) clarifies that once supervision becomes permanent, the receiving county has jurisdictional authority over the sex offender registration hearing and related decisions made under Code of Criminal Procedure Chapter 62. The authority to make this dispositional decision passes to the receiving county upon the expiration of interim supervision and related proceedings to finalize permanent supervision. This amendment would, however, authorize the receiving county to consider the written recommendations of the sending county's juvenile court with a residual interest in the decision regarding sex offender registration.

Family Code, Sec. 51.074. TRANSFER OF PROBATION SUPERVISION BETWEEN COUNTIES: DEFERRED PROSECUTION.

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

(b) On an extension of a previous order of deferred prosecution authorized under Section 53.03(j), the child shall remain on interim supervision for an additional period not to exceed 180 days.

(c) On a violation of the conditions of the original deferred prosecution agreement, the receiving county shall forward the case to the sending county for prosecution or other action in the manner provided by Sections 51.072(i) and (j), except that the original conditions of deferred prosecution may not be modified by the receiving county.

Commentary by Nydia D. Thomas

Source: HB 2884

Effective Date: September 1, 2007

Applicability: Transfers occurring on or after the effective date.

Summary of Changes: The 2005 statute did not address whether a child, who violates the conditions of deferred prosecution and is placed on an additional period of court-extended deferred for up to six months, remains on interim supervision. Subsection (b) is added to Section 51.074 to clarify that the child continues on interim supervision when the period of deferred prosecution is extended under Section 53.03(j).

Another matter regarding deferred prosecution was addressed in the amendment to Subsection (c). Generally, the primary remedy for a violation of deferred prosecution is to file a petition on the underlying offense. Under the inter-county transfer statute, however, jurisdiction remains with the sending county during the period of interim supervision. As such, only the sending county has authority to prosecute for the violation. Subsection (c) clarifies that the receiving county may not modify the conditions of the deferred prosecution agreement imposed by the sending county. This section also establishes the mechanism for the receiving county to deal with violations by directing the sending county to resume supervision.

3. Child Protective Services

Senate Bill 758 by **Senator Nelson** and **Representative Rose** is the clean-up bill to SB 6 which was passed during the 79th Legislative Session and instituted numerous reforms impacting the Department of Family and Protective Services (DFPS). The bill continues reforms in protective services and seeks to improve quality and accountability in foster care. SB 758 also clarifies certain provisions contained in SB 6 and modifies the privatization plan for foster care in Texas.

Because the bill is lengthy, the full text is not included in this issue, but it can be downloaded at the legislature's website at www.capitol.state.tx.us.

A synopsis of the key provisions of the bill as prepared by DFPS is provided below:

Total Agency Impact

- Establishes an **Improving Services for Children and Families Plan** designed to:
 - **Keep families together**
 - Engage families to ensure children can remain safely in their own homes through the provision of family preservation services.
 - Ensure adequate resources are available for purchased services for children and families prior to removal.
 - **Reduce the length of time children remain in state care**
 - Ensure services that are realistic, accessible and available to children and families.
 - Lower substitute care caseloads to meet federal requirements.
 - Achieve permanency in a timely manner.
 - **Improve the quality and accountability of foster care**
 - Improve quality and accountability in regulatory services delivered by DFPS.
 - Improve quality and accountability in services delivered by contracted providers.
 - Expand substitute care quality and capacity in local communities by performing annual statewide needs analyses and enhancing community engagement and contractor development activities.
 - **Reduce the rate of growth in foster care**
 - Realize foster care caseload reduction by providing services that will result in fewer children entering the foster care system.
 - Realize foster care caseload reduction by supporting kinship care and adoption efforts to result in shorter stays in foster care for children.
- **Repeals the Independent Administrator Model** established in Senate Bill 6 (79th Legislature) for the outsourcing of substitute care and case management.

Child Protective Services (CPS)

- Creates the **Enhanced In-Home Support Program** for children and families in child neglect cases where poverty is a significant factor.
 - Federal Temporary Assistance for Needy Families (TANF) funding will be used to provide assistance to needy families so that children may be cared for in their own homes or in the home of relatives.
- Provide children who age out of foster care with a **copy of their birth certificate and other medical information**.
- Department of State Health Services and DFPS will work together to establish a cost-effective and efficient method of **providing birth records/certificates for children in foster care**.
- Provide children who enter the **Preparation for Adult Living (PAL) Program** with a handbook describing the program and resources available to help them prepare for independent living.
- Allows former foster children to be **eligible for pre-kindergarten programs**.
- Develop criteria to **pay a higher adoption subsidy amount** for certain children who would not otherwise have been adopted without the higher rate.
- Requires DFPS to work with the OneStar Foundation to **increase foster families and provide training** to faith-based organizations that support foster families.
- Work with the Department of Assistive and Rehabilitative Services to **recruit foster and adoptive parents** with skills and experience to provide care for hearing-impaired children.
- Requires foster parents to receive **court approval prior to leaving the country** with a child in foster care.
- Creates a **Committee on Pediatric Excellence Relating to Abuse and Neglect**, led by the Department of State Health Services. This committee will develop forensic guidelines, protocols and recommendations that will be reported to the Legislature.
- DFPS will **study the effect of reimbursing CPS caseworkers for academic expenses** and the impact this might have on lowering turnover; and DFPS will **target hiring recruitment efforts** of new CPS caseworkers to those with a degree in related areas.

Child Care Licensing (CCL)

- Ensures that CCL remains a **separate division of the department** in order to maintain no conflict of interest in CCL's regulation of CPS.
- Adds safety specialists, risk analysts and a performance management unit to CCL designed to **improve accountability** within the division.

- Repeals currently existing licensing advisory committee and creates a **new committee to meet twice yearly to review licensing standards** and make recommendations about policy and statutory changes.
- Allow Residential Child Care Licensing (RCCL) facilities to **exceed capacity** for up to 48 hours to provide emergency care for children.
- Establishes a **team approach to RCCL investigations** and increases the number of agency foster home inspections if an allegation of abuse or neglect involves children under the age of 6.
- DFPS will **maintain a database of any verified foster home/group home** that is closed for any reason. This database will be available to private agencies in order to strengthen their ability to determine whether a new foster home applicant had ever previously been verified by another agency.
- Adds **guidelines for the transfer of foster homes** from one private agency to another. CPS may conduct review hearings to determine if it is in a child's best interest to stay in the current home or to be transferred to another home within the same agency.
- Requires **CCL representatives to meet, face-to-face, with day care directors** during annual unannounced inspections.
- All day care center applicants must get a **fingerprint-based criminal history check** in addition to already existing background check requirements.

Purchased Client Services (PCS)/Contracting

- Establishes a pilot program to **outsource a goal of 5% of case management services** by September 2008.
 - Requires a third-party evaluation of the case management pilot.
 - Deletes references to the Independent Administrator Model established in Senate Bill 6 (79th Legislature).
 - Deletes the requirement to outsource all substitute care services.
- Permits DFPS to **contract for the services of special investigators**, those investigators with law enforcement experience.

Code of Criminal Procedure Art. 5.04. DUTIES OF PEACE OFFICERS.

(a-1) A peace officer who investigates a family violence allegation or who responds to a disturbance call that may involve family violence shall determine whether the address of the persons involved in the allegation or call matches the address of a current licensed foster home or verified agency foster home listed in the Texas Crime Information Center.

Commentary by Chris Hubner

Source: SB 723

Effective Date: June 15, 2007

Applicability: Information regarding placement of children on or after effective date.

Summary of Changes: In addition to a peace officer's primary duty to protect potential victims of family violence, new Subsection (a-1) imposes the extra duty to determine whether the address of the family violence call is a current foster home listed in the TCIC database.

Code of Criminal Procedure Art. 5.05. REPORTS AND RECORDS.

(a-1) In addition to the written report required under Subsection (a), a peace officer who investigates a family violence incident or who responds to a disturbance call that may involve family violence shall make a report to the Department of Family and Protective Services if the location of the incident or call, or the known address of a person involved in the incident or call, matches the address of a current licensed foster home or a verified agency foster home as listed in the Texas Crime Information Center. The report under this subsection may be made orally or electronically and must:

(1) include the information required by Subsection (a); and

(2) be filed with the Department of Family and Protective Services within 24 hours of the beginning of the investigation or receipt of the disturbance call.

(b) Each local law enforcement agency shall establish a departmental code for identifying and retrieving family violence reports as outlined in Subsection (a) of this section. A district or county attorney or an assistant district or county attorney exercising authority in the county where the law enforcement agency maintains records under this section is entitled to access to the records. The Department of Family and Protective Services is entitled to access the records relating to any person who is 14 years of age or older and who resides in a licensed foster home or a verified agency foster home.

Commentary by Chris Hubner

Source: SB 723

Effective Date: June 15, 2007

Applicability: Information regarding placement of children on or after effective date.

Summary of Changes: SB 723 requires police investigating family violence calls to determine whether the address of the family violence or disturbance call is a licensed foster home and, if so, to make a report to DFPS within 24 hours. A DFPS database will make confidential information regarding foster homes available to law enforcement. In turn, DFPS may access domestic violence reports of persons who are old enough to be subject to background checks (14 years or older) and who reside in the foster home. The bill also requires DFPS to notify child-placing agencies about family violence reports occurring at their foster homes. The Health and Human Services Commission will develop rules regarding how DFPS and child-placing agencies will handle such reports.

Education Code Sec. 38.004. CHILD ABUSE REPORTING AND PROGRAMS.

(a-1) The agency shall:

(1) maintain on the agency Internet website a list of links to websites that provide information regarding the prevention of child abuse; and

(2) develop and periodically update a training program on prevention of child abuse that a school district may use for staff development.

Commentary by Chris Hubner

Source: SB 1456

Effective Date: June 15, 2007

Applicability: Information and training for educators on or after effective date.

Summary of Changes: Recognizing that public school educators are in a unique position to identify the signs of child abuse, SB 1456 requires the Texas Education Agency to maintain links on its website regarding the prevention of child abuse and to develop a child abuse prevention training program that school districts can use for staff development.

Family Code Sec. 107.004. ADDITIONAL DUTIES FOR ATTORNEY AD LITEM FOR CHILD.

(e) An attorney ad litem appointed for a child in a proceeding under Chapter 262 or 263 is not required to comply with Subsection (d) before a hearing if the court finds at that hearing that the attorney ad litem has shown good cause why the attorney ad litem's compliance with that subsection is not feasible or in the best interest of the child. Additionally, a court may, on a showing of good cause, authorize an attorney ad litem to comply with Subsection (d) by conferring with the child or other individual, as appropriate, by telephone or video conference.

Commentary by Chris Hubner

Source: HB 1972

Effective Date: June 15, 2007

Applicability: Requirements applicable to an attorney ad litem on or after effective date.

Summary of Changes: Currently, with limited exceptions, an attorney ad litem must meet in-person with a child-client who is at least four years old before each court hearing. In 2006, Attorney General Opinion No. GA-0406 ruled that this statutory duty cannot be satisfied by conducting a telephone interview unless the attorney ad litem shows good cause for noncompliance or that compliance is not in the child's best interest. HB 1972 authorizes a court, on a showing of good cause by the attorney ad litem, to permit the required meeting by telephone or video conference.

Family Code Sec. 107.013. MANDATORY APPOINTMENT OF ATTORNEY AD LITEM FOR PARENT.

(d) A parent who claims indigence under Subsection (a) must file an affidavit of indigence in accordance with Rule 145(b) of the Texas Rules of Civil Procedure before the court can conduct a hearing to determine the parent's indigence under this section.

Commentary by Chris Hubner

Source: SB 813

Effective Date: June 15, 2007

Applicability: Claims of indigence on or after effective date.

Summary of Changes: SB 813 requires a parent in a termination suit filed by the Texas Department of Family and Protective Services to file an affidavit of indigence before the court can determine whether the parent is indigent and therefore entitled to a court-appointed lawyer.

Family Code Sec. 263.405. APPEAL OF FINAL ORDER.

(b) Not later than the 15th day after the date a final order is signed by the trial judge, a party who intends to request a new trial or ~~[intending to]~~ appeal the order must file with the trial court:

(1) a request for a new trial; or

(2) if an appeal is sought, a statement of the point or points on which the party intends to appeal.

(b-1) The statement under Subsection (b)(2) may be combined with a motion for a new trial.

Commentary by Chris Hubner

Source: SB 813

Effective Date: June 15, 2007

Applicability: Requests for new trial or appeal on or after effective date.

Summary of Changes: SB 813 enacts procedural changes that require a party who intends to request a new trial or appeal to do so not later than the 15th day after the date the court signs a final order. The statement of the point(s) on which the party intends to appeal may be combined with the motion for new trial.

Family Code Sec. 263.302. CHILD'S ATTENDANCE AT HEARING.

The child shall attend each permanency hearing unless the court specifically excuses the child's attendance. The court shall consult with the child in a developmentally appropriate manner regarding the child's permanency plan, if the child is four years of age or older and if the court determines it is in the best interest of the child. Failure by the child to attend a hearing does not affect the validity of an order rendered at the hearing.

Commentary by Chris Hubner

Source: SB 759

Effective Date: June 15, 2007

Applicability: Requirements regarding permanency hearings on or after effective date.

Summary of Changes: SB 759 requires judges during a permanency hearing to consult with a child in a *developmentally appropriate manner* about the child's permanency plan if the child is at least four years old and if the court finds it is in the child's best interest.

Family Code Sec. 263.501. PLACEMENT REVIEW AFTER FINAL ORDER.

(d) The following are entitled to not less than 10 days' notice of a placement review hearing and are entitled to present evidence and be heard at the hearing:

- (1) the department;
- (2) the foster parent, preadoptive parent, relative of the child providing care, or director of the group home or institution in which the child is residing;
- (3) each parent of the child;
- (4) each possessory conservator or guardian of the child;

(5) the child's attorney ad litem and volunteer advocate, if the appointments were not dismissed in the final order; and

(6) any other person or agency named by the court as having an interest in the child's welfare.

(e) The licensed administrator of the child-placing agency responsible for placing the child is entitled to not less than 10 days' notice of a placement review hearing.

(f) The child shall attend each placement review hearing unless the court specifically excuses the child's attendance. The court shall consult with the child in a developmentally appropriate manner regarding the child's permanency or transition plan, if the child is four years of age or older. Failure by the child to attend a hearing does not affect the validity of an order rendered at the [The court may dispense with the requirement that the child attend a placement review] hearing.

Commentary by Chris Hubner

Source: SB 759

Effective Date: June 15, 2007

Applicability: Requirements regarding placement review hearings on or after effective date.

Summary of Changes: SB 759 makes it clear that the entities and persons who are entitled to 10 days notice of a placement review hearing are also allowed to present evidence and be heard at the hearing. Licensed administrators of child-placing agencies are added to this list as well. Additionally, judges are now required to consult with a child during the placement review hearing in a *developmentally appropriate manner* about the child's permanency or transition plan, if the child is at least four years old. There is no

requirement that the court make a best interest determination. Children are required to attend each placement review hearing unless the court specifically excuses attendance; however, failure to attend does not affect the validity of an order rendered at the hearing.

Family Code Sec. 266.001. DEFINITIONS.

(2-a) "Drug research program" means any clinical trial, clinical investigation, drug study, or active medical or clinical research that has been approved by an institutional review board in accordance with the standards provided in the Code of Federal Regulations, 45 C.F.R. Sections 46.404 through 46.407, regarding:

(A) an investigational new drug; or

(B) the efficacy of an approved drug.

(4-a) "Investigational new drug" has the meaning assigned by 21 C.F.R. Section 312.3(b).

Commentary by Chris Hubner

Source: SB 450

Effective Date: September 1, 2007

Applicability: Definitions on or after effective date.

Summary of Changes: SB 450 adds new definitions of *drug research program* and *investigational new drug* that comport with federal regulations to Family Code Chapter 266 pertaining to medical care and educational services for children in foster care.

Family Code Sec. 266.0041. ENROLLMENT AND PARTICIPATION IN CERTAIN RESEARCH PROGRAMS.

(a) Notwithstanding Section 266.004, a person may not authorize the enrollment of a foster child or consent to the participation of a foster child in a drug research program without a court order as provided by this section, unless the person is the foster child's parent and the person has been authorized by the court to make medical decisions for the foster child in accordance with Section 266.004.

(b) Before issuing an order authorizing the enrollment or participation of a foster child in a drug research program, the court must:

(1) appoint an independent medical advocate;

(2) review the report filed by the independent medical advocate regarding the advocate's opinion and recommendations concerning the foster child's enrollment and participation in the drug research program;

(3) consider whether the person conducting the drug research program:

(A) informed the foster child in a developmentally appropriate manner of the expected benefits of the drug research program, any potential side effects, and any available alternative treatments and received the foster child's assent to enroll the child to partici-

pate in the drug research program as required by the Code of Federal Regulations, 45 C.F.R. Section 46.408; or

(B) received informed consent in accordance with Subsection (h); and

(4) determine whether enrollment and participation in the drug research program is in the foster child's best interest and determine that the enrollment and participation in the drug research program will not interfere with the appropriate medical care of the foster child.

(c) An independent medical advocate appointed under Subsection (b) is not a party to the suit but may:

(1) conduct an investigation regarding the foster child's participation in a drug research program to the extent that the advocate considers necessary to determine:

(A) whether the foster child assented to or provided informed consent to the child's enrollment and participation in the drug research program; and

(B) the best interest of the child for whom the advocate is appointed; and

(2) obtain and review copies of the foster child's relevant medical and psychological records and information describing the risks and benefits of the child's enrollment and participation in the drug research program.

(d) An independent medical advocate shall, within a reasonable time after the appointment, interview:

(1) the foster child in a developmentally appropriate manner, if the child is four years of age or older;

(2) the foster child's parent, if the parent is entitled to notification under Section 266.005;

(3) an advocate appointed by an institutional review board in accordance with the Code of Federal Regulations, 45 C.F.R. Section 46.409(b), if an advocate has been appointed;

(4) the medical team treating the foster child as well as the medical team conducting the drug research program; and

(5) each individual who has significant knowledge of the foster child's medical history and condition, including any foster parent of the child.

(e) After reviewing the information collected under Subsections (c) and (d), the independent medical advocate shall:

(1) submit a report to the court presenting the advocate's opinion and recommendation regarding whether:

(A) the foster child assented to or provided informed consent to the child's enrollment and participation in the drug research program; and

(B) the foster child's best interest is served by enrollment and participation in the drug research program; and

(2) at the request of the court, testify regarding the basis for the advocate's opinion and recommendation concerning the foster child's enrollment and participation in a drug research program.

(f) The court may appoint any person eligible to serve as the foster child's guardian ad litem, as defined by Section 107.001, as the independent medical advocate, including a physician or nurse or an attorney who has experience in medical and health care, except that a foster parent, employee of a substitute care provider or child placing agency providing care for the foster child, representative of the department, medical professional affiliated with the drug research program, independent medical advocate appointed by an institutional review board, or any person the court determines has a conflict of interest may not serve as the foster child's independent medical advocate.

(g) A person otherwise authorized to consent to medical care for a foster child may petition the court for an order permitting the enrollment and participation of a foster child in a drug research program under this section.

(h) Before a foster child, who is at least 16 years of age and has been determined to have the capacity to consent to medical care in accordance with Section 266.010, may be enrolled to participate in a drug research program, the person conducting the drug research program must:

(1) inform the foster child in a developmentally appropriate manner of the expected benefits of participation in the drug research program, any potential side effects, and any available alternative treatments; and

(2) receive written informed consent to enroll the foster child for participation in the drug research program.

(i) A court may render an order approving the enrollment or participation of a foster child in a drug research program involving an investigational new drug before appointing an independent medical advocate if:

(1) a physician recommends the foster child's enrollment or participation in the drug research program to provide the foster child with treatment that will prevent the death or serious injury of the child; and

(2) the court determines that the foster child needs the treatment before an independent medical advocate could complete an investigation in accordance with this section.

(j) As soon as practicable after issuing an order under Subsection (i), the court shall appoint an independent medical advocate to complete a full investigation of the foster child's enrollment and participation in the drug research program in accordance with this section.

(k) This section does not apply to:

(1) a drug research study regarding the efficacy of an approved drug that is based only on medical records, claims data, or outcome data, including outcome data gathered through interviews with a child, caregiver of a child, or a child's treating professional;

(2) a retrospective drug research study based only on medical records, claims data, or outcome data; or

(3) the treatment of a foster child with an investigational new drug that does not require the child's enrollment or participation in a drug research program.

(l) The department shall annually submit to the governor, lieutenant governor, speaker of the house of representatives, and the relevant committees in both houses of the legislature, a report regarding:

(1) the number of foster children who enrolled or participated in a drug research program during the previous year;

(2) the purpose of each drug research program in which a foster child was enrolled or participated; and

(3) the number of foster children for whom an order was issued under Subsection (i).

(m) A foster parent or any other person may not receive a financial incentive or any other benefit for recommending or consenting to the enrollment and participation of a foster child in a drug research program.

Commentary by Chris Hubner

Source: SB 450

Effective Date: September 1, 2007

Applicability: Participation in certain research programs on or after effective date.

Summary of Changes: Currently, there is no law protecting foster children from being enrolled in clinical research programs. SB 450 prohibits a person from enrolling or consenting to the participation of a foster child in a drug research program without a court order unless the person is the foster child's parent. Before making a decision, the court is required to appoint an independent medical advocate (IMA) who must conduct an investigation and submit a report to the court with a recommendation on the foster child's enrollment in the drug research program. Texas Department of Family and Protective Services (DFPS) staff cannot serve as the IMA. After reviewing the report, the court must consider whether the person conducting the drug research program properly informed the foster child of relevant information and determine that enrollment is in the child's best interest. SB 450 spells out the duties of the IMA. Training, policy, and procedures will be developed by DFPS to meet the requirements of this bill.

Family Code Sec. 266.005. PARENTAL NOTIFICATION OF SIGNIFICANT MEDICAL CONDITIONS.

(b) Except as provided by Subsection (c), the department shall make reasonable efforts to notify the child's parents within 24 hours of:

(1) a significant medical condition involving a foster child; and

(2) the enrollment or participation of a foster child in a drug research program under Section 266.0041.

Commentary by Chris Hubner

Source: SB 450

Effective Date: September 1, 2007

Applicability: Participation in certain research programs on or after effective date.

Summary of Changes: SB 450 also requires the Texas Department of Family and Protective Services to make reasonable efforts to notify the parents within 24 hours of the enrollment or participation of a foster child in a drug research program.

Government Code Sec. 22.110. JUDICIAL INSTRUCTION RELATED TO FAMILY VIOLENCE, SEXUAL ASSAULT, AND CHILD ABUSE AND NEGLECT.

(a) The court of criminal appeals shall assure that judicial training related to the problems of family violence, sexual assault, and child abuse and neglect is provided.

(b) The court of criminal appeals shall adopt the rules necessary to accomplish the purposes of this section. The rules must require each district judge, judge of a statutory county court, associate judge appointed under Chapter 54 of this code or Chapter 201, Family Code, master, referee, and magistrate to complete at least 12 [eight] hours of the training within the judge's first term of office or the judicial officer's first four years of service and provide a method for certification of completion of that training. At least four hours of the training must be dedicated to issues related to child abuse and neglect and must cover at least two of the topics described in Subsections (d)(8)-(12). At least six hours of the training must be dedicated to the training described by Subsections (d)(5), (6), and (7). The rules must require each judge and judicial officer to complete an additional five [three] hours of training during each additional term in office or four years of service. At least two hours of the additional training must be dedicated to issues related to child abuse and neglect. The rules must exempt from the training requirement of this subsection each judge or judicial officer who files an affidavit stating that the judge or judicial officer does not hear any cases involving family violence, sexual assault, or child abuse and neglect.

(c) In adopting the rules, the court of criminal appeals may consult with the supreme court and with professional groups and associations in the state that have expertise in the subject matter to obtain the recommendations of those groups or associations for instruction content.

(d) The instruction must include information about:

(1) statutory and case law relating to videotaping a child's testimony and relating to competency of children to testify;

(2) methods for eliminating the trauma to the child caused by the court process;

(3) case law, statutory law, and procedural rules relating to family violence, sexual assault, and child abuse and neglect;

(4) methods for providing protection for victims of family violence, sexual assault, and [or] child abuse and neglect;

(5) available community and state resources for counseling and other aid to victims and to offenders;

(6) gender bias in the judicial process;
[and]

(7) dynamics and effects of being a victim of family violence, sexual assault, or child abuse and neglect;

(8) dynamics of sexual abuse of children, including child abuse accommodation syndrome and grooming;

(9) impact of substance abuse on an unborn child and on a person's ability to care for a child;

(10) issues of attachment and bonding between children and caregivers;

(11) issues of child development that pertain to child abuse and neglect; and

(12) medical findings regarding physical abuse, sexual abuse, and child abuse and neglect.

(d-1) The sponsoring organization for any training on issues related to child abuse and neglect must have at least three years' experience in training professionals on child abuse and neglect issues or have personnel or planning committee members who have at least five years' experience in working directly in the field of child abuse and neglect prevention and treatment.

Commentary by Chris Hubner

Source: HB 3505

Effective Date: September 1, 2007

Applicability: Requirements for judicial training on or after effective date.

Summary of Changes: To establish consistency in how judges decide cases involving child abuse and neglect and to ensure that DFPS conducts child removals, placements and parental terminations consistently around the state, HB 3505 mandates judicial training for certain judges to include at least four hours of training dedicated to issues of child abuse and neglect. For each additional term in office or four years of service, an additional two hours of training related to child abuse and neglect are now required.

Government Code Sec. 51.961. FAMILY PROTECTION FEE.

(a) The commissioners court of a county shall adopt a family protection fee in an amount not to exceed \$15 ~~[\$30]~~.

(d) The clerk shall pay a ~~[one-half of the]~~ fee collected under this section to the appropriate officer of the county in which the suit is filed for deposit in the county treasury to the credit of the family protection account. The account may be used by the commissioners court of the county only to fund a service provider located in that county or an adjacent county. The commissioners court may provide funding to a nonprofit organization that provides services described by Subsection (e).

Commentary by Chris Hubner

Source: HB 764

Effective Date: June 15, 2007

Applicability: Collection of a family protection fee on or after effective date.

Summary of Changes: In 2005, the legislature authorized district clerks to collect and distribute a family protection fee collected in divorce suits, with an additional requirement that county clerks pay one-half of the fee to the comptroller for deposit to the credit of a child abuse and neglect prevention trust fund account. Attorney General Opinion No. GA-0387, however, found the fee to be unconstitutional. HB 764 deletes the statutory mandate that one-half of the family protection fee collected be provided to the comptroller for deposit to the credit of a child abuse and neglect prevention trust fund account.

Health and Safety Code Section 481.1122. MANUFACTURE OF SUBSTANCE IN PENALTY GROUP 1: PRESENCE OF CHILD.

If it is shown at the punishment phase of a trial for the manufacture of a controlled substance listed in Penalty Group 1 that when the offense was committed a child younger than 18 years of age was present on the premises where the offense was committed:

(1) the punishments specified by Sections 481.112(b) and (c) are increased by one degree;

(2) the minimum term of imprisonment specified by Section 481.112(e) is increased to 15 years and the maximum fine specified by that section is increased to \$150,000; and

(3) the minimum term of imprisonment specified by Section 481.112(f) is increased to 20 years and the maximum fine specified by that section is increased to \$300,000.

Commentary by Chris Hubner

Source: HB 946

Effective Date: September 1, 2007

Applicability: Conduct involving controlled substances on or after effective date.

Summary of Changes: HB 946 increases the punishments by one degree if it is shown during the punishment phase of trial that a Penalty Group 1 controlled substance was manufactured while a child younger than 18 was present on the premises if the aggregate weight was less than one gram and one gram or more but less than four grams. The minimum terms of imprisonment are also increased for offenses involving 200 grams or more.

Human Resources Code Sec. 42.042. RULES AND STANDARDS.

(e-1) The department may not prohibit possession of lawfully permitted firearms and ammunition in a foster home of any type, including a foster group home, a foster home, an agency foster group home, and an agency foster

home. Minimum standards may be adopted under this section relating to safety and proper storage of firearms and ammunition, including standards requiring firearms and ammunition to be stored separately in locked locations.

Commentary by Chris Hubner

Source: SB 322

Effective Date: September 1, 2007

Applicability: Possession of firearms and ammunition on or after effective date.

Summary of Changes: Under standards adopted by the Texas Department of Family and Protective Services (DFPS) beginning in January 2007, some foster families were instructed to remove all firearms and ammunition from their property or lose their eligibility to serve as foster parents. SB 322 makes it clear that DFPS may not prohibit possession of legally permitted firearms and ammunition in any type of foster home. DFPS may adopt minimum standards to ensure safety and proper storage of firearms and ammunition, including the requirement that these items be stored separately in locked locations.

Penal Code Sec. 22.041. ABANDONING OR ENDANGERING CHILD.

(c-1) For purposes of Subsection (c), it is presumed that a person engaged in conduct that places a child in imminent danger of death, bodily injury, or physical or mental impairment if:

(1) the person manufactured, possessed, or in any way introduced into the body of any person the

controlled substance methamphetamine in the presence of the child;

(2) the person's conduct related to the proximity or accessibility of the controlled substance methamphetamine to the child and an analysis of a specimen of the child's blood, urine, or other bodily substance indicates the presence of methamphetamine in the child's body; or

(3) the person injected, ingested, inhaled, or otherwise introduced a controlled substance listed in Penalty Group 1, Section 481.102, Health and Safety Code, into the human body when the person was not in lawful possession of the substance as defined by Section 481.002(24) of that code.

Commentary by Chris Hubner

Source: HB 946

Effective Date: September 1, 2007

Applicability: Conduct involving controlled substances on or after effective date.

Summary of Changes: Current law defines placing a child younger than 15 in imminent danger to include the manufacture of methamphetamine in the child's presence. HB 946 expands the definition to include possession of methamphetamine or introduction of the substance into the body of any person in the child's presence and any conduct that would cause the substance to be near or accessible to the child. The new definition also adds introducing a Penalty Group 1 controlled substance into the body when not in lawful possession of the substance.

4. Education Code and Juvenile Justice Legislation

Education Code

Education Code Sec. 25.001. ADMISSION.

(a) A person who, on the first day of September of any school year, is at least five years of age and under 21 years of age, or is at least 21 years of age and under 26 years of age and is admitted by a school district to complete the requirements for a high school diploma ~~[on the first day of September of any school year]~~ is entitled to the benefits of the available school fund for that year. Any other person enrolled in a prekindergarten class under Section 29.153 is entitled to the benefits of the available school fund.

(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, and may admit a person who is at least 21 years of age and under 26 years of age

for the purpose of completing the requirements for a high school diploma, 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;

(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.

(b-1) A person who is 21 years of age or older and is admitted by a school district for the purpose stated in Subsection (b) is not eligible for placement in a disciplinary alternative education program or a juvenile justice alternative education program if the person engages in conduct that would require or authorize such placement for a student under the age of 21. If the student engages in conduct that would otherwise require such placement, the district shall revoke admission of the student into the public schools of the district.

(b-2) A person who is 21 years of age or older who is admitted by a school district to complete the requirements for a high school diploma and who has not attended school in the three preceding school years may not be placed with a student who is 18 years of age or younger in a classroom setting, a cafeteria, or another district-sanctioned school activity. Nothing in this subsection prevents a student described by this subsection from attending a school-sponsored event that is open to the public as a member of the public.

Commentary by Linda Brooke

Source: HB 1137

Effective Date: Effective June 15, 2007, applies 2007–2008 School Year

Applicability: Conduct occurring on or after the effective date.

Summary of Changes: HB 1137 changes current law to allow school districts to allow a person who is at least 21 and under age 26 to enroll in school and complete the requirements for a diploma. A student served under this new provision is entitled to benefits of the Foundation School Program.

This bill prohibits students who are at least 21 and under age 26 from placement in a disciplinary alternative education program (DAEP) or a juvenile justice alternative education program (JJAEP) if the student commits an offense for which removal to a DAEP or JJAEP is required or authorized. A school district is required to revoke a stu-

dent's admission if the student commits a DAEP or JJAEP removable offense.

Education Code Sec. 25.085. COMPULSORY SCHOOL ATTENDANCE.

(f) The board of trustees of a school district may adopt a policy requiring a person described by Subsection (e) who is under 21 years of age to attend school until the end of the school year. Section 25.094 applies to a person subject to a policy adopted under this subsection. Sections 25.093 and 25.095 do not apply to the parent of a person subject to a policy adopted under this subsection.

Commentary by Linda Brooke

Source: SB 1137

Effective Date: Effective June 15, 2007, applies 2007–2008 School Year

Applicability: Conduct occurring on or after effective date.

Summary of Changes: SB 1137 authorizes school boards to adopt a school policy regarding compulsory school attendance. Local policy may require students under age 21, who have not graduated, to attend school until the end of the school year. This subsection allows a school district to file on a student for *Failure to Attend* under Education Code Section 25.094, and exempts a parent from being prosecuted for *Parent Contributing to Nonattendance* or receiving warning notices under Section 25.095.

Education Code Sec. 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 10th [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.

Commentary by Linda Brooke

Source: HB 2884

Effective Date: September 1, 2007

Applicability: Conduct occurring on or after the effective date.

Summary of Changes: This provision contained in HB 2884 codifies Attorney General Opinion GA-0417, which interpreted the amendments made to this section during the 79th Legislature. The opinion clarified that a school district must file a complaint or referral against a student for

Failure to Attend school under Section 25.0951(a), Education Code, within seven school days of the student's tenth unexcused absence.

Education Code Sec. 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 10 [~~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.

Commentary by Linda Brooke

Source: SB 1161

Effective Date: September 1, 2007

Applicability: Conduct occurring on or after the effective date.

Summary of Changes: SB 1161 increases the number of school days from 7 to 10 that a school district has to file a complaint against a student or the student's parent for Failure to Attend School.

Education Code Sec. 25.092. MINIMUM ATTENDANCE FOR CLASS CREDIT.

(a-1) A student who is in attendance for at least 75 percent but less than 90 percent of the days a class is offered may be given credit for the class if the student completes a plan approved by the school's principal that provides for the student to meet the instructional requirements of the class. A student under the jurisdiction of a court in a criminal or juvenile justice proceeding may not receive credit under this subsection without the consent of the judge presiding over the student's case.

(b) The board of trustees of each school district shall appoint one or more attendance committees to hear petitions for class credit by students who are in attendance fewer than the number of days required under Subsection (a) and have not earned class credit under Subsection (a-1). Classroom teachers shall comprise a majority of the membership of the committee. A committee may give class credit to a student because of extenuating circumstances. Each board of trustees shall establish guidelines to determine what constitutes extenuating circumstances and shall adopt policies establishing alternative ways for students to make up work or regain credit lost because of absences. The alternative ways must include at least one option that does not require a student to pay a fee authorized under

Section 11.158(a)(15). A certified public school employee may not be assigned additional instructional duties as a result of this section outside of the regular workday unless the employee is compensated for the duties at a reasonable rate of pay.

Commentary by Linda Brooke

Source: SB 1137

Effective Date: Effective Immediately, applies 2007-2008 School Year

Applicability: Conduct occurring on or after the effective date.

Summary of Changes: Under prior law, to receive course credit a student must be in attendance at least 90 percent of the days the class is offered. A student who does not meet the 90 percent attendance requirement may petition the attendance committee to consider extenuating circumstances and grant class credit or establish alternate ways the student can make up the work or regain lost credit.

This provision amends Education Code Section 25.092 to allow a school principal to approve a plan for a student to achieve course credit if the student does not meet the 90 percent attendance rule, but was in attendance during at least 75 percent of the scheduled class. A student who is under court jurisdiction may only receive credit for a course if the court has consented.

Education Code Sec. 37.0062. INSTRUCTIONAL REQUIREMENTS FOR ALTERNATIVE EDUCATION SERVICES IN JUVENILE RESIDENTIAL FACILITIES.

(a) The commissioner shall determine the instructional requirements for education services provided by a school district or open-enrollment charter school in a pre-adjudication secure detention facility or a post-adjudication secure correctional facility operated by a juvenile board or a post-adjudication secure correctional facility operated under contract with the Texas Youth Commission, including requirements relating to:

(1) the length of the school day;

(2) the number of days of instruction provided to students each school year; and

(3) the curriculum of the educational program.

(b) The commissioner shall coordinate with:

(1) the Texas Juvenile Probation Commission in determining the instructional requirements for education services provided under Subsection (a) in a pre-adjudication secure detention facility or a post-adjudication secure correctional facility operated by a juvenile board; and

(2) the Texas Youth Commission in determining the instructional requirements for education services provided under Subsection (a) in a post-adjudication secure correctional facility operated under contract with the Texas Youth Commission.

(c) The commissioner shall adopt rules necessary to administer this section. The rules must ensure that:

(1) a student who receives education services in a pre-adjudication secure detention facility described by this section is offered courses that enable the student to maintain progress toward completing high school graduation requirements; and

(2) a student who receives education services in a post-adjudication secure correctional facility described by this section is offered, at a minimum, the courses necessary to enable the student to complete high school graduation requirements.

(d) The Texas Juvenile Probation Commission or the Texas Youth Commission, as applicable, shall coordinate with the commissioner in establishing standards for:

(1) ensuring security in the provision of education services in the facilities; and

(2) providing children in the custody of the facilities access to education services.

