

Same Difference – Determinate Sentencing Nuts And Bolts Of Juvenile Law

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Biographical Information

William B. "Bill" Connolly is a 1974 graduate of the University of Windsor in Ontario, Canada. He received his law degree (J.D.) in 1979 from South Texas College of Law where he was Assistant Editor of the Law Review and a member of the Order of the Lytae.

Bill's law practice revolves around the litigation of juvenile and family law matters. Typically these include children accused of engaging in delinquent conduct, children in need of supervision, divorces, custody cases, property divisions, pension valuations and division, abuse and neglect cases, termination of parental rights, adoptions and grandparent interventions for access, possession and/or custody of grandchildren. Bill has extensive experience in family law matters involving mental health issues and other areas such as alcoholism, drug addiction, domestic violence, protective orders, confidentiality of health care records and privilege and many others. Several years ago his practice was expanded to include mediation and alternative dispute resolution services, which now includes Collaborative Family Law. Bill is Board Certified in Family and Juvenile Law by the Texas Board of Legal Specialization.

In his 26 years of experience, Bill has been a frequent speaker, author and lecturer at continuing legal education programs.

Bill represents all facets of the Houston community. His firm, William B. Connolly & Associates handles a range of cases from the complex large estates, procedurally unique and complex matters to routine, smaller matters. Bill has committed a significant portion of his professional career to representing children in all different kinds of family related litigation.

Bill has served the community on a number of different Boards, projects and events. His principal volunteer work is with Child Advocates and The Council on Alcohol and Drug Abuse Houston. His most recent project has him serving as parent attorney in the new Harris County Family Intervention Court (FIC). The cases which will be referred to the FIC will involve parents with addiction problems in cases involving DFPS (abuse and neglect) or the Domestic Relations Office (child support). In addition to his monthly lectures on Appellate cases in Juvenile and Family Law, Bill served for several years as an Adjunct Professor of Juvenile Law at South Texas College of Law and has taught at the C. G. Jung Center.

Bill is an Elder at St. Philip Presbyterian Church in Houston, Texas. He is active politically and enjoys creative writing and photography.

“SAME DIFFERENCE” – DETERMINATE SENTENCING NUTS AND BOLTS OF JUVENILE LAW

I. INTRODUCTION

The challenge of any presentation at the level of “Nuts and Bolts” is how to make the theory practical. Anyone can read a statute and discern what the words mean with some reasonable degree of certainty. It seems that the principal question is one of application. How can a prosecutor, defense attorney, probation officer or Judge take a specific set of facts and apply them in the framework of the sometimes divergent worlds of the Juvenile Justice Code; Texas Code of Criminal Procedure; Texas Rules of Evidence; Texas Rules of Civil Procedure; Texas Constitution; United States Constitution and case law decisions related to all of these areas of law? The prosecutor’s duty to see that “justice is done”; the defense attorney’s duty “to zealously defend the Respondent within the bounds of the law;” and the Court’s duty to serve the dual purposes of “punishment” and “treatment, training and rehabilitation,” puts into play a multitude of possibilities in the area of “Determinate Sentencing.” Clearly stated, the purpose of punishment within the Juvenile Justice Code is more prominent in these cases, because the crimes are felonies and consequences to the victims and the community is more severe. Traditionally, there seems to have been less advocacy in the realm of social services, alternative sentencing and creative solutions than there has been for the demand for lengthy sentences and harsher conditions of probation. In communities such as Harris County, where a juvenile determinate sentencing offender might receive a longer sentence from the Judge or Jury in juvenile court, than as an adult or certified offender, plea negotiations can create extreme ethical and practical dilemmas. Some of these concerns relate to whether the juveniles have the capacity to knowingly and intelligently enter into determinate plea agreements; whether the defense bar is on the same footing as the prosecution relative to knowledge of the practical comparative workings of the adult and juvenile justice systems in that community; and whether as a legal community, we tend to fall into more traditional adversarial roles. For example, a Respondent accepts a 5 year sentence on a “no

Contest” plea for an aggravated sexual assault where the evidence is somewhat thin or marginal. The plea requires sex offender treatment and deferred registration. Respondent enters sex offender treatment, insisting that he is innocent and is unprepared for and adverse response.

Are we failing to take full advantage of the possibilities provided by our multi-dimensional juvenile justice system? My intention is to focus on two (2) distinct aspects of the area of determinate sentencing. First the practical exposition of law and the appropriate inclusion of twenty-six (26) sample forms to help in the nuts and bolts of practice. Second, to raise questions about the creative use of the multiple purposes and dimensions of these varied and divergent areas of law so that we may better serve the needs of the juveniles, their victims and the community

There is both a caveat and acknowledgment necessary. In the section on forms, I have included these as templates and for the purpose of generating ideas. Some of these forms are several years old. The law is not stagnant. It has changed. The citations to authority, while accurate at the time, may not be so at the time of this presentation. These materials should not be used without independent research and verification that the authority is valid. The idea for the second half of this presentation stems from discussions with the Honorable Pat Shelton, Judge of the 313th Juvenile District Court, about how we might better utilize the opportunities that the juvenile justice system provides. Unless otherwise indicated, all citations are to the Texas Family Code.

II. LEGAL - NUTS AND BOLTS - AUTHORITY AND FORMS

Like any other juvenile case, a Determinate Sentencing Petition must be filed and must allege “with reasonable particularity, the time place and the manner of the acts alleged and the penal law or standard of conduct allegedly violated by the acts. §53.04. Although a denial will be presumed, if it is not filed, it is wise to file a written Answer to the Petition. (See Forms --Appendix “A” and Appendix “B”). The issue with respect to pleadings is fair notice. Since §51.17 applies the Code of Criminal Procedure to Discovery and the Texas Rules of Evidence to Determinate proceedings, if

there is not a specific procedure, the Texas Rules of Civil Procedure will apply to the pleading practice. If nine (9) members of a grand jury vote to approve the Petition, it can proceed as a determinate case. **§53.045(b)**. If the Respondent has been served with an Original Indeterminate Petition, he/she does not have to be personally served with the Amended Determinate Petition. **In Re G.A.T., 16 S.W. 3d 818 (Tex. App. – Houston [14th Dist.] 2000, pet. denied)**. Age verification can be a significant issue beyond basic jurisdictional issues (age 10 - 17). In this regard a Determinate Petition may not be filed for sexual assault or aggravated sexual assault when the victim is less than three (3) years younger than the Respondent. **§53.045(e)**. The types of criminal conduct which may result in a grand jury approval and a determinate sentencing case are as follows:

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).

(b) A grand jury may approve a petition submitted to it under this section by a vote of nine members of the grand jury in the same manner that the grand jury votes on the presentment of an indictment.

(c) The grand jury has all the powers to investigate the facts and circumstances relating to a petition submitted under this section as it has to investigate other criminal activity but may not issue an indictment unless the child is transferred to a criminal court as provided by Section 54.02 of this code.

(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 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.

The legal requirements of an adjudication hearing are as follows:

§ 54.03. ADJUDICATION HEARING.

(a) A child may be found to have engaged in delinquent conduct or conduct indicating a need for supervision only after an adjudication hearing conducted in accordance with the provisions of this section.

(b) At the beginning of the adjudication hearing, the juvenile court judge shall explain to the child and his parent, guardian, or guardian ad litem:

- (1) the allegations made against the child;
- (2) the nature and possible consequences of the proceedings, including the law relating to the admissibility of the record of a juvenile court adjudication in a criminal proceeding;
- (3) the child's privilege against self-incrimination;
- (4) the child's right to trial and to confrontation of witnesses;
- (5) the child's right to representation by an attorney if he is not already represented; and
- (6) the child's right to trial by jury.

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

(d) Except as provided by Section 54.031, only material, relevant, and competent evidence in accordance with the Texas Rules of Evidence applicable to criminal cases and Chapter 38, Code of Criminal Procedure, may be considered in the adjudication hearing.

Except in a detention or discretionary transfer hearing, a social history report or social service file shall not be viewed by the court before the adjudication decision and shall not be viewed by the jury at any time.

