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Arrests, Searches, First Offender Programs and Authorized Dispositions

*By Helen Jackson
Harris County District Attorney's Office
Houston, Texas*

Law Enforcement and Juveniles: Arrests, Searches, First Offender Programs, and Authorized Disposition

- A. Law Enforcement Officers Defined
 - (1) Sheriffs, their deputies, reserve deputies, constables, deputy constables, reserve deputy constables, marshals, police officers, reserve municipal police officers of an incorporated city, town, or village, who hold a permanent peace officer license issued under Chapter 415, Government Code;
 - (2) rangers and officers commissioned by the Public Safety Commission and the Director of the Department of Public Safety;
 - (3) investigators of the district attorneys', criminal district attorneys', and county attorneys' offices;
 - (4) law enforcement agents of the Texas Alcoholic Beverage Commission;
 - (5) each member of an arson investigating unit commissioned by a city, a county, or the state;
 - (6) officers commissioned under Section 37.081, Education Code, or Subchapter E, Chapter 51, Education Code;
 - (7) law enforcement officers commissioned by the Parks and Wildlife Commission;
 - (8) apprehension specialists commissioned by the Texas Youth Commission as officers under Section 61.0931, Human Resources Code.

- B. Juvenile Probation
 - (1) A juvenile probation officer may only take a juvenile into custody if there is probable cause to believe that the child has violated a condition of probation imposed by the juvenile court under Section 52.01(a)(4).
 - (2) Human Resources Code Section 141.066 provides a probation officer may not carry a firearm in the course of the person's official duties.
 - (3) An alternative to a juvenile probation officer taking a juvenile into custody for a violation of probation is provided in Section 52.015(a) where on request of a law enforcement or probation officer, a juvenile court may issue a directive to apprehend a juvenile if the court finds there is probable cause to take the juvenile into custody.
 - (4) A peace officer may not serve as a juvenile probation officer under Human Resources Code Section 141.065.

- C. School District Peace Officers and Attendance Officers
 - (1) A school district peace officer may take a juvenile into custody upon probable cause provided the peace officer is commissioned under Section 37.081 of the Education Code.

- (2) A school district peace officer has limited territorial jurisdiction fixed by the board of trustees and may include all territory in the boundaries of the school district and all property outside the boundaries that is under the control of the school district. Education Code Section 37.081(a)
- (3) A school district may expand the territorial jurisdiction of school district peace officers by contracting with a political subdivision to provide the jurisdiction of the school district peace officer to include all territory in the jurisdiction of the political subdivision. Education Code Section 37.081(c)
- (4) Truancy laws are enforced by school district attendance officers as well as peace officers but attendance officers are prohibited under Education Code 25.091(c) from taking a truant into custody except upon court order without permission of the parent or guardian.
- (5) Under 25.091 (b) of the Education Code attendance officers may not enter a private residence without the permission of the parent or guardian except to serve process on the parent or guardian of the truant.

D. Transporting Juveniles in Custody

- (1) It is the duty of the sheriff of the county where the child was taken into custody to transport the juvenile to and from all scheduled juvenile court proceedings and appearances and other activities ordered by the juvenile court upon order of the juvenile board and approval of the commissioner's court. Section 52.026(c) and Attorney General Opinion LO-94-065 (1994).

E. Arrests and Investigatory Stops

- (1) Section 52.01 (b) provides the taking of a juvenile into custody is not an arrest except for the purpose of determining the validity of taking him into custody or the validity of a search under the laws and constitution of this state or of the United States.
- (2) Constitutional requirements of the Fourth Amendment of the United States and Article I, Section 9 of the Texas Constitution govern when a juvenile may be taken into custody for a criminal offense.
 - i. Probable Cause
 1. Lanes v. State, 767 S.W.2d 789 (Tex. Crim. App. 1989), established the probable cause requirement of Article I, Section 9 and the Fourth Amendment to juvenile proceedings. "Our holding today represents an accommodation between the aspirations of the juvenile court and the grim realities of the system...Although we are adopting another requisite of the criminal system, we find that requiring probable cause for arrest will not compel abandonment or displacement of the juvenile system's commendable rehabilitative intentions." 767 S.W.2d at 800-01.
 2. An arrest warrant is constitutionally required only when the arrest is made in the dwelling of the arrestee. See Payton v. New York, 445 U.S. 573, 100 S.Ct. 1371, 63 L.Ed.2d 639 (1980); United States v. Watson, 423 U. S. 411, 96 S.Ct. 820, 46 L.Ed.2d 598 (1976);
 3. A warrantless arrest of a juvenile on the front porch of his home was held valid. Cornealius v. State, 900 S.W.2d 731 (Tex. Crim.App. 1995)
 - ii. Reasonable Suspicion
 1. The Fourth Amendment requires reasonable suspicion generally for an investigatory stop. The courts have applied adult standards permitting brief, investigatory detentions on reasonable suspicion following the lack of statutory guidance in the Family Code.
 2. In the Matter of M. V., UNPUBLISHED, No. 04-98-00762-CV, 1999