Commentary by Linda Brooke

Source: HB 425

Effective Date: September 1, 2007

Applicability: All pre-adjudication secure detention facilities and post-adjudication secure correctional facilities.

Summary of Changes: This bill adds a new section to Chapter 37 of the Education Code. The new section requires the Texas Education Agency to adopt rules for school districts and open-enrollment charters that provide educational services in pre-adjudication secure detention facilities and post-adjudication secure correctional facilities.

New Section 37.0062 requires the Commissioner of Education to adopt rules in coordination with TJPC regarding the instructional requirements for education services in pre- and post-adjudication facilities, and requires coordination with TYC on rules for TYC contract facilities (post-adjudication secure facilities). The rules must include instructional requirements, length of the school day, number of instructional days each school year; and curriculum. The rules in a pre-adjudication facility must ensure that students are enabled to maintain progress toward graduation and in a post-adjudication facility, that students are enabled to complete graduation requirements.

TJPC and TYC are both required to coordinate with the Commissioner of Education to establish standards for the safety of the education staff in facilities and to provide access to education services.

Education Code Sec. 37.0081. EXPULSION AND PLACEMENT OF CERTAIN STUDENTS IN [DISCIPLINARY] ALTERNATIVE SETTINGS [EDUCATION PROGRAMS].

(a) Subject to Subsection (h), but notwithstanding [Notwithstanding] any other provision of this subchapter, the board of trustees of a school district, or the board's designee, after an opportunity for a hearing may expel a stu-

dent and elect to place the [a] student in an alternative setting as provided by Subsection (a-1) [in a disciplinary alternative education program under Section 37.008] if:

(1) the student:

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

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

(C) is charged with engaging in conduct defined as a felony offense in Title 5, Penal Code;

(D) has been referred to a juvenile court for allegedly engaging in delinquent conduct under Section 54.03, Family Code, for conduct defined as a felony offense in Title 5, Penal Code;

(E) has received probation or deferred adjudication for a felony offense under Title 5, Penal Code;

(F) has been convicted of a felony offense under Title 5, Penal Code; or

(G) has been arrested for or charged with a felony offense under Title 5, Penal Code; and

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

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

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

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

(a-1) The student must be placed in:

(1) a juvenile justice alternative education program, if the school district is located in a county that operates a juvenile justice alternative education program or the school district contracts with the juvenile board of another county for the provision of a juvenile justice alternative education program; or

(2) a disciplinary alternative education program.

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

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

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

(2) the location at which the conduct occurred;

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

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

(d) Notwithstanding Section 37.009(c) or (d) or any other provision of this subchapter, a student expelled and ordered placed in an alternative setting by the board of trustees or the board's designee is subject to that placement until:

(1) the student graduates from high school;

(2) the charges described by Subsection (a)(1) are dismissed or reduced to a misdemeanor offense; or

(3) the student completes the term of the placement or is assigned to another program [may order placement in accordance with this section for any period considered necessary by the board or the board's designee in connection with the determination made under Subsection (a)(2)].

(e) A student placed in an alternative setting [a disciplinary alternative education program] in accordance with this section is entitled to the periodic review prescribed by Section 37.009(e).

(f) Subsection (d) continues to apply to the student if the student transfers to another school district in the state.

(g) The board of trustees shall reimburse a juvenile justice alternative education program in which a student is placed under this section for the actual cost incurred each day for the student while the student is enrolled in the program. For purposes of this subsection:

(1) the actual cost incurred each day for the student is determined by the juvenile board of the county operating the program; and

(2) the juvenile board shall determine the actual cost each day of the program based on the board's annual audit.

(h) To the extent of a conflict between this section and Section 37.007, Section 37.007 prevails.

Commentary by Linda Brooke

Source: HB 2532

Effective Date: Effective June 15, 2007, applies 2007-2008 School Year

Applicability: Enrolled students, regardless of the date on which the conduct occurred.

Summary of Changes: HB 2532 altered Education Code Section 37.0081, which previously dealt only with placement of certain students in disciplinary alternative education programs (DAEP). The bill's new language expands the subsection to include expulsion and placement in an alternative education setting.

Section 37.0081(a) was amended to allow school districts to expel a student who has engaged in any Penal Code Title 5 felony offense (regardless of where the offense occurred) and the student was:

- placed on deferred prosecution;
- adjudicated delinquent;
- referred to juvenile court;
- placed on probation or deferred adjudication;

▪ arrested for or charged with; or
 ▪ convicted
and the student's presence in the regular classroom:

- threatens the safety of other students;
- will be detrimental to the educational process; or
- is not in the best interest of the district's students.

New Subsection (a-1) requires a student to be placed in a DAEP or a juvenile justice alternative education program (JJAEP), if the school district has a policy of removing Title 5 felony offenders. The bill does not authorize expulsion to the street. School districts located in a county with a JJAEP that want to place students in the JJAEP for a Penal Code Title 5 felony offense, may negotiate an annual memorandum of understanding (MOU) under Education Code Section 37.006(c).

Subsection (d) is expanded to allow students to remain in a DAEP or JJAEP until they graduate, charges are dismissed, reduced to a misdemeanor, they complete the term of placement or are assigned to an alternative setting. The length of stay for students placed in a JJAEP should also be negotiated in the annual MOU.

The final new provisions under this section are to ensure that counties are reimbursed for the actual cost of serving this increased JJAEP student population. School district's costs will be based on an annual audit provided by the juvenile board which demonstrates the actual cost of serving JJAEP students.

Education Code Sec. 37.0082. ASSESSMENT OF ACADEMIC GROWTH OF STUDENTS IN DISCIPLINARY ALTERNATIVE EDUCATION PROGRAMS.

(a) To assess a student's academic growth during placement in a disciplinary alternative education program, a school district shall administer to a student placed in a program for a period of 90 school days or longer an assessment instrument approved by the commissioner for that purpose. The instrument shall be administered:

(1) initially on placement of the student in the program; and

(2) subsequently on the date of the student's departure from the program, or as near that date as possible.

(b) The assessment instrument required by this section:

(1) must be designed to assess at least a student's basic skills in reading and mathematics;

(2) may be:

(A) comparable to any assessment instrument generally administered to students placed in juvenile justice alternative education programs for a similar purpose; or

(B) based on an appropriate alternative assessment instrument developed by the agency to measure student academic growth; and

(3) is in addition to the assessment instruments required to be administered under Chapter 39.

(c) The commissioner shall adopt rules necessary to implement this section.

Commentary by Linda Brooke

Source: HB 2532

Effective Date: Effective June 15, 2007, applies 2007-2008 School Year

Applicability: Disciplinary Alternative Education Programs (DAEP) assessments beginning in the 2007-2008 school year.

Summary of Changes: DAEPs serve more than 100,000 students per year, yet there are not performance expectations for the programs.

HB 2532 creates new Section 37.0082, which requires DAEPs to assess academic growth specifically in the areas of reading and math for students placed in the programs for 90 days or longer. Texas Education Agency is required to adopt rules to administer this new provision.

Education Code Sec. 37.203. BOARD.

(a) The center is advised by a board of directors composed of:

(1) the attorney general, or the attorney general's designee;

(2) the commissioner, or the commissioner's designee;

(3) the executive director of the Texas Juvenile Probation Commission, or the executive director's designee;

(4) the executive commissioner [~~director~~] of the Texas Youth Commission, or the executive commissioner's [~~director's~~] designee;

(5) the commissioner of the Texas Department of Mental Health and Mental Retardation, or the commissioner's designee; and

(6) the following members appointed by the governor with the advice and consent of the senate:

(A) a juvenile court judge;

(B) a member of a school district's board of trustees;

(C) an administrator of a public primary school;

(D) an administrator of a public secondary school;

(E) a member of the state parent-teacher association;

(F) a teacher from a public primary or secondary school;

(G) a public school superintendent who is a member of the Texas Association of School Administrators;

(H) a school district police officer or a peace officer whose primary duty consists of working in a public school; and

(I) two members of the public.

Commentary by Lisa Capers

Source: SB 103

Effective Date: June 8, 2007, at 6:50 p.m. Central Standard Time

Applicability: Operations of the board on or after the effective date.

Summary of Changes: This provision concerns the membership of the board of the Texas School Safety Center. The amendment simply replaces the term *executive director* with *executive commissioner* to reflect the new governance structure at the Texas Youth Commission.

SUBCHAPTER I. PLACEMENT OF REGISTERED SEX OFFENDERS

Education Code Sec. 37.301. DEFINITION.

In this subchapter, "board of trustees" includes the board's designee.

Commentary by Leigh de la Reza

Source: HB 2532 / SB 6

Effective Date: September 1, 2007

Applicability: Applies to a student who is required to register as a sex offender under Code of Criminal Procedure Chapter 62 on or after September 1, 2007.

Summary of Changes: This is a conforming change, which specifies that the board of trustees includes the board's designee.

Education Code Sec. 37.302. APPLICABILITY.

This subchapter:

(1) applies to a student who is required to register as a sex offender under Chapter 62, Code of Criminal Procedure; and

(2) does not apply to a student who is no longer required to register as a sex offender under Chapter 62, Code of Criminal Procedure, including a student who receives an exemption from registration under Subchapter H, Chapter 62, Code of Criminal Procedure, or a student who receives an early termination of the obligation to register under Subchapter I, Chapter 62, Code of Criminal Procedure.

Commentary by Linda Brooke

Source: HB 2532 / SB 6

Effective Date: September 1, 2007

Applicability: Registered sex offenders whose conduct occurred after the effective date.

Summary of Changes: HB 2532 and SB 6 both contain the same exact language pertaining to removal and placement of registered sex offenders.

Section 37.302 clarifies that the placement of registered sex offenders applies only to those students required to register. It specifically excludes students who receive an exemption from registration and students who receive an early termination of the obligation to register.

As soon as the school receives notice, under Code of Criminal Procedure Article 15.27, that a student is to register as a sex offender the school district shall remove the student from the regular classroom and determine appropriate placement. All registered sex offender students who are on any form of court supervision, including probation, community supervision, or parole are required to be removed for at least one semester. Students who transfer to another school during this mandatory semester may be required to either complete an additional semester or alternatively, the new district may count the time the child has already spent in alternative school toward the mandatory placement requirement.

Additionally, school districts may place registered sex offender students who are not under any form of court supervision in alternative school. The district may not place the child in the regular classroom if the district determines that the student's presence: 1) threatens the safety of other students or teachers; 2) will be detrimental to the educational process; or 3) is not in the best interests of the district's students.

At the end of the first semester the school district's board of trustees will conduct a review of the student's placement. The committee must be composed of:

- A classroom teacher from the campus to which the student would be assigned were the student not placed in an alternative education program;
- The student's parole or probation officer, or in the case the child does not have a parole or probation officer then a representative of the local juvenile probation department;
- An instructor from the alternative education program to which the student is assigned;
- A school district designee selected by the board of trustees;
- A counselor employed by the school district.

The child, the child's parent, and a representative for the child were not required to be included in the committee to decide the child's placement. Clearly, it is possible for a review committee to be composed entirely of persons who have not met the child, and likely in many cases, only probation or parole has met the child. The committee must decide by a majority vote if the child is to remain in alternative school or return to the regular classroom. However, even if the committee determines that the child should return to the regular classroom, the board of trustees must still find that the student's presence does not: 1) threaten the safety of other students or teachers; 2) will be detrimental to the educational process; or 3) is not in the best interests of the district's students. If the child remains in alternative school then the board shall convene before the beginning of each school year to review the child's placement.

Placement of students with disabilities who receive special education services must be made in compliance with the Individuals with Disabilities Education Act.

Review of placement of a student with a disability who receives special education may be made only by a duly constituted admission, review, and dismissal committee. The admission, review, and dismissal committee may request that the board of trustees convene a committee to assist in conducting the review.

Students will be placed in a disciplinary alternative education program (DAEP) unless there is a memorandum of understanding between the school district and the juvenile board; in which case, the student will be placed in a juvenile justice alternative education program (JJAEP). The student or the student's parent(s) may appeal a decision for placement, but the appeal is limited to the factual question of whether or not the student is a registered sex offender. They may not appeal whether or not the student's presence: 1) threatens the safety of other students or teachers; 2) will be detrimental to the educational process; or 3) is not in the best interests of the district's students. The school district board of trustees decision is final and may not be appealed.

Education Code Sec. 37.303. REMOVAL OF REGISTERED SEX OFFENDER FROM REGULAR CLASSROOM.

Notwithstanding any provision of Subchapter A, on receiving notice under Article 15.27, Code of Criminal Procedure, or Chapter 62, Code of Criminal Procedure, that a student is required to register as a sex offender under that chapter, a school district shall remove the student from the regular classroom and determine the appropriate placement of the student in the manner provided by this subchapter.

Commentary by Linda Brooke

Source: HB 2532 / SB 6

Effective Date: September 1, 2007

Applicability: Registered sex offenders whose conduct occurred after the effective date.

Summary of Changes: New Section 37.303 requires a school district, upon receipt of a notice under Code of Criminal Procedure Article 15.27 or Chapter 62, to remove a student who is a registered sex offender from the regular classroom and place the student in an appropriate alternative education setting as detailed in this new subchapter.

Education Code Sec. 37.304. PLACEMENT OF REGISTERED SEX OFFENDER WHO IS UNDER COURT SUPERVISION.

(a) A school district shall place a student to whom this subchapter applies and who is under any form of court supervision, including probation, community supervision, or parole, in the appropriate alternative education program as provided by Section 37.309 for at least one semester.

(b) If a student transfers to another school district during the student's mandatory placement in an alternative education program under Subsection (a), the district to which the student transfers may:

(1) require the student to complete an additional semester in the appropriate alternative education program without conducting a review of the student's placement for that semester under Section 37.306; or

(2) count any time spent by the student in an alternative education program in the district from which the student transfers toward the mandatory placement requirement under Subsection (a).

Commentary by Linda Brooke

Source: HB 2532 / SB 6

Effective Date: September 1, 2007

Applicability: Registered sex offenders whose conduct occurred after the effective date.

Summary of Changes: Section 37.304 requires a school district to remove a student who is a registered sex offender and who is under any form of court supervision (including juvenile probation, adult probation, juvenile parole or adult parole) and to place the student in an appropriate alternative education program for at least one school semester. Students who move from one district to another during the mandatory placement may be required by the new district to remain in the alternative setting for at least one additional semester before the student's placement is reviewed.

Education Code Sec. 37.305. PLACEMENT OF REGISTERED SEX OFFENDER WHO IS NOT UNDER COURT SUPERVISION.

A school district may place a student to whom this subchapter applies and who is not under any form of court supervision in the appropriate alternative education program as provided by Section 37.309 for one semester or in the regular classroom. The district may not place the student in the regular classroom if the district board of trustees determines that the student's presence in the regular classroom:

- (1) threatens the safety of other students or teachers;
- (2) will be detrimental to the educational process; or
- (3) is not in the best interests of the district's students.

Commentary by Linda Brooke

Source: HB 2532 / SB 6

Effective Date: September 1, 2007

Applicability: Registered sex offenders whose conduct occurred after the effective date.

Summary of Changes: This new section allows a school district to place students who are registered sex offenders, but not under any court supervision, in an alternative education setting if the board of trustees finds that the student's presence in the regular classroom: threatens the safety of other students or teachers; will be detrimental to the educational process; or is not in the best interest of the district's students. The statute only authorizes the board of trustees

to make this decision and the board may not defer to a designee.

Education Code Sec. 37.306. REVIEW OF PLACEMENT IN ALTERNATIVE EDUCATION PROGRAM.

(a) At the end of the first semester of a student's placement in an alternative education program under Section 37.304 or 37.305, the school district board of trustees shall convene a committee to review the student's placement in the alternative education program. The committee must be composed of:

(1) a classroom teacher from the campus to which the student would be assigned were the student not placed in an alternative education program;

(2) the student's parole or probation officer or, in the case of a student who does not have a parole or probation officer, a representative of the local juvenile probation department;

(3) an instructor from the alternative education program to which the student is assigned;

(4) a school district designee selected by the board of trustees; and

(5) a counselor employed by the school district.

(b) The committee by majority vote shall determine and recommend to the school district board of trustees whether the student should be returned to the regular classroom or remain in the alternative education program.

(c) If the committee recommends that the student be returned to the regular classroom, the board of trustees shall return the student to the regular classroom unless the board determines that the student's presence in the regular classroom:

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

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

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

(d) If the committee recommends that the student remain in the alternative education program, the board of trustees shall continue the student's placement in the alternative education program unless the board determines that the student's presence in the regular classroom:

(1) does not threaten the safety of other students or teachers;

(2) will not be detrimental to the educational process; and

(3) is not contrary to the best interests of the district's students.

(e) If, after receiving a recommendation under Subsection (b), the school district board of trustees determines that the student should remain in an alternative education program, the board shall before the beginning of each school year convene the committee described by Subsection (a) to review, in the manner provided by Subsec-

tions (b), (c), and (d), the student's placement in an alternative education program.

Commentary by Linda Brooke

Source: HB 2532 / SB 6

Effective Date: September 1, 2007

Applicability: Registered Sex Offenders whose conduct occurred after the effective date.

Summary of Changes: New Section 37.306 creates a review committee to review a student's placement in the alternative education setting after the initial semester placement. This new committee is comprised of:

- A classroom teacher from the campus to which the student would be assigned were the student not placed in an alternative education program;
- The student's parole or probation officer;
- An instructor from the alternative education program to which the student is assigned;
- A school district designee selected by the board of trustees; and
- A counselor employed by the school district.

If a student does not have a probation or parole officer, the juvenile probation department must have a representative on the review committee. The committee is required to make a recommendation (as determined by majority vote) to the board of trustees. The recommendation shall be either that the student remain in the alternative setting or be allowed to return to the regular classroom.

Once the board of trustees receives the committee's recommendation, the board is required to make a decision about whether to return the student to the regular classroom or require the student to remain in the alternative program. The board of trustees is required to make its decision based on whether the student's presence in the regular classroom:

- Does or does not threaten the safety of other students or teachers;
- Will or will not be detrimental to the educational process; or
- Is or is not contrary to the best interests of the district's students.

If the board of trustees determines that the student should remain in the alternative education program, the review committee is required to review the student's placement prior to the beginning of each school year.

Education Code Sec. 37.307. PLACEMENT AND REVIEW OF STUDENT WITH DISABILITY.

(a) The placement under this subchapter of a student with a disability who receives special education services must be made in compliance with the Individuals with Disabilities Education Act (20 U.S.C. Section 1400 et seq.).

(b) The review under Section 37.306 of the placement of a student with a disability who receives special education services may be made only by a duly constituted admission, review, and dismissal committee. The admission, review, and dismissal committee may request that the

board of trustees convene a committee described by Section 37.306(a) to assist the admission, review, and dismissal committee in conducting the review.

Commentary by Linda Brooke

Source: HB 2532 / SB 6

Effective Date: September 1, 2007

Applicability: Registered sex offenders whose conduct occurred after the effective date.

Summary of Changes: This new section lays out the guidelines for the placement and review of students who are registered sex offenders, have a disability, and receive special education services. The Admission, Review, and Dismissal (ARD) committee must convene to make the placement decision for a student who falls under this section. After the initial one semester placement, the ARD committee [instead of the Review Committee under Section 37.306(a)] is required to determine if the student is to remain in the alternative education program. The ARD committee can request the assistance of a Review Committee in making its decision. The ARD committee decision is final and cannot be overridden by the board of trustees.

Education Code Sec. 37.308. TRANSFER OF REGISTERED SEX OFFENDER.

Except as provided by Section 37.304(b), a school district shall determine whether to place a student to whom this subchapter applies and who transfers to the district in the appropriate alternative education program as provided by Section 37.309 or in a regular classroom. The school district shall follow the procedures specified under Section 37.306 in making the determination.

Commentary by Linda Brooke

Source: HB 2532 / SB 6

Effective Date: September 1, 2007

Applicability: Registered sex offenders whose conduct occurred after the effective date.

Summary of Changes: This new section clarifies that a school district receiving a transfer student who is a registered sex offender has the authority to make a placement decision for a newly enrolled student.

Education Code Sec. 37.309. PLACEMENT IN DISCIPLINARY ALTERNATIVE EDUCATION PROGRAM OR JUVENILE JUSTICE ALTERNATIVE EDUCATION PROGRAM.

(a) Except as provided by Subsection (b), a school district shall place a student who is required by the board of trustees to attend an alternative education program under this subchapter in a disciplinary alternative education program.

(b) A school district shall place a student who is required by the board of trustees to attend an alternative education program under this subchapter in a juvenile justice alternative education program if:

(1) the memorandum of understanding entered into between the school district and juvenile board under Section 37.011(k) provides for the placement of students to whom this subchapter applies in the juvenile justice alternative education program; or

(2) a court orders the placement of the student in a juvenile justice alternative education program.

Commentary by Linda Brooke

Source: HB 2532 / SB 6

Effective Date: September 1, 2007

Applicability: Registered Sex Offenders whose conduct occurred after the effective date.

Summary of Changes: Section 37.309 authorizes the placement of registered sex offenders in a JJAEP if it is agreed to in the annual memorandum of understanding (MOU) required under Education Code Section 37.011(k). This section also authorizes placement in a JJAEP of a registered sex offender, if ordered by a court.

Education Code Sec. 37.310. FUNDING FOR REGISTERED SEX OFFENDER PLACED IN JUVENILE JUSTICE ALTERNATIVE EDUCATION PROGRAM.

A juvenile justice alternative education program is entitled to funding for a student who is placed in the program under this subchapter in the same manner as a juvenile justice alternative education program is entitled to funding under Section 37.012 for a student who is expelled and placed in a juvenile justice alternative education program for conduct for which expulsion is permitted but not required under Section 37.007.

Commentary by Linda Brooke

Source: HB 2532 / SB 6

Effective Date: September 1, 2007

Applicability: Registered sex offenders whose conduct occurred after the effective date.

Summary of Changes: Section 37.310 addresses funding for students who are registered sex offenders and placed in a JJAEP. The students removed to a JJAEP under this subchapter are funded in the same manner as a discretionary expulsion under Education Code Sections 37.007(b), (c) and (f), and as agreed to in the local memorandum of understanding (MOU) required under Section 37.011(k).

Education Code Sec. 37.311. CONFERENCE.

(a) A student or the student's parent or guardian may appeal a decision by a school district board of trustees to place the student in an alternative education program under this subchapter by requesting a conference among the board of trustees, the student's parent or guardian, and the student. The conference is limited to the factual question of whether the student is required to register as a sex offender under Chapter 62, Code of Criminal Procedure.

(b) If the school district board of trustees determines at the conclusion of the conference that the student is required to register as a sex offender under Chapter 62, Code of Criminal Procedure, the student is subject to placement in an alternative education program in the manner provided by this subchapter.

(c) A decision by the board of trustees under this section is final and may not be appealed.

Commentary by Linda Brooke

Source: HB 2532 / SB 6

Effective Date: September 1, 2007

Applicability: Registered sex offenders whose conduct occurred after the effective date.

Summary of Changes: This new section allows a student or a student's parent(s) to appeal the board of trustee's decision to place the student in an alternative education program and to request a conference with the board. An appeal is limited only to the *factual question* of whether the student is required to register as a sex offender. The appeal may not be made on the appropriateness of the student's placement in an alternative education program nor whether the student is a threat to other students or district employees.

Education Code Sec. 37.312. LIABILITY.

This subchapter does not:

(1) waive any liability or immunity of a governmental entity or its officers or employees; or

(2) create any liability for or a cause of action against a governmental entity or its officers or employees.

Commentary by Lisa Capers

Source: HB 2532 / SB 6

Effective Date: September 1, 2007

Applicability: Conduct that occurs on or after the effective date.

Summary of Changes: Subchapter I dealing with registered sex offenders does not waive any liability or immunity or create any liability.

Education Code Sec. 37.313. CONFLICTS OF LAW.

To the extent of any conflict between a provision of this subchapter and a provision of Subchapter A, this subchapter prevails.

Commentary by Linda Brooke

Source: HB 2532 / SB 6

Effective Date: September 1, 2007

Applicability: Registered sex offenders whose conduct occurred after the effective date.

Summary of Changes: This new section clarifies that the removal of a student under Subchapter I prevails over any other provision under Chapter 37 of the Education Code.

Education Code Sec. 39.072. ACCREDITATION STANDARDS.

(d) Notwithstanding any other provision of this code, for purposes of determining the performance of a school district under this chapter, including the accreditation status of the district, a student confined by court order in a residential program or facility operated by or under contract with the Texas Youth Commission, Texas Juvenile Probation Commission, or any other governmental entity, including a juvenile board, is not considered to be a student of the school district in which the program or facility is physically located. The performance of such a student on an assessment instrument or other academic excellence indicator adopted under Section 39.051 shall be determined, reported, and considered separately from the performance of students attending a school of the district in which the program or facility is physically located.

Commentary by Linda Brooke

Source: HB 3092

Effective Date: Effective June 15, 2007, applies 2007 – 2008 School Year

Applicability: School districts serving secure pre-adjudication detention facilities and secure post-adjudication correctional facilities.

Summary of Changes: HB 3092 adds a provision that a student confined by court order in a residential program or facility operated by or under contract with the Texas Youth Commission, or any other governmental entity, including a juvenile board, is not considered to be a student of the school district which serves the facility for purposes of performance on an assessment instrument or other academic excellence indicator adopted under Education Code Section 39.051.

Education Code Sec. 42.003. STUDENT ELIGIBILITY.

(a) A student is entitled to the benefits of the Foundation School Program if, on September 1 of the school year, the student is 5 years of age or older and under 21 years of age [~~on September 1 of the school year~~] and has not graduated from high school, or is at least 21 years of age and under 26 years of age and has been admitted by a school district to complete the requirements for a high school diploma.

Commentary by Linda Brooke

Source: SB 1161

Effective Date: Effective June 15, 2007, applies 2007 – 2008 School Year

Applicability: Students who are at least 21 and under age 26.

Summary of Changes: The amendments made to Education Code Section 42.003 clarify that students who enroll in public school under Education Code Section 25.001 and

who are at least 21 and under age 26 are entitled to the benefits of the Foundation School Program.

Code of Criminal Procedure

Code of Criminal Procedure Art. 15.27. NOTIFICATION TO SCHOOLS REQUIRED.

(a-1) The superintendent or a person designated by the superintendent in the school district may send to a school district employee having direct supervisory responsibility over the student the information contained in the confidential notice under Subsection (a) if the superintendent or the person designated by the superintendent determines that the employee needs the information for educational purposes or for the protection of the person informed or others.

(b) On conviction, deferred prosecution, or deferred adjudication or an adjudication of delinquent conduct of an individual enrolled as a student in a public primary or secondary school, for an offense or for any conduct listed in Subsection (h) of this article, the office of the prosecuting attorney acting in the case shall orally notify the superintendent or a person designated by the superintendent in the school district in which the student is enrolled of the conviction or adjudication and whether the student is required to register as a sex offender under Chapter 62. Oral notification must be given within 24 hours of the time of the order or on the next school day. The superintendent shall, within 24 hours of receiving notification from the office of the prosecuting attorney, [~~promptly~~] notify all instructional and support personnel who have regular contact with the student. Within seven days after the date the oral notice is given, the office of the prosecuting attorney shall mail written notice, which must contain a statement of the offense of which the individual is convicted or on which the adjudication, deferred adjudication, or deferred prosecution is grounded and a statement of whether the student is required to register as a sex offender under Chapter 62.

(c) A parole, [~~or~~] probation, or community supervision office, including a community supervision and corrections department, a juvenile probation department, the paroles division of the Texas Department of Criminal Justice, and the Texas Youth Commission, having jurisdiction over a student described by Subsection (a), (b), or (e) who transfers from a school or is subsequently removed from a school and later returned to a school or school district other than the one the student was enrolled in when the arrest, referral to a juvenile court, conviction, or adjudication occurred shall within 24 hours of learning of the student's transfer or reenrollment notify the new school officials of the arrest or referral in a manner similar to that provided for by Subsection (a) or (e)(1), or of the conviction or delinquent adjudication in a manner similar to that provided for by Subsection (b) or (e)(2). The new school officials

shall, within 24 hours of receiving notification under this subsection, ~~promptly~~ notify all instructional and support personnel who have regular contact with the student.

(j) The notification provisions of this section concerning a person who is required to register as a sex offender under Chapter 62 do not lessen the requirement of a person to provide any additional notification prescribed by that chapter.

Commentary by Linda Brooke

Source: HB 2532 / SB 6

Effective Date: Effective June 15, 2007, applies 2007 – 2008 School Year

Applicability: Conduct occurring on or after effective date.

Summary of Changes: The current Code of Criminal Procedure Article 15.27 directs law enforcement, prosecutors and probation/parole officers to send notice to school districts regarding students who have engaged in certain conduct. These new changes were made in response to an incident in which a person under TYC jurisdiction was placed in a halfway house, required to register as a sex offender, and enrolled in public school. The student, while attending a regular school campus, attempted to sexually assault a teacher. Neither the school administration nor the teacher was aware that the student was a registered sex offender. This legislation was passed to ensure that school districts and personnel are aware that certain students are on their campuses so that appropriate safety measures can be put into place if necessary.

Subsection (a-1) is not new language but was moved from what was formerly Article 15.27(d). This provision allows a school superintendent who receives an Article 15.27 notice from law enforcement under Subsection (a) at the time of arrest or referral of a student, to share the notice with a school district employee who has direct supervisory responsibility of the student identified in the notice if the employee needs the information for the protection of others or for educational purposes.

The amendments made to Subsection (b) require the prosecutor to include in the required notices (both oral and written) whether the student is required to register as a sex offender under Code of Criminal Procedure Chapter 62. The amendments change the language regarding the school superintendent's duty to notify all instructional staff and support personnel who have regular contact with the student from *promptly* to *within 24 hours*.

Subsection (c) was amended to expand and clarify that when a student is under any form of supervision, including adult or juvenile probation or parole or under the jurisdiction of TYC, the supervising entity is required to send notice to the school superintendent of a district into which the student moves and enrolls. Notice must be provided to the new school official within 24 hours of the student's enrollment. The new school official is required to notify all instructional and support personnel of the student's presence.

The final amendment to this section was to Subsection (j), which was added to ensure that the required notices under Article 15.27 do not replace the notification requirements under Code of Criminal Procedure Chapter 62.

Code of Criminal Procedure Article 15.27. NOTIFICATION TO SCHOOLS REQUIRED.

(c) A parole or probation office having jurisdiction over a student described by Subsection (a), (b), or (e) who transfers from a school or is subsequently removed from a school and later returned to a school or school district other than the one the student was enrolled in when the arrest, referral to a juvenile court, conviction, or adjudication occurred shall notify the superintendent or a person designated by the superintendent of the school district to which the student transfers or is returned or, in the case of a private school, the principal or a school employee designated by the principal of the school to which the student transfers or is returned ~~new school officials~~ of the arrest or referral in a manner similar to that provided for by Subsection (a) or (e)(1), or of the conviction or delinquent adjudication in a manner similar to that provided for by Subsection (b) or (e)(2). The superintendent of the school district to which the student transfers or is returned or, in the case of a private school, the principal of the school to which the student transfers or is returned ~~new school officials~~ shall promptly notify all instructional and support personnel who have regular contact with the student.

Commentary by Chris Hubner

Source: SB 230

Effective Date: June 16, 2007

Applicability: Conduct on or after effective date.

Summary of Changes: Prior law required parole or probation officers to notify the *new school officials* when a student transferred or returned to a school. This language was vague, however, because it was unclear to whom *new school officials* referred. Amended Article 15.27(c) clarifies this by specifying the superintendent (or a designee) as the person who must receive the required notice from a parole or probation officer. In the case of a private school, the notice must be given to the principal of the school to which the student transfers or is returned. Both the superintendent and the principal are required to notify all instructional and support personnel who have regular contact with the student.

Code of Criminal Procedure Art. 15.27. NOTIFICATION TO SCHOOLS REQUIRED.

~~(d) The superintendent or a person designated by the superintendent in the school district may send to a school district employee having direct supervisory responsibility over the student the information contained in the confidential notice if the superintendent or the person designated by the superintendent determines that the school~~

~~district employee needs the information for educational purposes or for the protection of the person~~

Commentary by Linda Brooke

Source: HB 2832 / SB 6

Effective Date: September 1, 2007

Applicability: Conduct occurring on or after effective date.

Summary of Changes: This subsection was moved and is now the new Subsection (a-1).

5. Sex Offender Legislation

Adam Walsh Act

Child Protection and Safety Act of 2006

Commentary by Leigh de la Reza

Signed by the President in 2006, the Adam Walsh Act is a comprehensive federal act that expands the national sex offender registry, mandates minimum time lengths for registration, and strengthens criminal penalties for crimes against children. The stated purpose of the act is to protect the public, in particular children, from violent sex offenders. Some of the provisions within the Act apply only to adult offenders; however, Section 111(8) specifically includes certain juvenile sex offenders. The U.S. Attorney General has the authority to apply the law retroactively.

John Walsh, father of murdered child Adam Walsh, host of America's Most Wanted and founder of the National Center for Missing and Exploited Children, campaigned to get the bill passed into law along with several other families of murdered children. The bill passed the Senate by a unanimous vote and was signed by President George W. Bush in 2006. The law establishes a baseline federal standard under which States must be in full compliance by July 2009 or face a 10% reduction in law enforcement grants. Juvenile sex offender treatment grants are authorized for States in compliance with the Act for FY 2007-2009.

Juveniles are not impacted by the entire Act and all juveniles are not included; only juveniles who are 14 years or older at the time of the offense, and commit a sexual offense comparable to or more severe than the Title 18 US Code §2241 aggravated sexual abuse (or an attempt or conspiracy to commit such offense) are included.

In Texas, aggravated sexual assault and sexual assault by force, threat, or other means would be comparable to the federal law of aggravated sexual abuse. When conforming legislation is passed in Texas, the Act will alter Code of Criminal Procedure Chapter 62 and eliminate the discretion of the juvenile court to exempt, defer, or allow non-public registration for these offenses.

The Adam Walsh Act further mandates the length of time offenders must register. The length of time offenders are required to register is determined by a system of three tiers:

- Tier I = 15 years;
- Tier II = 25 years;
- Tier III = life.

Juveniles adjudicated for aggravated sexual assault would be classified as Tier III sex offenders and would be required to publicly register for life. Tier III juveniles may

petition the court to no longer be required to register if they maintain a clean record for 25 years, successfully complete probation or parole, and successfully complete an appropriate sex offender treatment program.

The Adam Walsh Act further creates a national sex offender registry that must be easily accessible to the public and available on the Internet. Each jurisdiction must provide: a physical description, the criminal offense, the criminal history of the offender, including dates of arrests and convictions and correctional or release status, a current photograph, fingerprints and palm prints, a DNA sample, a photocopy of a valid driver's license or ID card, and any other information required by the Attorney General. Offenders must appear in person to update the information at time intervals determined by their tier level. Tier III juveniles would be required to appear in person to update their information every 3 months.

States are required to set a maximum criminal penalty for failure to register that includes a maximum term of imprisonment for greater than 1 year.

This session, Senator Shapiro proposed SB 1740 to meet the requirements under the Adam Walsh Act. The bill did not pass. Each state will have until 2009 to be in compliance with the Adam Walsh Act, but exactly what law Texas will impose and how that law will ultimately impact Texas children is still unknown.

Due to space limitations, the Adam Walsh Act is not included in this newsletter. An online copy may be downloaded at the Library of Congress' website at <http://thomas.loc.gov/>.

Petition Against Adam Walsh Act

A petition is in circulation which proposes that judges should have discretion over whether or not to require a juvenile to register under the Adam Walsh Child Protection and Safety Act of 2006. For additional information or to receive a copy of the petition, contact The Honorable Jean Boyd at (817) 838-4620.

Occupations Code

Occupations Code Section 110.001. DEFINITIONS.

(6) "Sex offender" means a person who:

(A) is convicted of committing or adjudicated to have committed a sex crime under state or federal law;

(B) is awarded deferred adjudication for a sex crime under state or federal law; or

(C) is convicted of, adjudicated to have committed, or awarded deferred adjudication for an offense that is based on sexually motivated conduct ~~admits to having violated state or federal law with regard to sexual conduct; or~~

~~[(D) experiences or evidences a paraphilic disorder as defined by the Revised Diagnostic and Statistical Manual, including any subsequent revision of that manual].~~

(7) "Sex offender treatment provider" means a person, licensed by the council and recognized based on training and experience to provide assessment and treatment to adult sex offenders or juveniles with sexual behavioral problems who have been convicted, adjudicated, awarded deferred adjudication, or referred by a state agency or a court, and licensed in this state ~~[or certified]~~ to practice as ~~[in this state, including]~~ a physician, psychiatrist, psychologist, psychological associate, provisionally licensed psychologist, licensed professional counselor, licensed professional counselor intern, licensed marriage and family therapist, licensed marriage and family associate, licensed clinical social worker, licensed master ~~[or]~~ social worker under a clinical supervision plan approved by the Texas State Board of Social Worker Examiners, or advanced practice nurse recognized as a psychiatric clinical nurse specialist or psychiatric mental health nurse practitioner, who provides mental health or medical services for rehabilitation of sex offenders.

(8) "Sexually motivated conduct" has the meaning assigned by Section 841.002, Health and Safety Code.