(e) A child alleged to have engaged in delinquent conduct or conduct indicating a need for supervision need not be a witness against nor otherwise incriminate himself. An extrajudicial statement which was obtained without fulfilling the requirements of this title or of the constitution of this state or the United States, may not be used in an adjudication hearing. A statement made by the child out of court is insufficient to support a finding of delinquent conduct or conduct indicating a need for supervision unless it is corroborated in whole or in part by other evidence. An adjudication of delinquent conduct or conduct

indicating a need for supervision cannot be had upon the testimony of an accomplice unless corroborated by other evidence tending to connect the child with the alleged delinquent conduct or conduct indicating a need for supervision; and the corroboration is not sufficient if it merely shows the commission of the alleged conduct. Evidence illegally seized or obtained is inadmissible in an adjudication hearing.

(f) At the conclusion of the adjudication hearing, the court or jury shall find whether or not the child has engaged in delinquent conduct or conduct indicating a need for supervision. The finding must be based on competent evidence admitted at the hearing. The child shall be presumed to be innocent of the charges against the child and no finding that a child has engaged in delinquent conduct or conduct indicating a need for supervision may be returned unless the state has proved such beyond a reasonable doubt. In all jury cases the jury will be instructed that the burden is on the state to prove that a child has engaged in delinquent conduct or is in need of supervision beyond a reasonable doubt. A child may be adjudicated as having engaged in conduct constituting a lesser included offense as provided by Articles 37.08 and 37.09, Code of Criminal Procedure.

(g) If the court or jury finds that the child did not engage in delinquent conduct or conduct indicating a need for supervision, the court shall dismiss the case with prejudice.

(h) If the finding is that the child did engage in delinquent conduct or conduct indicating a need for supervision, the court or jury shall state which of the allegations in the petition were found to be established by the evidence. The court shall also set a date and time for the disposition hearing.

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

(j) When the state and the child agree to the disposition of the case, in whole or in part, the prosecuting attorney shall inform the court of the agreement between the state and the child. The court shall inform the child that the court is not required to accept the agreement. The court may delay a decision on whether to accept the agreement until after reviewing a report filed under

Trial must be to jury unless it is waived under **§51.09** and **§54.03(c)**. The jury in a determinate case must be of twelve (12) people and all verdicts must be unanimous. **§54.15(c)**. The evidence has to be material, relevant and competent. **§54.03(d)**.

The social history report or juvenile probation report may not be viewed by the Court before the adjudication hearing is concluded or by the jury at any time. **§54.03(d)**. Statements obtained in violation of the Title 3, The Texas Constitution or the U.S. Constitution would not be admissible. **§54.03(e)**. A statement of a child is insufficient to support a finding of delinquent conduct unless it is corroborated in whole or in part by other evidence. **§54.03(e)**. An adjudication of delinquent conduct cannot be had upon

the testimony of an accomplice, unless it is corroborated by the other evidence tending to connect the child with the delinquent conduct. **§54.03(e)**.

Evidence illegally seized or obtained is inadmissible in an adjudication hearing. **§54.03(e)**.

The juvenile and counsel can waive presentation and grand jury approval of the petition. **§53.045(d), §51.09; In Re A.R.A., 898 S.W. 2d 14 (Tex. App. -- Austin 1995, no writ)**.

Any material amendments to the Determinate Petition should be brought back to the grand jury for approval. **Tex. C. Crim. P., Art 28.10**.

Discovery should be conducted pursuant to the Texas Code of Criminal Procedure **51.17(b); Tex. C. Crim. P., Art 39.14**. (See Forms – Appendix “C” and “D”).

Determinate sentencing adjudication, disposition and modification hearings may only be heard by a district court judge sitting as a juvenile court judge. **§54.10(e)**. This does not preclude an associate Judge, Master or Referee from conducting hearings on ancillary matters. However, a county court judge has no jurisdiction over any proceedings after the Petition has been approved by the grand jury. **§51.04(c)**.

If there is a belief that the state is intending to use evidence of other crimes, wrongs or acts, under Rule 404(b) of the Texas Rules of Evidence, the state must disclose that it will do so, after proper written request. (See Forms - Appendix “E”).

If there is a belief that the child may be mentally ill (**§55.11**), incompetent or unfit to proceed (**§55.31**) or lacked the capacity to be legally responsible for his conduct (**§55.51**), a request for an examination should be made. (See Forms - Appendix “F”).

If there is a concern over the competency or potential bias of a professional or expert witness or if the child is the subject of a transfer hearing and the TYC mental health evaluations are in the master file, counsel for the child may seek an independent psychological and/or psychiatric evaluation. (See Forms - Appendix “G” and Appendix “H”).

If Respondent needs a private investigator to locate witnesses, obtain statements, etc., counsel should request one. **(See Forms - Appendix “I”).**

If an expert has been designated to testify and there is a question or concern over the relevance and/or reliability of the expert testimony, an objection should be made and a “Gate Keeper” hearing should be held. **(See Forms - Appendix “J” and Appendix “K”).** In this regard, please include the Nenno case to any objections as to relevance or reliability. **Nenno v. State of Texas, 970 S.W.2d 549 (Tex. Crim. App. 1998).**

If evidence has been illegally seized or obtained, it will not support an adjudication of delinquent conduct. **§54.03(e).** A challenge to the validity of an arrest, search and seizure should be raised under state law, The Texas Constitution, The United States Constitution and related case decisions. **§52.01. (See Forms – Appendix “L”).**

Prior to a jury trial, counsel for both the State and Respondent should consider the use of Motions in Limine. **(See Forms – Appendix “M”, Appendix “N” and Appendix “O”).**

Jury selection in determinate cases must consist of a final panel of twelve (12) persons and must be conducted in accordance with the requirements of criminal cases. **Tex. Code Crim. P., Art. 35.01 - Art. 35.26l.**

Unless specifically spelled out by a contrary intent stated in the Juvenile Justice Code, (e.g. the necessity of counsel), virtually any right may be waived by a juvenile with the assistance and consent of counsel. **§51.09.** This gives a Respondent several options relative to whether to have no jury, a jury for adjudication and disposition or a jury for either one.

Unlike the adult system, a juvenile does not have to elect to go to a jury for punishment prior to voir dire. **Tex. Code Crim. P., Art. 37.07(2)(b).** However, making that selection known will allow counsel to qualify the jury on the full range of punishment during the voir dire.

The burden of proof is on the State to prove each element of the offense beyond a reasonable doubt.

§54.03(f). The verdicts must be unanimous. **§54.03(c).** The court or jury must find that the child is in need of rehabilitation or that the protection of the public requires that a disposition be made. **§54.04(c).**

The range of punishments are set forth in the statute;

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.

(b) At the disposition hearing, the juvenile court 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.

(c) No disposition may be made under this section unless the child is in need of rehabilitation or the protection of the public or the child requires that disposition be made. If the court or jury does not so find, the court shall dismiss the child and enter a final judgment without any disposition. No disposition placing the child on probation outside the child's home may be made under this section unless the court or jury finds that the child, in the child's home, cannot be provided the quality of care and level of support and supervision that the child needs to meet the conditions of the probation.

(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).

(e) The Texas Youth Commission shall accept a person properly committed to it by a juvenile court even though the person may be 17 years of age or older at the time of commitment.

(f) The court shall state specifically in the order its reasons for the disposition and shall furnish a copy of the order to the child. If the child is placed on probation, the terms of probation shall be written in the order.

(g) If the court orders a disposition under Subsection (d)(3) or (m) and there is an affirmative finding that the defendant used or exhibited a deadly weapon during the commission of the conduct or during immediate flight from commission of the conduct, the court shall enter the finding in the order. If there is an affirmative finding that the deadly weapon was a firearm, the court shall enter that finding in the order.

(h) At the conclusion of the dispositional hearing, the court shall inform the child of:

- (1) the child's right to appeal, as required by Section 56.01; and
- (2) the procedures for the sealing of the child's records under Section 58.003.

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

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

- (A) it is in the child's best interests to be placed outside the child's home;
- (B) reasonable efforts were made to prevent or eliminate the need for the child's removal from the home and to make it possible for the child to return to the child's home; and

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

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

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

- (1) shall require that the child's thumbprint be affixed to the order; and
- (2) may require that a photograph of the child be attached to the order.

(k) Except as provided by Subsection (m), the period to which a court or jury may sentence a person to commitment to the Texas Youth Commission with a transfer to the Texas Department of Criminal Justice under Subsection (d)(3) applies without regard to whether the person has previously been adjudicated as having engaged in delinquent conduct.