WL 391856, 1999 Tex.App.lexis 4442, Juvenile Law Newsletter 99-3-06 (Tex.App.-San Antonio 1999), officers testified while passing by a school ground on bicycle patrol, three juveniles were observed passing a baggie between them. On approaching them, the juveniles seemed surprised, and one made a movement toward his shoe, stuffing something into it. One of the officers immediately handcuffed that juvenile and asked what was in his shoe. The Court of Appeals analyzed this fact situation as an investigatory stop on reasonable suspicion. The handling of the baggie and the surprised look on the boys' faces gave reasonable suspicion to stop them to investigate. The handcuffs were properly used for the officers' protection and did not go beyond the force authorized during an investigatory stop. Only after the marijuana was found did the officer arrest the juvenile and at that time he had probable cause to do so.

3. By contrast, officers in *In the Matter of C.R.*, UNPUBLISHED, No. 03-96-00429-CV, 1997 WL 348532, 1997 Tex.App. Lexis 3307, Juvenile Law Newsletter 97 -3-16 (Tex.App.-Austin 1997) observed the respondent walking away from a running vehicle stopped in a cul-de-sac near a subsidized housing project. Respondent walked toward two other men standing on the sidewalk, and they huddled together as the vehicle backed out of the cul-de-sac. As the officers approached in an unmarked vehicle, the respondent and two others began walking away. They began running when the officers exited the vehicle and one officer chased and caught the respondent. The Court of Appeals held these circumstances did not give rise to reasonable suspicion. The Court held, "... conduct that does not sufficiently set a person apart from innocent persons under the same circumstances does not, alone, create reasonable suspicion; an officer must have facts increasing the likelihood of criminal conduct."

F. Statutory Requirements

A juvenile may be taken into custody by a law enforcement officer under Section 52.01(a) under the following circumstances.

- (1) Juvenile Court Order
 - i. Upon adjudication or transfer petition and summons is served upon a juvenile if it appears from an affidavit filed or from sworn testimony before the court that immediate detention of the child is warranted.
 - ii. Upon release from detention and failure to appear before the juvenile court as required by the conditions of release.
 - iii. Upon failure to appear before the court when required to testify after being subpoenaed as a witness to an offense. Section 53.07(e) provided witnesses may be subpoenaed in accordance with the Texas Code of Criminal Procedure.
 - iv. Upon a motion to modify probation being filed when a juvenile is on probation.
- (2) Pursuant to Laws of Arrest
 - i. In any circumstance in which an adult could be arrested by a law enforcement officer, a juvenile in the same circumstance can be taken into custody. Section 52.01(a)(2) authorizes the taking of a juvenile into custody pursuant to the laws of arrest.
- (3) Probable Cause
 - i. 52.01(a)(3) allows a law enforcement officer to take a juvenile into custody if the officer has probable cause to believe the juvenile has engaged in delinquent conduct or conduct indicating a need for supervision.
 - ii. Arrest Warrant

1. No requirement of an arrest warrant or other court order to arrest on probable cause.
2. By contrast, Article 14.01(b) of the Code of Criminal Procedure allows a peace officer to arrest an offender without a warrant only for any committed in his presence or within his view.
3. In Vasquez v. State, 663 S.W.2d 16 (Tex.App.-Houston [1st Dist.] 1983, the court held that since the defendant was 16 years of age at the time of his arrest, the provisions of Section 52.01 of the Family Code, not Article 14.04, governed and that his arrest was valid under the probable cause provision. See Garcia v. State, 661S.W.2d 754 (Tex.App.-Beaumont 1983); Cornealius v. State, 900 S.W.2d 731 (Tex.Crim.App. 1995).