Commentary by Leigh de la Reza

Source: HB 2034

Effective Date: September 1, 2007

Applicability: Subsections (6) and (8) applies to persons convicted of, adjudicated to have committed, or awarded deferred adjudication. Subsection (7) applies to sex offender treatment providers.

Summary of Changes: HB 2034 amends the Occupations Code Section 110.001, Subsection (6) by defining a sex offender as a person who is convicted of, adjudicated to have committed, or awarded deferred adjudication for an offense that is based on sexually motivated conduct. It deletes current statutory language that defines a sex offender as person who admits to having violated state or federal law with regard to sexual conduct or experiences or evidences a paraphilic disorder.

As amended, Subsection (7) redefines the term *sex offender treatment provider*. The new definition includes a: psychological associate, provisionally licensed psychologist, licensed professional counselor intern, licensed

marriage and family associate, licensed clinical social worker, licensed master social worker under a clinical supervision plan approved by the Texas State Board of Social Worker Examiners, or advanced practice nurse recognized as a psychiatric clinical nurse specialist or psychiatric mental health nurse practitioner.

Subsection (8) defines sexually motivated conduct to have the same meaning assigned to the Health and Safety Code Section 841.002.

Occupations Code Section 110.002. APPLICATION OF CHAPTER.

(a) This chapter does not apply to a person licensed to practice in this state who provides adjunct therapy.

(b) This chapter does not apply to the prescribing of a drug, remedy, or clinical supply by a physician licensed under Subtitle B.

Commentary by Leigh de la Reza

Source: HB 2034

Effective Date: September 1, 2007

Applicability: Services of licensed sex offender treatment providers rendered on or after September 1, 2007.

Summary of Changes: Occupations Code Section 110.002 clarifies that the application of the chapter does not apply to persons licensed to practice in this state who provide adjunct therapy (i.e., treatment for other mental health disorders). The amendment exempts from licensure a physician who prescribes medications to a person who may be deemed a sex offender and clarifies that it does not apply to the prescribing of a drug, remedy, or clinical supply by a physician licensed under Subtitle B.

Occupations Code Section 110.158. RULEMAKING.

(a) The council may adopt rules consistent with this chapter. In adopting rules, the council shall:

(1) consider the rules and procedures of the board and the department; and

(2) adopt procedural rules consistent with similar existing rules and procedures of the board or the department.

(b) A sex offender treatment provider licensed under this chapter is subject to the rules of the council, in relation to the person's provision of sex offender treatment, rather than the rules of the licensing entity by which the provider is licensed or otherwise regulated. A sex offender treatment provider who acts in conformance with the rules, policies, and procedures of the council is not subject to any administrative sanction against the provider by the licensing entity by which the provider is licensed or otherwise regulated.

Commentary by Leigh de la Reza

Source: HB 2034

Effective Date: September 1, 2007

Applicability: Services of licensed sex offender treatment providers rendered on or after September 1, 2007.

Summary of Changes: Rulemaking authority previously granted to the Council on Sex Offender Treatment is modified in the Occupations Code Section 110.158. Under the new section, a licensed sex offender treatment provider will be subject to the rules of the council and not the rules of the licensing entity. A licensed sex offender treatment provider will not be subject to any administrative sanctions by the licensing entity if he/she is in conformance with the rules, policies, and procedures of the council.

Occupations Code Section 110.301. LICENSE REQUIRED.

(a) A person may not provide sex offender treatment [~~a rehabilitation service~~] or act as a sex offender treatment provider unless the person is licensed under this chapter.

(c) This section does not apply to a physician whose treatment of a sex offender is limited to prescribing medication to the sex offender.

Commentary by Leigh de la Reza

Source: HB 2034

Effective Date: September 1, 2007

Applicability: Services of sex offender treatment providers rendered on or after September 1, 2007.

Summary of Changes: HB 2034 amends the Occupations Code Section 110.301(a) to specify that a person may not provide *sex offender treatment* unless the person is licensed under Chapter 110 of the Occupations Code. Prior law prohibited such persons from providing *a rehabilitation service* unless the person is licensed and this section was deleted.

6. Open Government Legislation

Government Code Sec. 22.110. JUDICIAL INSTRUCTION RELATED TO FAMILY VIOLENCE, SEXUAL ASSAULT, AND CHILD ABUSE AND NEGLECT.

Commentary by Nydia D. Thomas

Source: HB 3505

Effective Date: September 1, 2007

Applicability: Applies prospectively only to a judge or judicial officer who has not completed the initial training during the first term or first four years in office as required under this section before September 1, 2007.

Summary of Changes: The amendment simply adds the word *neglect* to the heading of Government Code Section 22.110 relating to judicial instruction.

Government Code Sec. 22.110. JUDICIAL INSTRUCTION RELATED TO FAMILY VIOLENCE, SEXUAL ASSAULT, AND CHILD ABUSE.

(a) The court of criminal appeals shall assure that judicial training related to the problems of family violence, sexual assault, and child abuse and neglect is provided.

(b) The court of criminal appeals shall adopt the rules necessary to accomplish the purposes of this section. The rules must require each district judge, judge of a statutory county court, associate judge appointed under Chapter 54 of this code or Chapter 201, Family Code, master, referee, and magistrate to complete at least 12 [~~eight~~] hours of the training within the judge's first term of office or the judicial officer's first four years of service and provide a method for certification of completion of that training. At least four hours of the training must be dedicated to issues related to child abuse and neglect and must cover at least two of the topics described in Subsections (d)(8)-(12). At

least six hours of the training must be dedicated to the training described by Subsections (d)(5), (6), and (7). The rules must require each judge and judicial officer to complete an additional five [~~three~~] hours of training during each additional term in office or four years of service. At least two hours of the additional training must be dedicated to issues related to child abuse and neglect. The rules must exempt from the training requirement of this subsection each judge or judicial officer who files an affidavit stating that the judge or judicial officer does not hear any cases involving family violence, sexual assault, or child abuse and neglect.

(c) In adopting the rules, the court of criminal appeals may consult with the supreme court and with professional groups and associations in the state that have expertise in the subject matter to obtain the recommendations of those groups or associations for instruction content.

(d) The instruction must include information about:

(1) statutory and case law relating to videotaping a child's testimony and relating to competency of children to testify;

(2) methods for eliminating the trauma to the child caused by the court process;

(3) case law, statutory law, and procedural rules relating to family violence, sexual assault, and child abuse and neglect;

(4) methods for providing protection for victims of family violence, sexual assault, and [~~or~~] child abuse and neglect;

(5) available community and state resources for counseling and other aid to victims and to offenders;

(6) gender bias in the judicial process;
[and]

(7) dynamics and effects of being a victim of family violence, sexual assault, or child abuse and neglect;

(8) dynamics of sexual abuse of children, including child abuse accommodation syndrome and grooming;

(9) impact of substance abuse on an unborn child and on a person's ability to care for a child;

(10) issues of attachment and bonding between children and caregivers;

(11) issues of child development that pertain to child abuse and neglect; and

(12) medical findings regarding physical abuse, sexual abuse, and child abuse and neglect.

(d-1) The sponsoring organization for any training on issues related to child abuse and neglect must have at least three years' experience in training professionals on child abuse and neglect issues or have personnel or planning committee members who have at least five years' experience in working directly in the field of child abuse and neglect prevention and treatment.

Commentary by Nydia D. Thomas

Source: HB 3505

Effective Date: September 1, 2007

Applicability: Applies prospectively only to a judge or judicial officer who has not completed the initial training during the first term or first four years in office as required under this section before September 1, 2007.

Summary of Changes: Every active appellate, district and county court judge, including a retired and former judge who may be subject to assignment, is required to complete instruction in administrative judicial duties, as well as substantive procedural and evidentiary law. HB 3505 seeks to enhance judicial education and awareness regarding child abuse and neglect cases, child placement and removal, as well as parental terminations.

As amended, Subsection (a) adds the issue of neglect to the required instructional topics.

Subsection (b) requires the Court of Criminal Appeals to establish rules to implement this provision. District and county court judges, associate judges, masters, referees, and other magistrates with authority to hear family law matters and child abuse and neglect cases are now required to complete at least twelve (12), rather than eight (8), hours of training within the judge's first term of office or during the judicial officer's first four years of service. Four of those training hours must be dedicated to issues related to child abuse and neglect, and at least two of the instructional topics listed in the statute must be covered. The Court of Criminal Appeals must also promulgate rules that require each judge and judicial officer to complete an additional five (5), rather than three (3), hours of training during each additional term in office or four years of ser-

vice. At least two hours of the additional training hours must be dedicated to child abuse and neglect issues.

Subsection (c) obligates the Court of Criminal Appeals to consult with the Texas Supreme Court, professional groups, and associations around the state for recommendations on instructional content.

Subsection (d) lists the mandated training topics, which include instructional modules on case law, statutory law and procedural rules relating to child abuse and neglect; dynamics of sexual abuse of children, including child abuse accommodation syndrome and grooming; impact of substance abuse on an unborn child and on a person's ability to care for a child; issues of attachment and bonding between children and caregivers; issues of child development that pertain to child abuse and neglect; and medical findings regarding certain types of abuse and neglect among the information required to be included in the instruction.

Subsection (d-1) requires any agency that sponsors training on child abuse and neglect to have at least three years experience in training professionals on the child abuse and neglect topics and have personnel or planning committee members who have at least five years experience working directly in the field of child abuse and neglect prevention and treatment.

Government Code Sec. 551.001. DEFINITIONS.

(4) "Meeting" means:

(A) a deliberation between a quorum of a governmental body, or between a quorum of a governmental body and another person, during which public business or public policy over which the governmental body has supervision or control is discussed or considered or during which the governmental body takes formal action; or

(B) except as otherwise provided by this subdivision, a gathering:

(i) that is conducted by the governmental body or for which the governmental body is responsible;

(ii) at which a quorum of members of the governmental body is present;

(iii) that has been called by the governmental body; and

(iv) at which the members receive information from, give information to, ask questions of, or receive questions from any third person, including an employee of the governmental body, about the public business or public policy over which the governmental body has supervision or control.

The term does not include the gathering of a quorum of a governmental body at a social function unrelated to the public business that is conducted by the body, or the attendance by a quorum of a governmental body at a regional, state, or national convention or workshop, ceremonial event, or press conference, if formal action is not taken and any discussion of public business is incidental to the

social function, convention, [Ø] workshop, ceremonial event, or press conference.

The term includes a session of a governmental body.

Commentary by Nydia D. Thomas

Source: SB 1306

Effective Date: May 22, 2007

Applicability: Meetings or social functions that occur on or after the effective date.

Summary of Changes: The provisions of the Open Meetings Act (Act) contained in Government Code Chapter 551 apply to every regular, special or called meeting of a governing body, such as a juvenile board. Meetings held by a governing body must be open to the public and must adhere to other legal requirements. Members of a governing body are often required to attend trainings, conventions and other gatherings as an extension of their official duties. To be in compliance with open meetings laws members of a juvenile board, for example, in attendance at a social function must limit discussions to matters associated with the event.

Government Code Section 551.001 (4) clarifies that a social function such as a ceremonial event or press conference at which a quorum of a governmental body is present is not a meeting which would be subject to the Act. The members, however, must limit discussions of public business to matters which are incidental to the social function and are prohibited from taking any formal action at such events.

Government Code Sec. 551.047. SPECIAL NOTICE TO NEWS MEDIA OF EMERGENCY MEETING OR EMERGENCY ADDITION TO AGENDA.

(c) The presiding officer or member shall give the notice by telephone, facsimile transmission, or electronic mail [telegraph].

Commentary by Nydia D. Thomas

Source: SB 592

Effective Date: June 15, 2007

Applicability: Notices transmitted on or after the effective date.

Summary of Changes: Subsection (c) has been amended to add electronic mail and facsimile transmission to the options available to a presiding officer of a governmental body for communicating notice to the news media of an emergency meeting or emergency addition to an agenda. This amendment updates the statute to reflect current technology by striking the reference to outmoded messaging transmission systems.

Government Code Sec. 551.052. SCHOOL DISTRICT: SPECIAL NOTICE TO NEWS.

(b) The notice shall be by telephone, facsimile transmission, or electronic mail [telegraph].

Commentary by Nydia D. Thomas

Source: SB 592

Effective Date: June 15, 2007

Applicability: Notices transmitted on or after the effective date.

Summary of Changes: Subsection (b) has been amended to clarify that special notice to the news media of an emergency meeting or of emergency supplemental agenda items can be communicated by electronic mail and facsimile transmission. This amendment updates the statute to reflect current technological advances by eliminating the reference to alternate means of providing meeting notices.

Government Code Sec. 552.117. EXCEPTION: CERTAIN ADDRESSES, TELEPHONE NUMBERS, SOCIAL SECURITY NUMBERS, AND PERSONAL FAMILY INFORMATION.

(a) Information is excepted from the requirements of Section 552.021 if it is information that relates to the home address, home telephone number, or social security number of the following person or that reveals whether the person has family members:

(1) a current or former official or employee of a governmental body, except as otherwise provided by Section 552.024;

(2) a peace officer as defined by Article 2.12, Code of Criminal Procedure, or a security officer commissioned under Section 51.212, Education Code, regardless of whether the officer complies with Section 552.024 or 552.1175, as applicable;

(3) a current or former employee of the Texas Department of Criminal Justice or of the predecessor in function of the department or any division of the department, regardless of whether the current or former employee complies with Section 552.1175;

(4) a peace officer as defined by Article 2.12, Code of Criminal Procedure, or other law, a reserve law enforcement officer, a commissioned deputy game warden, or a corrections officer in a municipal, county, or state penal institution in this state who was killed in the line of duty, regardless of whether the deceased complied with Section 552.024 or 552.1175; [Ø]

(5) a commissioned security officer as defined by Section 1702.002, Occupations Code, regardless of whether the officer complies with Section 552.024 or 552.1175, as applicable; or

(6) an officer or employee of a community supervision and corrections department established under Chapter 76 who performs a duty described by Section 76.004(b), regardless of whether the officer or employee complies with Section 552.024 or 552.1175.

Commentary by Nydia D. Thomas

Source: HB 455

Effective Date: September 1, 2007

Applicability: Requests received on or after the effective date.

Summary of Changes: The amendment to Subsection (a) carves out a new confidentiality exception under the Public Information Act regarding the personal information of adult community supervision officers. The statute prohibits disclosure of information relating to the home address, telephone number, social security number, and information that reveals whether the person has family members. This exception applies regardless of whether the officer has made a disclosure election authorized under other provisions of the Public Information Act. A similar exception does not currently exist for juvenile probation department personnel or juvenile probation officers, and may be appropriate for future legislative consideration.

Government Code Sec. 552.1175. CONFIDENTIALITY OF ADDRESSES, TELEPHONE NUMBERS, SOCIAL SECURITY NUMBERS, AND PERSONAL FAMILY INFORMATION OF PEACE OFFICERS, COUNTY JAILERS, SECURITY OFFICERS, AND EMPLOYEES OF THE TEXAS DEPARTMENT OF CRIMINAL JUSTICE OR A PROSECUTOR'S OFFICE.

(a) This section applies only to:

(1) peace officers as defined by Article 2.12, Code of Criminal Procedure;

(2) county jailers as defined by Section 1701.001, Occupations Code;

(3) current or former employees of the Texas Department of Criminal Justice or of the predecessor in function of the department or any division of the department;

(4) commissioned security officers as defined by Section 1702.002, Occupations Code; ~~and~~

(5) employees of a district attorney, criminal district attorney, or county or municipal attorney whose jurisdiction includes any criminal law or child protective services matters; and

(6) officers and employees of a community supervision and corrections department established under Chapter 76 who perform a duty described by Section 76.004(b).

Commentary by Nydia D. Thomas

Source: HB 455

Effective Date: September 1, 2007

Applicability: Requests made on or after the effective date.

Summary of Changes: The amendment to Subsection (a) makes the confidentiality exceptions of the Public Information Act applicable to the personal information in the possession of a governmental body relating to the officers and employees of an adult community supervision department.

Government Code Sec. 552.132. CONFIDENTIALITY OF [EXCEPTION:] CRIME VICTIM OR CLAIMANT INFORMATION.

(a) Except as provided by Subsection (d) ~~(f)~~, in this section, "crime victim or claimant" means a victim or claimant under Subchapter B, Chapter 56, Code of Criminal Procedure, who has filed an application for compensation under that subchapter.

(b) ~~The following [A crime victim may elect whether to allow public access to] information held by the crime victim's compensation division of the attorney general's office is confidential [that relates to]:~~

(1) the name, social security number, address, or telephone number of a ~~the~~ crime victim or claimant; or

(2) any other information the disclosure of which would identify or tend to identify the crime victim or claimant.

(c) ~~[An election under Subsection (b) must be:~~

~~[(1) made in writing on a form developed by the attorney general for that purpose and signed by the crime victim; and~~

~~[(2) filed with the crime victims' compensation division before the third anniversary of the date that the crime victim filed the application for compensation.~~

~~[(d) If the crime victim elects not to allow public access to the information, the information is excepted from the requirements of Section 552.021. If the crime victim does not make an election under Subsection (b) or (f) or elects to allow public access to the information, the information is not excepted from the requirements of Section 552.021 unless the information is made confidential or excepted from those requirements by another law.~~

~~[(e) If the crime victim or claimant is awarded compensation under Section 56.34, Code of Criminal Procedure, as of the date of the award of compensation, the name of the crime victim or claimant and the amount of compensation awarded to that crime victim or claimant are public information and are not excepted from the requirements of Section 552.021.~~

~~(d) [(f)] An employee of a governmental body who is also a [crime] victim under Subchapter B, Chapter 56, Code of Criminal Procedure, regardless of whether the employee has filed an application for compensation under that subchapter, may elect whether to allow public access to information held by the attorney general's office or other governmental body that would identify or tend to identify the [crime] victim, including a photograph or other visual representation of the victim. An election under this subsection must be made in writing on a form developed by the governmental body, be signed by the employee, and be filed with the governmental body before the third anniversary of the latest to occur of one of the following:~~

~~(1) the date the crime was committed;~~

~~(2) the date employment begins; or~~

~~(3) the date the governmental body develops the form and provides it to employees.~~

(e) If the employee fails to make an election under Subsection (d), the identifying information is excepted from disclosure until the third anniversary of the date the crime was committed. In case of disability, impairment, or other incapacity of the employee, the election may be made by the guardian of the employee or former employee.

Commentary by Nydia D. Thomas

Source: HB 1042

Effective Date: September 1, 2007

Applicability: Requests received on or after the effective date.

Summary of Changes: HB 1042 made clarifying amendments to the Public Information Act (Act) regarding the disclosure of crime victim information. In addition to creating a new title and other conforming changes, Government Code Section 552.132 (a) was amended to define crime victim or claimant.

Subsection (b) clarifies that information held by the Attorney General's Office that would identify the crime victim or claimant is confidential in all cases and eliminates language that previously allowed the crime victim to elect whether to make the information available to the public.

Subsection (c) redesignates and deletes language contained in former Subsections (c) and (d) that outlined the requirements for a crime victim to make the election referenced in the Act. Subsections (d) and (e) make similar redesignations and conforming changes.

Government Code Sec. 552.147. ~~[EXCEPTION:] SOCIAL SECURITY NUMBERS [NUMBER OF LIVING PERSON]~~

(a) The social security number of a living person is excepted from the requirements of Section 552.021, but is not confidential under this section and this section does not make the social security number of a living person confidential under another provision of this chapter or other law.

(b) A governmental body may redact the social security number of a living person from any information the governmental body discloses under Section 552.021 without the necessity of requesting a decision from the attorney general under Subchapter G.

(c) Notwithstanding any other law, a county or district clerk may disclose in the ordinary course of business a social security number that is contained in information held by the clerk's office, and that disclosure is not official misconduct and does not subject the clerk to civil or criminal liability of any kind under the law of this state, including any claim for damages in a lawsuit or the criminal penalty imposed by Section 552.352.

(d) Unless another law requires a social security number to be maintained in a government document, on written request from an individual or the individual's representative the clerk shall redact within a reasonable amount of time all but the last four digits of the individual's social

security number from information maintained in the clerk's official public records, including electronically stored information maintained by or under the control of the clerk. The individual or the individual's representative must identify, using a form provided by the clerk, the specific document or documents from which the partial social security number shall be redacted.

Commentary by Nydia D. Thomas

Source: HB 2061

Effective Date: March 28, 2007

Applicability: Records filed with or maintained by a governmental body, including a district or county clerk's office on or after the effective date.

Summary of Changes: In February 2007, Attorney General Abbott opined in GA-0519 that the law required the removal of social security numbers from public documents maintained by government offices and by district and county clerks. The opinion was aimed at preventing the theft or compromise of sensitive identifying information that can be gleaned from certain transactional documents such as property records. The interpretation offered by the Attorney General's Office sent reverberations throughout county and district clerks' offices around the state, presenting them with the daunting task of combing through countless existing records to redact social security numbers. The practical ramifications and fiscal impact were immediately apparent and resulted in a 60-day suspension of the opinion to allow for a legislative solution such as the one presented in the provisions of HB 2061.

As amended, Government Code Section 552.147(a) clarifies that a social security number (SSN) maintained by a government office is not confidential and is not made confidential in another provision of the Public Information Act or by other law. There were no changes to Subsection (b).

Subsection (c) allows the county clerk or district clerk's office to disclose public information containing a SSN in the ordinary course of business without being exposed to official misconduct charges or civil or criminal liability of any kind.

Subsection (d) permits an individual to submit a written request to redact a portion of the SSN on any information maintained by the clerk. Although no specific time frame is set out in the new statute, the clerk is allowed a reasonable amount of time to redact from paper and electronic records all but the last four digits of the SSN. The individual or a representative must complete a form provided by the clerk and identify which documents should contain the partially redacted SSNs. HB 2061 was included on the juvenile justice legislative radar because of its relevance to court systems and governmental entities that maintain SSNs and confidential information relating to members of the public.

Government Code Sec. 552.148. EXCEPTION: CERTAIN PERSONAL INFORMATION MAINTAINED BY MUNICIPALITY PERTAINING TO A MINOR.

(a) In this section, "minor" means a person younger than 18 years of age.

(b) The following information maintained by a municipality for purposes related to the participation by a minor in a recreational program or activity is excepted from the requirements of Section 552.021:

- (1) the name, age, home address, home telephone number, or social security number of the minor;
- (2) a photograph of the minor; and
- (3) the name of the minor's parent or legal guardian.

Commentary by Nydia D. Thomas

Source: SB 123

Effective Date: May 17, 2007

Applicability: Requests received on or after the effective date.

Summary of Changes: As amended, Government Code Section 552.148(b) makes information that reveals the name, age, home address, home telephone number, social security number, photo and the name of a parent or guardian of a minor who participates in a municipal recreational program confidential under the Public Information Act.

Government Code Sec. 552.222. INQUIRY BY GOVERNMENTAL BODY TO REQUESTOR.

(d) If by the 61st day after the date a governmental body sends a written request for clarification or discussion under Subsection (b) or an officer for public information or agent sends a written request for additional information under Subsection (c) the governmental body, officer for public information, or agent, as applicable, does not receive a written response from the requestor, the underlying request for public information is considered to have been withdrawn by the requestor.

(e) A written request for clarification or discussion under Subsection (b) or a written request for additional information under Subsection (c) must include a statement as to the consequences of the failure by the requestor to timely respond to the request for clarification, discussion, or additional information.

(f) If the requestor's request for public information included the requestor's physical or mailing address, the request may not be considered to have been withdrawn under Subsection (d) unless the governmental body, officer for public information, or agent, as applicable, sends the request for clarification or discussion under Subsection (b) or the written request for additional information under Subsection (c) to that address by certified mail.

Commentary by Nydia D. Thomas

Source: HB 1497

Effective Date: September 1, 2007

Applicability: Requests received on or after the effective date.

Summary of Changes: Government Code Sections 552.222 (d), (e) and (f) were added to allow a governmental body that sends a written request for clarification, discussion or additional information to consider the underlying public information request withdrawn if the requestor fails to respond within 60 days. The request can only be considered withdrawn on the 61st day if the governmental body has sent a clarification letter by certified mail to the address provided by the requestor. The letter must also explain the consequences of failing to timely respond within 60 days.

Government Code Sec. 552.263. BOND FOR PAYMENT OF COSTS OR CASH PREPAYMENT FOR PREPARATION OF COPY OF PUBLIC INFORMATION.

(f) A requestor who fails to make a deposit or post a bond required under Subsection (a) before the 10th business day after the date the deposit or bond is required is considered to have withdrawn the request for the copy of the public information that precipitated the requirement of the deposit or bond.

Commentary by Nydia D. Thomas

Source: SB 175

Effective Date: June 15, 2007

Applicability: Requests received on or after the effective date.

Summary of Changes: Government Code Section 552.263(f) is amended to clarify that a requestor is considered to have withdrawn a request for public information if the person has not made a deposit or posted a bond before the 10th business day after the date the deposit or bond is required.

Government Code Sec. 552.306. RENDITION OF ATTORNEY GENERAL DECISION; ISSUANCE OF WRITTEN OPINION.

(a) Except as provided by Section 552.011, the attorney general shall promptly render a decision requested under this subchapter, consistent with the standards of due process, determining whether the requested information is within one of the exceptions of Subchapter C. The attorney general shall render the decision not later than the 45th business [working] day after the date the attorney general received the request for a decision. If the attorney general is unable to issue the decision within the 45-day period, the attorney general may extend the period for issuing the decision by an additional 10 business [working] days by informing the governmental body and the requestor, during the original 45-day period, of the reason for the delay.

Commentary by Nydia D. Thomas

Source: SB 175

Effective Date: June 15, 2007

Applicability: Rulings made on or after the effective date.

Summary of Changes: Amended Government Code Section 52.306(a) requires the Attorney General's Office to render an open records ruling regarding a public information request within 45 business days, rather than 45 working days, and allows for an extension.

Government Code Sec. 552.307. SPECIAL RIGHT OF ACCESS; ATTORNEY GENERAL DECISIONS.

(b) If a decision is not requested under Subsection (a), the governmental body shall release the information to the person with a special right of access under Section 552.023 not later than the 10th business day after the date of receiving the request for information.

Commentary by Nydia D. Thomas

Source: SB 175

Effective Date: June 15, 2007

Applicability: Requests received on or after the effective date.

Summary of Changes: The Public Information Act (Act) provides a special right of access to certain classes of requestors. A number of provisions in the Act authorize a governmental body to release information that might otherwise be considered confidential and excepted from disclosure. Specifically, certain exceptions may be inapplicable to information requested by a member of the legislature, agency or committee for a legislative purpose under Section 552.008; by the person who is the subject of the record [Sec. 552.023]; or by an employee seeking to obtain personnel records [Sec. 552.102]; or by a student or entity requesting certain educational records in accordance with state or federal law [Secs. 552.026 and 552.114].

As amended, Government Code Section 552.307(b) requires a governmental body to release information to persons with a special right of access not later than the 10th business day after receiving the request.

Property Code Sec. 11.008. PERSONAL ~~[CONFIDENTIAL]~~ INFORMATION IN REAL PROPERTY RECORDS.

(a) In this section, "instrument" means a deed or deed of trust.

(b) An instrument submitted for recording is not required to contain an individual's social security number, and the social security number of an individual is not obtained or maintained by the clerk under this section. The preparer of a document may not include an individual's social security number in a document that is presented for recording in the office of the county clerk.

(c) Notwithstanding Section 191.007(c), Local Government Code, an instrument transferring an interest in real property to or from an individual ~~[and disclosing that individual's social security number or driver's license number]~~ must include a notice that appears on the top of the first page of the instrument in 12-point boldfaced type or

12-point uppercase letters and reads substantially as follows:

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY ~~[THIS]~~ INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

(d) ~~[(e)]~~ The validity of an instrument as between the parties to the instrument and the notice provided by the instrument are not affected by a party's failure to include the notice required under Subsection (c) ~~[(b)]~~.

(e) ~~[(d)]~~ The county clerk may not under any circumstance reject an instrument presented for recording solely because the instrument fails to comply with this section. Other than the duty to redact an individual's social security number as required by Section 552.147, Government Code, the county clerk has no duty to ensure that an instrument presented for recording does not contain an individual's social security number.

(f) ~~[(e)]~~ The county clerk shall post a notice in the county clerk's office stating that instruments recorded in the real property or official public records or the equivalent of the real property or official public records of the county:

(1) are not required to contain a social security number or driver's license number; and

(2) are public records available for review by the public.

(g) ~~[(f)]~~ All instruments described by this section are subject to inspection by the public. The county clerk is not criminally or civilly liable for disclosing an instrument or information in an instrument in compliance with the public information law (Chapter 552, Government Code) or another law.

(h) ~~[(g)]~~ Unless this section is cited in a law enacted after September 1, 2003, this section is the exclusive law governing the confidentiality of personal information contained in the real property or official public records or the equivalent of the real property or official public records of a county.

Commentary by Nydia D. Thomas

Source: HB 2061

Effective Date: March 28, 2007

Applicability: Records submitted to or maintained by a governmental body, including a district or county clerk's office on or after the effective date.

Summary of Changes: HB 2061 was included on the juvenile justice legislative radar because of its relevance to court systems and governmental entities that maintain social security numbers (SSNs) and confidential information relating to members of the public. Property Code Section 11.008 is amended as a conforming change to the changes to Government Code Section 552.147. The Property Code amendments clarify that an individual's SSN need not be

included on property deeds or other similar transactional instruments filed for recording.

Subsection (c) provides new notice language advising a natural person that information relating to his or her driver's license number or SSN can be removed from any instrument transferring an interest in real property.

Subsection (e) makes clear that county clerks are not obligated by law to redact the SSN from submitted documents nor are they required to ensure that a document does not contain an individual's SSN.

Subsection (g) protects the clerk from criminal or civil liability for disclosing an instrument or information in compliance with a public information request. Subsections (c), (d), and (f) make other redesignations and conforming changes. For additional background see the commentary under Government Code Section 552.147 under this Section.

Penal Code Sec. 21.12. IMPROPER RELATIONSHIP BETWEEN EDUCATOR AND STUDENT.

(d) The name of a person who is enrolled in a public or private primary or secondary school and involved in an improper relationship with an educator as provided by Subsection (a) may not be released to the public and is not public information under Chapter 552, Government Code.

Commentary by Nydia D. Thomas

Source: HB 3659

Effective Date: September 1, 2007

Applicability: Requests received on or after the effective date.

Summary of Changes: Penal Code Section 21.12 is amended to make the name of a student or minor who has been the victim of the offense of *Improper Relationship*

Between and Educator and Student confidential and prohibits release of the name under the Public Information Act.

Tax Code Sec. 25.025. CONFIDENTIALITY OF CERTAIN HOME INFORMATION.

(a) This section applies only to:

(1) a peace officer as defined by Article 2.12, Code of Criminal Procedure;

(2) a county jailer as defined by Section 1701.001, Occupations Code;

(3) an employee of the Texas Department of Criminal Justice;

(4) a commissioned security officer as defined by Section 1702.002, Occupations Code; ~~and~~

(5) a victim of family violence as defined by Section 71.004, Family Code, if as a result of the act of family violence against the victim, the actor is convicted of a felony or a Class A misdemeanor; and

(6) an officer or employee of a community supervision and corrections department established under Chapter 76, Government Code, who performs a duty described by Section 76.004(b) of that code.

Commentary by Nydia D. Thomas

Source: HB 455

Effective Date: September 1, 2007

Applicability: Requests received on or after the effective date.

Summary of Changes: The amendment to Tax Code Section 25.025(a) is a conforming change that makes confidential the home information of officers and employees of an adult community supervision department.

7. Texas Juvenile Probation Commission Provisions

Human Resources Code Sec. 141.022. ADVISORY COUNCIL ON JUVENILE SERVICES.

(a) The advisory council on juvenile services consists of:

(1) two juvenile court judges, appointed by the commission;

(2) three juvenile probation officers, appointed by the commission;

(3) two citizens who are knowledgeable of juvenile services, appointed by the commission;

(4) the executive commissioner ~~director~~ of the Texas Youth Commission or the commissioner's ~~director's~~ designee;

(5) the commissioner of education or the commissioner's designee; and

(6) the commissioner of human services or the commissioner's designee.

Commentary by Lisa Capers

Source: SB 103

Effective Date: June 8, 2007, at 6:50 p.m. Central Standard Time

Applicability: Appointments on or after the effective date.

Summary of Changes: This provision in current law defines the Advisory Council on Juvenile Services within the enabling legislation of the Texas Juvenile Probation Commission. One of the required members of this council is a representative from the Texas Youth Commission (TYC) who was normally a designee appointed by the executive director of the agency. This amendment simply replaces

the term *director* with *commissioner* to reflect the new governance structure of TYC as enacted in SB 103. For the next two years TYC will not have an *executive director* appointed by a governing board but will instead have an *executive commissioner* appointed by the Governor.

Human Resources Code Sec. 141.042. RULES GOVERNING JUVENILE BOARDS, PROBATION DEPARTMENTS, PROBATION OFFICERS, PROGRAMS, AND FACILITIES.

~~(d) The commission shall biennially inspect all public and private juvenile pre-adjudication secure detention facilities and all public and private juvenile post-adjudication secure correctional facilities except a facility operated or certified by the Texas Youth Commission and shall biennially monitor compliance with the standards established under Subsection (a)(4) if the juvenile board has elected to comply with those standards or shall biennially ensure that the facility is certified by the American Correctional Association if the juvenile board has elected to comply with those standards.~~

Commentary by Lisa Capers

Source: SB 103

Effective Date: June 8, 2007, at 6:50 p.m. Central Standard Time

Applicability: State fiscal year beginning on or after the effective date.

Summary of Changes: This subsection is repealed and is a companion change to the amendments to Family Code Section 51.12 and new Section 51.125. Prior law required the Texas Juvenile Probation Commission (TJPC) to inspect juvenile justice facilities biennially. Under these new provisions, TJPC must inspect all juvenile pre-adjudication secure detention and post-adjudication secure correctional facilities annually. (See the discussion under Section 51.12 and 51.125 in the juvenile justice section of this report.)

Human Resources Code Sec. 141.047. INTER-AGENCY COOPERATION.

(b) The director, the executive commissioner [~~director~~] of the Texas Youth Commission, and the commissioners of education, mental health and mental retardation, and human services shall meet in Austin at least quarterly to:

- (1) discuss mutual problems;
- (2) resolve conflicts in providing services to juveniles; and
- (3) make recommendations to the governor and legislature.

Commentary by Lisa Capers

Source: SB 103

Effective Date: June 8, 2007, at 6:50 p.m. Central Standard Time

Applicability: Interagency meetings held on or after the effective date.

Summary of Changes: This provision in current law mandates interagency cooperation between the agency heads of the Texas Juvenile Probation Commission, the Texas Youth Commission (TYC), the Texas Education Agency and the Texas Health and Human Services Commission. This amendment simply replaces the term *director* with *commissioner* to reflect the new governance structure of TYC as enacted in SB 103. For the next two years, TYC will not have an *executive director* appointed by a governing board but will instead have an *executive commissioner* appointed by the Governor.

Human Resources Code Sec. 141.0471. COORDINATED STRATEGIC PLAN FOR JUVENILE JUSTICE SYSTEM.

(c) The governing board of the Texas Juvenile Probation Commission and the executive commissioner of the Texas Youth Commission [~~each agency~~] shall adopt the coordinated strategic plan on or before December 1st of each odd-numbered year, or before the adoption of the agency's individual strategic plan, whichever is earlier.

Commentary by Lisa Capers

Source: SB 103

Effective Date: June 8, 2007, at 6:50 p.m. Central Standard Time

Applicability: Strategic plans developed on or after the effective date.

Summary of Changes: This provision in current law mandates the governing boards of the Texas Juvenile Probation Commission and the Texas Youth Commission (TYC) to adopt a coordinated strategic plan between the two agencies every two years. This amendment now references the *executive commissioner* of TYC as the person to whom this responsibility falls since TYC no longer has as a *governing board* structure. For the next two years, TYC will have no *executive director* appointed by a governing board and no *governing board* appointed by the Governor but will instead have an *executive commissioner* appointed by the Governor.

~~Human Resources Code Sec. 141.0432. YOUTH BOOT CAMP PROGRAMS.~~

~~(a) The commission shall work with local juvenile boards and local juvenile probation departments to establish policies and guidelines for youth boot camp programs for children.~~

~~(b) The commission, local juvenile boards, and local juvenile probation departments may work together to develop a program of moral, academic, vocational, physical, and correctional training and military style discipline for children placed in youth boot camps on probation under Section 54.04(d)(1)(B), Family Code, or for violating the conditions of probation as determined under Section~~

~~54.05(f), Family Code, including follow up programs to aid successful community reintegration.~~

~~(c) The commission, local juvenile boards, and local juvenile probation departments shall adopt rules of conduct for children participating in the program under this section.~~

~~(d) Local juvenile boards and local juvenile probation departments may enter into agreements with each other to jointly establish regional youth boot camps.~~

~~(e) Local juvenile probation departments may contract with the Texas Youth Commission to provide services to persons who violate conditions of parole as determined under Section 61.075.~~

Commentary by Lisa Capers

Source: HB 2884

Effective Date: September 1, 2007

Applicability: Agency operations on or after the effective date.