(l) Except as provided by Subsection (q), a court or jury may place a child on probation under Subsection (d)(1) for any period, except that probation may not continue on or after the child's 18th birthday. Except as provided by Subsection (q), the court may, before the period of probation ends, extend the probation for any period, except that the probation may not extend to or after the child's 18th birthday.

(m) The court or jury may sentence a child adjudicated for habitual felony conduct as described by Section 51.031 to a term prescribed by Subsection (d)(3) and applicable to the conduct adjudicated in the pending case if:

- (1) a petition was filed and approved by a grand jury under Section 53.045 alleging that the child engaged in habitual felony conduct; and
- (2) the court or jury finds beyond a reasonable doubt that the allegation described by Subdivision (1) in the grand jury petition is true.

(n) A court may order a disposition of secure confinement of a status offender adjudicated for violating a valid court order only if:

- (1) before the order is issued, the child received the full due process rights guaranteed by the Constitution of the United States or the Texas Constitution; and
- (2) the juvenile probation department in a report authorized by Subsection (b):
 - (A) reviewed the behavior of the child and the circumstances under which the child was brought before the court;
 - (B) determined the reasons for the behavior that caused the child to be brought before the court; and
 - (C) determined that all dispositions, including treatment, other than placement in a secure detention facility or secure correctional facility, have been exhausted or are clearly inappropriate.

(o) In a disposition under this title:

- (1) a status offender may not, under any circumstances, be committed to the Texas Youth Commission for engaging in conduct that would not, under state or local law, be a crime if committed by an adult;
- (2) a status offender may not, under any circumstances other than as provided under Subsection (n), be placed in a post-adjudication secure correctional facility; and
- (3) a child adjudicated for contempt of a county, justice, or municipal court order may not, under any circumstances, be placed in a post-adjudication secure correctional facility or committed to the Texas Youth Commission for that conduct.

(p) Except as provided by Subsection (l), a court that places a child on probation under Subsection (d)(1) for conduct described by Section 54.0405(b) and punishable as a felony shall specify a minimum probation period of two years.

(q) If a court or jury sentences a child to commitment in the Texas Youth Commission under Subsection (d)(3) for a term of not more than 10 years, the court or jury may place the child on probation under Subsection (d)(1) as an alternative to making the disposition under Subsection (d)(3). The court shall prescribe the period of probation ordered under this subsection for a term of not more than 10 years. The court may, before the sentence of probation expires, extend the probationary period under Section

54.05, except that the sentence of probation and any extension may not exceed 10 years. The court may, before the child's 18th birthday, discharge the child from the sentence of probation. If a sentence of probation ordered under this subsection and any extension of probation ordered under Section 54.05 will continue after the child's 18th birthday, the court shall discharge the child from the sentence of probation on the child's 18th birthday unless the court transfers the child to an appropriate district court under Section 54.051.

(r) If the judge orders a disposition under this section and there is an affirmative finding that the victim or intended victim was younger than 17 years of age at the time of the conduct, the judge shall enter the finding in the order.

(s) 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.

(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.

There cannot be a probation disposition outside the child's home unless there is a specific finding that within the home, the child cannot be provided the quality of care and level of supervision that is needed in order to meet the conditions of probation. **§54.04(c)**. If the child is committed to TYC, the Court must make the same finding as above and that it is in the best interest of the child to be placed outside the home and that reasonable efforts were made to prevent or eliminate the need for the child's removal from the home and to make it possible for the child to return to the child's home. **§54.04(i)(1)(A)(B)(c)**.

There are different schools of thought on the issue of the Court's charge. Respondent's Counsel needs to provide sufficiently specific objections to the erroneous aspects of the Court's charge. Some defense lawyers feel that they should only propose charge definitions, instructions or questions on affirmative defenses or matters upon which the defense has the burden of proof. However, there is no rule that says that Respondent's Counsel cannot provide definitions, instructions or questions relative to issues upon which the State has the burden of proof. The focal point of the trial is what the jury instructions are relative to the evidence of the case. It makes sense that Respondent's Counsel would propose language that supports the legal theory of Respondent's defense as long as it corresponds with the then existing law. **(See Forms – Appendix "P", "Q" and "R").**

The denial of a requested charge or instruction can form the basis of reversible error. Where a proper request by Respondent was made that the charge include an instruction that extraneous offenses needed to be proven beyond a reasonable doubt, it was held to be reversible error to deny the request, especially when the State argued the extraneous offenses on the issue of disposition. **Tex. Code of Crim. P., Art. 37.07(3)(a); In the Matter of M.O.M (No. 01-00-00323-CV) (Tex. App. -- Houston [1st Dist.]) (May 3, 2001) (Unpublished).**

It is important to bring errors to the attention of the trial court as many times as possible. **(See Forms – Appendix "S").** If there is a factual insufficiency claim, it should be asserted in a Motion for New Trial. **Tex. R. Civ. P. 324.**

Upon an adverse Judgment, Counsel for Respondent should discuss the desirability and time line relative to the perfection of an appeal. If new Counsel has not been timely appointed or hired, Respondent's Counsel should file a Notice of Appeal. **(See Forms – Appendix "T").**

If Respondent has satisfactorily performed on his probation, Respondent's Counsel should look to the possibility of filing a Motion to Modify Disposition and supporting authority. **(See Forms – Appendix "U" and "V").**

In an appropriate case, Respondent's Counsel should seek to excuse sex offender registration. (See Forms – Appendix “W” and “X”).

Finally, when the case has been favorably resolved or the appropriate length of time has passed, Respondent should seek to seal the files and records. (See Forms – Appendix “Y” and “Z”). This would only be appropriate relative to a case matter which was disposed of as a non-determinate case, because an adjudication and disposition for conduct listed in §53.045 or habitual felony conduct under §53.031 cannot be sealed. §58.003(b).

III. ISSUES, QUESTIONS AND CONCERNS UNDER THE DETERMINATE SENTENCING PROVISIONS OF THE JUVENILE JUSTICE CODE

1. There is a specific Family Code prohibition as to the use of evidence which is illegally seized or obtained in adjudication proceedings. §54.03(e). Because this statute is very specific, can illegally obtained evidence be used in a disposition hearing under §54.04 or in a modification proceeding? §54.05. Certain aspects of this already happen when this information is included in the juvenile probation reports. §54.045(b).

2. Is it appropriate to simplify the jury questions emanating from §54.04(c) and (i)? Instead of mirroring the statute and creating a double negative:

“Do you find that the child in the child's home, cannot be provided the quality of care and level of support and supervision the child needs to meet the conditions of probation”.

Answer: We do or We do not

or

“Do you find that the child can be provided the quality of care and level of support and supervision in his home that the child needs to meet the conditions of probation.”

Answer: We do or We do not

Both of these questions are striving for the same information and because of the word “cannot”, a traditional finding of “We do not” actually means “We do”. **Tex. Code Crim. P., Art. 36.14.**

3. While probation is permissible on sentences of 10 years or less, can Respondent and the State agree up front to the early termination of probation if certain conditions are met by a date certain?
§54.04(q).

For example:

- A.** Can Respondent and the State agree in advance to not oppose an early termination of probation if certain conditions are met? **§54.04(q).**
- B.** Can Respondent and the State agree in advance not to seek transfer of probation, if certain conditions are met? **§54.04(q).**
- C.** Can there be an agreement in advance, not to seek a transfer hearing under **§54.11**, if certain conditions are met?
- D.** Can the parties agree in advance to an early parole with the consent of the Court? **§54.11(a)(j).**
- E.** Can the prosecution and defense be as creative as the law allows in order to serve purposes of the Code, i.e. punishment and treatment, training and rehabilitation?
- F.** Can the Parties agree to defer or eliminate Sex Offender Registration?

Are we, as a group adequately serving the multiple purposes of the Juvenile Justice Code? Does determinate sentencing provide us with opportunities that we do not utilize? Are harsher and longer sentences and stricter conditions of probation the principal means that we have to provide for the protection of the public and public safety? Can we do more? Can we be more creative? When a condition of a plea agreement is sex offender registration (regardless of the underlying facts) are we doing anything to remove the taint of criminality? **§51.01(2)(B).** There are many mental health professionals that believe that sex offender registration is a reactionary fear-based response that does nothing to deal

with the offender problem and imposes the taint of criminality on the victims and the families of both the perpetrator and the victim.