iii. Truancy Arrests

1. The probable cause provision applies to a law enforcement officer's warrantless arrest for truancy. Matthews v. State, 677 S.W.2d 809 (Tex.App.-Fort Worth 1984, pet. ref'd.)
2. Section 25.096 of the Education Code authorizes peace officers to take truants into custody upon probable cause without a warrant.

iv. Curfew Violations

1. Municipalities have enacted ordinances requiring juveniles not be in a public place at certain hours. Local Government Code Sections 341.904,351.093, and 370.001.
2. In the Matter of C. R., UNPUBLISHED, No. 04-98-00389-CV, 1999 WL 15963, 1999 Tex.App.Lexis 135, Juvenile Law Newsletter 99-1-19 (Tex.App.-San Antonio 1999), answered the question of whether an officer has reasonable suspicion for an investigatory stop to determine whether there is a curfew violation, youthful appearance and time of day by themselves are sufficient.
3. If an officer stops a juvenile to investigate a curfew violation and determines that a violation has occurred, the officer may take the juvenile into custody. At that point, a full search incident to a lawful arrest may be conducted of the person of the juvenile. Section 52.028(a). In the Matter of J. M., UNPUBLISHED, No. 03-98-00206-CV, 1999 WL 372508, 1999 Tex.App. Lexis 4293, Juvenile Law Newsletter 99-3-05 (Tex.App.-Austin 1999)

v. Probation Violations

1. Only a probation officer may arrest a juvenile upon probable cause to believe the juvenile has violated probation. Section 52.01(a)(4).
2. A law enforcement officer may arrest a juvenile for a probation violation if that violation is delinquent conduct and the officer has probable cause to believe the juvenile engaged in that delinquent conduct. Section 52.01(a)(3).
3. If the juvenile court has issued a directive to apprehend any law enforcement officer or probation officer may take the juvenile into custody under that order.

vi. Directive to Apprehend

1. Section 52.015(a) directs a juvenile court may issue a directive to apprehend if there is probable cause to take the child into custody under the provisions of this title.
2. A directive to apprehend is an arrest warrant under the Fourth Amendment.
 - a. Section 52.015 does not explicitly require that the statement

of probable cause upon which a directive to apprehend is based be under oath.

- b. The Fourth Amendment does impose such a requirement.
3. A directive to apprehend may be issued under of the circumstances in which it could issue an order of immediate custody.
 - a. If there is probable cause to believe the juvenile has engaged in delinquent conduct or conduct indicating a need for supervision. Section 52.01(a)(3).

G. Searches

(1)

Consent Searches

(2)

Third-party Consent

- a. Valid if the party consenting did so voluntarily and had possession and control over the area to be searched either individually or jointly with the target of the search. Jacobs v. State, 681 S.W.2d 119 (Tex.App.-Houston [14th Dist.] 1984, pet. ref'd.) "There is no question that neither probable cause nor a search warrant is necessary if consent to search is given ...Further, contrary to Appellant's assertion, the Texas Court of Criminal Appeals passed directly on the issue of whether a parent can consent to a search of her child's bedroom in Sorenson v. State, 478 S.W.2d 532 (Tex.Crim.App. 1972). The court found the defendant has no "reasonable expectation of privacy" in his bedroom, that his mother had a right to be in his bedroom, that his mother she could consent to the search of his bedroom and that her consent obviated the need for a search warrant. Further, the court found her consent was binding upon everyone who had rights in the bedroom." 681 S.W.2d at 122.
- b. The United States Supreme Court has held that third party consent may be valid even if the person giving consent did not have sufficient connection to the area to be searched to give consent if the officer reasonably believes the person had control of the premises. See Illinois v. Rodriguez, 497 U.S. 177, 110 S.Ct. 2793, 111L.Ed.2d 148 (1990); In the Matter of L.D.R., UNPUBLISHED, No. 05-92-02756-CV, 1993 WL 378086, Juvenile Law Newsletter 93-4-10 (Tex.App.-Dallas 1993).

(3)

School Searches

- a. New Jersey v. T.L.O., 469 U.S.325, 105 S.Ct. 733, 83 L.Ed.2d 720 (1985), addresses the issue of searches of juveniles and their property by public school officials on school premises. The Supreme Court concluded that different Fourth Amendment standards apply to searches on school property of students by public school officials than apply to searches by law enforcement officers. The Supreme Court held, "...the legality of a search of a student should depend simply on the reasonableness, under all the circumstances, of the search. Determining the reasonableness of any search involves a twofold inquiry: first, one must consider "whether the...action was justified at its inception"...; second, one must determine whether the search as actually conducted "was reasonably related in scope to the circumstances which justified the interference in the first place." Under ordinary circumstances, a search of a student by a teacher or other school official will be "justified at its inception" when there are reasonable grounds for suspecting that the search will turn up evidence that the student has violated or is violating either the law or the rules of the school. Such a search will be permissible in its scope when the measures adopted are reasonably related to the objectives of the search and not excessively intrusive in light of the age and sex of the student and the nature of the infraction. 105 S.Ct. at 742-43.