Summary of Changes: This section is repealed. Section 141.0432 was originally enacted during the omnibus juvenile justice reforms in 1995 when youth boot camps were quite prevalent and popular. Since 1995, the Texas Juvenile Probation Commission (TJPC) has not utilized this provision because the overwhelming weight of the state and national research suggests that boot camp programs for youth are ineffective. Since 1995, virtually no new boot camp programs have been established by local officials and TJPC expects that trend to continue. However, local juvenile boards and county officials do have the authority to establish programs and facilities for juveniles, including boot camp type programs, and this authority is not reliant upon this provision.

~~Human Resources Code Sec. 141.0433. CONTRACTS WITH PRIVATE VENDORS.~~

~~The commission may contract with a private vendor for the financing, construction, operation, maintenance, or management of a youth boot camp. The commission may not award a contract under this section unless the commission requests proposals and receives a proposal that meets or exceeds, in addition to requirements specified in the request for proposals, the requirements specified in Section 141.0434.~~

Commentary by Lisa Capers

Source: HB 2884

Effective Date: September 1, 2007

Applicability: Agency operations on or after the effective date.

Summary of Changes: This section is repealed. Section 141.0433 related to contracts between the Texas Juvenile Probation Commission (TJPC) and private vendors for the establishment of youth boot camps. This legislation was originally enacted during the omnibus juvenile justice reforms in 1995 when youth boot camps were quite prevalent

and popular. Since 1995, however, TJPC has not utilized this provision because the overwhelming weight of the state and national research suggests that boot camp programs for youth are ineffective. Since 1995, virtually no new boot camp programs have been established by local officials and TJPC expects that trend to continue. The agency has no plans to establish youth boot camps in the future.

~~Human Resources Code Sec. 141.0434. ADDITIONAL REQUIREMENTS FOR CONTRACTS WITH PRIVATE VENDORS.~~

~~(a) Any contract entered into by the commission with a private vendor for the financing, construction, operation, maintenance, or management of a youth boot camp under Section 141.0433 must comply with the following requirements:~~

~~(1) a person proposing to enter into a contract with the commission under that section must demonstrate the qualifications and the operations and management experience to carry out the terms of the contract; and~~

~~(2) in addition to meeting the requirements specified in the requests for proposals, a proposal must:~~

~~(A) provide for regular, on-site monitoring by the commission;~~

~~(B) offer a level and quality of programs at least equal to those provided by any other state-run youth boot camp;~~

~~(C) permit the commission to terminate the contract for cause, including as cause the failure of the private vendor to meet the conditions required by this section and other conditions required by the contract;~~

~~(D) if the proposal includes construction of a facility, contain a performance bond approved by the commission that is adequate and appropriate for the proposed contract;~~

~~(E) provide for assumption of liability by the private vendor for all claims arising from the services performed under the contract by the private vendor;~~

~~(F) provide for an adequate plan of insurance for the private vendor and its officers, guards, employees, and agents against all claims, including claims based on violations of civil rights arising from the services performed under the contract by the private vendor; and~~

~~(G) provide for an adequate plan of insurance to protect the commission against all claims arising from the services performed under the contract by the private vendor and to protect the commission from actions by a third party against the private vendor and its officers, guards, employees, and agents as a result of the contract.~~

~~(b) A private vendor operating under a contract authorized by this subchapter may not claim sovereign im-~~

munity in a suit arising from the services performed under the contract by the private vendor. This subsection does not deprive the private vendor or the commission of the benefit of any law limiting exposure to liability, setting a limit on damages, or establishing a defense to liability.

Commentary by Lisa Capers

Source: HB 2884

Effective Date: September 1, 2007

Applicability: Agency operations on or after the effective date.

Summary of Changes: This section is repealed. Section 141.0434 related to contract requirements between the Texas Juvenile Probation Commission (TJPC) and private vendors for the establishment of youth boot camps. This legislation was originally enacted during the omnibus juvenile justice reforms in 1995 when youth boot camps were quite prevalent and popular. Since 1995, TJPC has not utilized this provision because the overwhelming weight of the state and national research suggests that boot camp programs for youth are ineffective. Since 1995, virtually no new boot camp programs have been established by local officials and TJPC expects that trend to continue. The agency has no plans to establish youth boot camps in the future.

Human Resources Code Sec. 141.0486. REPORTING CONCERNING RESEARCH PROGRAMS OR STUDIES.

(a) The commission shall keep records relating to children within the juvenile probation system that participate in research programs or studies.

(b) The records must show, for each calendar quarter and for each calendar year:

(1) the number of children participating in research programs or studies for the appropriate reporting period;

(2) the type of research program or study in which each child is participating;

(3) the name of the principal investigator conducting the research program or study; and

(4) the entity sponsoring the research program or study.

(c) The commission shall submit a report that contains the information in the records kept under Subsection (b) on or before the 15th day after the last day of the appropriate reporting period to the:

(1) governor;

(2) lieutenant governor;

(3) speaker of the house of representatives; and

(4) members of the senate and house of representatives.

(d) A report submitted under this section is public information under Chapter 552, Government Code.

Commentary by Lisa Capers

Source: HB 1113

Effective Date: June 15, 2007

Applicability: To all children within the juvenile probation system regardless of whether they entered the probation system before, on or after the effective date.

Summary of Changes: This piece of legislation was prompted by news reports of foster children in some states being given experimental drugs or being enrolled in research studies involving prescription drugs. In 2004, one headline in New York State read, *Foster Children Used as Guinea Pigs*. Consequently, New York City council members called for an investigation into the participation of HIV-infected foster children in potentially dangerous experiments involving high doses of AIDS drugs. Such reports got the attention of Texas legislators. Additionally, in Texas, serious concerns were also raised as a result of reports regarding the types and amounts of psychotropic medications prescribed to children in our foster care system. HB 1113 as originally filed was much broader than the version that actually passed. It sought to define prohibited types of research -- a slippery slope and difficult chore at best.

The legislation in the version that ultimately passed requires the Texas Juvenile Probation Commission (TJPC) to maintain records relating to all children on probation who participate in research programs or studies. TJPC must keep records that show the number of children participating in such programs or studies, the types of studies or programs, and the individuals and entities sponsoring and conducting the research. The data must be collected for each calendar quarter and annual data must be maintained. TJPC must submit a report to legislative leadership regarding the data collected; this report is available under the Public Information Act.

It is important to note that TJPC has an administrative rule that prohibits experimentation on youth confined in juvenile justice facilities. Title 37 Texas Administrative Code Section 343.12(g) provides:

“Experimentation. Participation by residents in medical, pharmaceutical, or cosmetic experiments is prohibited.”

This standard has been in effect for many years, but it does not generally cover regular research programs or studies which are the subject of HB 1113. As TJPC is currently in the process of reviewing and modifying all of its standards, this particular standard will certainly be amended to address the issues raised by HB 1113.

Human Resources Code Sec. 141.0461. AUTHORITY TO ISSUE SUBPOENA, ADMINISTER OATH, RECEIVE EVIDENCE, AND GATHER INFORMATION.

(a) In this section, "evidence" means any record, book, paper, document, data, or other evidence maintained by electronic or other means.

(b) The commission may issue a subpoena requiring the attendance of a witness or the production of evidence that the commission considers necessary for the investigation of:

(1) abuse, neglect, or exploitation allegations;

(2) complaints;

(3) financial and programmatic audits of juvenile probation programs services and facilities, including juvenile justice alternative education programs; or

(4) any matter under the authority of the commission.

(c) The commission may issue a subpoena under Subsection (b) only if the subpoena is signed by:

(1) the chairman of the commission or, if the chairman is unavailable, the vice-chairman of the commission; and

(2) at least two other members of the commission, including a member who is a judge.

(d) Any peace officer, commission investigator, other commission official, or person authorized under Article 24.01, Code of Criminal Procedure, may serve the subpoena in the same manner that similar process in a court of record having original jurisdiction of criminal actions is served.

(e) A subpoena under this section shall be served and witness fees and mileage paid as in civil cases in the district court in the county to which the witness is called, unless the proceeding for which the service or payment is made is under Chapter 2001, Government Code, in which case the service or payment shall be made as provided in that chapter. Witnesses subpoenaed at the instance of the commission shall be paid their fees and mileage by the commission out of funds appropriated for that purpose.

(f) On application of the commission, a court of record having original jurisdiction of criminal actions may compel the attendance of a witness, the production of material, or the giving of testimony before the commission, by an attachment for contempt or in the same manner as the court may otherwise compel the production of evidence.

(g) The chairman or another member of the commission may administer an oath to a witness in attendance before the commission or before an authorized representative of the commission.

(h) If a witness in attendance before the commission or before an authorized representative refuses without reasonable cause to be examined or answer a legal or pertinent question, or to produce evidence when ordered by the commission, the commission may apply to the district court for a rule or order returnable in not less than two or in more than five days, directing the witness to show cause before the judge why the witness should not be punished for contempt. The commission may apply to the district court of any county where the witness is in attendance, on proof by affidavit of the fact, unless the order of contempt is sought under Chapter 2001, Government Code, in which case the commission shall apply to a district court of Travis County, as provided by that chapter. On return of the order, the

judge hearing the matter shall examine the witness under oath and the witness shall be given an opportunity to be heard. If the judge determines that the witness has refused, without reasonable cause or legal excuse, to be examined or answer a legal or pertinent question, or to produce evidence that the witness was ordered to bring or produce, the judge may immediately find the witness in contempt of court.

(i) The commission shall be granted access at any reasonable time to any evidence that is related to any matter the commission or executive director considers necessary to administer the commission's functions, powers, and duties.

Commentary by Lisa Capers

Source: HB 2884

Effective Date: September 1, 2007

Applicability: Requests for subpoenas on or after the effective date.

Summary of Changes: It is common for state agencies with investigatory powers to also have the power to issue subpoenas to aid in the discharge of their duties. This provision amends Human Resources Code Chapter 141 Subchapter C, by adding new Section 141.0461 related to issuing subpoenas, administering oaths, receiving evidence, and gathering information by the Texas Juvenile Probation Commission (TJPC). This provision gives TJPC the authority to access information for investigative purposes and the power to subpoena witnesses, documents or other evidence necessary to administer the commission's functions, powers and duties. This amendment provides TJPC the tools needed to thoroughly and completely carry out its statutory responsibilities to investigate abuse, neglect and exploitation cases in addition to financial and programmatic audits, and any matters under the agency's jurisdiction.

Subsection (c) requires TJPC to issue a subpoena only if it is signed by the chairman or vice-chairman of the commission and by at least two other members of the commission, one of whom must be a judge. Currently, both the chair and vice-chair of TJPC are district court judges.

The remaining provisions of this bill detail the responsibilities and powers of TJPC as they relate to obtaining witness testimony. This legislation is very similar to that of other state agencies with similar powers whose enabling statutes were used as a pattern for this bill.

Human Resources Code Sec.141.055. INVESTIGATORS.

(a) The commission may employ and commission investigators as peace officers for the purpose of investigating allegations of abuse, neglect, and exploitation in juvenile justice programs and facilities under Section 261.405, Family Code.

(b) Peace officers employed and commissioned under Subsection (a) must be certified by the Commission

on Law Enforcement Officer Standards and Education under Chapter 1701, Occupations Code.

Commentary by Lisa Capers

Source: HB 2884

Effective Date: September 1, 2007

Applicability: Investigators commissioned on or after the effective date.

Summary of Changes: A variety of state and local agencies and other entities that conduct law enforcement activities or that perform other types of investigatory functions are authorized to commission their employees as peace officers. Code of Criminal Procedure Article 2.02 defines which individuals may be defined as *peace officers* in Texas. The Texas Juvenile Probation Commission (TJPC) is the state agency mandated to investigate allegations of abuse, neglect or exploitation of a child in any juvenile justice program or facility (excluding any TYC operated programs or facilities). New Section 141.055 gives TJPC the explicit authority to employ and commission their investigators as peace officers. These peace officers must be certified by the Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE). TYC was also given the authority to commission their inspector generals as peace officers per Senate Bill 103.

Human Resources Code Sec. 141.055. STUDY OF VICTIM-OFFENDER MEDIATION PROGRAMS FOR JUVENILE OFFENDERS; REPORT.

(a) The commission shall conduct a study of established victim-offender mediation programs for juvenile offenders in this state for the purpose of determining the potential effect on the state's juvenile justice system of establishing guidelines for and expanding the implementation of victim-offender mediation programs for juvenile offenders. The study must include:

(1) an evaluation of the number of juvenile probation departments that operate victim-offender mediation programs;

(2) an evaluation of the number of juvenile probation departments that contract for the services of victim-offender mediation programs;

(3) a comprehensive program description of victim-offender mediation programs that includes an evaluation of program eligibility criteria and the process for utilizing the mediation services;

(4) an evaluation of the number of children served by victim-offender mediation programs annually, including individual data on referral offenses and demographic information for children served by victim-offender mediation programs;

(5) an evaluation of the number of mediation agreements established in victim-offender mediation programs annually; and

(6) the funding sources for victim-offender mediation programs and the cost to operate those programs.

(b) Not later than January 1, 2009, the commission shall provide a report describing the results of the study to each member of the legislature. The report must include:

(1) the estimated cost to the state and local governments of expanding the implementation and administration of victim-offender mediation programs for juvenile offenders;

(2) a review of the benefits to juvenile offenders and victims of participating in victim-offender mediation programs for juvenile offenders; and

(3) recommendations for legislation establishing guidelines for and expanding the implementation and administration of victim-offender mediation programs for juvenile offenders in this state.

(c) This section expires January 31, 2009.

Commentary by Lisa Capers

Source: HB 2291

Effective Date: June 15, 2007

Applicability: Victim-offender mediation programs operating on or after the effective date will be the subject of the study.

Summary of Changes: Restorative justice programs such as the victim-offender mediation program are included among the funding priorities and program purpose areas for the Juvenile Accountability Block Grant (JABG). JABG eligibility is determined on a formula basis and state jurisdictions, such as Texas, would be required to establish a coordinated enforcement plan for reducing juvenile crime in order to meet the eligibility criteria. Information regarding the programmatic components of existing victim-offender mediation programs around the state would assist the legislature in meeting these objectives.

HB 2291 as originally filed would have required each juvenile board to implement and administer a victim-offender mediation program. Victim-offender mediation programs in juvenile court have been quite successful in other states, providing a cost-effective disposition option. Additionally, some Texas counties are having good success with these types of programs. Ultimately, this bill's author concluded that a comprehensive evaluation of the counties in Texas that currently operate a victim-offender mediation program was a necessary step. Based on the outcome of the study results, legislative leadership could make a future decision about whether the programs should be replicated around the state.

The final version of HB 2291 now requires the Texas Juvenile Probation Commission (TJPC) to study currently established victim-offender mediation programs to determine their feasibility and the potential effect of expanding these programs to the juvenile justice system statewide. The study must include an evaluation of the number of juvenile probation departments that operate or contract for the operation of such programs, a comprehensive program description including eligibility criteria for the program, information on the number of children served

annually, including offense and demographic information. Additionally, the study must evaluate the number of mediation agreements established annually in each program, as well as the funding sources and costs for the program. TJPC must report back to legislative leadership no later than January 1, 2009, with the results of the study. The report must include a cost estimate of expanding victim-

offender mediation programs statewide and a review of the benefits of these programs. TJPC must also make recommendations to the legislature about whether victim-offender mediation programs should be replicated statewide.

8. Texas Youth Commission Provisions

General Overview of Senate Bill 103 Effective Date

Senate Bill 103 was the Texas Youth Commission (TYC) reform bill. While SB 103 did many things, one of the most critical changes was a fundamental change to the governance structure of the TYC. These changes are discussed in detail below.

Section 78 of SB 103 included an immediate effective date, provided that the bill got at least a 2/3 majority vote in both houses. The legislation received unanimous approval in both houses and became effective upon the Governor's signature. Governor Perry signed the bill mid-afternoon on June 8, 2007, and the bill was recorded in the Secretary of State's office at 6:50 p.m. Central Standard Time on June 8, 2007, which is the true effective date/time of the bill. *Galveston v. I.O. Lynch*, 55 S.W. 389 (Tex. App. 1899) holds that when dealing with fractions of a day, the legislation is effective at the time when officially recorded by the Secretary of State. A full text of this case is included in Appendix C. Therefore, all of the changes in SB 103 were technically effective beginning at 6:50 p.m. Central Standard Time on June 8, 2007. The effective dates below for SB 103 provisions in this section will state "June 8, 2007, at 6:50 p.m. Central Standard Time" without the above detail to conserve space in this issue.

Human Resources Code Sec. 61.001. DEFINITIONS.

(2) "Advisory board" [~~"Board"~~] means the advisory [~~governing~~] board of the commission.

(4) "Executive commissioner" [~~director~~] means the executive commissioner [~~director~~] of the commission.

(7) "Office of inspector general" means the office of inspector general established under Section 61.0451.

Commentary by Lisa Capers

Source: SB 103

Effective Date: June 8, 2007, at 6:50 p.m. Central Standard Time

Applicability: Texas Youth Commission agency structure on or after the effective date.

Summary of Changes: This provision is one in a long list of changes to the enabling legislation of the TYC that made part of the massive TYC reforms in SB 103. The structure of the TYC governance is dramatically changed in SB 103 for the next two-year period. This amendment replaces the term *governing board* with *advisory board* to reflect the new governance structure of TYC as enacted in SB 103. It also changes the term *executive director* to *executive commissioner*. For the next two years, TYC will have no *governing board* appointed by the Governor but will instead have an *executive commissioner* appointed by the Governor and an *advisory board* appointed by legislative leadership.

Human Resources Code Sec. 61.001. DEFINITIONS.

In this chapter:

(1) "Commission" means the Texas Youth Commission.

(2) "Board" means the governing board of the commission.

(3) ~~"Chairman" means the chairman of the board.~~

(4) "Executive director" means the executive director of the commission.

(5) "Court" means a juvenile court.

(6) "Child" means a person 10 years old or older and under 21 years old who is committed to the commission under Title 3, Family Code.

Commentary by Lisa Capers

Source: SB 103

Effective Date: June 8, 2007, at 6:50 p.m. Central Standard Time

Applicability: Texas Youth Commission agency structure on or after the effective date.

Summary of Changes: Subsection (3) of Section 61.001 was repealed by SB 103. This change reflects the new governance structure of the TYC and the fact that TYC no longer has a governing oversight board and thus no chairman of the board. See the more detailed discussions of Sections 61.001 above and 61.012 below.

Human Resources Code Sec. 61.012. EXECUTIVE COMMISSIONER ~~[MEMBERS OF THE GOVERNING BOARD].~~

(a) The ~~[governing board of the]~~ Texas Youth Commission is governed by an executive commissioner ~~[consists of seven members]~~ appointed by the governor with the consent of the senate. The appointment of the executive commissioner ~~[Appointments to the board]~~ shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee ~~[appointees]~~.

(b) ~~[Members of the board must be citizens who are recognized within their communities for their interest in youth.~~

~~[(c)]~~ The executive commissioner holds ~~[board members hold]~~ office for a term of not more than two years expiring February 1 of odd-numbered ~~[staggered terms of six years, with the terms of two or three members expiring every two]~~ years.

~~(c)~~ The executive commissioner ~~[(d) A member]~~ is eligible for reappointment with the consent of the senate.

~~(d)~~ The executive commissioner is a full-time state officer who is entitled to a salary and reimbursement for actual expenses incurred while on commission business.

~~(e)~~ This section expires September 1, 2009.

Commentary by Lisa Capers

Source: SB 103

Effective Date: June 8, 2007, at 6:50 p.m. Central Standard Time

Applicability: Texas Youth Commission agency structure on or after the effective date.

Summary of Changes: The changes to Section 61.012 of the TYC enabling legislation are fundamental structural governance changes made to the agency by SB 103. TYC no longer has an oversight governing board appointed by the Governor. The *governing board* structure is replaced by an *executive commissioner* appointed by the Governor. The executive commissioner holds a term of not more than two years expiring on the odd-numbered years. The executive commissioner is eligible for reappointment by the Governor with the consent of the Senate. The executive commissioner is authorized to receive a salary and reimbursement for business expenses.

This new governance structure is basically a two-year experiment. Subsection (e) states that this section expires September 1, 2009, at which point the old law will return if not changed or amended by the legislature. TYC is undergoing review by the Texas Sunset Commission beginning this summer 2008. Part of the charge to the Sunset Commission is to study the governance of TYC under this current structure and to make recommendations about whether this structure is more effective than the governing board structure. See Government Code Section 325.0122 discussion. It is anticipated that the Sunset Commission will either affirm the current governance

structure enacted by SB 103, recommend the prior structure or some version of the two.

SB 103 requires the Governor to appoint the executive commissioner of TYC as soon as practicable after the effective date of this legislation. As of the date of this publication, the TYC head was still the executive director, Ms. Dimitria Pope, and no executive commissioner had yet been appointed.

Human Resources Code Sec. 61.021. QUALIFICATIONS FOR EXECUTIVE COMMISSIONER, ADVISORY BOARD MEMBERS, AND EMPLOYEES.

(a) A person is not eligible for appointment as executive commissioner or as a member of ~~[to]~~ the advisory board if the person or the person's spouse:

(1) is employed by or participates in the management of a business entity or other organization receiving funds from the commission;

(2) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization receiving funds from the commission; or

(3) uses or receives a substantial amount of tangible goods, services, or funds from the commission, other than compensation or reimbursement authorized by law ~~[for board membership, attendance, or expenses]~~.

(b) An officer, employee, or paid consultant of a Texas trade association in the field of criminal or juvenile justice may not be the executive commissioner, a member of the advisory board, or an employee of the commission who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule.

(c) A person who is the spouse of an officer, manager, or paid consultant of a Texas trade association in the field of criminal justice or juvenile justice may not be the executive commissioner, a member of the advisory board, or ~~[and may not be]~~ an employee of the commission who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule.

(d) For the purposes of this section, a Texas trade association is a nonprofit, cooperative, and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(e) A person may not be appointed as executive commissioner, serve as a member of the advisory board, or act as the general counsel to the executive commissioner, the advisory board, or the commission if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the commission.

(f) This section expires September 1, 2009.

Commentary by Lisa Capers

Source: SB 103

Effective Date: June 8, 2007, at 6:50 p.m. Central Standard Time

Applicability: Appointments made on or after the effective date.

Summary of Changes: Section 61.0121 of TYC's enabling legislation details certain individuals who are not eligible for appointment as the *executive commissioner* or as members of the *advisory board* or for certain employee positions with the agency. Under previous law, this section applied to the *governing board* of the agency, which is now the *advisory board*. Generally, this section prohibits persons who may have a conflict of interest, lobbyists, and certain trade associations from serving in the specified positions with the agency.

Human Resources Code Sec. 61.0122. BOARD MEMBER TRAINING.

~~(a) To be eligible to take office as a member of the board, a person appointed to the board must complete at least one course of a training program that complies with this section.~~

~~(b) The training program must provide information to the person regarding:~~

- ~~(1) the enabling legislation that created the commission;~~
- ~~(2) the programs operated by the commission;~~
- ~~(3) the role and functions of the commission;~~
- ~~(4) the rules of the commission with an emphasis on the rules that relate to disciplinary and investigatory authority;~~
- ~~(5) the current budget for the commission;~~
- ~~(6) the results of the most recent formal audit of the commission;~~
- ~~(7) the requirements of the:~~
 - ~~(A) open meetings law, Chapter 551, Government Code;~~
 - ~~(B) open records law, Chapter 552, Government Code; and~~
 - ~~(C) administrative procedure law, Chapter 2001, Government Code;~~
- ~~(8) the requirements of the conflict of interests laws and other laws relating to public officials; and~~

~~(9) any applicable ethics policies adopted by the commission or the Texas Ethics Commission.~~

~~(c) A person appointed to the board is entitled to reimbursement for travel expenses incurred in attending the~~

~~training program, as provided by the General Appropriations Act and as if the person were a member of the board.~~

Commentary by Lisa Capers

Source: SB 103

Effective Date: June 8, 2007, at 6:50 p.m. Central Standard Time

Applicability: Agency operations on or after the effective date.

Summary of Changes: This section was repealed as part of the TYC reform package. TYC no longer has a governing board, thus the requirement for mandatory board training is now moot.

Human Resources Code Sec. 61.0123. REMOVAL OF EXECUTIVE COMMISSIONER FROM OFFICE.

(a) It is a ground for removal from office as executive commissioner if the executive commissioner:

(1) does not have at the time of appointment the qualifications required by Section 61.0121(a) for appointment;

(2) does not maintain while serving as executive commissioner the qualifications required by Section 61.0121(a) for appointment; or

(3) violates a prohibition established by Section 61.0121(b) or (c).

(b) The validity of an action of the executive commissioner is not affected by the fact that it was taken when a ground for removal existed.

(c) If the advisory board has knowledge that a potential ground for removal exists under this section, the chairman of the advisory board shall notify the executive commissioner, the governor, and the attorney general of the potential ground for removal.

(d) This section expires September 1, 2009.

Commentary by Lisa Capers

Source: SB 103

Effective Date: June 8, 2007, at 6:50 p.m. Central Standard Time

Applicability: Removals from office on or after the effective date.

Summary of Changes: New Section 61.0123 is a companion amendment to the provisions changing the governance structure of the Texas Youth Commission. This provision details the grounds for which the executive commissioner may be removed from office. It refers primarily to the conflict of interest prohibitions in Section 61.0121 discussed earlier.

Human Resources Code Sec. 61.013. ADVISORY BOARD [PRESIDING OFFICER; MEETINGS].

(a) An advisory board for the commission is established to:

(1) advise the executive commissioner on matters concerning the commission; and

(2) assist the executive commissioner in the performance of the executive commissioner's duties [The governor shall designate a member of the board as the chairman of the board to serve in that capacity at the pleasure of the governor].

(b) The advisory board is composed of nine members. Three members shall be appointed by the governor, three members shall be appointed by the lieutenant governor, and three members shall be appointed by the speaker of the house of representatives. The governor, lieutenant governor, and speaker of the house of representatives shall coordinate to ensure that the membership of the advisory board meets the requirements of Subsection (d). The governor shall designate a member of the advisory board as the chairman of the advisory board to serve in that capacity at the pleasure of the governor [The board shall meet at least four times each year].

(c) The appointment of a member of the advisory board shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee [A meeting shall be held on the call of the chairman or on the request of four members at the time and place designated by the chairman].

(d) Members of the advisory board must be citizens who are recognized within their communities for their interest in youth. The board shall be composed of at least one physician, an experienced member of a victims advocacy organization, a mental health professional, and a current or former prosecutor or judge. A majority of the members of the advisory board must be qualified, by experience or education, in the development and administration of programs for the rehabilitation and reestablishment in society of children in the custody of agencies similar in mission and scope to the commission. At least two of the members of the advisory board must have primary experience in a field other than the field of criminal or juvenile justice.

(e) The advisory board shall meet at least four times each year. A meeting shall be held at the call of the chairman or on the request of five members at a time and place designated by the chairman.

(f) Advisory board members are entitled to receive a per diem in the amount provided in the General Appropriations Act for not more than 90 days in any fiscal year, plus reimbursement for actual expenses incurred while on advisory board business.

(g) A member of the advisory board serves at the pleasure of the person who appointed the member.

(h) This section expires September 1, 2009.

Commentary by Lisa Capers

Source: SB 103

Effective Date: June 8, 2007, at 6:50 p.m. Central Standard Time

Applicability: Board appointments and meetings on or after the effective date.

Summary of Changes: Section 61.013 used to be a short provision containing only three sentences that related to the TYC governing board and their required meetings each year. This section has been re-written and greatly expanded to detail the structure of the new *advisory board* concept at TYC.

The primary function of the new *advisory board* is to advise the executive commissioner on matters concerning TYC and to assist the executive commissioner with his or her duties. The advisory board consists of nine members, three of whom are appointed by the Governor, three by the Lt. Governor, and three by the Speaker of the House. The Governor will designate the chairperson of the advisory board.

The advisory board members must be citizens with a recognized interest in youth. The board must include at least one physician, a victim's advocacy organization member, a mental health professional, and a current or former prosecutor or judge. A majority of the members must be qualified by experience or education in the development and administration of rehabilitative programs for children similar to those provided at TYC. At least two of the members must be in a field other than criminal or juvenile justice.

Four meetings per year are required for the advisory board. Board members are paid a *per diem* rate for not more than 90 days in any fiscal year, plus expense reimbursement. Board members serve at the pleasure of the person who appointed them.

As soon as practicable after the effective date of SB 103, the Governor, Speaker of the House, and the Lt. Governor are required to appoint the members of the advisory board.

Human Resources Code Sec. 61.014. QUORUM.

~~Four members constitute a quorum for the exercise of functions of the commission not delegated to the executive director or other employees.~~

Commentary by Lisa Capers

Source: SB 103

Effective Date: June 8, 2007, at 6:50 p.m. Central Standard Time

Applicability: Agency governance on or after the effective date.

Summary of Changes: This section was repealed as it dealt with the quorum requirements of the TYC governing board under previous law. Since the governing board is no longer authorized, there is no need for a quorum requirement.

Human Resources Code Sec. 61.015. PER DIEM; EXPENSES.

~~Board members are entitled to receive a per diem in the amount provided in the General Appropriations Act for not~~

more than 90 days in any fiscal year, plus reimbursement for actual expenses incurred while on board business.

Commentary by Lisa Capers

Source: SB 103

Effective Date: June 8, 2007, at 6:50 p.m. Central Standard Time

Applicability: Agency governance on or after the effective date.

Summary of Changes: This section was repealed. Former Section 61.015 authorized governing board members to receive a *per diem* amount and reimbursement of expenses incurred while on board business. Since the TYC board no longer exists per the SB 103 reforms, this section is now moot and has therefore been repealed.

Human Resources Code Sec. 61.0151. REMOVAL FROM OFFICE.

(a) It is a ground for removal from the board if a member:

(1) ~~does not have at the time of appointment the qualifications required by Subsection (a) of Section 61.0121 of this chapter for appointment to the board;~~

(2) ~~does not maintain during the member's service on the board the qualifications required by Subsection (a) of Section 61.0121 of this chapter for appointment to the board;~~

(3) ~~violates a prohibition established by Subsection (b) or (c) of Section 61.0121 of this chapter;~~

(4) ~~is unable to discharge the member's duties for a substantial part of the term for which the member was appointed because of illness or disability; or~~

(5) ~~is absent from more than one-half of the regularly scheduled board meetings that the member is eligible to attend during each calendar year, except when the absence is excused by majority vote of the board.~~

(b) ~~The validity of an action of the board is not affected by the fact that it was taken when a ground for removal of a member of the board existed.~~

(c) ~~If the executive director has knowledge that a potential ground for removal exists, the executive director shall notify the chairman of the board of the potential ground. The chairman of the board shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the chairman, the executive director shall notify the next highest ranking officer of the board, who shall notify the governor and the attorney general that a potential ground for removal exists.~~

Commentary by Lisa Capers

Source: SB 103

Effective Date: June 8, 2007, at 6:50 p.m. Central Standard Time

Applicability: Agency governance on or after the effective date.

Summary of Changes: This section was repealed. Former Section 61.0151 authorized removal of governing board members of the Texas Youth Commission (TYC). Since the TYC board no longer exists per the SB 103 reforms, this section is now moot and has therefore been repealed.

Human Resources Code Sec. 61.017. EXECUTIVE DIRECTOR.

(a) ~~The commission shall employ an executive director, selected by the board, to serve at the will of the board.~~

(b) ~~The executive director shall devote full time to the work of the commission.~~

(c) ~~The executive director is entitled to actual expenses while on commission business.~~

Commentary by Lisa Capers

Source: SB 103

Effective Date: June 8, 2007, at 6:50 p.m. Central Standard Time

Applicability: Agency governance on or after the effective date.

Summary of Changes: This section was repealed. Former Section 61.017 authorized TYC to employ an executive director selected by the governing board. Since the TYC board and the executive director governance structure no longer exist per the SB 103 reforms, this section is now moot and has therefore been repealed.

Human Resources Code Sec. 61.019. DELEGATION OF POWERS AND DUTIES.

(a) Any power, duty, or function of the commission that is not assigned by statute to the chief inspector general of the office of inspector general ~~[or of the board]~~ may be exercised and performed by the executive commissioner.

(b) The executive commissioner may delegate to [director or] any [member or] employee designated or assigned by the [board or by the] executive commissioner a power, duty, or function of the executive commissioner or the commission that is not already assigned by statute to the chief inspector general of the office of inspector general [director].

(c) This section expires September 1, 2009.

Commentary by Lisa Capers

Source: SB 103

Effective Date: June 8, 2007, at 6:50 p.m. Central Standard Time

Applicability: Delegations of power occurring on or after the effective date.

Summary of Changes: Section 61.019 relates to the delegation of the power of the TYC board. Previously, the TYC board could delegate any power, duty or function to

the TYC executive director or any board member or employee designated or assigned by the board or executive director. Under the new governance structure created in SB 103 for the next two years, the executive commissioner now has the authority to delegate powers, duties, and functions of the commission that are not otherwise delegated to the Chief Inspector General in the Office of the Inspector General to an employee designated or assigned by the executive commissioner.

Human Resources Code Sec. 61.0191. AUDIT; AUTHORITY OF STATE AUDITOR.

(a) The [financial transactions of the] commission is [are] subject to audit by the state auditor in accordance with Chapter 321, Government Code.

(b) The state auditor, on request of the office of inspector general, may provide information or other assistance to the office of inspector general that the state auditor determines is appropriate. The office of inspector general may coordinate with the state auditor to review or schedule a plan for an investigation under Section 61.0451 or share other information.

(c) The state auditor may access all information maintained by the office of inspector general, such as vouchers, electronic data, and internal records, including information that is otherwise confidential under law. Information obtained by the state auditor under this subsection is confidential and is not subject to disclosure under Chapter 552, Government Code.

(d) Any provision of this chapter relating to the operations of the office of inspector general does not:

(1) supersede the authority of the state auditor to conduct an audit under Chapter 321, Government Code; or

(2) prohibit the state auditor from:

(A) conducting an audit, investigation, or other review; or

(B) having full and complete access to all records and other information concerning the commission, including any witness statement or electronic data, that the state auditor considers necessary for the audit, investigation, or review.

Commentary by Lisa Capers

Source: SB 103

Effective Date: June 8, 2007, at 6:50 p.m. Central Standard Time

Applicability: Audits and requests for assistance or information on or after the effective date.

Summary of Changes: Section 61.0191 previously stated that financial transactions of TYC were subject to the audit jurisdiction of the Texas State Auditor's Office. SB 103 expanded and clarified the authority of the state auditor in this amendment to Section 61.0191. The Office of Inspector General can request the assistance of the state auditor in any investigation of wrongdoing at TYC. The state auditor

has the authority to assist and has access to all information maintained by the Office of Inspector General, although this information is confidential and not subject to release under the Public Information Act. Lastly, this provision clarifies that the authority given to the Office of Inspector General does not supersede the authority of the Texas State Auditor's Office nor prohibit the state auditor from having full and complete access to all TYC files, records, and information.

Human Resources Code Sec. 61.022. ACCESSIBILITY TO PROGRAMS AND FACILITIES.

The commission shall comply with federal and state laws related to program and facility accessibility. The executive commissioner [director] shall also prepare and maintain a written plan that describes how a person who does not speak English can be provided reasonable access to the commission's programs and services.

Commentary by Lisa Capers

Source: SB 103

Effective Date: June 8, 2007

Applicability: Plans prepared on or after the effective date.

Summary of Changes: Section 61.022 was amended to change the term *executive director* to *executive commissioner* to reflect the new governance structure of TYC per the SB 103 reforms. This provision now requires the executive commissioner to prepare and maintain a written plan for accessibility to TYC programs and facilities for persons who do not speak English.

Human Resources Code Sec. 61.023. ACCREDITATION BY AMERICAN CORRECTIONAL ASSOCIATION.

Not later than September 1, 2007, the commission shall adopt a plan for and begin the process of receiving accreditation by the American Correctional Association for each correctional facility operated by or under contract with the commission.

Commentary by Lisa Capers

Source: SB 103

Effective Date: June 8, 2007, at 6:50 p.m. Central Standard Time

Applicability: Planning for accreditation beginning on or after effective date.

Summary of Changes: The new Section 61.023 is a very significant provision for TYC. Not later than September 1, 2007, TYC must adopt a plan to get all of their correctional facilities accredited by the American Correctional Association (ACA). This plan must include all TYC operated facilities and those operated by or under contracts with private vendors. This is a tall order and obtaining ACA accreditation is a huge, but very worthwhile project. ACA standards for juvenile facilities are stringent and set high

expectations. According to the ACA website, to receive accreditation TYC must sign a contract, pay an accreditation fee, conduct a self-evaluation, and have a standards compliance audit by trained ACA consultants before an accreditation decision is made by the Commission on Accreditation for Corrections.

The ACA accreditation process is not new to TYC as some of their facilities have been ACA accredited in the past. The accreditation fee per facility can be as high as \$5,000 or more, so the process is relatively expensive. ACA reports that more than 1,500 correctional facilities and programs are involved in accreditation nationwide. Approximately 80 percent of all state departments of corrections and youth services are active participants. Also included are programs and facilities operated by the Federal Bureau of Prisons, the U.S. Parole Commission, and the private sector.