While the retributive justice model does effectively remove a child from the existing situation for some period of time, the absence of systemic interventions often has the child returning to difficult family or relative placements. When a specific purpose of the Juvenile Justice Code is to “emphasize accountability and responsibility of both **the parent** and the child,” do we fall short of the mark if we are not providing “progressive incentives” along “progressive sanctions.” The Juvenile Justice System is different. Unlike criminal cases, parents are parties to the proceedings. The Court has jurisdiction over them and has independent order and enforcement powers relative to parents. Certainly, it is unfair to punish or re-punish a child because of their parents lack of accountability and/or responsibility. However, in those cases where the parents are appropriately concerned about the child, the victim(s) and the community, does it make any sense to not build “progressive incentives” into the resolution of determinate sentencing cases? Could specific forms of community service be used as incentives? Would it make sense for a prosecutor to build incentives to reduce sanctions and have the performance measured by certain milestones? Can combinations of sanctions out of home and in-home be employed with specific reporting requirements? Providing goals, discipline, training and incentives might reduce recidivism or strengthen a family. In drug cases, would a systemic approach with family treatment provide more tangible results? If we used family accountability and responsibility as a benchmark to provide incentives for success and reduce the possibility of failures, we might be more accountable as a system to the issue of public safety. Multiple family members repeatedly entering the system, tends to show us the leading edge of the problem. Strained budgets and limited resources can also suggest that we could not reasonably do this. However, if we emphasize the statutory purpose of accountability and responsibility, we could find metrics that the Respondent and his or her family could utilize on their own. If a child enters the system and we collectively discover a family drug problem, why couldn’t we provide incentives for early return of the

child based upon demonstrable sobriety and a drug free home being provided by the parent(s)? This goal seems more in line with the goals of public safety, punishment, rehabilitation, accountability and responsibility than current practice.

The intention here is not necessarily to provide answers to these questions. The intention is to challenge conventions and to encourage the Juvenile Bar, Prosecutors, Probation Officers and Juvenile Courts to stretch. When we do this, we are the leading edge and problem solvers. The result can only be a stronger system, healthier families and a safer community.

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- G. MOTION FOR INDEPENDENT PSYCHOLOGICAL AND PSYCHIATRIC EVALUATION AND FOR FUNDS TO PROVIDE RESPONDENT WITH EXPERT ASSISTANCE
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APPENDIX

A

CAUSE NO. _____

IN THE MATTER OF:

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

MINOR CHILD

___TH JUDICIAL DISTRICT

RESPONDENT'S ORIGINAL ANSWER

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW _____ Respondent and files this his Respondent's Original Answer and in support thereof would respectfully show the Court the following:

I.

GENERAL DENIAL

Respondent generally denies each and every all and singular the allegations of the State's Petition and demands strict proof thereof in accordance with the Constitution and Laws of the United States and the State of Texas. Respondent pleads "not guilty."

WHEREFORE PREMISES CONSIDERED, Respondent prays that Petitioner take nothing by its suit and that the case be dismissed and for such other and further relief as is just.

Respectfully submitted,

WILLIAM B. CONNOLLY & ASSOCIATES

William B. Connolly
2930 Revere, Suite 300
Houston, Texas 77098
Telephone (713) 520-5757
Facsimile (713) 520-6644
State Bar No. 04702400

ATTORNEY FOR RESPONDENT

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Respondent's Original Answer was forwarded to _____, Mother of Respondent, ADDRESS, CITY, Texas 77___; _____, Father of Respondent, ADDRESS, CITY, Texas 77___; _____, Guardian of Respondent, ADDRESS, CITY, Texas and _____, Assistant District Attorney, ADDRESS, CITY, Texas 77002, via certified mail, postage prepaid, messenger delivery or facsimile transmission, return receipt requested on this the ___th day of MONTH, 2005

William B. Connolly

APPENDIX

B

CAUSE NO. _____

IN THE MATTER OF

CHILD

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

___TH JUDICIAL DISTRICT

RESPONDENT'S FIRST AMENDED ORIGINAL ANSWER

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW _____, Respondent and files this her Respondent's First Amended Answer and in support thereof would respectfully show the Court the following:

I.
GENERAL DENIAL

Respondent generally denies each and every all and singular the allegations of the State's Petition and demands strict proof thereof in accordance with the Constitution and Laws of the United States and the State of Texas. Respondent pleads "not guilty."

II.
NECESSITY

In the alternative, Respondent would show that any conduct that she engaged in was immediately necessary to avoid imminent harm; the desirability and urgency of avoiding the harm clearly outweighed, according to ordinary standards of reasonableness, the harm sought to be prevented by the law proscribing the conduct and that there was no plainly appearing legislative purpose to exclude the justification.

III.
SELF-DEFENSE

In the alternative, Respondent would show that any conduct that she engaged in amounted to self-defense and that she was justified in using force when she did and to the degree that she did in order to protect herself against the Complainant's use or attempted use of unlawful force.

If further pleading is necessary, Respondent would also show that she attempted to abandon the encounter and clearly communicated her intent to do so but reasonably believed that she could not safely

do so because the Complainant continued to use or attempted to use unlawful force against the Respondent.

WHEREFORE PREMISES CONSIDERED, Respondent prays that Petitioner take nothing by its suit and that the case be dismissed and for such other and further relief as is just.

Respectfully submitted,

WILLIAM B. CONNOLLY & ASSOCIATES

William B. Connolly
State Bar No. 04702400
2930 Revere, Suite 300
Houston, Texas 77098
Telephone: (713) 520-5757
Facsimile: (713) 520-6644

ATTORNEY FOR RESPONDENT

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Respondent's First Amended Original Answer was forwarded to _____, Assistant District, ADDRESS, Houston, Texas 77002, via certified mail, postage prepaid, messenger delivery or facsimile transmission, return receipt requested on this the ____ day of _____, 200_.

William B. Connolly

APPENDIX

C

CAUSE NO. _____

IN THE MATTER OF

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

CHILD

____th JUDICIAL DISTRICT

MOTION FOR DISCOVERY

TO THE HONORABLE JUDGE OF SAID COURT:

Now comes _____, Respondent in the above entitled and numbered cause, by and through the undersigned counsel, and makes this Motion for Discovery, and for good cause would respectfully show the Court the following:

- A. All written confessions, admissions and statements, made by the Respondent in connection with this case.
- B. All oral confessions, admissions and statements, made by the Respondent to the state in connection with this case, which have been electronically recorded.
- C. The substance of all oral confessions, admissions and statements made by the Respondent to the state in connection with this case, which were not electronically recorded and which the State would assert a trial has a bearing on the credibility of Respondent as a witness.
- D. All statements, written or oral, electronically recorded or not, given by the Respondent which are exculpatory or which tend to mitigate disposition.
- E. All written warnings, admonitions, rights and waivers given by the state to the Respondent before Respondent gave any written or oral statements, admissions or confessions.

In support of this motion, Respondent shows the following:

- 1. The items requested are in the exclusive possession, custody and control of the State of Texas or the United States Government by and through its agents, the police or the prosecuting attorney's office, and the Respondent has no other means of ascertaining the disclosures requested.
- 2. The items requested are not privileged.
- 3. The items and information are material to this cause and the issues of adjudication and disposition to be determined in this cause.

4. The Respondent cannot safely go to trial without such information and inspection, nor can the Respondent adequately prepare the defense to the charges against him.
5. The Respondent's rights will be violated under Article 39.14 of the Texas Code of Criminal Procedure, Texas Family Code, Article I, §§ 3,3a, 10, 13 and 19 of the Constitution of the State of Texas, and the fifth, sixth, Eighth and Fourteenth Amendments to the Constitution of the United States of America by such absent discovery.

WHEREFORE, PREMISES CONSIDERED, Respondent prays that this Honorable Court will grant this Motion for Discovery in all things, or in the alternative, that this Court will set this matter down for a hearing prior to trial on the merits and that at all such hearing this Motion will be in all things granted.

WILLIAM B. CONNOLLY & ASSOCIATES

William B. Connolly
2930 Revere, Suite 300
Houston, Texas 77098
Telephone (713) 520-5757
Facsimile (713) 520-6644
State Bar No. 04702400

ATTORNEY FOR RESPONDENT

NOTICE OF HEARING

A hearing will be conducted on the foregoing Motion For Discovery at 9:00 a.m. on the ___ day of December, ____, in the ___th District Court of Harris County, Texas.