- i. Reasonableness of Scope of Search

1. In Coronado v. State, 835 S.W.2d 636 (Tex.Crim.App. 1992), the Court of Criminal Appeals applied T.L.O. and reversed the Court of Appeals in finding the principal had reasonable grounds to investigate a student's attempt to leave school during the school day and in "patting down" a student for safety reasons. "However, the subsequent searches violated the second prong of T.L.O. The searches were not reasonably related in scope to the circumstances which initially justified [the principal's] interference with appellant, i.e. [the principal's] suspicion of appellant skipping school. Nor were the searches reasonably related to any discovery from the initial "pat down."...Additionally, nothing observed during the patdown or subsequent search of appellant's clothes and person, or locker, would justify [the principal's] expansion of the search to appellant's vehicle. 835 S.W.2d at 641.
2. Distinguished from Coronado in the course of its opinion by the Court of Criminal Appeals were two Court of Appeals opinions that upheld school searches under T.L.O.
 - a. Irby v. State, 751 S.W.2d 670 (Tex.App.-Eastland 1988)
 - b. Coffman v. State, 782 S.W.2d 249 (Tex.App.-Houston [14th Dist.] 1989)
3. Reports from Students and Others
 - a. Search upheld as related to reason for initiating investigation:
 - i. Wilcher v. State, 876 S.W.2d 466 (Tex.App.-El Paso 1994, pet.ref'd.)
 - ii. M.M.v. State, UNPUBLISHED, No. A14-93-009888-CV, 1995 WL 115808, 1995 Tex.App.Lexis 574, Juvenile Law Newsletter 95-2-5 (Tex.App.-Houston [14th Dist.] 1995).
 - b. Search upheld as tip from informant previously providing reliable information:
 - i. Farias v. State, UNPUBLISHED, No. 01-94-00612-CR, 1995 WL 737473, Juvenile Law Newsletter 96-1-04 (Tex.App.-Houston [1st Dist.] 1995)
 - c. Search upheld on anonymous crime stopper's tip where principal verified all other information before search:
 - i. In the Matter of C.S., UNPUBLISHED, No. 14-97-01304-CV, 1998 WL 832121, 99-1-01 (Tex.App.-Houston [14th Dist.] 1998)
4. Locker Searches
 - a. No reasonable expectation of privacy.
 - b. A student's locker is school property which remains under the control of school authorities.
 - c. Shoemaker v. State, 971 S.W.2d 178 (Tex.App.-Beaumont 1998)
5. Abolition of Private Party Search in Public Schools following T.L.O.
6. Stop and Frisk
 - a. Search was for self-protection, and
 - b. the search was consistent with that purpose.
 - c. Freeman v. State, UNPUBLISHED, No. 03-94-00754-CR, 1997 WL 6302, 1997 Tex.App.Lexis 96, Juvenile Law Newsletter 97-1-11 (Tex.App.-Austin 1997)
 - d. Also see In the Matter of A.D.D., 974 S.W.2d 299 (Tex.App.-San Antonio 1998) (search was for cocaine, not

weapons, so invalid on facts).

G. Informal Disposition and First Offender Programs

(1) Juvenile Board Guidelines must be promulgated under Section 53.032.

a. Informal Disposition authorized under Section 52.03:

i. A law-enforcement officer authorized to take a juvenile into custody may dispose of the case of a child taken into custody without referral to the juvenile court, if:

1. guidelines adopted by juvenile board;
2. disposition authorized by guidelines;
3. officer makes a written report of the officer's disposition.

ii. No disposition may involve:

1. keeping the juvenile in law-enforcement custody; or
2. requiring periodic reporting to a law-enforcement officer.

iii. A disposition may involve:

1. referral of the juvenile to an agency other than a juvenile court;
2. conference with the juvenile and parent or guardian; or
3. referral of the juvenile and parent or guardian for services.

b. First Offender Programs authorized under Section 52.031

i. For referral and disposition of juveniles taken into custody for:

1. CINS; or
2. delinquent conduct other than conduct that is a:
 - a. felony
 - b. state jail felony or misdemeanor involving violence or possession of a weapon.

ii. Juvenile board must designate law enforcement agency to process juvenile.

iii. Juvenile board must adopt guidelines before any disposition of juvenile.

iv. Law enforcement officer may refer juvenile under first offender program only if:

1. juvenile has not previously been adjudicated as having engaged in delinquent conduct;
2. the referral complies with the adopted guidelines; and
3. the officer makes a written report of the referral.

v. Juvenile may not be detained in law enforcement custody.

vi. Parent or guardian of juvenile must receive notice of the referral.

vii. The juvenile may not be referred to juvenile court if successfully complete program.

viii. The juvenile may be referred to juvenile court if:

1. fail to complete program;
2. juvenile or parent or guardian terminates the juvenile's participation in program; or
3. juvenile is taken into custody for another offense less than 90 days after successfully completing referral.

- ix. Statement made by juvenile in program may not be used against juvenile.

H. Authorized Permanent Dispositions, Juvenile Processing Offices, Places of Nonsecure Custody and Juvenile Curfew Processing Offices

- (1) Authorized Dispositions under Section 52.02
 - i. A person taking a juvenile into custody, without unnecessary delay and without first taking the child to any place other than a designated juvenile processing office, shall:
 - 1. release the juvenile to a parent or guardian upon that person's promise to bring the juvenile before the juvenile court as requested by the court;
 - 2. bring the juvenile before the official designated by the juvenile court if there is probable cause to believe the juvenile engaged in delinquent conduct or CINS;
 - 3. bring the juvenile to a detention facility;
 - 4. bring the juvenile to a secure detention facility;
 - 5. bring the juvenile to a medical facility;
 - 6. dispose of the case under Section 52.03 informal disposition or first offender program.
- (2) Authorized Disposition in Driving Under the Influence Cases
 - i. Officer authorized to take the juvenile to an intoxilyzer or videotaping area in an adult detention facility for immediate processing under Section 52.02(c).
- (3) Juvenile Processing Office
 - i. Section 52.025(a) permits the juvenile board to designate offices in locations that include law enforcement facilities.
 - ii. A law enforcement officer may take a juvenile in custody to a designate juvenile processing office for initial processing.
 - iii. The juvenile may be held for a maximum period of six hours.
- (4) Place of Nonsecure Custody
 - i. Section 52.027 authorizes designation of places of nonsecure custody.
 - ii. Section 52.027(c) specifies the characteristics:
 - 1. An unlocked, multipurpose area that is not designated or used as a secure detention area.
 - 2. It may be a juvenile processing office if the area is not locked when used as a placed of nonsecure custody.
 - iii. Juveniles served by places of nonsecure custody:
 - 1. Juveniles in custody for traffic offenses;
 - 2. Juveniles in custody for fineable only offenses other than public intoxication; and
 - 3. Juveniles in custody as status offenders or nonoffenders.
 - iv. Procedures for nonsecure custody of juveniles:
 - 1. May not be secured physically to stationary object;
 - 2. May be held only long enough to accomplish specific limited purposes;
 - 3. May not be used for residential purposes; and
 - 4. Juvenile shall be under constant visual supervision.
 - 5. May not be held for longer than six hours.
- (5) Juvenile Curfew Processing Offices
 - i. For practical purposes same as place of nonsecure custody for juveniles.
 - ii. For political reasons separate provisions designate. Sections 52.027(c),(d), (e) and 52.028 (b)(1-6)

I. New Law Changes

- (1) Temporary custody for fingerprints and photographs. Section 58.0021
- i. Authorizes a law enforcement officer having probable cause to believe a juvenile has engaged in delinquent conduct and probable cause to believe the juvenile's fingerprints will match latent prints or the juvenile's photograph will materially assist the investigation to take temporary custody of the juvenile in order to take the fingerprints or photographs.
 - ii. Requires the juvenile's immediate release without information related to the temporary custody entered into JJIS.
 - iii. Require the law enforcement officer to immediately destroy the fingerprints and photographs if they do not lead to a positive comparison or identification and to make a reasonable effort to notify the juvenile's parent or guardian of the action.
 - iv. The fingerprinting and photographing must be at a place where reasonable privacy is afforded or in the juvenile processing office.
 - v. Authorize the fingerprinting and photographing of a runaway juvenile if necessary to determine the juvenile's identity.