ACA's website also explains some of the benefits of accreditation. *"The accreditation program offers the opportunity to evaluate facility operations against national standards, to remedy deficiencies and to upgrade the quality of correctional programs and services. The recognized benefits from such a process include improved management, a defense against lawsuits through documentation and the demonstration of a 'good faith' effort to improve conditions of confinement, increased accountability and enhanced public credibility for administrative and line staff, a safer and more humane environment for personnel and offenders, and the establishment of measurable criteria for upgrading programs, personnel practices, and physical plant on a continuous basis."* For more information on ACA accreditation please visit www.aca.org.

Human Resources Code Sec. 61.024. GOVERNANCE OF COMMISSION.

(a) Notwithstanding any other provision of this chapter, effective September 1, 2009, the commission is governed by a board that consists of seven members appointed by the governor with the advice and consent of the senate. Appointments to the board shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointees.

(b) Members of the board must be citizens who are recognized within their communities for their interest in youth. The board shall be composed of at least one physician, an experienced member of a victims advocacy organization, a mental health professional, and a current or former prosecutor or judge. A majority of the members of the board must be qualified, by experience or education, in the development and administration of programs for the rehabilitation and reestablishment in society of children in the custody of agencies similar in mission and scope to the commission. At least two of the members of the board must have primary experience in a field other than the field of criminal or juvenile justice.

(c) The board shall meet at least four times each year. A meeting shall be held at the call of the chairman or on the request of five members at a time and place desig-

nated by the chairman. Board members are entitled to receive a per diem in the amount provided in the General Appropriations Act for not more than 90 days in any fiscal year, plus reimbursement for actual expenses incurred while on board business.

(d) Effective September 1, 2009, the commission shall employ an executive director, selected by the board, to serve at the will of the board. The executive director shall devote full time to the work of the commission. The executive director is entitled to actual expenses while on commission business.

(e) Effective September 1, 2009:

(1) a reference in law to the executive commissioner is a reference to the board in matters concerning the governance of the commission, policymaking functions of the commission, or rulemaking functions of the commission; and

(2) a reference in law to the executive commissioner is a reference to the executive director in matters concerning the administrative functions of the commission.

Commentary by Lisa Capers

Source: SB 103

Effective Date: June 8, 2007, at 6:50 p.m. Central Standard Time

Applicability: TYC governance structure beginning September 1, 2009, if not modified during 2009 legislative session.

Summary of Changes: New Section 61.024 is the flip-side of the two-year experiment on the governance structure of TYC. If no changes are made to the law during the 2009 legislative session as a result of the Sunset process or other independent legislation, the governance structure of TYC will revert back to the old law (i.e., the law in effect before June 8, 2007).

Therefore, if no legislation in 2009 re-codifies the current TYC governance structure (i.e., executive commissioner and advisory board), beginning September 1, 2009, TYC will again have a *governing board*. The board will be composed of seven members appointed by the Governor with the advice and consent of the Senate. The makeup of the governing board is identical to the makeup of the advisory board under the new governance scheme. The governing board members must be citizens with a recognized interest in youth. There must be at least one physician, a victim's advocacy organization member, a mental health professional, and a current or former prosecutor or judge. A majority of the members must be qualified by experience or education in the development and administration of rehabilitative programs for children similar to those provided by TYC. At least two of the members must be in a field other than criminal or juvenile justice. The governing board must meet *four times per year* and the members receive the standard *per diem* amount and expenses just like the current advisory board and just like the former govern-

ing board in the old days! Confused? Feels sort of like watching a tennis match, doesn't it?

Also reappearing on September 1, 2009, (unless the Sunset Commission or other legislation intervenes during the 2009 session) is the TYC *executive director* position instead of the current *executive commissioner*. Additionally, all references to the *executive commissioner* will magically revert to *executive director*.

Presumably, Section 61.024 is a safeguard provision in the event the two-year governance experiment fails or the Sunset Commission does not address the issue. Most observers feel the executive commissioner governance plan will prevail, but only time and the outcome of the Sunset process will tell.

Human Resources Code Sec. 61.0315. ~~[REVIEW OF]~~ TREATMENT PROGRAMS.

(a) The commission shall annually review the effectiveness of the commission's programs for the rehabilitation and reestablishment in society of children committed to the commission, including programs for sex offenders, capital offenders, children who are chemically dependent, ~~[and] emotionally disturbed children, and females.~~

(b) On or before December 31 of each year, the commission shall make a report on the effectiveness of the programs to the Legislative Budget Board.

(c) The commission shall offer or make available programs described by Subsection (a) in an adequate manner so that a child in the custody of the commission receives appropriate rehabilitation services recommended for the child by the court committing the child to the commission.

(d) If the commission is unable to offer or make available programs described by Subsection (a) in the manner provided by Subsection (c), the commission shall, not later than January 10 of each odd-numbered year, provide the standing committees of the senate and house of representatives with primary jurisdiction over matters concerning correctional facilities with a report explaining:

(1) which programs are not offered or are unavailable; and

(2) the reason the programs are not offered or are unavailable.

(e) The commission shall periodically review, document, and compare the accessibility and funding of treatment programs provided to female children committed to the commission to the accessibility and funding of treatment provided to male children committed to the commission.

Commentary by Lisa Capers

Source: SB 103

Effective Date: June 8, 2007, at 6:50 p.m. Central Standard Time

Applicability: Programs operated by TYC on or after the effective date.

Summary of Changes: Previously, Section 61.0315 required TYC to annually review the effectiveness of its specialized treatment programs including programs for sex offenders, capital offenders, chemically dependent youth, and emotionally disturbed children. TYC was required to report to the Legislative Budget Board on or before December 31st of each year. The first new amendment to this section adds female offenders to the categories of specialized treatment programs that must be reviewed annually.

New Subsection (c) requires TYC to make all of these specialized treatment programs available in an *adequate manner* to youth in their custody. If TYC is unable to offer or make their programs available to all youth in their custody, it must report to legislative leadership not later than January 10th of each session year, detailing which programs are not offered and why.

Additionally, new Subsection (e) requires TYC to periodically review and compare the accessibility and funding of treatment programs provided to both males and females in TYC custody. As it relates to female offenders, the former TYC conservator, Jay Kimbrough, commissioned a study of the needs and status of female offenders in TYC to be conducted by the American Civil Liberties Union (ACLU) Women's Rights Project. The ACLU report was issued May 22, 2007, and can be viewed at <http://www.aclutx.org/files/Texas%20Youth%20Blueprint.pdf>.

TYC's inability to serve all of the specialized populations in its custody appears not to have been fully remedied this session. TYC received \$0.6 million each year (\$1.25 million for the biennium) and 17 new staff to replace the grant funding for the VOI/TIS (Violent Offenders Incarceration /Truth in Sentencing) grant, which is ending in fiscal year 2007. This appropriation will support continuation of TYC's chemical dependency treatment program. However, the other exceptional item appropriations to TYC were not specifically directed toward specialized treatment; therefore, there may still be sex offenders, capital offenders and other specialized populations whose treatment needs will continue to go unserved.

Human Resources Code Sec. 61.0331. INTERNAL AUDIT; REPORT.

(a) The commission shall regularly conduct internal audits of the commission, including audits of:

(1) correctional facilities operated by and under contract with the commission; and

(2) medical services provided to children in the custody of the commission.

(b) The commission shall on a quarterly basis report the results of the audits to:

(1) the committees of the senate and house of representatives with primary jurisdiction over matters concerning correctional facilities; and

(2) the state auditor.

Commentary by Lisa Capers

Source: SB 103

Effective Date: June 8, 2007, at 6:50 p.m. Central Standard Time

Applicability: Audits beginning the calendar quarter after the effective date.

Summary of Changes: This new provision requires TYC to conduct regular internal audits of its own correctional facilities or those operated under contract by a private vendor. Additionally, TYC is required to audit the medical services provided to youth in custody. TYC must report the results of these audits on a quarterly basis to legislative leadership and to the State Auditor's Office.

During this session and the hearings of the Joint Select Committee on the Operation and Management of the Texas Youth Commission, the subject of medical care in TYC facilities was a topic of heated discussion as committee members questioned medical providers regarding the services at TYC facilities or the lack thereof. According to TYC, the University of Texas Medical Branch (UTMB) will be the sole provider of medical services to youth, including psychiatric services. The agency also plans to have enhanced centralized oversight responsibility for medical and health services. TYC also plans for continued ACA review of medical departments to assess the quality and delivery of care to youth in TYC facilities.

Human Resources Code Sec. 61.0332. COMPLIANCE REPORTS.

(a) The commission shall provide the Joint Select Committee on the Operation and Management of the Texas Youth Commission with reports concerning the progress of the commission in complying with the requirements of S.B. No. 103, Acts of the 80th Legislature, Regular Session, 2007. The commission shall prepare and deliver the first report to the joint select committee on December 1, 2007, the second report to the joint select committee on June 1, 2008, and the final report to the joint select committee on December 1, 2008.

(b) This section expires January 1, 2009.

Commentary by Lisa Capers

Source: SB 103

Effective Date: June 8, 2007, at 6:50 p.m. Central Standard Time

Applicability: Compliance reports due on or after the effective date.

Summary of Changes: The Joint Select Committee on the Operation and Management of the Texas Youth Commission was created by Proclamation on March 2, 2007, jointly by the Lt. Governor and the Speaker of the House. The committee is comprised of seven Senators (Senators Whitmire, Harris, Hinojosa, Selinger, Shapiro, West, and Williams) and seven Representatives (Representatives Madden, Dutton, Pena, Phillips, Riddle, Turner and Van Ars-

dale) members. The committee has jurisdiction over all matters pertaining to the operation and management of TYC, including any investigation of allegations of gross financial mismanagement at the agency, sexual misconduct by agency employees or former employees, and failure of the agency to properly investigate or resolve either of those issues.

This new provision requires TYC to provide the Joint Select Committee with progress reports regarding the agency's compliance with the requirements of SB 103. The first report is due on December 1, 2007. A second report is due on June 1, 2008, and the final report is due on December 1, 2008.

Human Resources Code Sec. 61.034. POLICIES AND RULES.

(a) The executive commissioner [The commission] is responsible for the adoption of all policies and shall make rules appropriate to the proper accomplishment of the commission's [its] functions.

(b) The executive commissioner [commission] shall adopt rules for the government of the schools, facilities, and programs under the commission's [its] authority and shall see that the schools, facilities, and programs are conducted according to law and to the executive commissioner's [commission's] rules. The purpose of the rules and of all education, work, training, discipline, recreation, and other activities in the schools, facilities, and programs is to restore and increase the self-respect and self-reliance of the youth under the authority of the commission and to qualify them for good citizenship and honorable employment.

Commentary by Lisa Capers

Source: SB 103

Effective Date: June 8, 2007

Applicability: Rules and policies made on or after the effective date.

Summary of Changes: This provision changes the term *commission* to *executive commissioner* to reflect the new TYC governance structure. Section 61.034 now places the responsibility for the adoption of all policies and rules related to TYC operations, programs, and services on the executive commissioner. Formerly, the governing board of the agency was ultimately responsible for all administrative rules. Since the *executive commissioner* now replaces the *governing board*, the executive commissioner must take over all responsibilities of the former board.

Human Resources Code Sec. 61.0345. MISSION STATEMENT.

The commission shall develop and adopt a statement regarding the role and mission of the commission.

Commentary by Lisa Capers

Source: SB 103

Effective Date: June 8, 2007, at 6:50 p.m. Central Standard Time

Applicability: Mandatory duty applicable to agency on or after effective date.

Summary of Changes: New Section 61.0345 requires TYC to develop a mission statement. It is unclear whether the agency currently has a mission statement. It is likely they do because of the mandatory strategic planning projects in which TYC is involved that normally include some form of a mission statement. The probable intent of this provision was for TYC to take a closer look at its true mission in light of the systemic problems experienced by the agency that were brought to light during the legislative session and to update the mission statement in appropriate and meaningful ways. Section 69 of SB 103 requires this new mission statement to be adopted on or before October 1, 2007.

Human Resources Code Sec. 61.035. EMPLOYEES.

(b) Except as otherwise provided by this chapter, an employee of the commission is employed on an at-will basis [The commission may remove any employee for cause, and a decision by the commission is final].

(c) The commission shall establish procedures and practices governing:

(1) employment-related grievances submitted by commission employees; and

(2) disciplinary actions within the commission, including a procedure allowing a commission employee to elect to participate in an independent dismissal mediation if the employee is recommended for dismissal.

Commentary by Lisa Capers

Source: SB 103

Effective Date: June 8, 2007, at 6:50 p.m. Central Standard Time

Applicability: All individuals employed by TYC on or after the effective date regardless of the date hired.

Summary of Changes: Section 61.035 under prior law did something pretty unheard of among Texas state agencies. It modified the at-will doctrine that is the norm for state employment. Prior law authorized the commission to remove any employee for *cause*, thus prohibiting terminations that were not for *cause*. As the sex scandals at TYC broke during the session, this provision came under scrutiny. The amendment to this section now makes all TYC employees *at-will*, meaning the agency can terminate an employee for any reason or no reason (excluding discriminatory reasons prohibited by law). Additionally, TYC is required to establish an employee grievance procedure, including a process for participating in mediation if an employee is recommended for dismissal from employment.

Human Resources Code Sec. 61.0351. PROFESSIONAL INFORMATION FOR ADVISORY BOARD MEMBERS AND EMPLOYEES.

The executive commissioner [~~director or the executive director's designee~~] shall provide to members of the advisory board and to commission employees, as often as is necessary, information regarding their qualification for office or employment under this chapter and their responsibilities under applicable laws relating to standards of conduct for state officers or employees.

Commentary by Lisa Capers

Source: SB 103

Effective Date: June 8, 2007, at 6:50 p.m. Central Standard Time

Applicability: Information provided on or after the effective date.

Summary of Changes: This provision shifts the responsibility for providing information to the new *advisory board* to the *executive commissioner* as opposed to the *executive director* under prior law. This is another in the long list of SB 103 amendments enacting the new TYC governance structure.

Human Resources Code Sec. 61.0352. DIVISION OF RESPONSIBILITY.

The executive commissioner [~~board~~] shall develop and implement policies that clearly separate the policymaking responsibilities of the executive commissioner [~~board~~] and the management responsibilities of the [~~executive director and the~~] staff of the commission.

Commentary by Lisa Capers

Source: SB 103

Effective Date: June 8, 2007, at 6:50 p.m. Central Standard Time

Applicability: Policies regarding division of responsibility enacted on or after the effective date.

Summary of Changes: This provision shifts the responsibility for developing and implementing appropriate division of agency responsibilities to the *executive commissioner* as opposed to the *governing board* under prior law. The executive commissioner must develop policies that separate the policymaking responsibilities of the executive commissioner and the management responsibilities of the staff of TYC. This is another in the long list of SB 103 amendments enacting the new TYC governance structure.

Human Resources Code Sec. 61.0354. JOB PERFORMANCE EVALUATIONS.

The executive commissioner [~~director or the executive director's designee~~] shall develop a system of annual performance evaluations that are based on documented employee performance. All merit pay for commission employees must be based on the system established under this section.

Commentary by Lisa Capers

Source: SB 103

Effective Date: June 8, 2007, at 6:50 p.m. Central Standard Time

Applicability: Performance evaluation systems developed on or after the effective date.

Summary of Changes: This provision shifts the responsibility for developing a system of annual performance evaluations for TYC staff to the *executive commissioner* as opposed to the *executive director* under prior law. This is another in the long list of SB 103 amendments enacting the new TYC governance structure.

Human Resources Code Sec. 61.0355. EQUAL EMPLOYMENT OPPORTUNITY POLICY STATEMENT.

(a) The executive commissioner [~~director or the executive director's designee~~] shall prepare and maintain a written policy statement to assure implementation of a program of equal employment opportunity under which all personnel transactions are made without regard to race, color, disability, sex, religion, age, or national origin. The policy statement shall include:

(1) personnel policies, including policies relating to recruitment, evaluation, selection, appointment, training, and promotion of personnel that are in compliance with requirements of Chapter 21, Labor Code;

(2) a comprehensive analysis of the commission's work force that meets federal or state laws, rules, and regulations and instructions promulgated directly from those laws, rules, and regulations;

(3) procedures by which a determination can be made about the extent of underuse in the commission's work force of all persons of whom federal or state laws, rules, and regulations and instructions promulgated directly from those laws, rules, and regulations encourage a more equitable balance; and

(4) reasonable methods to appropriately address those areas of underuse.

Commentary by Lisa Capers

Source: SB 103

Effective Date: June 8, 2007, at 6:50 p.m. Central Standard Time

Applicability: Equal Employment Opportunity policy statements on or after the effective date.

Summary of Changes: This provision shifts the responsibility for preparing and maintaining an equal employment opportunity policy statement to the *executive commissioner* as opposed to the *executive director* under prior law. This is another in the long list of SB 103 amendments enacting the new TYC governance structure.

Human Resources Code Sec. 61.0356. JUVENILE CORRECTIONAL OFFICERS; STAFFING.

(a) In this section, "juvenile correctional officer" means an employee whose primary duty includes the custodial supervision of children in the custody of the commission.

(b) The commission shall provide each juvenile correctional officer employed by the commission with at least 300 hours of training, which must include on-the-job training, before the officer independently commences the officer's duties at the facility. The training must provide the officer with information and instruction related to the officer's duties, including information and instruction concerning:

(1) the juvenile justice system of this state, including the juvenile correctional facility system;

(2) security procedures;

(3) the supervision of children committed to the commission;

(4) signs of suicide risks and suicide precautions;

(5) signs and symptoms of the abuse, assault, neglect, and exploitation of a child, including sexual abuse and sexual assault, and the manner in which to report the abuse, assault, neglect, or exploitation of a child;

(6) the neurological, physical, and psychological development of adolescents;

(7) commission rules and regulations, including rules, regulations, and tactics concerning the use of force;

(8) appropriate restraint techniques;

(9) the Prison Rape Elimination Act of 2003 (42 U.S.C. Section 15601, et seq.);

(10) the rights and responsibilities of children in the custody of the commission;

(11) interpersonal relationship skills;

(12) the social and cultural lifestyles of children in the custody of the commission;

(13) first aid and cardiopulmonary resuscitation;

(14) counseling techniques;

(15) conflict resolution and dispute mediation, including de-escalation techniques;

(16) behavior management;

(17) mental health issues; and

(18) employee rights, employment discrimination, and sexual harassment.

(c) The commission may employ part-time juvenile correctional officers. A part-time juvenile correctional officer is subject to the training requirements of this section.

(d) In each correctional facility operated by the commission that has a dormitory, including an open-bay dormitory, the commission must maintain a ratio of not less than one juvenile correctional officer performing direct supervisory duties for every 12 persons committed to the facility.

(e) The commission shall consider the age of a juvenile correctional officer or other commission employee who performs direct supervisory duties when determining

the placement of the officer or employee in a commission facility so that, to the extent practicable, an officer or employee is not supervising a child who is not more than three years younger than the officer or employee or is otherwise a similar age to the officer or employee.

(f) The commission shall rotate the assignment of each juvenile correctional officer at an interval determined by the commission so that a juvenile correctional officer is not assigned to the same station for an extended period of time.

(g) The commission shall ensure that at least one juvenile correctional officer is assigned to supervise in or near a classroom or other location in which children receive education services or training at the time the children are receiving the education services or training.

(h) The commission shall adopt rules necessary to administer this section.

Commentary by Lisa Capers

Source: SB 103

Effective Date: June 8, 2007, at 6:50 p.m. Central Standard Time

Applicability: Juvenile correctional officers hired on or after the effective date.

Summary of Changes: New Section 61.0356 is one of the most important provisions in the TYC reform legislation. As the legislative committees probed into the systemic problems at TYC, it became clear that inadequate staffing and training of correctional officers was a major issue. It was a well known fact that TYC suffers from a 48 percent annual employee turnover rate, contributing greatly to youth-to-staff ratios of nearly twice the nationally recommended maximum of 12:1. Many TYC facilities are located in rural areas with small labor pools, making it difficult to attract and retain qualified correctional officers. The U. S. Department of Justice conducted an investigation September 12-15, 2006, of the TYC Evins Regional Juvenile Center in Edinburg, Texas. The report was issued on March 15, 2007, and found that *the most striking factor contributing to the frequency of youth-on-youth violence is the absence of sufficient staff to adequately supervise youths at Evins.* The entire DOJ report can be viewed at http://www.usdoj.gov/crt/split/documents/evins_findlet_3-15-07.pdf.

Based in part on this information, Section 61.0356 addresses several critical points. First, TYC must provide all correctional officers with 300 hours of training, which must include on-the-job training, before the officer can independently assume the duties of a correctional officer. This is a substantial increase over the 80 hours of training previously required for TYC correctional officers before they assumed their duties. This mandatory training includes 18 specified topics listed in Subsection (b), and the training requirement applies to full-time as well as part-time officers.

A second key provision addresses the problem of inadequate staffing. Subsection (d) requires that a correctional officer-to-youth ratio of 1:12 be maintained in all TYC facilities.

Finally, there are several remaining provisions that address the supervision of TYC youth. Subsection (e) addresses the problem of correctional officers supervising youth near their own age, which could be a risk factor for inappropriate and illegal behaviors, contacts or relationships. To be hired as a correctional officer at TYC an individual must be at least 18 years old. Under Subsection (e), to the extent practicable, a correctional officer should not supervise youth who are not at least three years younger than the officer. Subsection (f) requires that correctional officer assignments be rotated so that officers are not assigned to the same station for extended periods of time. And Subsection (g) requires that a correctional officer supervise in or near classroom settings where youth receive educational services.

Correctional officers hired after the effective date of the legislation must receive the mandatory training immediately before they can begin independent work. Current correctional officers employed prior to the effective date must receive the 300 hours of training not later than six months after the effective date, which is December 8, 2007.

Human Resources Code Sec. 61.0357. REQUIRED BACKGROUND AND CRIMINAL HISTORY CHECKS.

(a) In this section:

(1) "Department" means the Department of Public Safety.

(2) "National criminal history record information" means criminal history record information obtained from the department under Subchapter F, Chapter 411, Government Code, and from the Federal Bureau of Investigation under Section 411.087, Government Code.

(b) The executive commissioner shall review the national criminal history record information, state criminal history record information maintained by the department, and previous and current employment references of each person who:

(1) is an employee, contractor, volunteer, ombudsman, or advocate working for the commission or working in a commission facility or a facility under contract with the commission;

(2) provides direct delivery of services to children in the custody of the commission; or

(3) has access to records in commission facilities or offices.

(c) To enable the executive commissioner to conduct the review, the commission shall adopt rules requiring a person described by Subsection (b) to electronically provide the department with a complete set of the person's fingerprints in a form and of a quality acceptable to the department and the Federal Bureau of Investigation.

(d) For each person described by Subsection (b), the executive commissioner shall review on an annual basis the person's national criminal history record information.

(e) The commission shall ensure that the system used to check state criminal history record information maintained by the department is capable of providing real time arrest information.

(f) The commission by rule may require a person described by Subsection (b) to pay a fee related to the first national criminal history record information review conducted under this section. The amount of the fee may not exceed the administrative costs incurred by the commission in conducting the initial review, including the costs of obtaining the person's fingerprints.

(g) The commission shall adopt rules necessary to administer this section.

Commentary by Lisa Capers

Source: SB 103

Effective Date: June 8, 2007, at 6:50 p.m. Central Standard Time

Applicability: All individuals working with or providing services to children in TYC custody on or after the effective date.

Summary of Changes: News reports during the legislative session indicated that many TYC employees had criminal convictions for misdemeanor and/or felony offenses. The press reported that over 400 employees had a misdemeanor conviction on their criminal history and that 99 employees had a total of 132 felony convictions.

New Section 61.0357 was enacted, at least partially, in response to this information. This provision requires the TYC executive commissioner to initially review state (TCIC) and national (NCIC) criminal history records for all current employees, contractors, volunteers, ombudsman, or advocate working for TYC or working in a TYC facility (including contract facilities). Records checks must also be run on any individual who provides direct services to children in TYC custody or who has access to records in TYC facilities or offices. All persons subject to these checks must provide their fingerprints for submission to DPS and the FBI. TYC may charge a person to whom this provision applies an administrative fee for the first NCIC.

Human Resources Code Sec. 61.0386. ADVOCACY AND SUPPORT GROUPS.

(a) The commission shall allow advocacy and support groups whose primary functions are to benefit children, inmates, girls and women, the mentally ill, and victims of sexual assault to provide on-site information, support, and other services for children confined in commission facilities.

(b) The commission shall adopt security and privacy procedures for advocacy and support groups that provide on-site information, support, and other services under

this section. The security and privacy procedures may not be designed to deny an advocacy or support group access to children confined in commission facilities.

(c) The commission shall adopt standards consistent with standards adopted by the Texas Department of Criminal Justice regarding the confidential correspondence of children confined in commission facilities with external entities, including advocacy and support groups.

Commentary by Lisa Capers

Source: SB 103

Effective Date: June 8, 2007, at 6:50 p.m. Central Standard Time

Applicability: Advocacy and support groups seeking access on or after the effective date.

Summary of Changes: During the legislative session, several advocacy groups worked closely with legislators on SB 103. In particular, the American Civil Liberties Union (ACLU) and the Juvenile Justice Coalition of Texas were quite visible and vocal regarding the TYC sex scandal and needed reforms.

Section 61.0386 was enacted to ensure that child advocacy groups continue to have a visible presence in TYC facilities in the future. Subsection (a) requires TYC to allow advocacy and support groups on-site access at TYC facilities, including groups whose primary functions are to benefit children, inmates, girls and women, the mentally ill, and victims of sexual assault so they may provide on-site information, support, and other services for children confined in TYC facilities.

Subsection (b) requires TYC to adopt security and privacy procedures or rules for these advocacy groups. However, these rules cannot be designed to deny access to an advocacy group to the children confined in TYC. Additionally, TYC must adopt standards that are consistent with the standards developed by the Texas Department of Criminal Justice regarding the confidential correspondence of children with external entities like advocacy groups.

Human Resources Code Sec. 61.0423. PUBLIC HEARINGS.

(a) The executive commissioner [board] shall develop and implement policies that provide the public with a reasonable opportunity to appear before the executive commissioner or the executive commissioner's designee [board] and to speak on any issue under the jurisdiction of the commission.

(b) The executive commissioner shall ensure that the location of public hearings held in accordance with this section is rotated between municipalities in which a commission facility is located or that are in proximity to a commission facility.

Commentary by Lisa Capers

Source: SB 103

Effective Date: June 8, 2007, at 6:50 p.m. Central Standard Time

Applicability: TYC public hearings on or after the effective date.

Summary of Changes: This provision amends TYC's enabling legislation related to public hearings. Subsection (a) changes the term "board" to "executive commissioner" to reflect the new governance structure. TYC's executive commissioner must develop policies to provide the public with a reasonable opportunity to appear before the executive commissioner or that person's designee to speak about any matter under TYC jurisdiction. Subsection (b) requires that the location of public hearings be rotated between municipalities where TYC facilities are located or in close proximity to TYC facilities. The overall goal is to facilitate the public in providing information to the TYC executive commissioner, and to provide the public with easy and convenient access statewide.

Human Resources Code Sec. 61.044. BIENNIAL BUDGET. [DUTIES OF EXECUTIVE DIRECTOR.]

(a) ~~The executive director shall perform the duties assigned by the commission.~~

~~[(b)]~~ The executive commissioner ~~[director]~~ shall prepare ~~[and submit to the commission for its approval]~~ a biennial budget of all funds necessary to be appropriated by the legislature to the commission to carry out the purposes of this chapter. The budget shall be submitted and filed by the executive commissioner ~~[commission]~~ in the form and manner and within the time prescribed by law.

Commentary by Lisa Capers

Source: SB 103

Effective Date: June 8, 2007, at 6:50 p.m. Central Standard Time

Applicability: TYC governance on or after the effective date.

Summary of Changes: SB 103 changed the structure of the TYC governance dramatically. This amendment relates to the biennial budget responsibilities and simply changes the term *executive director* to *executive commissioner*. For the next two years, TYC will have no *governing board* appointed by the Governor and no *executive director* appointed by the *governing board*, but will instead have an *executive commissioner* appointed by the Governor and an *advisory board* appointed by legislative leadership.

Human Resources Code Sec. 61.0451. OFFICE OF INSPECTOR GENERAL.

(a) The office of inspector general is established at the commission for the purpose of investigating:

(1) crimes committed by commission employees, including parole officers employed by or under a contract with the commission; and

(2) crimes committed at a facility operated by the commission or at a residential facility operated by another entity under a contract with the commission.

(b) The office of inspector general shall prepare and deliver a report concerning the results of any investigation conducted under this section to:

(1) the executive commissioner;

(2) the advisory board;

(3) the governor;

(4) the lieutenant governor;

(5) the speaker of the house of representatives;

(6) the standing committees of the senate and house of representatives with primary jurisdiction over matters concerning correctional facilities;

(7) the special prosecution unit;

(8) the state auditor; and

(9) any other appropriate state agency responsible for licensing or certifying commission employees or facilities.

(c) The report prepared under Subsection (b) must include a summary of the actions performed by the office of inspector general in conducting the investigation, a statement of whether the investigation resulted in a finding that a criminal offense occurred, and a description of the finding. The report is public information under Chapter 552, Government Code, only to the extent authorized under that chapter and other law.

(d) The office of inspector general may employ and commission inspectors general as peace officers for the purpose of carrying out the duties described by this section. An inspector general shall have all of the powers and duties given to peace officers under Article 2.13, Code of Criminal Procedure.

(e) Peace officers employed and commissioned under Subsection (d) must:

(1) be certified by the Commission on Law Enforcement Officer Standards and Education under Chapter 1701, Occupations Code; and

(2) complete advanced courses relating to the duties of peace officers employed and commissioned under Subsection (d) as part of any continuing education requirements for the peace officers.

(f) The executive commissioner shall select a commissioned peace officer as chief inspector general. The chief inspector general is subject to the requirements of this section and may only be discharged for cause.

(g) The chief inspector general shall on a quarterly basis prepare and deliver a report concerning the operations of the office of inspector general to:

(1) the executive commissioner;

(2) the advisory board;

(3) the governor;

(4) the lieutenant governor;

(5) the speaker of the house of representatives;

(6) the standing committees of the senate and house of representatives with primary jurisdiction over correctional facilities;

(7) the state auditor; and

(8) the comptroller.

(h) A report prepared under Subsection (g) is public information under Chapter 552, Government Code, to the extent authorized under that chapter and other law, and the commission shall publish the report on the commission's Internet website. A report must be both aggregated and disaggregated by individual facility and include information relating to:

(1) the types of investigations conducted by the office of inspector general, such as whether an investigation concerned narcotics or an alleged incident of sexual abuse;

(2) the relationship of a victim to a perpetrator, if applicable; and

(3) the number of investigations conducted concerning suicides, deaths, and hospitalizations of children in the custody of the commission.

(i) The office of inspector general shall immediately report to the executive commissioner, the advisory board, the governor's general counsel, and the state auditor any particularly serious or flagrant problem concerning the administration of a commission program or operation or any interference by the executive commissioner or an employee of the commission with an investigation conducted by the office.

Commentary by Lisa Capers

Source: SB 103

Effective Date: June 8, 2007, at 6:50 p.m. Central Standard Time

Applicability: Implementation of Office of Inspector General (OIG) on or after the effective date. Before October 1, 2007, TYC must notify the Employees Retirement System of Texas of all persons employed by the OIG as a law enforcement officer.

Summary of Changes: New Section 61.0451 is one of the most significant provisions in the TYC reforms. This provision creates the Office of Inspector General (OIG) at TYC. The purpose of this office is to investigate crimes committed by TYC employees (including contract parole officers) and crimes committed at TYC facilities (including contract facilities).

Under Subsection (b), the OIG must prepare a report on the results of any investigation for the TYC executive commissioner, advisory board, and a long list of legislative leadership. Such reports must include a summary of the OIG's actions and state whether a criminal offense occurred. The report is public information under the Public Information Act, unless an exception shelters its release.

The OIG can employ and commission inspectors general as peace officers who will have all the powers and duties enjoyed by peace officers under Code of Criminal Procedure Article 2.13. The inspectors have to be certified

by the Commission on Law Enforcement Officer Standards and Education (TCLEOSE) and must meet all the training requirements for peace officers.

The Chief Inspector General is selected by the TYC executive commissioner and must be a commissioned peace officer. The Chief Inspector General is not an *at-will* employee and can only be discharged for cause.

On a quarterly basis, the Chief Inspector General must prepare a report concerning the operations of the OIG and provide this to legislative leadership. This report is public information under the Public Information Act (unless exceptions to its disclosure apply) and TYC must publish this report on their Internet site. The report must provide information on the types of investigations and whether they involved narcotics or sexual abuse. Additionally, the report must disclose the relationship of a victim to a perpetrator, if applicable, and detail the number of investigations concerning suicides, deaths and hospitalizations of youth in TYC custody. The OIG must immediately report to the TYC executive commissioner, advisory board, the governor's general counsel, and the state auditor any serious or flagrant problems concerning the administration of TYC programs or operations, or any interference by TYC management or staff in the OIG conducted investigations.

Human Resources Code Sec. 61.0452. TOLL-FREE NUMBER.

(a) The commission shall establish a permanent, toll-free number for the purpose of receiving any information concerning the abuse, neglect, or exploitation of children in the custody of the commission.

(b) The office of inspector general shall ensure that:

(1) the toll-free number is prominently displayed in each commission facility; and

(2) children in the custody of the commission and commission employees have confidential access to telephones for the purpose of calling the toll-free number.

Commentary by Lisa Capers

Source: SB 103

Effective Date: June 8, 2007, at 6:50 p.m. Central Standard Time

Applicability: Access to toll-free number beginning on effective date.

Summary of Changes: Section 61.0452 is new and requires TYC to establish a permanent, toll-free number to report allegations of abuse, neglect or exploitation of children in TYC custody. The Office of Inspector General must ensure that the number is prominently posted in each commission facility. Subsection (b)(2) is the most critical provision and requires that youth in TYC custody, as well as TYC employees, have confidential access to telephones for the purpose of calling the toll-free number.

The current TYC hotline number was established in March of this year for the special law enforcement task force that began investigating abuse of kids at TYC. This toll-free hotline number is 1-866-477-8354. It is unclear if this number will continue in the future. Beginning September 1, 2007, TYC will have additional appropriations to set up a call center and the phone number may change at that point.

Human Resources Code Sec. 61.055. ZERO-TOLERANCE POLICY.

(a) The commission shall adopt a zero-tolerance policy concerning the detection, prevention, and punishment of the sexual abuse, including consensual sexual contact, of children in the custody of the commission.

(b) The commission shall establish standards for reporting and collecting data on the sexual abuse of children in the custody of the commission.

(c) The commission shall establish a procedure for children in the custody of the commission and commission employees to report incidents of sexual abuse involving a child in the custody of the commission. The procedure must designate a person employed at the commission facility in which the abuse is alleged to have occurred as well as a person who is employed at the commission's headquarters to whom a person may report an incident of sexual abuse.

(d) The commission shall prominently display the following notice in the office of the chief administrator of each commission facility, the employees' break room of each commission facility, the cafeteria of each commission facility, and at least six additional locations in each commission facility:

THE TEXAS LEGISLATURE HAS ADOPTED A ZERO-TOLERANCE POLICY REGARDING THE SEXUAL ABUSE, INCLUDING CONSENSUAL SEXUAL CONTACT, OF A CHILD IN THE CUSTODY OF THE COMMISSION. ANY SUCH VIOLATION MUST BE REPORTED TO _____.

Commentary by Lisa Capers

Source: SB 103

Effective Date: June 8, 2007, at 6:50 p.m. Central Standard Time

Applicability: TYC policies and procedures on or after effective date.

Summary of Changes: New Section 61.055 requires TYC to adopt a *zero-tolerance* policy concerning the detection, prevention and punishment of sexual abuse, including consensual sexual contact, of youth in TYC custody. This amendment reinforces the intent and mandate of the 2003 federal Prison Rape Elimination Act (PREA), which applies not only to adult prisons, but also to all juvenile justice facilities, juvenile probation departments, and community corrections programs and services as well. For more

information on PREA, please visit <http://www.wcl.american.edu/nic/prea.cfm>.

TYC must establish standards for reporting and collecting data on incidents of sexual abuse of children in TYC custody. The data collection element is a critical part of the PREA legislation.

TYC is also required to establish a procedure to allow its employees and youth in custody to report incidents of sexual abuse involving a child in custody. A person must be designated at each TYC facility, as well as an individual at the TYC headquarters in Austin, for this purpose. While the legislation does not designate the individual at the TYC central office, it would appear to make sense for this person to be in the Office of Inspector General (OIG).

Each TYC facility must prominently display signs/notices posted in a variety of places, including the office of the chief administrator of the facility, the employees break room, the facility cafeteria, and at least six additional locations in each facility stating: THE TEXAS LEGISLATURE HAS ADOPTED A ZERO-TOLERANCE POLICY REGARDING THE SEXUAL ABUSE, INCLUDING CONSENSUAL SEXUAL CONTACT, OF A CHILD IN THE CUSTODY OF THE COMMISSION. ANY SUCH VIOLATION MUST BE REPORTED TO _____. Although the legislation does not specify the areas for the six signs, they will hopefully be posted in areas easily accessible to youth such as day areas, programming areas, housing areas, medical facilities, and recreational or educational areas.