William B. Connolly

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Motion for Discovery was forwarded to _____, ADDRESS, Houston, Texas 77002, via certified mail, postage prepaid, messenger delivery or facsimile transmission, return receipt requested on this the ___ day of December, _____.

William B. Connolly

APPENDIX

D

CAUSE NO. _____

IN THE MATTER OF

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

CHILD

____th JUDICIAL DISTRICT

MOTION FOR DISCOVERY

TO THE HONORABLE JUDGE OF SAID COURT:

Now comes _____, Respondent in the above entitled and numbered cause, by and through the undersigned counsel, and makes this Motion for Discovery, and for good cause would respectfully show the Court the following:

1. All written confessions, admissions and statements, made by the Respondent in connection with this case.
2. All oral confessions, admissions and statements, made by the Respondent to the state in connection with this case, which have been electronically recorded.
3. The substance of all oral confessions, admissions and statements made by the Respondent to the state in connection with this case, which were not electronically recorded.
4. The substance of all statements made by Respondent that do not conform to the requirements of the Texas Family Code or other law to be admissible on their own but which might be admissible or otherwise used for impeachment.
5. All statements, written or oral, electronically recorded or not, given by the Respondent which are exculpatory or which tend to mitigate disposition.
6. All written warnings, admonitions, rights and waivers given by the state to the Respondent before Respondent gave any written or oral statements, admissions or confessions.
7. All notes, whether in final, rough draft, or other form, made by all law enforcement officers prior to, during, and after the Respondent was interrogated which concern any confessions, admissions or statements made by Respondent to law enforcement officers or any other person in authority concerning this case.
8. All confessions, admissions, or statements give by Co-Respondents, parties, accomplices, or co-conspirators which the state intends to offer into evidence in Respondent's trial.
9. All confessions, admissions, or statements give by Co-Respondents, parties, accomplices, or co-conspirators which tend to exculpate Respondent or mitigate disposition.

10. All witness statements as that term is used in Rule 615 of the Texas Rules of Evidence, whether in final, rough, draft, or other form.
11. All writing intended to be used to refresh the recollection of witnesses, as provided in Rule 612 of the Texas Rules of Evidence.
12. The names and addresses of all suspects other than Respondent who were interrogated or arrested or investigated in connection with this case.
13. A list of the names, addresses and telephone numbers of all witnesses the prosecution intends to call at trial.
14. All statements made by any suspect, party, or witness to this alleged offense which tend to exculpate Respondent or mitigate punishment.
15. Access to all physical evidence seized by the state from the Respondent or any other person or any other place in connection with this case.
16. Access to all physical evidence in possession or control of the state which the state intends to offer at trial in this case.
17. Access to all physical evidence removed by the state from the scene of the alleged crime.
18. Access to all other physical evidence, property, documents, papers, books, accounts, letters, photographs, objects, tangible things or record which constitute or contain evidence material to any matter involved in this case which are in the possession, custody, or control of the state or any of its agencies, specifically including evidence which tends to exculpate Respondent or mitigate disposition.
19. Access to all photographs of suspects which were shown to all witnesses to the alleged offense, concerning the identity of the perpetrator(s) of the offense for which the Respondent has been charged, specifically including evidence which tends to exculpate Respondent or mitigate disposition.
20. All latent fingerprints and/or palm prints, and reports generated with respect to said prints, discovered by the state which are material to the commission of the delinquent conduct of which Respondent has been charged or is suspect in and evidence of which the state intends to offer into evidence at trial.
21. The results of the comparison of all latent fingerprints and/or palm prints, along with the names of the persons who lifted the latent prints and who performed the comparisons.
22. A list of the names, addresses, and professions of all expert witnesses the state intends to call at trial, along with each expert's qualifications, the subject and a description of his or her contemplated testimony, and his or her report so that Respondent may evaluate the need for a Daubert/Robinson/Nenno challenge prior to trial.

23. A copy of any expert witnesses or expert witness reports or data known or believed by the state to contain evidence which tends to exculpate Respondent or mitigate disposition in this case.
24. A copy of all recorded communications between the initial call or report to the law enforcement authorities and between the dispatcher and law enforcement agents who were called to the scene in this case.
25. The delinquency or criminal felony histories of any other person that the state intends to introduce into evidence at trial, including but not limited to offenses which would be the specific subject of impeachment or appropriate cross-examinations of any adult.
26. Access to any direct or circumstantial evidence that Respondent had possession of or access to a gun at any time relative to the delinquent conduct alleged in the Petition.
27. Access to any direct or circumstantial evidence that Respondent had possession or control of, or access to, any motor vehicle other than the Chevrolet MAKE vehicle relative to the unauthorized use of a motor vehicle for which he was adjudicated. This specifically includes any white vans or MAKE automobiles.

In support of this motion, Respondent shows the following:

1. The items requested are in the exclusive possession, custody and control of the State of Texas or the United States Government by and through its agents, the police or the prosecuting attorney's office, and the Respondent has no other means of ascertaining the disclosures requested.
2. The items requested are not privileged.
3. The items and information are material to this cause and the issues of adjudication and disposition to be determined in this cause.
4. The Respondent cannot safely go to trial without such information and inspection, nor can the Respondent adequately prepare the defense to the charges against him.
5. The Respondent's rights will be violated under Article 39.14 of the Texas Code of Criminal Procedure, Texas Family Code, Article I, §§ 3,3a, 10, 13 and 19 of the Constitution of the State of Texas, and the fifth, sixth, Eighth and Fourteenth Amendments to the Constitution of the United States of America by such absent discovery.

WHEREFORE, PREMISES CONSIDERED, Respondent prays that this Honorable Court will grant this Motion for Discovery in all things, or in the alternative, that this Court will set this matter down for a hearing prior to trial on the merits and that at all such hearing this Motion will be in all things granted.

WILLIAM B. CONNOLLY & ASSOCIATES

William B. Connolly
2930 Revere, Suite 300
Houston, Texas 77098
Telephone (713) 520-5757
Facsimile (713) 520-6644
State Bar No. 04702400

ATTORNEY FOR RESPONDENT

NOTICE OF HEARING

A hearing will be conducted on the foregoing Motion For Discovery at 9:00 a.m. on the ___ day of December, ____, in the ___th District Court of Harris County, Texas.

William B. Connolly

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Motion for Discovery was forwarded to _____, ADDRESS, _____, Houston, Texas 77002, via certified mail, postage prepaid, messenger delivery or facsimile transmission, return receipt requested on this the ___ day of December, _____.

William B. Connolly

APPENDIX

E

CAUSE NO. _____

IN THE MATTER OF

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

CHILD

____th JUDICIAL DISTRICT

**REQUEST FOR NOTICE OF INTENT TO USE
OTHER CRIMES, WRONGS OR ACTS UNDER RULE 404(b)**

TO THE HONORABLE JUDGE OF SAID COURT:

This Request for Notice of Intent to Use Other Crimes, Wrongs or Acts Under Rule 404(b) is made by _____, Movant.

Movant requests that reasonable notice be given in advance of trial of intent to introduce in the State's case-in-chief any evidence of other crimes, wrongs or acts in accordance with Texas Rules of Evidence 404(b).

Respectfully submitted,

WILLIAM B. CONNOLLY & ASSOCIATES

William B. Connolly
2930 Revere, Suite 300
Houston, Texas 77098
Telephone (713) 520-5757
Facsimile (713) 520-6644
State Bar No. 04702400

ATTORNEY FOR RESPONDENT

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Request for Notice of Intent to Use Other Crimes, Wrongs or Acts Under Rule 404(b) was forwarded to _____, Assistant District Attorney, _____, Houston, Texas 77002 via certified mail, postage prepaid, messenger delivery or facsimile transmission, return receipt requested on this the 29th day of November, ____.

William B. Connolly

APPENDIX

F

NO. _____

IN THE MATTER OF:

MINOR CHILD

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

____TH JUDICIAL DISTRICT

**MOTION FOR EVALUATION PURSUANT TO
§§ 55.51 & 51.20 OF THE TEXAS FAMILY CODE**

COMES NOW, _____, Respondent and files this his Motion for Evaluation Pursuant to §§ 55.51 and 51.20 of the Texas Family Code and in support thereof would respectfully show the Court the following:

**I.
DETERMINATION OF WHETHER RESPONDENT
LACKED RESPONSIBILITY FOR CONDUCT**

While Respondent denies the allegations of the petition, if there is evidence in support of the allegations, Respondent is entitled to have a determination as to whether or not he is responsible for any conduct which he may have engaged in, as a result of mental illness or mental retardation. In this regard, Respondent seeks a determination of whether, as a result of mental illness or mental retardation, he lacked substantial capacity either to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of the law.

**II.
PROCEDURE**

Pursuant to § 55.51 TFC on a motion by a party, in which it is alleged that a child may not be responsible as a result of mental illness or mental retardation for the child's conduct, the court shall order the child to be examined under § 51.20 TFC. A previous evaluation done October 11, 1999, by Dr. _____ at the _____ Clinic, consisted of a basic psychiatric assessment for purposes of addressing manifestations of _____'s mental health problems and providing him with inpatient and outpatient psychiatric care and treatment pending this case. However, Respondent was not evaluated to

determine whether he lacked responsibility for his conduct under § 55.51 TFC. The psychiatric assessment by Dr. _____ diagnoses _____ with Bipolar disorder with psychotic features and states that _____’s “insight is barely existent and his judgment is seriously impaired.”

Furthermore, in addition to the evaluation requested under § 51.20, Respondent specifically requests the Court to have the examiners address the issues of:

1. Whether Respondent was capable of intelligently, knowingly and voluntarily understanding the magistrate’s warnings attendant to a confession taken by police officers, without assistance from any parent, guardian or attorney;
2. Whether at the time of the alleged delinquent conduct Respondent was intellectually and emotionally capable of formulating the requisite culpable mental state for the offense;
3. Whether alcohol or drug use at or around the time of the alleged delinquent conduct affected the degree and/or manifestation of Respondent’s mental illness; and
3. Whether Respondent’s intellectual, emotional, and mental functioning, at the time of the alleged delinquent conduct, as a result of Respondent’s mental illness, created a circumstance that prevented Respondent from making any, or in the alternative, an appropriate judgment regarding his actions.

WHEREFORE PREMISES CONSIDERED, Respondent prays that the Court remove this cause from the trial docket and order the appropriate expert examinations pursuant to the Texas Family Code.

Respondent prays for general relief.

Respectfully submitted,

WILLIAM B. CONNOLLY & ASSOCIATES

William B. Connolly
2930 Revere, Suite 300
Houston, Texas 77095
Telephone (713) 520-5757
Facsimile (713) 520-6644
State Bar No. 04702400

ATTORNEY FOR RESPONDENT

NOTICE OF HEARING

A hearing on the foregoing Motion for Evaluation Pursuant to §§ 55.51 and 51.20 of the Texas Family Code has been set on the ___th day of October, ____, at 9:00 o'clock a.m., in the ___th Judicial District Court, Harris County, Texas.

William B. Connolly

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Motion for Evaluation Pursuant to §§ 55.51 and 51.20 of the Texas Family Code was forwarded to _____, Assistant District Attorney, _____, Houston, TX 77002 via certified mail, postage prepaid, messenger delivery or facsimile transmission, return receipt requested on this the ___ day of October, ____.

William B. Connolly

APPENDIX

G

NO. _____

IN THE MATTER OF:

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IN THE DISTRICT COURT OF
HARRIS COUNTY, TEXAS
____TH JUDICIAL DISTRICT

**MOTION FOR INDEPENDENT PSYCHOLOGICAL AND PSYCHIATRIC
EVALUATION AND FOR FUNDS TO PROVIDE RESPONDENT WITH EXPERT
ASSISTANCE**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, _____, Movant files this his Motion for Independent Psychological and Psychiatric Evaluation and for Funds to Provide Respondent with Expert Assistance and in support thereof would respectfully show the Court the following:

**I.
INDEPENDENT EXPERT ASSISTANCE**

In assessing the issues of Respondent’s transfer, Texas Youth Commission (“TYC”) is providing the Court with its Master File and a Summary Report that includes diagnostic information and the unqualified opinions and recommendations of the TYC staff or contract psychologists _____, Ph.D. and _____, Ph. D. This information was considered important enough by TYC to quote it extensively in its Summary Report to the Court. If Respondent is denied an opportunity to have an independent examination, denied an opportunity to review all reports, have access to all of the data compiled and/or reviewed by Dr. _____ and Dr. _____; denied the right of examination of these principal witnesses against him and denied the right of qualified expert assistance in the preparation for such examination and the hearing on the issue of transfer, Respondent will be denied his rights of due process and confrontation under U.S. CONST. amend. V, XIV, T.X. CONST. art. I, §19 and his right of confrontation under U.S. CONST Amend VI, XIV and T.X. CONST. art. I §10 and Tex. Family Code§54.11(e).

II.
ALTERNATIVE REQUEST FOR MHMRA FORENSIC EXPERT ASSISTANCE

In the alternative, in the event the Court refuses Respondent's request for independent Psychological and Psychiatric Evaluation and expert assistance, Respondent requests the Court to appoint both _____, Ph.D and _____, M.D. to provide this assistance to Respondent. While Respondent's attorney fully respects the clinical skills and objectivity of these two (2) experts, this appointment is crucial to the extent that it would move these experts from the category of public to private experts. Accordingly, if these experts are appointed, Respondent would request that appropriate clinical safeguards be put into place to avoid the prospect of prior tainting of their objectivity, through the prior disclosure of information from TYC.

WHEREFORE PREMISES CONSIDERED, Movant prays that this Motion be granted, Movant prays for general relief.

WILLIAM B. CONNOLLY & ASSOCIATES

William B. Connolly
2930 Revere, Suite 300
Houston, Texas 77098
Telephone (713) 520-5757
Facsimile (713) 520-6644
State Bar No. 04702400

ATTORNEY FOR RESPONDENT

NOTICE OF HEARING

Notice is hereby given that Respondent will present this Motion for Independent Psychological and Psychiatric Evaluation and for Funds to Provide Respondent with Expert Assistance for ruling prior to the commencement of the hearing on the Motion to Transfer currently scheduled for 9:00 a.m. on the 29th day of October, _____, in the ____th Judicial District Court, Harris County, Texas.

William B. Connolly

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Motion for Independent Psychological and Psychiatric Evaluation and for Funds to Provide Respondent with Expert Assistance was forwarded to _____, Assistant District Attorney, _____, Houston, Texas 77002 via certified mail, postage prepaid, messenger delivery or facsimile transmission, return receipt requested on this the 26th day of October, ____.

William B. Connolly

APPENDIX

H

NO. _____

IN THE MATTER OF:

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IN THE DISTRICT COURT OF
HARRIS COUNTY, TEXAS
____TH JUDICIAL DISTRICT

ORDER APPOINTING MENTAL HEALTH PROFESSIONALS

On this the 19th day of November ____ came on to be heard Respondent's request to formally appoint the Mental Health Professionals which are to assist Respondent in this proceeding. The Court previously authorized the appointment of a psychologist and a psychiatrist in a hearing on October 29, _____. Accordingly, in conformity with the prior oral order, the Court finds Respondent's request should be granted.

Accordingly, it is ORDERED that _____, Ph. D. and _____, M.D. be appointed to conduct a psychological and psychiatric evaluation respectively. In the respective evaluations, the psychologist and psychiatrist shall define the limits of Respondent's functioning, establish a diagnosis, if any, and make recommendations to Respondent and his counsel and, if requested, the Court, regarding:

6. Respondent's current medical, psychiatric and psychological condition.
7. The abilities of Respondent to contribute to society;
8. Whether Respondent would be a danger to himself or others if returned to Texas Youth Commission which would be required to parole him on his 21st birthday;
9. Whether transfer from Texas Youth Commission to the Texas Department of Criminal Justice would be necessary to protect the victim, any member of the victim's family or the public;
10. Whether transfer from Texas Youth Commission to Texas department of Criminal Justice would be in the best interest of the Respondent; and
11. Any other factor relevant to the issue to be decided.

In making this recommendation, it is ORDERED that both _____, M.D. and _____, Ph.D. shall be allowed to:

1. contact any and all of Respondent's treating or evaluating Medical and Mental Health Professionals and;

2. have access to and, if requested, a copy of all records, notes, testing, data and reports and other materials in the possession of the Texas Youth Commission relative to _____.