Human Resources Code Sec. 61.0461. EMPLOYMENT OR DESIGNATION OF CHAPLAIN AT CERTAIN COMMISSION FACILITIES.

The commission shall ensure that a chaplain is employed or formally designated for each commission correctional facility that is an institution.

Commentary by Lisa Capers

Source: SB 103

Effective Date: June 8, 2007, at 6:50 p.m. Central Standard Time

Applicability: Requirement for all TYC institutions on effective date.

Summary of Changes: New Section 61.0461 requires TYC to ensure that a chaplain is available in each correctional facility that is an institution. Presumably, half-way houses are not institutions so this requirement is not applicable. The chaplain can be a TYC employee or a non-TYC employee who is designated to serve in this function.

Human Resources Code Sec. 61.061. PLACEMENT IN COMMISSION FACILITIES.

(a) The commission may not assign a child younger than 15 years of age to the same correctional facility dormitory as a person who is at least 17 years of age

unless the commission determines that the placement is necessary to ensure the safety of children in the custody of the commission. This subsection does not apply to a dormitory that is used exclusively for short-term assessment and orientation purposes.

(b) The commission by rule shall adopt scheduling, housing, and placement procedures for the purpose of protecting vulnerable children in the custody of the commission. The procedures must address the age, physical condition, and treatment needs of a child as well as any other relevant factor.

(c) The commission shall consider the proximity of the residence of a child's family in determining the appropriate commission facility in which to place a child.

Commentary by Lisa Capers

Source: SB 103

Effective Date: June 8, 2007, at 6:50 p.m. Central Standard Time

Applicability: Placements of youth in TYC facilities and classifications of youth in TYC facilities on or after the effective date.

Summary of Changes: New Section 61.061 establishes guidelines on TYC's placement of youth in their facilities. It is normally the best practice for secure juvenile correctional facilities to separate younger and more vulnerable juveniles from the older offenders. This provision states that TYC may not place a child younger than 15 in the same facility dormitory with a youth who is 17 or older, unless TYC determines that the placement is necessary to ensure the safety of children in their custody. This rule does not apply to a dorm or *pod* used exclusively for short-term assessment and orientation purposes. The current Marlin Orientation Unit is being closed because the facility is being transferred to the Texas Department of Criminal Justice (TDCJ). The Mart Unit will become the new TYC intake center for boys upon transfer of the Marlin Unit to TDCJ before August 31st of this year. The Ron Jackson Unit in Brownwood will be the intake center for girls.

Subsection (b) requires TYC to adopt rules related to scheduling, housing, and placement of vulnerable children in their custody. These classification procedures must address the child's age, physical condition, and treatment needs, in addition to other relevant factors which might include offense history, history of victimization or predatory behaviors, etc.

Subsection (c) requires TYC to consider the proximity of the residence of the child's family when determining where to place the child. The obvious goal is to place a child in a TYC facility as close to home as possible to promote visitation, as well as efficient and effective re-entry and reintegration back to the child's home.

SB 103 requires that TYC, as soon as practicable after the effective date of the bill, ensure that children younger than 15 are assigned to correctional facility dorms separate from persons who are at least 17 years old as required by this section.

Human Resources Code Sec. 61.062. ESTABLISHMENT OF MINIMUM LENGTH OF STAY.

(a) The commission shall establish a minimum length of stay for each child committed to the commission without a determinate sentence.

(b) In establishing a minimum length of stay for a child, the commission shall consider:

(1) the nature of and seriousness of the conduct engaged in by the child; and

(2) the danger the child poses to the community.

Commentary by Lisa Capers

Source: SB 103

Effective Date: June 8, 2007, at 6:50 p.m. Central Standard Time

Applicability: Determination of minimum lengths of stay for youth committed on or after effective date.

Summary of Changes: New Section 61.062 requires TYC to establish a minimum length of stay for each child committed to its custody without a determinate sentence. TYC must consider the nature and seriousness of the committed offense and the potential danger the child poses to the public. Although this is new law, TYC has always set minimum lengths of stay for indeterminate commitments. This provision re-states the obvious to some extent; however, there was one specific issue discussed during the legislative session that fueled this provision. Many lawmakers, advocate groups and members of the public were concerned that youth in TYC were having their minimum lengths of stay extended for unjustified, arbitrary reasons. While the extension of a length of stay for a juvenile is frequently merited for serious infractions and negative behaviors, it was determined that many of these extensions were for minor incidents that did not merit such lengthy extensions of the youth's period of confinement. Therefore, Section 61.062 is part of a series of amendments, discussed below, which are designed to address the problem of extending lengths of stay without reasonable justification.

Human Resources Code Sec. 61.0651. INFORMATION PROVIDED BY COMMITTING COURT.

In addition to the information provided under Section 61.065, a court that commits a child to the commission shall provide the commission 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) if the commitment is a result of revocation of probation, a copy of the conditions of probation and the revocation order;

(3) the social history report for the child;

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

- (5) the contact information sheet for the child's parents or guardian;
- (6) any law enforcement incident reports concerning the offense for which the child is committed;
- (7) any sex offender registration information concerning the child;
- (8) any juvenile probation department progress reports concerning the child;
- (9) any assessment documents concerning the child;
- (10) the computerized referral and case history for the child, including case disposition;
- (11) the child's birth certificate;
- (12) the child's social security number or social security card, if available;
- (13) the name, address, and telephone number of the court administrator in the committing county;
- (14) Title IV-E eligibility screening information for the child, if available;
- (15) the address in the committing county for forwarding funds collected to which the committing county is entitled;
- (16) any of the child's school or immunization records that the committing county possesses;
- (17) any victim information concerning the case for which the child is committed; and
- (18) any of the child's pertinent medical records that the committing court possesses.

Commentary by Lisa Capers

Source: SB 103

Effective Date: June 8, 2007, at 6:50 p.m. Central Standard Time

Applicability: Commitments on or after the effective date.

Summary of Changes: New Section 61.0651 supplements the current Section 61.065 which was left intact and places certain duties on local officials when a youth is committed to TYC. Section 61.065 requires the juvenile court committing a child to forward a certified copy of the commitment order to TYC. Additionally, the court, probation officer, prosecutor, law enforcement, school officials, and other public officials have to make available to TYC all pertinent information in their possession regarding the child. Under the current statute, TYC may request this information on specific forms or according to an outline provided by TYC.

New Section 61.0651 imposes an additional requirement on the committing court to furnish TYC with copies of numerous documents related to the child. Many of these documents are normally included in the TYC commitment packet and the new statute merely codifies this procedure. However, some of the items on this list are probably new to many jurisdictions.

Although the *Common Application* is not among the documents listed in this statute, it is still required by

TYC and the current practice of submitting this document in the TYC commitment packet should continue. Much of the information on the statutory list is contained in the *Common Application*. The *Common Application* is a standard application form that provides a comprehensive profile of a child being placed in residential care or TYC. The format is a Health and Human Services Commission (HHSC) form that has been universally adopted by all agencies placing children and is accepted by all private and public residential care providers. In the past, TYC has had some problems getting the committing county to completely fill out the *Common Application*. It is essential that this document be thoroughly and accurately completed.

Subsection (8) refers to progress reports. These progress reports refer not only to progress reports from detention, but also probation supervision progress reports, if applicable.

Subsection (9) refers to any *assessment* documents concerning the child. These are assessments in addition to the psychological or psychiatric reports or assessments conducted. For example, there may have been a substance abuse assessment, educational assessment, etc. that should be included.

Subsection (11) refers to the child's birth certificate. If at all possible, TYC needs a certified copy of the birth certificate.

Subsection (17) refers to victim information. TYC needs the name, age, and gender of the victim at a minimum under this section.

Other documents that are useful to TYC and that should be included in the commitment packet are the Detainer Orders and Immigration and Customs Enforcement detainers. It is important for TYC to know if the U.S. Citizenship and Immigration Services has been involved with the child's case.

Human Resources Code Sec. 61.071. INITIAL EXAMINATION.

(a) The commission shall examine and make a study of each child committed to it as soon as possible after commitment. The study shall be made according to rules established by the commission and shall include:

- (1) long-term planning for the child; and
- (2) consideration of the child's medical, substance abuse, and treatment history, including the child's psychiatric history and substance abuse history [a determination of whether the child will need long term residential care].

(b) For a child for whom a minimum length of stay is established under Section 61.062 of one year or longer, the initial examination must include a comprehensive psychiatric evaluation.

(c) The commission shall administer comprehensive psychological assessments to a child as part of the child's initial examination, including assessments designed to identify whether a child is in need of a psychiatric evaluation. If the results of a child's psychological assess-

ments indicate that the child is in need of a psychiatric evaluation, the commission shall as soon as practicable conduct a psychiatric evaluation of the child.

Commentary by Lisa Capers

Source: SB 103

Effective Date: June 8, 2007, at 6:50 p.m. Central Standard Time

Applicability: Youth committed on or after effective date.

Summary of Changes: Section 61.071 of TYC's enabling legislation has always required TYC to conduct an initial examination of each child committed to their custody. The amendments to this section now clarify what this examination must include.

TYC must specifically consider the child's medical, substance abuse, and treatment history, including the child's psychiatric and substance abuse history, in developing the child's treatment plan. If a child has a minimum length of stay of one year or longer, the initial exam must include a *comprehensive psychiatric evaluation*. This psychological term of art means a very comprehensive and thorough psychiatric exam as compared to a *comprehensive psychological assessment*. Under Subsection (c), all youth committed to TYC must be given a *comprehensive psychological assessment* as part of the initial intake examination. If this assessment indicates that the child needs further evaluation, TYC must conduct a psychiatric evaluation of the youth as soon as possible.

Human Resources Code Sec. 61.0711. HEALTH CARE DELIVERY SYSTEM.

(a) In providing medical care, behavioral health care, or rehabilitation services, the commission shall integrate the provision of those services in an integrated comprehensive delivery system.

(b) The delivery system may be used to deliver any medical, behavioral health, or rehabilitation services provided to a child in the custody of the commission, including:

- (1) health care;
- (2) dental care;
- (3) behavioral health care;
- (4) substance abuse treatment;
- (5) nutrition;
- (6) programming;
- (7) case management; and
- (8) general rehabilitation services, in-

cluding educational, spiritual, daily living, recreational, and security services.

Commentary by Lisa Capers

Source: SB 103

Effective Date: June 8, 2007, at 6:50 p.m. Central Standard Time

Applicability: Health care systems utilized by TYC on or after effective date.

Summary of Changes: During the legislative session, lawmakers conducted hearings during which testimony was heard regarding the provision of health care services in TYC facilities. Serious concerns were raised about the adequacy and efficacy of the TYC health care delivery system. Health care at TYC is provided by the University of Texas Medical Branch.

New Section 61.0711 requires TYC to integrate the provision of medical care, behavioral health care and rehabilitation services into an integrated comprehensive delivery system. This system can be used to provide the various types of care described in the eight enumerated items above.

Human Resources Code Sec. 61.072. REEXAMINATION.

The commission shall periodically reexamine each child under its control, except those on release under supervision or in foster homes, for the purpose of determining whether a rehabilitation plan made by the commission concerning the child should be modified or continued. The examination must include a study of all current circumstances of a child's personal and family situation and an evaluation of the progress made by the child since the child's last examination. The examination of a child may be made as frequently as the commission considers necessary [~~desirable~~], but shall be made at intervals not exceeding six months [~~one year~~].

Commentary by Lisa Capers

Source: SB 103

Effective Date: June 8, 2007, at 6:50 p.m. Central Standard Time

Applicability: All youth in TYC custody on or after effective date.

Summary of Changes: Under prior law, TYC was required to reexamine each child in their custody at least annually to determine the child's status and progress in treatment. The new amendment to this section clarifies what this reexamination entails, and requires a more frequent exam at intervals not to exceed six months. The purpose of the reexamination is to determine whether the rehabilitation plan for the child should be modified or continued. The exam must include a study of all the current circumstances of the child's personal and family situation in addition to an evaluation of the child's progress since the last exam.

Human Resources Code Sec. 61.0731. INFORMATION AVAILABLE TO CHILDREN, PARENTS, AND OTHERS.

(c) The commission may disclose to a peace officer or law enforcement agency images of children recorded by an electronic recording device and incident reporting and investigation documents containing the names of children if the information is relevant to the investigation of a criminal offense alleged to have occurred in a facility operated by or under contract with the commission.

Commentary by Lisa Capers

Source: SB 103

Effective Date: June 8, 2007, at 6:50 p.m. Central Standard Time

Applicability: Releases of information occurring on or after the effective date.

Summary of Changes: Current Section 61.0731 in TYC's enabling legislation allows TYC to disclose records and information about a child in its custody to the child and the child's parent or guardian if the release would not harm the treatment and rehabilitation of the child. If the youth is 18 or older, TYC may not release information to the youth's parent or guardian without the youth's consent. Additionally, TYC currently has the ability to release information about a child's location and committing court to a person with a legitimate need for the information.

This amendment creates new Subsection (c), which authorizes TYC to disclose to law enforcement or a peace officer, images (i.e., pictures, video) and incident/investigation documents containing the names of children if this information is relevant to a criminal investigation of an offense that occurred in a TYC facility (including contract facilities).

Human Resources Code Sec. 61.0763. RIGHTS OF PARENTS.

(a) The commission, in consultation with advocacy and support groups such as those described in Section 61.0386(a), shall develop a parent's bill of rights for distribution to the parent or guardian of a child who is under 18 years of age and committed to the commission. The parent's bill of rights must include:

(1) a description of the commission's grievance policies and procedures, including contact information for the office of inspector general and the office of the independent ombudsman established under Chapter 64;

(2) a list of possible incidents that require parental notification;

(3) policies concerning visits and telephone conversations with a child committed to the commission;

(4) a description of commission caseworker responsibilities;

(5) a statement that the commission caseworker assigned to a child may assist the child's parent or guardian in obtaining information and services from the commission and other resources concerning:

(A) counseling, including substance abuse and mental health counseling;

(B) assistance programs, including financial and travel assistance programs for visiting a child committed to the commission;

(C) workforce preparedness programs;

(D) parenting programs; and

(E) commission seminars; and

(6) information concerning the indeterminate sentencing structure at the commission, an explanation of reasons that a child's commitment at the commission could be extended, and an explanation of the review process under Sections 61.0815 and 61.0816 for a child committed to the commission without a determinate sentence.

(b) Not later than 48 hours after the time a child is admitted to a commission facility, the commission shall mail to the child's parent or guardian at the last known address of the parent or guardian:

(1) the parent's bill of rights; and

(2) the contact information of the commission caseworker assigned to the child.

(c) The commission shall on a quarterly basis provide to the parent, guardian, or designated advocate of a child who is in the custody of the commission a report concerning the progress of the child at the commission, including:

(1) the academic and behavioral progress of the child; and

(2) the results of any reexamination of the child conducted under Section 61.072.

(d) The commission shall ensure that written information provided to a parent or guardian regarding the rights of a child in the custody of the commission or the rights of a child's parent or guardian, including the parent's bill of rights, is clear and easy to understand.

Commentary by Lisa Capers

Source: SB 103

Effective Date: June 8, 2007, at 6:50 p.m. Central Standard Time

Applicability: Admissions to TYC on or after the effective date and all youth in the custody of TYC on or after effective date.

Summary of Changes: New Section 61.0763 requires TYC to develop a parent's bill of rights for the parents of youth in TYC custody. The document has to be developed in consultation with the advocacy and support groups discussed earlier in Section 61.0386(a). This bill of rights must include key information, including TYC's grievance procedure, contact information for the Office of the Inspector General and the independent ombudsman, incidents that require parental notification, visitation and telephone policies, and information about the child's caseworker, as well as the responsibilities and duties of the caseworker. TYC caseworkers are given many specific and important duties under this provision and Section 61.076 below. The goal is for parents to have an effective contact in the institutions to help them assist in the child's rehabilitation both while the child is in the facility and when the child transitions back into the community.

Another important piece of information that must be included in the bill of rights is information regarding

why and how a child's minimum length of stay may be extended. The review process for extensions must also be explained to the parent in this bill of rights document.

TYC must mail the document to the child's parent or guardian not later than 48 hours after the time a child is admitted to the TYC facility. Along with the bill of rights, the parent or guardian must be given the contact information for their child's caseworker.

TYC must also provide quarterly progress reports regarding the child to the parent or guardian. The progress reports must include the academic and behavioral progress of the child, and the results of any re-examinations that may have occurred.

The bill of rights and any written progress reports or information provided to the parent or guardian must be clear and easy to understand. These provisions are intended to give parents as much information as possible about how their child is doing, what is happening to their child, and how the parents can be involved in an effective manner.

Human Resources Code Sec. 61.0764. COMMISSION CASEWORKERS.

(a) The commission shall assign a caseworker to a child committed to the commission. A commission caseworker shall:

(1) explore family issues and needs with the parent or guardian of a child committed to the commission;

(2) as needed, provide the parent or guardian of a child committed to the commission with information concerning programs and services provided by the commission or another resource; and

(3) perform other duties required by the commission.

(b) A commission caseworker shall:

(1) at least once a month, attempt to contact the child's parent or guardian by phone, in person while the parent or guardian is visiting the facility, or, if necessary, by mail;

(2) if unsuccessful in contacting the child's parent or guardian under Subdivision (1), attempt at least one additional time each month to contact the child's parent or guardian; and

(3) document successful as well as unsuccessful attempts to contact the child's parent or guardian.

(c) To the extent practicable, a caseworker or another facility administrator shall attempt to communicate with a parent or guardian who does not speak English in the language of choice of the parent or guardian.

Commentary by Lisa Capers

Source: SB 103

Effective Date: June 8, 2007, at 6:50 p.m. Central Standard Time

Applicability: Casework for all youth in TYC custody on or after effective date.

Summary of Changes: New Section 61.0764 explicitly addresses the duties and responsibilities of TYC caseworkers. While TYC has always had caseworkers, presumably this section clarifies the expectations of the legislature that TYC caseworkers will be actively involved with a child's parent or guardian during the youth's commitment stay.

Each child committed to TYC must be assigned a caseworker. One of the caseworker's primary duties is to explore family issues and the child's needs with the parent or guardian and provide relevant information about TYC programs, services and resources. The caseworker must attempt to contact the child's parent or guardian at least once a month, either during facility visitation, by phone or by mail if necessary. At least one additional attempt at contact must be made by the caseworker if initial attempts fail. The caseworker must document all successful and unsuccessful contact attempts. If possible, the child's assigned caseworker should speak the primary language of both the child and the child's parent or guardian if English is not their primary language. If this is not feasible, another facility administrator who speaks the primary language should handle the communications.

Human Resources Code Sec. 61.079. REFERRAL OF VIOLENT AND HABITUAL OFFENDERS FOR TRANSFER.

(a) After a child sentenced to commitment under Section 54.04(d)(3), 54.04(m), or 54.05(f), Family Code, becomes 16 years of age but before the child becomes 19 [24] years of age, the commission may refer the child to the juvenile court that entered the order of commitment for approval of the child's transfer to the [institutional division of the] Texas Department of Criminal Justice for confinement if:

(1) the child has not completed the sentence; and

(2) the child's conduct, regardless of whether the child was released under supervision under Section 61.081, indicates that the welfare of the community requires the transfer.

Commentary by Lisa Capers

Source: SB 103

Effective Date: June 8, 2007, at 6:50 p.m. Central Standard Time

Applicability: All determinate sentenced youth in TYC custody on or after effective date.

Summary of Changes: This amendment was one of the most significant changes in SB 103. TYC jurisdiction now ends at age 19 instead of 21. Determinate sentenced youth must either be transferred or released on parole prior to age 19 under this new procedure. The removal of the term *institutional division* is cosmetic clean-up and makes no substantive change in the law.

Human Resources Code Sec. 61.0791. EVALUATION OF CERTAIN CHILDREN SERVING DETERMINATE SENTENCES.

(a) When a child who is sentenced to commitment under Section 54.04(d)(3), 54.04(m), or 54.05(f), Family Code, becomes 18 years of age, the commission shall evaluate whether the child is in need of additional services that can be completed in the six-month period after the child's 18th birthday to prepare the child for release from the custody of the commission or transfer to the Texas Department of Criminal Justice.

(b) This section does not apply to a child who is released from the custody of the commission or who is transferred to the Texas Department of Criminal Justice before the child's 18th birthday.

Commentary by Lisa Capers

Source: SB 103

Effective Date: June 8, 2007, at 6:50 p.m. Central Standard Time

Applicability: Determinate sentenced youth who reach age 18 in TYC custody on or after the effective date.

Summary of Changes: New Section 61.0791 applies only to determinate sentenced youth at TYC. When a youth serving a determinate sentence reaches age 18 and has not been previously released or transferred, TYC must evaluate whether the child is in need of additional services that can be completed in the six month period after the child's 18th birthday. These services are designed to prepare the child for release on parole or transfer to the Texas Department of Criminal Justice (TDCJ).

Human Resources Code Sec. 61.0814. REENTRY AND REINTEGRATION PLAN.

(a) The commission shall develop a reentry and reintegration plan for each child committed to the custody of the commission. The plan for a child must be designed to ensure that the child receives an extensive continuity of care in services from the time the child is committed to the commission to the time of the child's final discharge from the commission. The plan for a child must include, as applicable:

- (1) housing assistance;
- (2) a step-down program, such as placement in a halfway house;
- (3) family counseling;
- (4) academic and vocational mentoring;
- (5) trauma counseling for a child who is a victim of abuse while in the custody of the commission; and
- (6) other specialized treatment services appropriate for the child.

(b) If a program or service in the child's reentry and reintegration plan is not available at the time the child is to be released, the commission shall find a suitable alter-

native program or service so that the child's release is not postponed.

Commentary by Lisa Capers

Source: SB 103

Effective Date: June 8, 2007, at 6:50 p.m. Central Standard Time

Applicability: All youth in TYC custody on or after effective date.

Summary of Changes: New Section 61.0814 requires TYC to develop a re-entry and re-integration plan for every child in custody. This plan is supposed to ensure that the child receives continuity of care from the time the child enters TYC until the child is released back into the community. The plan should address needed services for both the child and the child's family, including family counseling. If a needed program or service addressed in the plan is not available before the child is scheduled for release, TYC is mandated to find a suitable alternative program or service so that the child's release is not delayed.

Much has been written in the literature about reentry and reintegration plans. When implemented correctly, these plans prove very effective for the youth and family. Ohio has developed and implemented a *Re-entry Roadmap* that provides some excellent information about reentry plans. This document is available at the Ohio Department of Youth Services website: <http://www.dys.ohio.gov/dysweb/ReEntry%20Services/Roadmap.pdf>.

Human Resources Code Sec. 61.0815. COMPLETION OF MINIMUM LENGTH OF STAY.

(a) After a child who is committed to the commission without a determinate sentence completes the minimum length of stay established by the commission for the child under Section 61.062, the commission shall, in the manner provided by this section:

- (1) discharge the child from the custody of the commission;
- (2) release the child under supervision under Section 61.081; or
- (3) extend the length of the child's stay in the custody of the commission.

(b) The commission by rule shall establish a panel whose function is to review and determine whether a child who has completed the child's minimum length of stay should be discharged from the custody of the commission as provided by Subsection (a)(1), be released under supervision under Section 61.081 as provided by Subsection (a)(2), or remain in the custody of the commission for an additional period of time as provided by Subsection (a)(3).

(c) The executive commissioner shall determine the size of the panel and the length of the members' terms of service on the panel. The panel must consist of an odd number of members and the terms of the panel's members

must last for at least two years. The executive commissioner shall adopt policies that ensure the transparency, consistency, and objectivity of the panel's composition, procedures, and decisions. The executive commissioner shall appoint persons to serve as members of the panel. A person appointed to the panel must be a commission employee who works at the commission's central office. A member of the panel may not be involved in any supervisory decisions concerning children in the custody of the commission.

(d) The panel may extend the length of the child's stay as provided by Subsection (a)(3) only if the panel determines by majority vote and on the basis of clear and convincing evidence that the child is in need of additional rehabilitation from the commission and that the commission will provide the most suitable environment for that rehabilitation. In extending the length of a child's stay, the panel must specify the additional period of time that the child is to remain in the custody of the commission and must conduct an additional review and determination as provided by this section on the child's completion of the additional term of stay. If the panel determines that the child's length of stay should not be extended, the commission must discharge the child from the custody of the commission as provided by Subsection (a)(1) or release the child under supervision under Section 61.081 as provided by Subsection (a)(2).

(e) The commission shall maintain statistics of the number of extensions granted by the panel. The statistics must include aggregated information concerning:

(1) the race, age, sex, specialized treatment needs, and county of origin for each child for whom an extension order is requested;

(2) the facility in which the child is confined; and

(3) if applicable, any allegations concerning the abuse, mistreatment, or neglect of the child, aggregated by the type of misconduct to which the child was subjected.

(f) To the extent authorized under law, the statistics maintained under Subsection (e) are public information under Chapter 552, Government Code, and the commission shall post the statistics on the commission's Internet website. The commission shall prepare and deliver to the standing committees of the senate and house of representatives with primary jurisdiction over matters concerning correctional facilities a report concerning the statistics maintained under Subsection (e).

(g) The commission shall provide a report to the parent, guardian, or designated advocate of a child whose length of stay is extended under this section explaining the panel's reason for the extension.

Commentary by Lisa Capers

Source: SB 103

Effective Date: June 8, 2007, at 6:50 p.m. Central Standard Time

Applicability: Youth in custody on or after the effective date.

Summary of Changes: New Section 61.0815 addresses what happens to a youth in TYC custody when the youth has completed the minimum length of stay required by TYC. This section applies only to indeterminate commitments to TYC. When a child completes TYC's minimum length of stay, TYC must select one of three possible options: 1) discharge the child; 2) release the child on parole supervision; or 3) extend the length of stay using the new procedures outlined in SB 103.

Subsection (b) requires TYC to establish a review panel to decide which of the three options is appropriate for a child once the minimum length of stay is completed. Under Subsection (c), the TYC executive commissioner determines the size of the panel and the length of the members' terms. The panel must have an odd number of members and their terms must last for at least two years. The executive commissioner has the responsibility of making sure the panel members are appropriate and that the process is transparent, objective and consistent. The executive commissioner appoints the members from the TYC central office in Austin. No member of the panel can be involved directly in any supervisory decisions concerning children in TYC custody; thus no facility staffers can be on this panel.

Subsection (d) authorizes the panel to extend a child's length of stay if by majority vote, based on clear and convincing evidence, it determines that the child is in need of additional rehabilitation and that TYC is the most suitable place for that rehabilitation. The panel specifies the additional length of stay that is appropriate.

Under Subsection (e), TYC must maintain statistics on all extensions granted by the panel, including data on the child's race, age, sex, treatment needs and county of origin. Also, any allegations regarding the child's mistreatment must be reported in these statistics. Subsection (f) provides that this report is a public record and TYC must post the report on the agency website. The report must also be sent to legislative leadership with jurisdiction over correctional facilities.

Subsection (g) requires TYC to provide the parent, guardian or designated advocate of the child a report explaining why the child's length of stay was extended.

Human Resources Code Sec. 61.0816. REQUEST FOR RECONSIDERATION OF EXTENSION ORDER.

(a) The commission by rule shall establish a process to request the reconsideration of an extension order issued by the panel established under Section 61.0815.

(b) The process to request reconsideration must provide that:

(1) a child, a parent, guardian, or designated advocate of a child, an employee of the commission, or a person who provides volunteer services at a commission facility may submit a request for reconsideration of an extension order;

(2) the person submitting the request for reconsideration of an extension order must state in the request the reason for the request;

(3) after receiving a request for reconsideration of an extension order, the panel shall reconsider an extension order that:

(A) extends the child's stay in the custody of the commission by six months or more; or

(B) combined with previous extension orders will result in an extension of the child's stay in the custody of the commission by six months or more;

(4) the panel's reconsideration of an extension order includes consideration of the information submitted in the request; and

(5) the panel shall send a written reply to the child, the parent, guardian, or designated advocate of the child, and the person who made the request for reconsideration of an extension order that includes an explanation of the panel's decision after reconsidering the extension order, including an indication that the panel has considered the information submitted in the request.

(c) The commission shall create a form for a request for reconsideration of an extension order that is clear and easy to understand. The commission shall ensure that a child may request assistance in completing a request for reconsideration of an extension order.

(d) The commission shall maintain statistics of the number of requests for reconsideration of an extension order that are submitted and the action taken on reconsideration of the extension order. The statistics must include aggregated information concerning:

(1) the race, age, sex, specialized treatment needs, and county of origin for each child for whom a request for reconsideration of an extension order is submitted;

(2) whether a request for reconsideration of an extension order results in:

(A) a discharge or release under supervision; or

(B) the original extension order being upheld;

(3) the facility in which the child is confined; and

(4) if applicable, any allegations concerning the abuse, mistreatment, or neglect of the child, aggregated by the type of misconduct to which the child was subjected.

(e) To the extent authorized under law, the statistics maintained under Subsection (d) are public information under Chapter 552, Government Code, and the commission shall post the statistics on the commission's Internet website. The commission shall prepare and deliver to the standing committees of the senate and house of representatives with primary jurisdiction over matters concerning correctional facilities a report concerning the statistics maintained under Subsection (d).

Commentary by Lisa Capers

Source: SB 103

Effective Date: June 8, 2007, at 6:50 p.m. Central Standard Time

Applicability: Youth in custody on or after the effective date.

Summary of Changes: New Section 61.0816 governs the process of reconsidering an order extending a child's minimum length of stay in TYC.

Under Subsection (a), TYC is mandated to promulgate administrative rules to establish a process for an individual to request reconsideration of an extension of a child's minimum length of stay. Subsection (b) provides that the request for reconsideration may come from the child, a parent, guardian, or designated advocate of a child, a TYC employee or TYC volunteer. The person submitting the request must provide a reason for the request. The review panel must consider the request and must send a written reply to the child, the parent, guardian or designated advocate of the child, and the person who made the request. The reply must provide an explanation of the panel's decision.

Subsection (c) requires TYC to create a form for the request for reconsideration that is clear and easy to use, and youth must be provided assistance upon request to complete the form.

Subsection (d) requires TYC to maintain statistics on the number of requests for reconsideration and the action taken on these requests. The resulting statistics are public information and must be posted on the TYC website. Additionally, TYC must prepare and deliver a formal report to legislative committees with jurisdiction over correctional facilities.

Human Resources Code Sec. 61.084. TERMINATION OF CONTROL.

(e) Except as provided by Subsection ~~[(f)-(g)]~~ (g), the commission shall discharge from its custody a person not already discharged on the person's 19th ~~[24th]~~ birthday.

(g) The commission shall transfer a person who has been sentenced under a determinate sentence to commitment under Section 54.04(d)(3), 54.04(m), or 54.05(f), Family Code, or who has been returned to the commission under Section 54.11(i)(1), Family Code, to the custody of the ~~[pardons and paroles division of the]~~ Texas Department of Criminal Justice on the person's 19th ~~[24th]~~ birthday, if the person has not already been discharged or transferred, to serve the remainder of the person's sentence on parole as provided by Section 508.156, Government Code.

Commentary by Lisa Capers

Source: SB 103

Effective Date: June 8, 2007, at 6:50 p.m. Central Standard Time

Applicability: All youth in TYC custody on or after effective date.

Summary of Changes: This amendment represents another of the most significant changes in SB 103. TYC jurisdiction now ends at age 19 instead of 21 for both determinate and indeterminate commitments. Determinate sentenced youth must either be transferred or released on parole before turning 19 under this new system. The removal of the term *pardons and paroles division* is cosmetic clean-up and makes no substantive change in the law.

Human Resources Code Sec. 61.084. TERMINATION OF CONTROL.

~~(f) The commission shall transfer a person who has been sentenced under a determinate sentence to commitment under Section 54.04(d)(3), 54.04(m), or 54.05(f), Family Code, or who has been returned to the commission under Section 54.11(i)(1), Family Code, to the custody of the pardons and paroles division of the Texas Department of Criminal Justice to serve the remainder of the person's sentence on parole as provided by Section 508.156, Government Code, when the person is released under supervision after becoming 19 years of age.~~

Commentary by Lisa Capers

Source: SB 103

Effective Date: June 8, 2007, at 6:50 p.m. Central Standard Time

Applicability: Agency operations on or after the effective date.

Summary of Changes: This section is repealed.

Human Resources Code Sec. 61.0841. DETERMINATE SENTENCE PAROLE.

(a) Not later than the 90th day before the date the commission transfers a person to the custody of ~~[the pardons and paroles division of]~~ the Texas Department of Criminal Justice for release on parole under Section 61.081(f) or 61.084(g) ~~[61.084(f) or (g)]~~, the commission shall submit to the department all pertinent information relating to the person, including:

- (1) the juvenile court judgment;
- (2) the circumstances of the person's offense;
- (3) the person's previous social history and juvenile court records;
- (4) the person's physical and mental health record;
- (5) a record of the person's conduct, employment history, and attitude while committed to the commission;
- (6) a record of the sentence time served by the person at the commission and in a juvenile detention facility in connection with the conduct for which the person was adjudicated; and
- (7) any written comments or information provided by the commission, local officials, family mem-

bers of the person, [or] victims of the offense, or the general public.

(c) The Texas Department of Criminal Justice shall grant credit for sentence time served by a person at the commission and in a juvenile detention facility, as recorded by the commission under Subsection (a)(6), in computing the person's eligibility for parole and discharge from the department.

Commentary by Lisa Capers

Source: SB 103

Effective Date: June 8, 2007

Applicability: Transfers on or after the effective date.

Summary of Changes: The amendments to Section 61.0841 apply to determinate sentenced youth who are released to the Texas Department of Criminal Justice (TDCJ) for release on parole. This provision makes some clarifications and technical clean-up to citations and terminology. Additionally, this section requires TYC to send to TDCJ, at least 90 days before transfer of the youth to TDCJ custody, a wide variety of information, including written comments or information provided by the youth's family members or the general public.

New Subsection (c) is the more important provision and requires TDCJ to grant credit for time served by the child in TYC and in local juvenile detention while pending trial or an appeal. TDCJ must credit this time when determining the youth's eligibility for parole and discharge from TDCJ.

Human Resources Code Sec. 61.093. ESCAPE AND APPREHENSION.

(a) If a child who has been committed to the commission and placed by it in any institution or facility has escaped or has been released under supervision and broken the conditions of release:

- (1) a sheriff, deputy sheriff, constable, or police officer may, without a warrant, arrest the child; or
- (2) a ~~[parole officer or other]~~ commission employee designated by the executive commissioner ~~[director]~~ may, without a warrant or other order, take the child into the custody of the commission.

Commentary by Lisa Capers

Source: SB 103

Effective Date: June 8, 2007, at 6:50 p.m. Central Standard Time

Applicability: Custody events on or after the effective date.

Summary of Changes: This amendment is one in a long series of changes to terminology required by the new TYC governance structure implemented by SB 103. The amendment changes the term *executive director* to *executive commissioner*. For the next two years TYC will have no governing board appointed by the Governor and no *executive director* hired by the governing board. Instead,

TYC will have an *executive commissioner* appointed by the Governor and an *advisory board* appointed by legislative leadership.

The change in Subsection (a)(2) appears to be a technical cleanup. While parole officers are specifically deleted, the statute continues to authorize any TYC employee designated by the executive commissioner to take a youth into custody if the youth has escaped from a TYC facility or violated a parole condition. No warrant or other court order is necessary.

Human Resources Code Sec. 61.098. CERTAIN CRIMES CONCERNING THE COMMISSION.

(a) In this section, "special prosecution unit" means the special prosecution unit established under Subchapter E, Chapter 41, Government Code.

(b) As appropriate, the district attorney, criminal district attorney, or county attorney representing the state in criminal matters before the district or inferior courts of the county who would otherwise represent the state in the prosecution of an offense or delinquent conduct concerning the commission and described by Article 104.003(a), Code of Criminal Procedure, may request that the special prosecution unit prosecute the offense or delinquent conduct.

(c) The office of inspector general shall on a quarterly basis prepare and deliver to the board of directors of the special prosecution unit a report concerning:

(1) any alleged criminal offense or delinquent conduct concerning the commission and described by Article 104.003(a), Code of Criminal Procedure, that occurred during the preceding calendar quarter; and

(2) the disposition of any case involving a criminal offense or delinquent conduct concerning the commission and described by Article 104.003(a), Code of Criminal Procedure, that occurred during the preceding calendar quarter.

(d) Notwithstanding Subsection (c), the office of inspector general shall immediately provide the special prosecution unit with a report concerning an alleged criminal offense or delinquent conduct concerning the commission and described by Article 104.003(a), Code of Criminal Procedure, if the chief inspector general reasonably believes the offense or conduct is particularly serious and egregious.

(e) The chief inspector general of the office of inspector general, at the direction of the board of directors of the special prosecution unit, shall notify the foreman of the appropriate grand jury, in the manner provided by Article 20.09, Code of Criminal Procedure, if:

(1) the chief inspector general receives credible evidence of illegal or improper conduct by commission officers, employees, or contractors that the inspector general reasonably believes jeopardizes the health, safety, and welfare of children in the custody of the commission;

(2) the chief inspector general reasonably believes the conduct:

(A) could constitute an offense under Article 104.003(a), Code of Criminal Procedure; and

(B) involves the alleged physical or sexual abuse of a child in the custody of a commission facility or an investigation related to the alleged abuse; and

(3) the chief inspector general has reason to believe that information concerning the conduct has not previously been presented to the appropriate grand jury.