It is ORDERED that _____, Ph.D. and _____, M.D. shall have the legal authority to visit with _____, SPN No. _____ currently located at the Harris County Jail Annex, 701 North San Jacinto, Houston, Texas 77002.

It is ORDERED, that upon request, Respondent, _____ shall be brought to the Main Harris County Jail, 1301 Franklin, Houston, Harris County, Texas so that appropriate interviews and testing can be done by Drs. _____ and _____.

It is ORDERED that _____, M.D. and _____, Ph.D. shall provide expert assistance to Respondent and his counsel on the issue of transfer.

It is ORDERED that _____, Ph.D. shall submit his invoice to the Court, through Respondent's attorney, William B. Connolly, who shall attach it to his attorney fee voucher.

SIGNED this ___ day of November, ____.

JUDGE PRESIDING

APPROVED AS TO FORM:

WILLIAM B. CONNOLLY & ASSOCIATES

William B. Connolly
2930 Revere, Suite 300
Houston, Texas 77098
Telephone (713) 520-5757
Facsimile (713) 520-6644
State Bar No. 04702400

ATTORNEY FOR RESPONDENT

Assistant District Attorney

Houston, Texas 77002
Telephone: _____
Facsimile: _____
State Bar No. _____

APPENDIX

I

CAUSE NO. _____

IN THE MATTER OF

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

CHILD

____th JUDICIAL DISTRICT

MOTION FOR FUNDS TO EMPLOY PRIVATE INVESTIGATOR

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW _____, Respondent and files this his Motion for Funds to Employ Private Investigator and in support thereof would respectfully show the Court the following:

Respondent has need to employ a private investigator so that his Counsel may provide Respondent with an appropriate defense. Respondent is represented by a court appointed Counsel and does not have funds to employ such a private investigator. Accordingly, as provided for in **Code of Criminal Procedure, Art. 26.05(d)**, Respondent requests the Court to authorize Respondent’s Counsel to employ _____, _____ Investigations, for this purpose and to authorize the expenditure of at least _____ as reasonable and necessary expenses to conduct investigation for Respondent’s defense.

WHEREFORE PREMISES CONSIDERED, Respondent prays that the Court grant his Motion for Funds to Employ Private Investigator.

Respondent prays for general relief.

Respectfully submitted,

WILLIAM B. CONNOLLY & ASSOCIATES

William B. Connolly
2930 Revere, Suite 300
Houston, Texas 77098
Telephone (713) 520-5757
Facsimile (713) 520-6644
State Bar No. 04702400

ATTORNEY FOR RESPONDENT

NOTICE OF HEARING

A hearing on the foregoing Motion for Funds to Employ Private Investigator has been set for oral hearing on the ____ day of _____, 20____, at 9:00 o'clock a.m., in the ____th Judicial District Court, Harris County, Texas.

William B. Connolly

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Motion for Funds to Employ Private Investigator was forwarded to _____, Assistant District Attorney, _____, Houston, Texas, via certified mail, postage prepaid, messenger delivery or facsimile transmission, return receipt requested on this the ____ day of _____, 20____.

William B. Connolly

APPENDIX

J

NO. _____

IN THE MATTER OF:

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IN THE DISTRICT COURT OF

HARRIS COUNTY, T E X A S

____TH JUDICIAL DISTRICT

**RESPONDENT'S, NOTICE OF OBJECTION TO INTRODUCTION OF
TESTIMONY AS PROVIDED UNDER DAUBERT, ROBINSON, AND KELLY
AND REQUEST FOR "GATE KEEPER" HEARING**

1. _____ ("Respondent") files his Notice of Objection to Introduction of Testimony based on relevance and reliability as provided by **Daubert v. Merrell Dow Pharmaceuticals, Inc.**, 113 S.Ct. 2786 (1993); **E.I. du Pont de Nemours & Co. v. Robinson**, 923 S.W.2d 549 (Tex. 1995) and **Kelly v. State**, 824 S.W.2d 568 (Tex.Crim.App 1992). Respondent further requests an oral hearing on the admissibility of testimony by _____, _____ and _____, Ph.D and any other "experts" within the TYC Master file, whether testifying directly or indirectly through Mr. _____ or the TYC records. This case is presently set for Transfer Hearing on October 29, ____.

2. Respondent asserts that any evidence to be offered by Petitioner is not grounded upon careful scientific methods and procedures, nor does the evidence demonstrate a careful scientific investigation upon which reliable conclusions could be based. Respondent further asserts that the conclusions and recommendations made by the listed witnesses are not based on scientifically valid reasoning and methodology, nor does the evidence show that the witnesses have any reliable basis for their opinions that are grounded in knowledge and experience of their discipline. Respondent further assert that their testimony is not based on theories and techniques that have been properly subjected to peer review. Additionally, Respondent asserts that the witnesses have failed to show that their methodology would have received any degree of acceptance within the relevant scientific community.

3. As provided by Daubert, Robinson and Kelly, Respondent requests that a, "gate keeper" hearing be conducted by this Court, in which the burden of proof falls on the Petitioner, the State of Texas, to prove the relevance and reliability of such evidence **by clear and convincing evidence** in which the Court must consider the following under the civil law standard:

- a. the extent to which the theory forming the basis of the opinion held by the witness has been tested;
- b. the extent to which the technique used by the witness in forming his opinion relies upon the subjective interpretation of the expert;
- c. whether the theory has been subjected to peer review and/or published;
- d. the technique's potential rate of error;
- e. whether the underlying theory or technique has been generally accepted as valid by the relevant scientific community; and
- f. the non judicial uses which have been made of the theory or technique.

Robinson, 923 S.W.2d at 557.

The following must be considered under the criminal standard:

- a. **The underlying theory is valid;**
- b. The technique applying the theory is valid;
- c. The technique was properly applied on the occasion in question. Factors for the Court to consider in making the reliability determination include, but are not limited to, following:
 1. The extent to which the underlying scientific theory and technique are accepted as valid by the relevant scientific community;
 2. the qualifications of the expert(s) testifying;
 3. the existence of literature supporting or rejecting the underlying scientific theory and technique;
 4. the technique's potential rate of error of the technique;
 5. the availability of other experts to test and evaluate the technique;

6. the clarity with which the theory or technique can be explained to the Court; and
7. the experience and skill of the person(s) who applied the technique on the occasion in question.

Kelly, 824 S.W.2d at 568.

Respondent requests that the Court rule on this matter prior to the hearing in order that the parties have a reasonable time to develop both strategy and hearing tactics before time of hearing.

WHEREFORE, PREMISES CONSIDERED, _____ prays that this Court SUSTAIN his Objection to the Introduction of Testimony and Evidence from _____, _____, Ph.D. and _____, Ph.D. and any other "experts" within the TYC files provided to the Court. Respondent prays for general relief.

Respectfully submitted,

WILLIAM B. CONNOLLY & ASSOCIATES

William B. Connolly
State Bar No. 04702400
2930 Revere, Suite 300
Houston, Texas 77098
Telephone (713) 520-5757
Facsimile (713) 520-6644

ATTORNEY FOR RESPONDENT

NOTICE OF HEARING

Notice is hereby given that Movant will present this Notice of Objection to Introduction of Testimony as Provided under Daubert and Robinson and Request for "Gate Keeper" Hearing to the Court for ruling prior to the commencement of the hearing on the Motion to Transfer currently scheduled for 9:00 a.m on the 29th day of October, ___ in the ___th Judicial District Court, Harris County, Texas.

William B. Connolly

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Notice of Objection to Introduction of Testimony as Provided under Daubert and Robinson and Request for "Gate Keeper" Hearing was forwarded to _____, Assistant District Attorney, ADDRESS, Houston, Texas 77002 via certified mail, postage prepaid, messenger delivery or facsimile transmission, return receipt requested on this the _____ day of October, _____.