Commentary by Lisa Capers

Source: SB 103

Effective Date: June 8, 2007, at 6:50 p.m. Central Standard Time

Applicability: Operation of the Office of Inspector General and Special Prosecution Unit on or after the effective date.

Summary of Changes: New section 61.098 is a companion statute to new Subchapter E. Special Prosecution Unit created in Chapter 41 of the Government Code which was discussed earlier in this issue.

Subsection (b) gives local criminal prosecutors the authority to request that the Special Prosecution Unit prosecute an offense committed on TYC or TDCJ property at one of the juvenile or adult correctional facilities or committed off TYC or TDCJ property by a person in custody who was performing a duty out of the facility.

The TYC Office of Inspector General (OIG) must prepare a quarterly report for the Special Prosecution Unit board of directors regarding crimes and delinquent conduct concerning TYC and the disposition of any cases during the quarter.

The OIG must provide the Special Prosecution Unit with a report concerning any crimes or delinquent conduct concerning TYC that is particularly serious and egregious. The Chief Inspector General, at the direction of the Special Prosecution Unit board of directors, must also notify the appropriate grand jury if the counselor: 1) receives credible evidence of illegal or improper conduct by TYC officers, employees or contractors; 2) believes the conduct constitutes a felony criminal offense or delinquent conduct and involves the physical or sexual abuse of a child in a TYC facility; and 3) has reason to believe the conduct has not previously been presented to the grand jury.

Human Resources Code Sec. 61.099. DUTY TO FILE COMPLAINT WITH LAW ENFORCEMENT AGENCY.

If the executive commissioner has reasonable cause to believe that a child in the custody of the commission is the victim of a crime committed at a commission facility, the executive commissioner shall immediately file a complaint with the appropriate law enforcement agency.

Commentary by Lisa Capers

Source: SB 103

Effective Date: June 8, 2007, at 6:50 p.m. Central Standard Time

Applicability: Reasonable cause to suspect the abuse of or criminal offense against a child in TYC custody on or after effective date.

Summary of Changes: New Section 61.099 clarifies that the TYC executive commissioner must notify law enforcement of any crimes committed against children in TYC care. During the legislative hearings this session, a lot of scrutiny was focused on whether TYC was actually notifying law enforcement of allegations of sexual abuse against children in TYC custody.

Current law in Family Code Chapter 261 requires professionals to report allegations of child abuse and neglect to appropriate entities within 48 hours. However, the law is ambiguous as it relates to TYC professionals in facilities. A professional in TYC must report the alleged abuse to TYC, but there is no concurrent requirement in statute to report it to local law enforcement. Presumably, TYC policies and procedure require this (or should require this) if they do not already. The critical point of this notification is to allow law enforcement to conduct a timely and effective criminal investigation that will support prosecution of an offender. The notice must obviously be timely, especially if an offense has just occurred, to facilitate protection of the crime scene and adequate evidence gathering.

In contrast, the law is quite clear that any allegations of abuse, neglect or exploitation of a child in a local juvenile justice facility or program must be reported to both law enforcement and the Texas Juvenile Probation Commission (TJPC) within 48 hours per the Family Code. Additionally, TJPC's current administrative rules make the reporting timeline even stricter than the Family Code in that the report must be made within 24 hours to both entities. TJPC is currently in the process of updating standards to tighten this notification timeline even more due to the critical nature of timely evidence gathering and crime scene processing, which necessitates immediate law enforcement involvement.

CHAPTER 64. OFFICE OF INDEPENDENT OMBUDSMAN OF THE TEXAS YOUTH COMMISSION **SUBCHAPTER A. GENERAL PROVISIONS**

Human Resources Code Sec. 64.001. DEFINITIONS.

In this chapter:

(1) "Commission" means the Texas Youth Commission.

(2) "Independent ombudsman" means the individual who has been appointed under this chapter to the office of independent ombudsman.

(3) "Office" means the office of independent ombudsman created under this chapter.

Commentary by Lisa Capers

Source: SB 103

Effective Date: June 8, 2007, at 6:50 p.m. Central Standard Time

Applicability: Establishment of the Office of Independent Ombudsman on or after the effective date.

Summary of Changes: New Human Resources Code Chapter 64 establishes the office of independent ombudsman of the Texas Youth Commission. The ombudsman structure is utilized by many states and organizations to provide effective and independent advocacy for the rights of youth or adults.

Human Resources Code Sec. 64.002. ESTABLISHMENT; PURPOSE.

The office of independent ombudsman is a state agency established for the purpose of investigating, evaluating, and securing the rights of the children committed to the commission, including a child released under supervision before final discharge.

Commentary by Lisa Capers

Source: SB 103

Effective Date: June 8, 2007, at 6:50 p.m. Central Standard Time

Applicability: Operation of the Office of Independent Ombudsman on or after the effective date.

Summary of Changes: New Section 64.002 defines the purpose of the Office of Independent Ombudsman. This office is a separate and independent state agency whose purpose is to investigate, evaluate and secure the rights of youth committed to TYC and released on TYC parole.

Human Resources Code Sec. 64.003. INDEPENDENCE.

(a) The independent ombudsman in the performance of its duties and powers under this chapter acts independently of the commission.

(b) Funding for the independent ombudsman is appropriated separately from funding for the commission.

[Sections 64.004-64.050 reserved for expansion]

Commentary by Lisa Capers

Source: SB 103

Effective Date: June 8, 2007, at 6:50 p.m. Central Standard Time

Applicability: Funding and operations of the Office of Independent Ombudsman on or after effective date.

Summary of Changes: New Section 64.003 makes it clear that the independent ombudsman is just that...independent from TYC in all respects. While the ombudsman is housed at TYC central office, the funding for this office is a separate appropriation from the legislature and TYC has no control over this funding or how it is spent. The independ-

ent ombudsman is responsible only to the legislature.

The Office of Independent Ombudsman was appropriated funding in the amount of \$600,000 for the biennium and the office was given five staff members. Rider 22 to the TYC appropriations bill pattern makes it clear that these funds and FTEs (staff positions) may be used only for the operations of the Office of Independent Ombudsman.

SUBCHAPTER B. APPOINTMENT AND MANAGEMENT OF OFFICE

Human Resources Code Sec. 64.051. APPOINTMENT OF INDEPENDENT OMBUDSMAN.

(a) The governor shall appoint the independent ombudsman with the advice and consent of the senate for a term of two years, expiring February 1 of odd-numbered years.

(b) A person appointed as independent ombudsman is eligible for reappointment but may not serve more than three terms in that capacity.

(c) Notwithstanding Subsection (a), as soon as practicable after the effective date of this section, the executive commissioner of the commission shall appoint the independent ombudsman for a term of office expiring February 1, 2009. As provided by Subsection (a), the governor shall appoint the independent ombudsman with the advice and consent of the senate for each of the independent ombudsman's subsequent terms of office. This subsection expires March 1, 2009.

Commentary by Lisa Capers

Source: SB 103

Effective Date: June 8, 2007, at 6:50 p.m. Central Standard Time

Applicability: Appointments on or after the effective date.

Summary of Changes: New Chapter 64 Subchapter B addresses the appointment and management of the Office of Independent Ombudsman. The Governor appoints the individual with the advice and consent of the Senate for a two-year term expiring February 1st of each odd-numbered year, coinciding with the biennial legislative session. The ombudsman is eligible to serve only three terms. Subsection (c) requires as soon as practicable after the effective date of this section that the TYC *executive commissioner* appoint the independent ombudsman for a term to expire February 1, 2009. In February 2009, the Governor will appoint the next ombudsman or reappoint the current ombudsman with the advice and consent of the Senate and that appointment process will continue thereafter.

The reality of the appointment process was a bit different. On Friday May 11, 2007, TYC officials announced the selection of the new ombudsman. The TYC *executive director* made this appointment since SB 103 was not yet in effect and TYC had no *executive commissioner*. The new ombudsman had no authority to act and was not

officially on the job until SB 103 came into effect on June 8, 2007.

The new ombudsman is Will Harrell, the former head of the American Civil Liberties Union (ACLU) of Texas. Mr. Harrell was part of a special review team assisting former TYC conservator Jay Kimbrough in reviewing release policies for youths since the TYC scandal erupted early during the legislative session. According to the ACLU website, Harrell had been executive director of the ACLU's Texas office since June 2000. He came to Austin from New York City, where he had spent the previous year as the executive director of the National Police Accountability Project. In his role as head of the ACLU's Texas operations, Harrell served on the board of the Texas Criminal Justice Coalition, an advocacy group and co-chaired the Texas Coalition Advocating Justice for Juveniles, a group that has been advocating change since before the TYC scandal made the headlines. From 1993 to 1997, Harrell served as legal director of a human rights center in Guatemala. During that time, he also served as a consultant to the United Nations International Human Rights Verification Mission and produced a documentary video on prison conditions in Guatemala.

Human Resources Code Sec. 64.052. ASSISTANTS.

The independent ombudsman may hire assistants to perform, under the direction of the independent ombudsman, the same duties and exercise the same powers as the independent ombudsman.

Commentary by Lisa Capers

Source: SB 103

Effective Date: June 8, 2007, at 6:50 p.m. Central Standard Time

Applicability: Operation of the Office of the Independent Ombudsman on or after effective date.

Summary of Changes: This provision authorizes the independent ombudsman to hire assistants to perform the same duties and exercise the same powers as the ombudsman.

The Office of Independent Ombudsman was appropriated \$600,000 for the biennium and the office was given five staff members. Rider 22 to the TYC appropriations bill pattern makes it clear that these funds and FTEs (staff positions) may be used only for the operations of the Office of Independent Ombudsman.

Human Resources Code Sec. 64.053. CONFLICT OF INTEREST.

(a) A person may not serve as independent ombudsman or as an assistant to the independent ombudsman if the person or the person's spouse:

(1) is employed by or participates in the management of a business entity or other organization receiving funds from the commission;

(2) owns or controls, directly or indirectly, any interest in a business entity or other organization receiving funds from the commission; or

(3) uses or receives any amount of tangible goods, services, or funds from the commission.

(b) A person may not serve as independent ombudsman or as an assistant to the independent ombudsman if the person or the person's spouse is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the commission.

(c) A person may not serve as independent ombudsman or as an assistant to the independent ombudsman if the person or the person's spouse is an officer, employee, manager, or paid consultant of a Texas trade association in the field of criminal or juvenile justice.

(d) For the purposes of this section, a Texas trade association is a nonprofit, cooperative, and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

Commentary by Lisa Capers

Source: SB 103

Effective Date: June 8, 2007, at 6:50 p.m. Central Standard Time

Applicability: Ombudsman and assistants appointed on or after the effective date.

Summary of Changes: This new provision enacts specific conflict of interest provisions that would prohibit certain individuals from serving as the TYC independent ombudsman or assistants to the ombudsman. A person cannot serve in this capacity if the person is affiliated or participates with any organization or entity that receives funds, goods or services from TYC. Registered lobbyists are prohibited from serving if they lobby for compensation on behalf of a profession related to the operation of TYC. A person affiliated with a Texas criminal or juvenile justice trade association is also prohibited from serving, as well as a person's spouse who falls into any of the above listed categories.

Human Resources Code Sec. 64.054. SUNSET PROVISION.

The office is subject to review under Chapter 325, Government Code (Texas Sunset Act), but is not abolished under that chapter. The office shall be reviewed during the periods in which state agencies abolished in 2009 and every 12th year after 2009 are reviewed.

Commentary by Lisa Capers

Source: SB 103

Effective Date: June 8, 2007, at 6:50 p.m. Central Standard Time

Applicability: Sunset review on or after the effective date.

Summary of Changes: This provision places the Office of Independent Ombudsman under Sunset review as with all other state agencies. TYC is undergoing Sunset review in 2009; thus the ombudsman's office will be on the same schedule as TYC unless this is modified by the Sunset Commission in future legislation.

Human Resources Code Sec. 64.055. REPORT.

(a) The independent ombudsman shall submit on a quarterly basis to the governor, the lieutenant governor, the state auditor, and each member of the legislature a report that is both aggregated and disaggregated by individual facility and describes:

(1) the work of the independent ombudsman;

(2) the results of any review or investigation undertaken by the independent ombudsman, including reviews or investigation of services contracted by the commission; and

(3) any recommendations that the independent ombudsman has in relation to the duties of the independent ombudsman.

(b) The independent ombudsman shall immediately report to the governor, the lieutenant governor, the speaker of the house of representatives, the state auditor, and the office of the inspector general of the commission any particularly serious or flagrant:

(1) case of abuse or injury of a child committed to the commission;

(2) problem concerning the administration of a commission program or operation;

(3) problem concerning the delivery of services in a facility operated by or under contract with the commission; or

(4) interference by the commission with an investigation conducted by the office.

Commentary by Lisa Capers

Source: SB 103

Effective Date: June 8, 2007, at 6:50 p.m. Central Standard Time

Applicability: Reports due on or after the effective date.

Summary of Changes: This new provision requires the independent ombudsman to submit a quarterly report to all legislative leadership and individual legislators, detailing the work of the ombudsman, any investigation results, and any recommendations from the ombudsman related to the duties of the office. The data in the report must be aggregated both statewide and individually to each TYC facility.

The ombudsman must also immediately report to legislative leadership, the state auditor, and the Office of Inspector General any serious or flagrant case of abuse of a child in TYC custody, problem concerning TYC programs, operations, service delivery, and any interference by TYC with investigations conducted by the ombudsman.

Human Resources Code Sec. 64.056. COMMUNICATION AND CONFIDENTIALITY.

(a) The commission shall allow any child committed to the commission to communicate with the independent ombudsman or an assistant to the ombudsman. The communication:

(1) may be in person, by mail, or by any other means; and

(2) is confidential and privileged.

(b) The records of the independent ombudsman are confidential, except that the independent ombudsman shall:

(1) share with the office of inspector general of the commission a communication with a child that may involve the abuse or neglect of the child; and

(2) disclose its nonprivileged records if required by a court order on a showing of good cause.

(c) The independent ombudsman may make reports relating to an investigation public after the investigation is complete but only if the names of all children, parents, and employees are redacted from the report and remain confidential.

(d) The name, address, or other personally identifiable information of a person who files a complaint with the office of independent ombudsman, information generated by the office of independent ombudsman in the course of an investigation, and confidential records obtained by the office of independent ombudsman are confidential and not subject to disclosure under Chapter 552, Government Code, except that the information and records, other than confidential information and records concerning a pending law enforcement investigation or criminal action, may be disclosed to the appropriate person if the office determines that disclosure is:

(1) in the general public interest;

(2) necessary to enable the office to perform the responsibilities provided under this section; or

(3) necessary to identify, prevent, or treat the abuse or neglect of a child.

Commentary by Lisa Capers

Source: SB 103

Effective Date: June 8, 2007, at 6:50 p.m. Central Standard Time

Applicability: Reports, investigations and releases of information on or after the effective date.

Summary of Changes: New Section 64.056 requires TYC to allow any child in TYC custody to communicate with the ombudsman or assistant ombudsman. This communication can be in person, by mail or any other means, and is confidential and privileged.

The records of the ombudsman are confidential but must be shared with the office of inspector general if the communication involves the abuse or neglect of the child. The records must be disclosed per court order if the records are non-privileged. The ombudsman may make

investigation reports public after an investigation is complete but only if the names of all youth, parents and employees are redacted from the report.

Names of reporters who file complaints with the ombudsman, information generated and confidential records obtained during an investigation are confidential under the Public Information Act. However, information that does not concern a pending law enforcement investigation or criminal case may be disclosed to an appropriate person if the ombudsman's office determines it is in the general public interest, to enable the ombudsman's office to perform its responsibilities, or to identify, prevent or treat the abuse or neglect of a child.

Human Resources Code Sec. 64.057. PROMOTION OF AWARENESS OF OFFICE.

The independent ombudsman shall promote awareness among the public and the children committed to the commission of:

(1) how the office may be contacted;

(2) the purpose of the office; and

(3) the services the office provides.

Commentary by Lisa Capers

Source: SB 103

Effective Date: June 8, 2007, at 6:50 p.m. Central Standard Time

Applicability: Operations of the Office of the Independent Ombudsman on or after the effective date.

Summary of Changes: This new section mandates the independent ombudsman to promote public awareness of the functions, roles and duties of the office, especially to the children committed to TYC and their parents, guardians and custodians. The information must include contact information, the general purpose of the office, and the services provided by the office.

Presumably, this information will be provided to all youth during admission to TYC. It also would seem appropriate to include this information in the parent's bill of rights document that is given to all parents by TYC. Dissemination of this information to all TYC staff, service providers and anyone having direct contact with youth in facilities would also be appropriate and advisable. Finally, all juvenile probation departments, prosecutors, defense counsel, juvenile courts, and advocacy and support groups should be provided this information since individuals with all of these entities may receive outcry's from youth who either are in TYC or have been in TYC.

Human Resources Code Sec. 64.058. RULEMAKING AUTHORITY.

The office by rule shall establish policies and procedures for the operations of the office of independent ombudsman.

Commentary by Lisa Capers

Source: SB 103

Effective Date: June 8, 2007, at 6:50 p.m. Central Standard Time

Applicability: Operations of the Office of Independent Ombudsman on or after the effective date.

Summary of Changes: New Section 64.058 mandates the Office of Independent Ombudsman to establish policies and procedures for the operation of the office by administrative rule. Administrative rules must follow the Administrative Procedure and Texas Register Acts (i.e., Government Code Chapters 2001 and 2002) and must be submitted for public comment before any new rules come into effect.

Human Resources Code Sec. 64.059. AUTHORITY OF STATE AUDITOR.

The office is subject to audit by the state auditor in accordance with Chapter 321, Government Code.

[Sections 64.060-64.100 reserved for expansion]

Commentary by Lisa Capers

Source: SB 103

Effective Date: June 8, 2007, at 6:50 p.m. Central Standard Time

Applicability: Audit authority for the Office of Independent Ombudsman on or after effective date.

Summary of Changes: This provision authorizes the Texas State Auditor's Office to audit the independent ombudsman as with all other state agencies.

SUBCHAPTER C. DUTIES AND POWERS

Human Resources Code Sec. 64.101. DUTIES AND POWERS.

(a) The independent ombudsman shall:

(1) review the procedures established by the commission and evaluate the delivery of services to children to ensure that the rights of children are fully observed;

(2) review complaints filed with the independent ombudsman concerning the actions of the commission and investigate each complaint in which it appears that a child may be in need of assistance from the independent ombudsman;

(3) conduct investigations of complaints, other than complaints alleging criminal behavior, if the office determines that:

(A) a child committed to the commission or the child's family may be in need of assistance from the office; or

(B) a systemic issue in the commission's provision of services is raised by a complaint;

(4) review or inspect periodically the facilities and procedures of any institution or residence in which a child has been placed by the commission, whether

public or private, to ensure that the rights of children are fully observed;

(5) provide assistance to a child or family who the independent ombudsman determines is in need of assistance, including advocating with an agency, provider, or other person in the best interests of the child;

(6) review court orders as necessary to fulfill its duties;

(7) recommend changes in any procedure relating to the treatment of children committed to the commission;

(8) make appropriate referrals under any of the duties and powers listed in this subsection; and

(9) supervise assistants who are serving as advocates in their representation of children committed to the commission in internal administrative and disciplinary hearings.

(b) The independent ombudsman may apprise persons who are interested in a child's welfare of the rights of the child.

(c) To assess if a child's rights have been violated, the independent ombudsman may, in any matter that does not involve alleged criminal behavior, contact or consult with an administrator, employee, child, parent, expert, or any other individual in the course of its investigation or to secure information.

(d) Notwithstanding any other provision of this chapter, the independent ombudsman may not investigate alleged criminal behavior.

Commentary by Lisa Capers

Source: SB 103

Effective Date: June 8, 2007, at 6:50 p.m. Central Standard Time

Applicability: Operation of the Office of Independent Ombudsman on or after the effective date.

Summary of Changes: New Chapter 64 Subchapter C defines the duties and powers of the independent ombudsman. Basically, the ombudsman's main duties are to evaluate the service delivery at TYC and ensure that the rights of children are observed and protected. The ombudsman must also review and investigate all complaints filed with the office related to TYC and youth in TYC custody. Periodically the ombudsman must review or inspect TYC facilities, as well as the policies and procedures of said facilities to ensure protection of youth rights. The office may also provide assistance to a child and the child's family, and advocate for the child's best interests. Criminal behavior will be investigated by law enforcement or the Office of Inspector General and not by the independent ombudsman.

Human Resources Code Sec. 64.102. TREATMENT OF COMMISSION EMPLOYEES WHO COOPERATE WITH INDEPENDENT OMBUDSMAN.

The commission may not discharge or in any manner discriminate or retaliate against an employee who in good

faith makes a complaint to the office of independent ombudsman or cooperates with the office in an investigation.

Commentary by Lisa Capers

Source: SB 103

Effective Date: June 8, 2007, at 6:50 p.m. Central Standard Time

Applicability: TYC personnel actions on or after the effective date.

Summary of Changes: Section 64.102 makes clear that TYC may not discharge, discriminate or retaliate against a TYC employee who submits a complaint to the independent ombudsman or cooperates with that office in an investigation.

Human Resources Code Sec. 64.103. TRAINING.

The independent ombudsman shall attend annual sessions, including the training curriculum for juvenile correctional officers required under Section 61.0356, and may participate in other appropriate professional training.

[Sections 64.104-64.150 reserved for expansion]

Commentary by Lisa Capers

Source: SB 103

Effective Date: June 8, 2007, at 6:50 p.m. Central Standard Time

Applicability: Operations of the Office of Independent Ombudsman on or after the effective date.

Summary of Changes: New Section 64.103 requires the independent ombudsman to attend annual training sessions, including the mandatory training required for TYC correctional officers. The training referenced in Section 61.0356 is the 300 mandatory hours that correctional officers must receive before they can perform their duties independently. Arguably, the ombudsman will also have to complete this 300 hours of training.

SUBCHAPTER D. ACCESS TO INFORMATION

Human Resources Code Sec. 64.151. ACCESS TO INFORMATION OF GOVERNMENTAL ENTITIES.

(a) The commission shall allow the independent ombudsman access to its records relating to the children committed to the commission.

(b) The Department of Public Safety shall allow the independent ombudsman access to the juvenile justice information system established under Subchapter B, Chapter 58, Family Code.

(c) A local law enforcement agency shall allow the independent ombudsman access to its records relating to any child in the care or custody of the commission.

Commentary by Lisa Capers

Source: SB 103

Effective Date: June 8, 2007, at 6:50 p.m. Central Standard Time

Applicability: Access to TYC, DPS and local law enforcement information on or after the effective date.

Summary of Changes: New Subchapter D authorizes the independent ombudsman to receive broad access to information about youth in TYC. The ombudsman has the authority to access all records and files for TYC committed youth. TYC and the Texas Department of Public Safety (DPS) must allow the ombudsman access to the statewide Juvenile Justice Information System (JJIS), the database maintained by DPS. Further, local law enforcement must allow the ombudsman access to its records relating to any child in TYC custody.

Human Resources Code Sec. 64.152. ACCESS TO INFORMATION OF PRIVATE ENTITIES.

The independent ombudsman shall have access to the records of a private entity that relate to a child committed to the commission.

Commentary by Lisa Capers

Source: SB 103

Effective Date: June 8, 2007, at 6:50 p.m. Central Standard Time

Applicability: Access to private entity records on or after the effective date.

Summary of Changes: Section 64.152 is a companion statute to Section 64.151 and extends the authority of the independent ombudsman to gain access to additional information about a youth in TYC custody. Any private entity that has records relating to a child in TYC custody must allow the ombudsman to have access. Presumably, this relates to private service providers that serve youth while in TYC custody, such as medical treatment providers, counselors, educators, etc. It could also include advocacy and support groups, volunteer groups, mentors, faith-based organizations or any private entity that has information about the youth in TYC.

Human Resources Code Sec. 61.0386. ADVOCACY AND SUPPORT GROUPS.

(a) The commission shall allow advocacy and support groups whose primary functions are to benefit children, inmates, girls and women, the mentally ill, and victims of sexual assault to provide on-site information, support, and other services for children confined in commission facilities.

(b) The commission shall adopt security and privacy procedures for advocacy and support groups that provide on-site information, support, and other services under this section. The security and privacy procedures may not be designed to deny an advocacy or support group access to children confined in commission facilities.

(c) The commission shall adopt standards consistent with standards adopted by the Texas Department of

Criminal Justice regarding the confidential correspondence of children confined in commission facilities with external entities, including advocacy and support groups.

Commentary by Lisa Capers

Source: HB 3309

Effective Date: June 15, 2007

Applicability: Advocacy and support groups seeking access on or after the effective date.

Summary of Changes: Many pieces of legislation were filed this session and there was lots of duplication. HB 3309 by Representative Bolton was passed and the exact provisions in HB 3309 are also found in SB 103. As originally filed, SB 103 contained only eight pages but it blossomed to 90 pages when it finally passed. At some point during the session, the text of HB 3309 was amended into SB 103 while HB 3309 kept traveling down the road to ultimate passage as well.

During the legislative session, several advocacy groups worked closely with legislators on SB 103. In particular, the American Civil Liberties Union (ACLU) and the Juvenile Justice Coalition of Texas were quite visible and vocal regarding the TYC sex scandal and needed reforms.

New Section 61.0386 was enacted to ensure that child advocacy groups would continue to have a visible presence in TYC facilities in the future. Subsection (a) requires TYC to allow advocacy and support groups to have access on-site at TYC facilities. The type of advocacy groups permitted is relatively broad, including groups whose primary functions are to benefit children, inmates, girls and women, the mentally ill, and victims of sexual assault to provide on-site information, support, and other services for children confined in TYC facilities.

Subsection (b) requires TYC to adopt security and privacy procedures or rules for these advocacy groups. However, these rules cannot be designed to deny access by an advocacy group to the children confined in TYC. TYC must adopt standards that are consistent with the standards developed by TDCJ regarding the confidential correspondence of children with external entities like advocacy groups.

Human Resources Code Sec. 61.0451. OFFICE OF INSPECTOR GENERAL.

(a) The office of inspector general is established at the commission for the purpose of investigating:

(1) crimes committed by commission employees, including parole officers employed by or under a contract with the commission; and

(2) crimes and delinquent conduct committed at a facility operated by the commission or at a residential facility operated by another entity under a contract with the commission.

(b) The office of inspector general shall prepare and deliver a report concerning the results of any investigation conducted under this section to:

(1) the executive commissioner;

(2) the advisory board;

(3) the governor;

(4) the lieutenant governor;

(5) the speaker of the house of representatives;

(6) the standing committees of the senate and house of representatives with primary jurisdiction over matters concerning correctional facilities;

(7) the special prosecution unit;

(8) the state auditor; and

(9) any other appropriate state agency responsible for licensing or certifying commission employees or facilities.

(c) The report prepared under Subsection (b) must include a summary of the actions performed by the office of inspector general in conducting the investigation, a statement of whether the investigation resulted in a finding that a criminal offense or delinquent conduct occurred, and a description of the finding. The report is public information under Chapter 552, Government Code, only to the extent authorized under that chapter and other law.

(d) The office of inspector general may employ and commission inspectors general as peace officers for the purpose of carrying out the duties described by this section. An inspector general shall have all of the powers and duties given to peace officers under Article 2.13, Code of Criminal Procedure.

(e) Peace officers employed and commissioned under Subsection (d) must:

(1) be certified by the Commission on Law Enforcement Officer Standards and Education under Chapter 1701, Occupations Code; and

(2) complete advanced courses relating to the duties of peace officers employed and commissioned under Subsection (d) as part of any continuing education requirements for the peace officers.

(f) The executive commissioner shall select a commissioned peace officer as chief inspector general. The chief inspector general is subject to the requirements of this section and may only be discharged for cause.

(g) The chief inspector general shall on a quarterly basis prepare and deliver a report concerning the operations of the office of inspector general to:

(1) the executive commissioner;

(2) the advisory board;

(3) the governor;

(4) the lieutenant governor;

(5) the speaker of the house of representatives;

(6) the standing committees of the senate and house of representatives with primary jurisdiction over correctional facilities;

(7) the state auditor; and

(8) the comptroller.

(h) A report prepared under Subsection (g) is public information under Chapter 552, Government Code, to the extent authorized under that chapter and other law.

and the commission shall publish the report on the commission's Internet website. A report must be both aggregated and disaggregated by individual facility and include information relating to:

(1) the types of investigations conducted by the office of inspector general, such as whether an investigation concerned narcotics or an alleged incident of sexual abuse;

(2) the relationship of a victim to a perpetrator, if applicable; and

(3) the number of investigations conducted concerning suicides, deaths, and hospitalizations of children in the custody of the commission.

(i) The office of inspector general shall immediately report to the executive commissioner, the advisory board, the governor's general counsel, and the state auditor any particularly serious or flagrant problem concerning the administration of a commission program or operation or any interference by the executive commissioner or an employee of the commission with an investigation conducted by the office.

Commentary by Lisa Capers

Source: HB 914

Effective Date: June 15, 2007

Applicability: Implementation of Office of Inspector General on or after the effective date.

Summary of Changes: Many pieces of legislation were filed this session and there was lots of duplication. HB 914 by Representative Madden was passed and includes almost identical provisions to those contained in SB 103 relating to the creation of the Office of Inspector General (OIG). The main difference between the two pieces of legislation was the addition in HB 914 in Subsections (a)(2) and (c) of the term *delinquent conduct*. HB 914 extended the jurisdiction of the OIG to investigations of not only crimes committed by TYC adult employees but also delinquent conduct of juveniles, a change designed to clarify the OIG's authority to investigate offenses committed by juveniles in TYC custody.

New Section 61.0451 represents one of the most significant provisions in the TYC reforms. This provision creates the OIG at TYC. The purpose of the OIG is to investigate crimes committed by TYC employees (including contract parole officers) and crimes and delinquent conduct committed at a TYC facility (including contract facilities).

Under Subsection (b), the OIG must prepare a report on the results of any investigation for the TYC executive commissioner, advisory board and a long list of legislative leadership. These reports must include a summary of the OIG's actions and state whether a criminal offense occurred. The report is public information under the Public Information Act unless an exception shelters its release.

The OIG can employ and commission inspectors general as peace officers who will have all the powers and duties given to peace officers under Code of Criminal Pro-

cedure Article 2.13. The inspectors have to be certified by the Commission on Law Enforcement Officer Standards and Education (TCLEOSE) and must meet all of the training requirements for peace officers.

The Chief Inspector General is selected by the TYC executive commissioner and must be a commissioned peace officer. The Chief Inspector General is not an *at-will* employee and can only be discharged for cause.

On a quarterly basis, the Chief Inspector General must prepare a report concerning the operations of the OIG and provide this to legislative leadership. This report is public information under the Public Information Act (unless exceptions to disclosure apply) and TYC must publish this report on their Internet site. The report must provide information on the types of their investigations and whether they involved narcotics or sexual abuse. Additionally, the report must disclose the relationship of a victim to a perpetrator, if applicable, and detail the number of investigations concerning suicides, deaths and hospitalizations of youth in TYC custody. The OIG must immediately report to the TYC executive commissioner, advisory board, the governor's general counsel, and the state auditor regarding any serious or flagrant problems concerning the administration of TYC programs or operations, or any interference by TYC management or staff in the investigations conducted by the OIG.

HB 914 requires that TYC establish the Office of Inspector General as soon as practicable after the effective date of the bill.

~~Human Resources Code Sec. 61.049. CROCKETT STATE SCHOOL FOR GIRLS.~~

~~The Crockett State School for Girls is under the jurisdiction and control of the commission.~~

Commentary by Lisa Capers

Source: HB 2884

Effective Date: September 1, 2007

Applicability: Operations of TYC on or after the effective date.

Summary of Changes: This section is repealed. The Crockett State School for Girls has not been operational for many years.

Human Resources Code Sec. 61.0762. INFANT CARE AND PARENTING PROGRAM.

(a) In this section, "child" means the child of a person who is committed to the commission.

(b) The commission may establish child [infant] care and parenting programs for persons committed to the commission [children] who are parents.

(c) ~~(b)~~ The commission may permit a [child who is the] mother [of an infant younger than 36 months] to have possession of her child [infant] in a residential program that has an infant care and parenting program or to have possession of her child in a commission-funded inde-

pendent living residence for up to six ~~[until the infant reaches the age of 36]~~ months ~~[or the mother is released under supervision]~~ if:

(1) the child's ~~[infant's]~~ father or another relative or guardian of the child ~~[infant]~~ agrees in advance of the child's ~~[infant's]~~ placement with the child's ~~[infant's]~~ mother to assume possession of the child ~~[infant]~~ immediately upon notice by the commission to do so;

(2) the child's ~~[infant's]~~ parents and any other person having a duty of support acknowledge that by permitting the mother to have possession of the child ~~[infant]~~ while the mother is confined in a residential facility or placed in an independent living residence, the commission assumes no responsibility for the child's ~~[infant's]~~ care beyond the responsibility of care that is ordinarily due the child's ~~[infant's]~~ mother and the reasonable accommodations that are necessary for the mother's care of her child ~~[the infant]~~;

(3) the child's ~~[infant's]~~ parents and any other person having a duty of support agree to indemnify and hold the commission harmless from any claims that may be made against the commission for the child's ~~[infant's]~~ support, including medical support; and

(4) the commission determines that the placement is in the best interest of both the mother and her child ~~[infant]~~.

Commentary by Lisa Capers and Neil Nichols

Source: HB 2884

Effective Date: September 1, 2007

Applicability: Operation of infant care and parenting program at TYC on or after the effective date.

Summary of Changes: This provision amends Section 61.0762 of the TYC enabling legislation related to the infant care and parenting program. Subsection (b) is amended to clarify that TYC has the authority to establish infant care and parenting programs for TYC committed youth. Subsection (c) is amended to authorize TYC to expand the mother-baby program to permit a mother to have possession of her infant in a commission-funded independent living residence for up to six months. The term *infant* is changed to *child* throughout the subsection.

The independent living component would apply only to mothers who are at least age 18. The mother must obtain qualified day-care, enroll in all applicable federal and state assistance programs (Medicaid and WIC), apply for child support through the Office of the Attorney General, obtain employment within 30 days, pass drug tests, have no roommates, have an assigned mentor, and develop an Individual Case Plan (ICP) that addresses contingencies (abandonment of the child or parole/independent living program violations).

TYC anticipates that between two to four mothers per year will be placed in an independent living residence for up to six months. The subsidy paid by TYC would be an initial start-up cost of \$375.00 for staples and basic house-

hold items; \$75.00 per month electricity subsidy; \$35.00 per week food allowance; and \$550 per month rent subsidy.

At the end of the six months subsidy, the expectation is for the youth to live independently by paying full rent and assuming all living expenses without the assistance of TYC. At the end of six months, if the youth is unable to support herself independently in the apartment location, the options available are:

- the TYC youth will move from the apartment to an approved home or home substitute parole location with her child. TYC will not incur moving expenses for her personal belongings/furniture;
- if an approved home location is not available, the family member assigned to take possession of the child will be contacted to assume immediate possession of the child. The TYC youth at that time would be required to locate placement on her own, such as a shelter, and continue to report to her parole officer as required until discharge from the agency; or
- if the youth meets discharge criteria, she will be discharged from the agency at the end of six months.

This provision also deletes the upper age limit for babies in these programs who are allowed to be with their mothers. Though most babies are under age three, it is possible that a few of the children could be somewhat older when their mothers become eligible for participation in the independent living program.

Human Resources Code Sec. 61.0763. REPORTING CONCERNING RESEARCH PROGRAMS OR STUDIES.

(a) The commission shall keep records relating to children committed to it that participate in research programs or studies.

(b) The records must show, for each calendar quarter and for each calendar year:

(1) the number of children participating in research programs or studies for the appropriate reporting period;

(2) the type of research program or study in which each child is participating;

(3) the name of the principal investigator conducting the research program or study; and

(4) the entity sponsoring the research program or study.

(c) The commission shall submit a report that contains the information in the records kept under Subsection (b) on or before the 15th day after the last day of the appropriate reporting period to the:

- (1) governor;
- (2) lieutenant governor;
- (3) speaker of the house of representatives; and
- (4) members of the legislature.

(d) A report submitted under this section is public information under Chapter 552, Government Code.

Commentary by Lisa Capers

Source: HB 1111

Effective Date: June 15, 2007

Applicability: All children in Texas Youth Commission custody regardless of whether they were committed before, on, or after the effective date.

Summary of Changes: This legislation was prompted by news reports of foster children in some states being given experimental drugs or being involved in research studies involving prescription drugs. In 2004, one headline in New York State read, *Foster Children Used as Guinea Pigs*. Consequently, New York City council members called for an investigation into the participation of HIV-infected foster children in potentially dangerous experiments involving high doses of AIDS drugs. Such reports got the attention of

Texas legislators. Additionally, in Texas, serious concerns were also raised as a result of reports regarding the types and amounts of psychotropic medications prescribed to children in our foster care system. HB 1113 as originally filed was much broader than the version that actually passed. It sought to define prohibited types of research -- a slippery slope and difficult chore at best.

The legislation in the version that ultimately passed requires TYC to maintain records relating to all children in TYC custody who participate in research programs or studies. TYC must keep records that show the number of kids participating in such programs or studies, the types of studies or programs, and the individuals and entities sponsoring and conducting the research. The data must be collected for each calendar quarter and annual data must be maintained. TYC must submit a report to legislative leadership regarding the data collected; this report is public information under the Public Information Act.

Appendix A

Senate Bill 103 Highlights

Texas Youth Commission Reform

Effective Date of Bill [Section 78]

- Passed House and Senate with unanimous votes in both (2/3 vote in both houses required for immediate effective date).
- Immediate effective date of June 8, 2007.
 - Governor signed bill on or around 3:30 p.m. on Friday, June 8, 2007.

Governance of Texas Youth Commission (TYC) [Sections 24, 27, 28, 29, 30, 31, 33, 35, 36, and 69]

- TYC to be governed by an Executive Commissioner selected by the Governor.
 - Two year terms expiring February 1 of odd-numbered years.
 - Eligible for reappointment with consent of senate.
 - Section expires September 1, 2009.
 - Statute sets out grounds for removal of commissioner from office.
 - Effective September 1, 2009, TYC to have Executive Director instead of Executive Commissioner.
- No citizen member governing board structure for next two years.
 - Effective September 1, 2009, TYC to be governed by 7 member board appointed by Governor with advice and consent of senate.
 - Makeup of Board will be identical to advisory board discussed below.
- Creates advisory board for TYC to advise and assist the executive commissioner.
 - 9 members. 3 members each appointed by Governor, Lt. Governor and Speaker of the House.
 - Members must have certain qualifications:
 - At least 1 physician
 - Victim's advocacy organization member
 - Mental health professional
 - Former prosecutor or judge
 - 2 members must have experience in a field other than juvenile or criminal justice.
 - Governor to designate chairman of advisory board.
 - Board must meet at least 4 times each year.
- Executive Commissioner to assume former duties of governing board for next 2 years.
- The Sunset Commission shall study the merits of an executive commissioner governing TYC as compared to a citizen board.
- TYC must provide progress reports on specified dates regarding the implementation of SB 103 to the Joint Select Committee on the Operation and Management of the Texas Youth Commission.
- TYC must develop and adopt a mission statement on or before October 1, 2007.

Commitment of Misdemeanor Offenders [Sections 7, 9, 64, and 65]

- Youth who commit misdemeanor offenses cannot be committed to TYC under any circumstances effective June 8, 2007.
- Current offenders in TYC for misdemeanor offenses must be discharged not later than 19th birthday.

TYC Jurisdiction [Sections 50, 53, and 65]

- TYC jurisdiction terminates at age 19.
- TYC must release or transfer prior to age 19.

Minimum Lengths of Stay [Sections 43, 52]

- TYC must establish minimum lengths of stay for all indeterminate commitments.
- TYC must consider nature and seriousness of child's conduct and the danger the child poses to the community.
- Upon completion of minimum length of stay, TYC review panel must decide whether to discharge, release on parole, or extend the length of stay.
 - Majority vote of panel based on clear and convincing evidence that child is in need of further rehabilitation is required to extend length of stay.
 - TYC must maintain statistics on number of extensions and shall post on TYC website.
 - TYC must report to legislative leadership regarding extensions.
 - TYC must provide parent or designated advocate for child report regarding the reasons for any extensions.
- TYC must establish process to request reconsideration of an extension decision and maintain statistics on this process.

TYC Employees [Section 37]

- TYC employees are *at-will* employees.
- TYC must establish employee grievance system.

Criminal Background Checks [Section 40]

- Requires TYC to conduct NCIC and TCIC history checks on all:
 - Employees, contractors, volunteers, ombudsman, or advocate working for TYC or working in a TYC facility or contract facility.
 - Persons providing direct delivery of services to youth in custody; and
 - Persons who have access to records in TYC facilities or offices.
- Requires annual review of NCIC and TCIC checks.

TYC Institutions, Correctional Officers and Treatment Providers [Sections 33, 35, 40, 61, and 70]

- TYC must develop a plan by September 1, 2007, to begin the process of accrediting all TYC institutions by the American Correctional Association (ACA). Includes all contract facilities.
- TYC must conduct internal audits of their correctional facilities and medical services and report quarterly to the legislature and the state auditor on the results of the audits.
- TYC full-time and part-time correctional officers required to have at least 300 hours of training prior to independently commencing the officer's duties in a facility. Mandatory and broad list of training topics specified. Training for all officers hired prior to June 8, 2007, must be completed no later than December 8, 2007.
- Mandatory corrections officer to youth ratio of 1-12.
- To the extent practicable, a corrections officer should not supervise youth who are not at least 3 years younger than the officer.
- Requires that corrections officer assignments be rotated so that an officer is not assigned to same station for extended period of time.
- Corrections officer required in or near classroom settings where youth receive educational services.
- TYC employees providing sex offender treatment may not be exempt from the licensing requirements for licensed sex offender treatment providers. TDCJ can be exempt.

TYC Institutions – Placement, Classification and Housing [Section 43]

- TYC may not house a youth younger than 15 in the same dorm as a youth age 17 or older unless TYC determines the placement is necessary to ensure safety.
- Dorms used exclusively for short-term assessment and orientation are excluded.
- TYC must by rule adopt scheduling, housing and placement procedures to protect vulnerable children in custody.
- TYC must consider the proximity of child's family residence in determining placement in a TYC facility.

Zero Tolerance Policy [Section 45]

- TYC must adopt a zero-tolerance policy concerning the detention, prevention and punishment of the sexual abuse, including consensual sexual contact, of youth in TYC custody.
- TYC must establish data collecting and reporting standards related to sexual abuse of youth in custody.
- Mandatory signs required throughout TYC facilities stating zero tolerance policy and to whom to report violations.

“THE TEXAS LEGISLATURE HAS ADOPTED A ZERO-TOLERANCE POLICY REGARDING THE

SEXUAL ABUSE, INCLUDING CONSENSUAL SEXUAL CONTACT, OF A CHILD IN THE CUSTODY OF THE COMMISSION. ANY SUCH VIOLATION MUST BE REPORTED TO _____.”

New Criminal Offenses [Section 62]

- Second degree felony for TYC employee or volunteer to engage in sexual contact, sexual intercourse or deviate sexual intercourse with youth in TYC or to employ, authorize or induce a youth to engage in sexual conduct or sexual performance.
- Covers conduct occurring on or after September 1, 2007.

Investigations of Criminal Conduct and Abuse and Neglect [Sections 1, 17, 21, 22, 23, 31, 42, and 56]

- Creates the Office of Inspector General at TYC for purpose of investigation of crimes committed by TYC employees and contract employees.
 - OIG may request assistance of State Auditor's Office
- Makes TYC inspectors general peace officers with all powers of peace officers.
 - Adds these individuals to state retirement system.
- Chief Inspector General must be commissioned peace officer.
- OIG must report quarterly to legislature on results of investigations. Reports to be published on TYC website.
- Requires TYC to maintain toll free number for the reporting of abuse, neglect and exploitation.
 - Children in TYC facilities and TYC employees must have confidential access to telephones for purpose of calling toll-free number.
- TYC required to file a complaint with law enforcement if a child is the victim of a crime committed in a TYC facility.

Office of Independent Ombudsman of TYC [Section 57]

- Creates office of independent ombudsman at TYC whose purpose is to investigate, evaluate and secure the rights of children committed to TYC, or on TYC parole. Broad duties and powers.
- Independent state agency with separate appropriated budget.
- Independent ombudsman appointed by governor with advice and consent of senate for two year terms expiring February 1 of odd-numbered years.
 - TYC executive commissioner to appoint initial ombudsman.
- Person may not serve more than three terms in the ombudsman capacity.
- Ombudsman must submit quarterly reports to legislative leadership.
- TYC youth entitled to confidential communication with ombudsman or assistants.

- Ombudsman has broad authority to review TYC service delivery, youth rights, youth complaints, conduct investigations, and inspect facilities.
- Ombudsman must attend juvenile correctional officer training.
- Ombudsman has broad access to DPS juvenile data, law enforcement records, TYC records and records of private entities that relate to a child in TYC.
- TYC may not retaliate against employees who cooperate with office of ombudsman.
- Office shall promote awareness of office among public and committed children.
- Office has rulemaking authority and is subject to audit by the State Auditor's office.

Special Prosecution Unit at TDCJ [Sections 14, 56, and 77]

- Creates Special Prosecution Unit at TDCJ
- Function is to assist local county prosecutors in prosecuting criminal conduct on TYC and TDCJ property.
- Board of Directors composed of one criminal prosecutor from every county where a TYC or TDCJ facility is located.
 - Executive Board composed of 11 elected members of the full Board of Directors. Executive Board must be elected no later than September 30, 2007.
 - Presiding officer must be elected no later than September 30, 2007.
- Local prosecutors can request the Special Prosecution Unit prosecute offenses or delinquent conduct.
- Office of Inspector General and Special Prosecution Unit must share information and communicate regularly. OIG required to provide SPU quarterly reports.

Prosecution of Crimes on TYC Property [Section 3]

- State must reimburse the county for prosecution related expenses for crimes committed on TYC property by or against youth in custody.
- Office of the Attorney General may offer to assist local prosecutors in prosecution of criminal offense concerning TYC.

Advocacy and Support Groups [Section 40]

- TYC must allow advocacy and support groups to provide on-site information, support, and other services for children confined in TYC.
- TYC cannot adopt security and privacy procedures designed to deny access to youth.
- TYC must adopt standards consistent with TDCJ standards regarding confidential correspondence of children in TYC with external entities including advocacy and support groups.

Initial Exams, Assessments and Reexaminations [Section 46]

- Comprehensive psychiatric evaluation required as part of youth's initial exam for all youth whose TYC minimum length of stay is one year or longer.
- Comprehensive psychological assessments required on each child as part of initial exam.
 - Youth whose initial psychological assessment indicates a need for a full psychiatric evaluation shall receive evaluation as soon as possible.
- TYC must reexamine child's progress at periodic intervals not to exceed every six months
 - Determine if rehabilitation plan should be modified or continued;
 - Examine child's personal and family situation;
 - Evaluate whether child has made progress since last exam.

Evaluation of Youth Serving Determinate Sentences [Section 51]

- Requires TYC to evaluate a youth not previously released at age 18 to determine if child in need of additional services that can be completed within 6 months of the child's 18th birthday to prepare child for release from TYC or transfer to TDCJ.

Health Care Delivery and Related Services [Section 47]

- TYC must provide integrated comprehensive delivery system for health care, dental care, behavioral health care, substance abuse treatment, nutrition, programming, case management and general rehabilitation services.

TYC Caseworkers [Section 49]

- Requires TYC to appoint caseworker for all youth.
- Caseworkers must work with and communicate with parents and provide information.

Reentry and Reintegration Plan [Section 52]

- TYC must develop a reentry and reintegration plan for each child committed to TYC.
- Plan must designed to ensure the child receives an extensive continuity of care in services from the time the child is committed through final discharge.

Mandatory Chaplains [Section 42]

- All TYC institutions shall have a chaplain employed or formally designated.

Parent's Bill of Rights [Section 49]

- TYC must develop Parent's Bill of Rights in consultation with advocacy and support groups.
 - Must describe grievance policies and procedures and contact information for inspector general office and independent ombudsman.
 - Must provide information on visitation, services, programs, caseworkers duties,
 - Must explain indeterminate sentencing and reasons that merit extension.

- No later than 48 hours after child is admitted to facility, TYC must mail to parents.
- TYC must provide quarterly reports to parents.

Detention Time and TYC Time Served [Sections 10, 54]

- Time a child stays in detention pending adjudication and disposition is applied as credit toward TYC sentence.
- Time in detention while case on appeal counts as credit toward TYC sentence.
- TYC must count detention credit in computing child's eligibility for parole and discharge.
- TDCJ must grant credit for sentence time served at TYC and in a juvenile detention facility in computing person's eligibility for parole from TDCJ.

Photos, Confidentiality of Files and Records; Gang Database Records [Sections 11, 12, and 48]

- Gives TYC independent ombudsman access to juvenile justice data in the Department of Public Safety's Juvenile Justice Information System (JJIS).
- Requires TYC to release reports of alleged abuse or neglect of a child committed to TYC.
 - TYC must protect identity of child, reporter and any person whose life or safety may be endangered by the disclosure.
- Amends Code of Criminal Procedure Article 61.06 to exempt gang database records from the removal requirement during time youth is in TYC or local post-adjudication facility.
- Authorizes TYC to release names and photos of youth to law enforcement if the information is relevant to an investigation of criminal conduct at the facility.

TYC Public Access [Section 41]

- Requires public hearings providing public access to TYC Commissioner or designee in or in close proximity to municipalities where TYC facilities located.

Sunset Commission Mandated Studies [Section 15]

- Regionalized Juvenile Corrections Study
 - The Sunset Commission shall study the merits of moving TYC toward a regionalized structure of smaller facilities and more diversified treatment and placement options.
- Study on TYC Governance
 - The Sunset Commission shall study the merits of an executive commissioner governing TYC as compared to a citizen board.

Juvenile Justice Facilities (Community-Based Pre and Post Facilities) [Sections 5, 6, 25, and 26]

- Clarifies that a pre-adjudication secure detention facility and a post-adjudication secure correctional facility may only be operated by a governmental unit in this state or a private entity under contract with a governmental unit.

- Details statutory criteria juvenile board and juvenile court judges in a county must use to determine if facility is *suitable*:
 - Current monitoring reports from TJPC;
 - Current compliance with local fire codes and building codes;
 - Number of abuse, neglect and exploitation allegations, investigations and findings over 12 month period preceding inspection;
 - Availability of health and mental health services;
 - Availability of education services; and
 - Overall physical appearance, security, maintenance, cleanliness and environment of facility.
- Mandates TJPC inspection of facilities annually (previously biennially).
- Authorizes TJPC to deny, suspend or revoke a facility registration if facility fails to adhere to standards or timely correct notices of noncompliance.

Information From Committing Juvenile Court [Section 43]

- Mandates committing juvenile court to provide long laundry list of information to TYC.

Community-Based Programs for Misdemeanor Offenders [Sections 8, 66]

- Authorizes juvenile court judges in counties with a population of at least 335,000 to require juvenile who meets the previous TYC misdemeanor commitment rule to participate in a community-based program administered by the juvenile board. The counties are: Harris; Dallas; Tarrant; Bexar; Travis; El Paso; Hidalgo; Collin; Denton; Ft. Bend; and Cameron.
- TJPC required to establish guidelines for these programs by November 1, 2007.
- Grant funding available from TJPC for above urban counties and regional areas.
- Statutory eligibility criteria limited to misdemeanor offenders who under prior law could have went to TYC.
- Juvenile boards must implement programs by January 1, 2008.
- TJPC must report to legislative leadership on the effectiveness of these community-based programs by January 1, 2009.

Equal Access to Facilities, Services and Treatment Study [Section 20, 34]

- Requires HHSC, TYC and TJPC to periodically review, document and compare the accessibility and funding of facilities, services, and treatment provided to females and males under age 18.
- TYC must annually review effectiveness of rehabilitation programs for youth committed to TYC, now including females. TYC must periodically review and compare availability of female and male programs.

- TYC must make available programs for sex offenders, capital offenders, chemically dependent youth, emotionally disturbed youth, and female offenders.
- If TYC is unable to offer these programs, they must report to legislature on the reasons why the programs are not offered.

Appendix B

HB 2884 Highlights

Juvenile Justice Omnibus Bill

House Bill 2884 contains substantive improvements to the Juvenile Justice Code in addition to refinements to existing juvenile law and procedure. The amendments in HB 2884 reflect the changing needs of a juvenile justice system that has increased in size, sophistication and complexity since the major reforms of the 74th Legislature in 1995. Juvenile justice practitioners including juvenile court judges, prosecutors and juvenile probation officers assisted in making recommendations for this bill.

The bill is effective September 1, 2007. The key provisions of this bill include the following:

HB 2884 Strengthens Current Law to Protect Youth in the Juvenile Justice System Placed in Residential Treatment and Correctional Facilities

- Clarifies a residential placement of a child as a condition of juvenile probation must be into a facility licensed by a state governmental entity or exempted by law from licensure. [Section 11]
- Adds the employees of the Texas Youth Commission and local juvenile probation departments (e.g., juvenile probation, detention, correctional and parole officers) to the list of those professionals who are prohibited from having sexual activity with persons under the jurisdiction of but not in the custody of their employing entity. (*Penal Code 39.04. Violations of the Civil Rights of Person in Custody; Improper Sexual Activity with person in Custody*) [Section 43]
- Includes secure juvenile pre-adjudication detention and post-adjudication correctional facilities in the following Penal Code offenses committed by staff in these facilities. [Sections 39, 40, and 42]
 - *Permitting or Facilitating Escape (Penal Code Section 38.07)*
 - *Implements for Escape (Penal Code Section 38.09)*
 - *Contraband in Correctional Facility (Penal Code Section 38.114)*

HB 2884 Enhances Public Safety Related to Juvenile Offenders

- Expands the Determinate Sentencing Act provisions to include the offense of criminal conspiracy to commit any of the enumerated determinate sentence offenses. (Texas Family Code Section 53.045) [Section 10]

- Expands the Penal Code offense of *Escape* (Penal Code 38.06) to include escape by a juvenile from a secure juvenile pre-adjudication detention facility and escape from the lawful custody of a juvenile probation officer. [Section 38]
- Includes all secure juvenile pre-adjudication detention and post-adjudication correctional facilities in the following Penal Code offense that may be committed by juvenile offenders [Section 41]:
 - *Improper Contact with Victim (Penal Code 38.111)*
- Requires mental health facilities to seek juvenile court permission before releasing a juvenile who has committed a “3g” offense on furlough for more than 48 hours. [Section 15]

HB 2884 Strengthens the Ability of the Texas Juvenile Probation Commission to Investigate Allegations of Abuse, Neglect and Exploitation in Juvenile Justice Facilities and Programs

- Allows the Texas Juvenile Probation Commission to employ and commission investigators as peace officers for the purpose of investigating allegations of abuse, neglect, and exploitation in juvenile justice programs and facilities. [Section 1]
- Clarifies the definitions of abuse, neglect and exploitation to reinforce that the Texas Juvenile Probation Commission has investigative authority in all juvenile justice programs and facilities. [Sections 29, 30]
- Provides TJPC with a necessary investigative tool of subpoena power. It allows the commission board to issue a subpoena for the investigation of abuse, neglect, or exploitation, during fiscal and programmatic audits, and to discharge the agency’s statutory duties and mandates. [Section 33]

HB 2884 Expands Information Sharing Procedures between Juvenile Justice Agencies and Other Authorized Entities to Facilitate More Effective Assessment, Treatment and Rehabilitation of Juvenile Offenders

- Authorizes the Texas Juvenile Probation Commission, via an interagency agreement, to share information for research, audit and analytical purposes with TEA, TYC and TDCJ. [Sections 16, 18]
- Clarifies that law enforcement records may be sent to regional and statewide repositories such as the JIS Sys-

tem in the Dallas region and the new statewide JCMS Project. [Section 17]

- Expands the local justice information systems (JIS) to include prosecutors and court clerks. Recognizes the use of electronic filing of court documents with electronic signatures. [Sections 20, 21, 22, and 23]
- Provides statutory authorization for a statewide juvenile information and case management system. The JCMS project, a collaborative effort between the Conference of Urban Counties, Bexar County, Dallas County, Tarrant County and the Texas Juvenile Probation Commission, is a unique state/local partnership to create a state of the art technology system for use by Texas juvenile probation departments. By sharing design and development costs, the participating entities are leveraging state and local resources to create an innovative and effective technology solution which will facilitate information sharing by juvenile justice entities statewide. [Section 27]

HB 2884 Requires the Urban Counties to Post Numbers of TYC Commitments on County Website [Section 26]

- Applies to counties with a population of 600,000 or more:
 - Per 2000 Census, these 6 counties are Harris, Bexar, Travis, Dallas, Tarrant, and El Paso.
- Juvenile court judge must post on the county's internet website the total number of TYC commitments including a description of the offense, the age range, race and gender of the child.
- Posting required quarterly.
- No posted information may identify the child.

HB 2884 Expands the Infant Care and Parenting Program at the Texas Youth Commission [Section 32]

- Expands the Texas Youth Commission's parenting program to include a parenting aftercare independent living component. The independent living component would apply to mothers who are at least age 18. The mother must obtain qualified day-care, enroll in all applicable federal and state assistance programs (Medicaid and WIC), apply for child support through the Office of the Attorney General, obtain employment within 30 days, pass drug tests, have no roommates, have an assigned mentor, and develop an Individual Case Plan (ICP) that addresses contingencies (abandonment of the child or parole or independent living program violations).

HB 2884 Makes Refinements and Improvements to the Inter-County Transfer of Probation Supervision Procedures

- In 2005, HB 1575 (by Dutton) enacted a new and comprehensive procedure known as Inter-County Transfer of Probation Supervision to ensure probationers moving between counties were provided effective and continuing probation supervision.

- HB 2884 makes several refinements to these procedures which were suggested by a collaborative working group of juvenile probation departments. [Sections 5, 6, and 7]
 - Requires Sending County and Receiving County to agree on start date of interim supervision which must begin within 3 days of when documents are received and accepted.
 - Requires Sending County to provide Receiving County with additional information about the child in a timely manner.
 - Counties in the same judicial district served by same juvenile probation department do not have to transfer cases between counties.
 - Clarifies the collection and distribution of victim restitution payments between Sending County and Receiving County.
 - Clarifies the transfer provisions for youth on determinate sentence probation.

HB 2884 Provides a Detailed Procedure for Juvenile Probation Departments to Handle Victim Restitution Payments [Section 12]

- After notification of receipt of restitution payments by the juvenile probation department, the victims have 5 years to claim the restitution payments.
- Authorizes juvenile probation departments to expend unclaimed funds in the juvenile restitution fund for same purposes for which the county may spend state aid funds.
- Probation department retains any interest earned on restitution account.

HB 2884 Provides a Number of Technical Amendments, Corrections and Clarifications and Substantive Changes to Current Law in a Variety of Areas

- Prohibits justice and municipal courts from ordering a child to attend the juvenile justice alternative education program (JJAEP). [Section 2]
- Expands juvenile court jurisdiction in a motion to transfer determinate sentence probation to adult court for a juvenile age 18 or older who has fled the jurisdiction before a transfer hearing can be held if the motion for transfer has timely been filed prior to the juvenile becoming 18. Additionally, the prosecutor must demonstrate due diligence to complete the transfer proceeding prior to the probationer's 18th birthday for probation to be transferred. [Section 4]
- Authorizes the use of digital recording mediums for magistrate's warnings. [Section 8]
- Makes certain Code of Criminal Procedure rules applicable to juvenile proceedings as it relates to using a pseudonym by a victim, using unadjudicated conduct at disposition hearings, and the voluntary absence of a juvenile from a proceeding. [Section 9]
- Waives trial and appellate court fees for the State except in determinate sentence appeals. [Section 9]

- Explicitly authorizes detention of a juvenile post-disposition pending transport to a court-ordered placement, a Texas Youth Commission facility, or while accessing medical care purposes. [Section 11]
- Authorizes fingerprint cards to be attached to juvenile court adjudication orders for digital fingerprint imaging systems. [Section 11]
- Requires juvenile to elect jury in disposition hearing in writing prior to voir dire of jury panel. [Section 11]
- Authorizes the fingerprint records of non-custodial juvenile referrals to be forwarded to Department of Public Safety within 30 days instead of the 7 day requirement for custodial referrals. [Section 19]
- Recognizing the serious dangers of juvenile inhalant abuse, the bill elevates inhalant abuse to Level Two of Progressive Sanctions Guidelines to encourage higher level of intervention, programs and services. [Section 28]
- Clarifies that school districts must file a complaint for failure to attend school within 7 days of the child's 10th absence. [Note that HB 1161 extends the 7 days to 10 days] [Section 31]
- Amends the Jim Hogg County, Starr County and Duval County juvenile board statutes to clarify membership and duties. [Sections 34, 35, 36, 37]
- Repeals Human Resources Code Sections 61.049, 141.0432, 141.0433, and 141.0434 to delete unused sections in TYC and TJPC enabling legislation. [Section 44]

Appendix C

LEXSEE 55 S.W. 389

Galveston, Harrisburg & San Antonio Railway Company v. I. O. Lynch. [NO NUMBER IN ORIGINAL] COURT OF CIVIL APPEALS OF TEXAS, SAN ANTONIO *22 Tex. Civ. App. 336; 55 S.W. 389; 1899 Tex. App. LEXIS 105*

December 20, 1899, Decided

PRIOR HISTORY: [***1] Appeal from Medina. Tried below before Hon. I. L. Martin.

DISPOSITION: Affirmed.

CASE SUMMARY:

PROCEDURAL POSTURE: Appellant employer challenged a decision from a Medina County trial court (Texas), which entered judgment in favor of appellee employee. The employee sought to recover damages for personal injuries alleged to have been inflicted on him by the employer's negligence.

OVERVIEW: The employee, while in the performance of his duties was injured by a collision between a passenger train and a loose car on the main line of the employer's railway. The loose car had escaped from the side track because of the employer's negligence in permitting it to remain thereon without having the brakes set or the wheels blocked. Such negligence was the proximate cause of the collision and of the employee's injuries. The court found that the trial court did not err in refusing to submit the case

on special issues because the Act of May 12, 1899, which repealed. Tex. Rev. Stat. art. 1333 was in full force and effect when the trial court refused the employer's request to submit the cause on special issues. Further, even if the second paragraph of the charge did not sufficiently state the issues raised by the pleadings, the employer failed to call the trial court's attention to the error. As such, the employer was not entitled to a reversal on that issue. Additionally, the proximate cause charge was not open to the objections raised by the employer because it submitted questions of fact for the jury. Finally, the jury was properly instructed on the measure of damages.

OUTCOME: The court affirmed the trial court's judgment.

CORE TERMS: side track, collision, brakes, wheels, blocked, proximate cause, special issues, windstorm, loose, unprecedented, main line, passenger train, railway, assigned, earn, guilty of negligence, double recovery, diminished, fractions, reversal, personal injuries, escaped, general rule, proper charge, box car, main track, repealing, undertakes, omission, omitting

LexisNexis(R) Headnotes

Civil Procedure > *Trials* > *Jury Trials* > *Jury Instructions* > *General Overview*

Civil Procedure > *Appeals* > *Reviewability* > *Preservation for Review*

[HN1] If the judge in his charge undertakes to state to the jury the issues made by the pleadings, and the charge, as given, is objected to on account of omitting a part of the issues, the proper remedy of appellant is to call attention of the court to the error by requesting a proper charge at the time, and if that is not done, it is not proper, as a general rule, to reverse a judgment for such a cause.

HEADNOTES:

Statutes -- Time of Taking Effect -- Fraction of Day.

The Act of May 12, 1899, repealing article 1333 of the Revised Statutes relating to the submission of cases on special issues, which act took effect from its passage and was filed, with the executive approval, in the Department of State at 10:55 a. m., became a law from that time, and controlled as to action subsequently had that day in a case on trial.

Statutes -- Immaterial Error.

But if the rule excluding fractions of a day and making the act take effect the next day were applicable here, the action of the court in refusing to submit the case upon special issues would be harmless error, since upon another trial the act would be in effect.

Charge of Court -- Omission of Issue -- Request.

Where the charge undertakes to state the issues made by the pleadings and is erroneous in omitting a part of them, such error is not, as a general rule, ground for reversal unless the attention of the court was called to the error by request for a proper charge.

Charge of Court -- Negligence Not Assumed.

Where a charge submits to the jury the questions of fact, leaving them to determine the matter of negligence from the facts as they may find them, it is not erroneous as assuming that the facts show negligence.

Negligence -- Concurring Causes of Injury.

Where an unusually high wind blowing a box car out on the main track was a cause of injury concurring with the negligence of the railway company in leaving the car on a side track with brakes not set and wheels unblocked, such negligence was the proximate cause of the resultant injury.

Damages for Personal Injuries -- Charge -- Double Recovery.

In an action for personal injuries, a charge allowing the jury to take into consideration the value of the time lost by

plaintiff by reason of the injuries, and, if they believed his injuries permanent, such further sum as will be a fair compensation for his diminished capacity to labor and earn money in the future, is not erroneous as allowing a double recovery.

COUNSEL: Baker, Botts, Baker & Lovett, and Walter Gillis, for appellant.

Perry J. Lewis, for appellee.

JUDGES: NEILL, Associate Justice.

OPINION BY: NEILL

OPINION

[*337] [**390] NEILL, Associate Justice. -- This suit was brought by the appellee against appellant to recover damages for personal injuries alleged to have been inflicted on him by the latter's negligence. The case was tried before a jury and judgment rendered in favor of appellee for \$ 10,000.

On October 20, 1898, the appellee, while in the employ of appellant and in the performance of his duties, was injured by a collision between a passenger train and a loose car on the main line of defendant's railway. The loose car had escaped from the side track by reason of appellant's negligence in permitting it to remain thereon without having brakes set or wheels blocked, and such negligence was the proximate cause of the collision and of plaintiff's injuries, by which he was damaged in the amount found by the jury.

1. The court did not err in refusing to submit the case on special issues. The Act of May 12, 1899, repealing article 1333, Revised Statutes, was passed [***2] with the emergency clause by a two-thirds vote on May 11, was received by the Governor on said day; and, on next day at 10 o'clock, 55 minutes, a. m., with his signature and approval, it was received in the Department of State. The court, with knowledge of the passage of the act, declined to submit the case on special issues, and charged the jury at 6 o'clock p. m. on May 12, 1899. It is only from a fiction of law that it has been held an act of the Legislature which by its terms is to take effect from and after its passage does not go into effect until the next day. The rule, if such it can be held, founded on the legal fiction that in law [*338] there are no divisions or fractions of a day, is never allowed to operate against the right and justice of the case. On the contrary, the very truth and facts, in point of time, may be proved in furtherance of right and justice. Act May 12, 1899, Acts 26th Leg., p. 190; *United States v. Stoddard*, 89 F. 699; *Louisville v. Savings Bank*, 104 U.S. 469 at 469-479; *Gardner v. Barney*, 73 U.S. 499; *Arnold v. United States*, 9 Cranch 104, 119; *Richardson's Case*, 2 Story, 571, Fed. Cases No. 11777; *Arrowsmith v. Hamering*, 39 Ohio St. 573; *People* [***3] *v. Clark*, 1 Cal. 406; *Croveno v.*

Railway, 44 N.E. 968; *Wood v. Fort*, 42 Ala. 641; *Strauss v. Heiss*, 48 Md. 292; *In re Welman*, 20 Vt. 653; *Grosvenor v. Magill*, 37 Ill. 239; *State v. Dunning*, 9 Ind. 20; *Mallory v. Hiles*, 4 Metc. (Ky.), 53; *Turnipseed v. Jones*, 14 So. 377; 23 Am. and Eng. Enc. of Law, p. 214; *Suth. Stat. Const.*, sec. 110.

Upon principle and authority, we hold that the Act of May 12, 1899, was in full force and effect when the court refused appellant's request to submit the cause on special issues.

Besides, as article 1333 of the Revised Statutes, which relates only to a matter of procedure, was repealed before appellant's motion for a new trial was acted on, the Act of May 12, 1899, which act was then and is now in force, would govern on the trial of this cause should it be remanded, and as nothing would be accomplished by a reversal of the judgment for the error assigned to the action of the court in refusing to submit the case to the jury upon special issues, such error, therefore, is no ground for reversal. *Phoenix Insurance Co. v. Shearman*, 17 Tex. Civ. App. 456; *Cool. Const. Lim.*, 469; *Suth. Stat. Const.*, sec. 482.

2. If the second paragraph of the court's charge [***4] did not sufficiently state the issues raised by the pleadings, it was an act of omission which appellant should have asked the court to correct by a special charge. The rule on this point is that [HN1] if the judge in his charge undertakes to state to the jury the issues made by the pleadings, and the charge, as given, is objected to on account of omitting a part of the issues, the proper remedy of appellant is to call attention of the court to the error by requesting a proper charge at the time, and if that is not done, it is not proper, as a general rule, to reverse a judgment for such a cause. *Milmo v. Adams*, 79 Tex. 526, 530; *Christian v. Insurance Co.*, 45 S.W. 268. Besides, if there was error in not accurately stating in this paragraph the issues made by the pleadings, the charge taken as a whole submits every issue made by them to the jury.

3. The fourth paragraph of the court's charge is as follows: "If you believe from the evidence that the plaintiff, I. O. Lynch, was in defendant's employ as a fireman on one [**391] of its passenger trains, and that, while he was so employed, he was injured by a collision between such passenger train and a loose car on the main line of defendant's [***5] railway, as alleged in plaintiff's petition, and if you further believe from the evidence that the said car escaped from a side track at Missouri City and run down upon the main line, and that the said car, while on the said side track, did not have the brakes set, or the wheels blocked, and that this caused its escape [*339] from said side track, and if you further believe from the evidence that the defendant negligently permitted said car to be and remain upon said side track without having the brakes set or the wheels blocked, and that the failure to have the brakes set or the wheels blocked, if you believe there was such failure, was negligence on the part of defendant, and that such negli-

gence, if any, was the proximate cause of the collision and of plaintiff's injuries, then you will find your verdict for the plaintiff."

It is assigned as error on the ground that it is upon the weight of evidence, in that it assumes that defendant not only permitted said car to be and remain upon the side track without having the brakes set or wheels blocked, but that it was guilty of negligence in permitting it to be so and remain thereon. This part of the charge, as we understand it, [***6] is not open to the objections urged against it, for it submits all questions of fact to the finding of the jury, and leaves them to determine whether under such facts the defendant was guilty of negligence.

The fifth and sixth paragraphs of the court's charge are as follows:

"5. If you believe from the evidence that the plaintiff, I. O. Lynch, while in defendant's employ and while in the performance of his duties, was injured by a collision between a passenger train and a loose car on the main line of defendant's railway, and that the said loose car escaped from the side track at Missouri City by reason of an unusual or unprecedented windstorm, and that defendant was not guilty of negligence under the charges herein given you, proximately causing the escape of said car, and said collision, and plaintiff's injuries, then you will find for the defendant. Or if you believe from the evidence that the brakes on said car, while in the side track at Missouri City were set, or that the wheels were blocked, or if you believe from the evidence that the defendant was not guilty of negligence in failing to have the brakes set, or the wheels blocked, if you believe there was such failure, or [***7] that the negligence, if any, was not the proximate cause of the collision, and of plaintiff's injuries, then you will find for the defendant."

"6. If, however, you believe from the evidence that the plaintiff, I. O. Lynch, while in defendant's employ and in the performance of his duty, was injured by a collision between a passenger train and a loose car on the main line of defendant's railway, and that such car was blown out of the side track at Missouri City by an unusual or unprecedented windstorm, and that such unusual or unprecedented windstorm was a proximate cause of the collision and of plaintiff's injuries, and if you further believe from the evidence that the brakes on the said car, while on the side track, were not set, and that the wheels were not blocked, and that the failure to have the brakes set, or the wheels blocked, if you believe there was such failure, was negligence on the part of defendant, and if you further believe from the evidence that such negligence of the defendant, if any, and such unusual or unprecedented windstorm were concurring causes of the said collision and of plaintiff's injuries, and together were the direct and proximate cause of the collision [***8] and of plaintiff's [*340] injuries, then defendant would be liable, and you would find your verdict for the plaintiff."

The latter paragraph is assigned as error upon the ground that it instructs the jury that under the circumstances therein stated they should return a verdict against defendant, notwithstanding that they should find an unusual and unprecedented windstorm was the proximate cause of plaintiff's injury. No such meaning can be given to the part of the charge complained of, especially when read in connection with the preceding paragraph. Its clear import is that if the windstorm and appellant's negligence in leaving the cars unsecured were concurrent causes, and together were the direct and proximate cause of plaintiff's injury, the railroad would be liable therefor. This we understand to be the law. *Railway v. Sweeney*, 36 S.W. 800; *Railway v. Croskell*, 6 Tex. Civ. App. 160; *Railway v. McClain*, 80 Tex. 85. If appellant was negligent in leaving the box cars upon the side track without having brakes set or the wheels blocked, and they were blown out on the main track by a storm, such negligence was necessarily the proximate cause of the collision and appellee's injury.

[***9] The ninth paragraph of the charge is as follows: "In the event you find for plaintiff and allow him damages, you should allow him such sum as you believe from the evidence will compensate him for the injuries

sustained, and in estimating his damage, if any, you may take into consideration the mental and physical pain suffered, if any, consequent upon the injury received, and the reasonable value of time lost, if any, consequent upon his injuries; and if you believe from the evidence that his injuries are permanent, and will disable him to labor and earn money in the future, then you may, in addition to the above, find such further sum as will be a fair compensation for his diminished capacity, if any, to labor and earn money in the future."

This charge is assigned as error upon the ground that it "authorized and encouraged the jury to allow plaintiff damages twice, or a double recovery, in so far as the injuries resulted in his diminished capacity to labor and earn money in future was concerned." The charge correctly states the measure of damages, and is not obnoxious to the objection urged in the assignment. *Railway* [**392] *v. Waldo*, 32 S.W. 783; *Knittel v. Schmidt*, 16 Tex. [***10] Civ. App. 7.

There is no error in the judgment appealed from, and it is affirmed.

Affirmed.