William B. Connolly

APPENDIX

K

NO. _____

IN THE MATTER OF:

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IN THE DISTRICT COURT OF
HARRIS COUNTY, T E X A S
____TH JUDICIAL DISTRICT

**ORDER ON OBJECTION TO INTRODUCTION OF
EVIDENCE AS PROVIDED UNDER DAUBERT AND ROBINSON**

On the ____ day of October, _____, came on to be heard _____,

Objections to Introduction of Expert Testimony as provided by **Daubert v. Merrell Dow
Pharmaceuticals, Inc., 113 S.Ct. 2786 (1993); E.I. du Pont de Nemours & Co. v. Robinson,
923 S.W.2d 549 (Tex. 1995) and Kelly v. State, 824 S.W.2d 568 (Tex.Crim.App 1992).**

The Court is of the opinion that the Objection should in all things be:

_____ SUSTAINED

_____ OVERRULED

IT IS THEREFORE ORDERED that the Petitioner, the State of Texas may not introduce
testimony from _____, _____ and _____, Ph.D and any
other “experts” within the TYC Master file.

SIGNED on the ____ day of October, _____.

JUDGE PRESIDING

APPENDIX

L

CAUSE NO. _____

IN THE MATTER OF

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

CHILD

___TH JUDICIAL DISTRICT

MOTION TO SUPPRESS EVIDENCE

COMES NOW, _____, Respondent and files this his Motion to Suppress Evidence and in support thereof would respectfully show the Court the following:

I.
FACTS

On or about October 9, ____, Harris County Sheriffs or Harris County Police Officers ____ and _____ viewed Respondent standing in an alley. The alley was located in an area allegedly known for drug trafficking. The Officers approached the Respondent and stated that the “suspect appeared to try to conceal an object behind his back.” The Officers then began to search the Respondent for weapons to insure officer safety. In their search for weapons, the Officers found what is alleged to be marijuana in 2 clear plastic baggies inside Respondent’s left front pocket. Respondent was then taken into custody.

II.
EVIDENCE OBTAINED CONTSTITUTES FRUIT OF UNLAWFUL SEARCH

In **Terry v. Ohio** the United States Supreme Court held that “law enforcement officers may stop and briefly detain persons suspected of criminal activity on less information than is constitutionally required for probable cause to arrest.” **392 U.S. 1, 22 (1968)**. Such stops have become known as “Terry Stops” and are legally justified only upon reasonable suspicion that some activity out of the ordinary is occurring or did occur, and some suggestion connecting the detained person with the unusual activity, and some indication that the activity is related to a crime. **Id. at 21; Florida v. Royer, 460 U.S. 491, 497 (1983)**. To constitute reasonable suspicion, a law enforcement officer must have “specific articulable facts which, in light of his experience and personal knowledge, together with rational inferences from those facts, would reasonably warrant the intrusion on the freedom of the detainee for further investigation.” **Comer v. State, 754 S.W.2d**

656, 657 (Tex. Crim. App. 1986); Garcia v. State, 3 S.W.3d 227 (Tex. App.–Houston [14th Dist.] 1999, n.p.h.). Reasonable suspicion is based upon an objective standard–“would the facts available to the officer at the moment of seizure or search warrant a man of reasonable caution in the belief that the action taken was appropriate.” Terry, 392 U.S. at 21-22. The officer’s good faith is not enough. Id. Furthermore, the officer’s reasonable suspicion cannot be based on an inchoate and unparticularized suspicion or hunch. Id. at 27. The reasonableness of a “Terry Stop” turns on the totality of the circumstances. United States v. Mendenhall, 446 U.S. 544, 557 (1980).

The actual investigative “Terry Stop” itself is limited to a patdown to find weapons that the law enforcement officer reasonably believes or suspects are then in the possession of the person he has stopped. Id.; Worthey v. State, 805 S.W.2d 435, 437 (Tex. Crim. App. 1991). “Any search beyond that scope is invalid and its fruits will be suppressed.” Terry, 392 U.S. at 27. “The purpose of a limited search after an investigatory stop is not to discover evidence of a crime, but to allow the officer to pursue the investigation without fear of violence.” Wood v. State, 515 S.W.2d 300, 306 (Tex. Crim. App. 1974). The Supreme Court in Terry further held that the search must be a “carefully limited search of the *outer* clothing of such persons in an attempt to discover weapons with might be used to assault [the law enforcement officer.” Terry v. Ohio, 392 U.S. at 30. Terry does not constitutionally authorize a search for drugs. Id. at 21-22; Vaughn v. State, 983 S.W.2d 860, 863 n.4 (Tex. App.– Houston [14th Dist.] 1998, n.p.h.). If in the course of the patdown for weapons, the officer does not find weapons, the search must cease absent probable cause to arrest. Lippert v. State, 664 S.W.2d 712, 721 (Tex. Crim. App. 1984).

The United States Supreme Court recognizes one exception to the limited search for weapons during a “Terry Stop”–the ‘plain feel’ exception. Minnesota v. Dickerson, 508 U.S. 366, 375-76 (1993). The exception allows a police officer to seize contraband found during the patdown for weapons. Id. However, the contour or mass of the contraband must make its identity immediately apparent to the officer. Id.

When Officers _____ and _____ stopped and detained Respondent, they made, according to the facts set out in the offense report, what has been described above as a “Terry Stop.” However, the officers

lacked the requisite reasonable suspicion. Respondent was either walking or standing in an alley where narcotics were known to be sold. The Respondent lived in the complex and was virtually at his place of residence. No other persons were present and no apparent criminal activity was taking place. Assuming Respondent was allegedly holding something behind his back, such action on the part of Respondent was not enough to cause a reasonable person to believe that a crime had occurred or was occurring. Even taking into consideration the fact that the alley was known for drug trafficking, Respondent's actions were not enough to cause a reasonable person to believe such activity was occurring or had occurred. Respondent was on his way home and was minding his own business. Taking into consideration the totality of the circumstances, the stop on behalf of the officers could only have been based upon an unparticularized suspicion or hunch which is not enough to warrant an invasion of Respondent's privacy.

Even assuming for the purposes of argument that the "Terry Stop" was legally justified, the subsequent search of the Respondent was outside the scope of Terry and thus the evidence obtained from that search constitutes fruits of an unlawful search and must be suppressed. Although the officers may have been entitled to do a patdown search of the Respondent for weapons, they were not entitled to search the Respondent for drugs. The officers went much further and searched inside the front pockets of Respondent. A Terry search is limited to the *outer* clothing. Even if the officers could have felt the baggies from the outside of the Respondent's pockets, they could not have reasonably believed the baggies were weapons of any kind. Furthermore, the officers could not have reasonably known immediately upon the plain feel of the outside of Respondent's pockets that the pockets contained marijuana.

Accordingly, the marijuana found on the person of Respondent should be suppressed.

WHEREFORE PREMISES CONSIDERED, Respondent prays that this Motion to Suppress be in all respects granted and for such other and further relief, special or general, in law or in equity, to which he may show himself to be justly entitled.

Respondent prays for general relief.

Respectfully submitted,

WILLIAM B. CONNOLLY & ASSOCIATES

William B. Connolly
2930 Revere, Suite 300
Houston, Texas 77098
Telephone (713) 520-5757
Facsimile (713) 520-6644
State Bar No. 04702400

ATTORNEY FOR RESPONDENT

NOTICE OF HEARING

A hearing on the foregoing Motion to Suppress Evidence has been set on the 4th day of January, _____ 9:00 o'clock a.m., in the ____th Judicial District Court, Harris County, Texas.

William B. Connolly

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Respondent's Motion to Suppress Evidence was forwarded to **NAME**, Assistant District Attorney, **ADDRESS**, Houston, TX 77002 via certified mail, postage prepaid, messenger delivery or facsimile transmission, return receipt requested on this the ____ day of December, ____.

William B. Connolly

APPENDIX

M

CAUSE NO. _____

IN THE MATTER OF

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

CHILD

___TH JUDICIAL DISTRICT

MOTION IN LIMINE

TO THE HONORABLE JUDGE OF SAID COURT:

This Motion in Limine is brought by _____, Movant. Movant requests the Court:

1. To instruct the attorneys not to mention, refer to, or bring before the jury, directly or indirectly, upon voir dire examination, reading of the pleadings, statement of the case, interrogation of the witnesses, argument, objections before the jury, or in any other manner any of the matters set forth below, unless and until such matters have first been called to the Court's attention out of the presence and hearing of the jury and a favorable ruling received on the admissibility and relevance of such matters.

2. To instruct the attorneys for the Petitioner to inform the Petitioner and all witnesses called by that party to refrain from mentioning or referring to, in any way, in the presence of hearing of the jury, any of the matters enumerated below, unless specifically permitted to do so by ruling of the Court.

3. To instruct the attorneys for Petitioner that violation of any of these instructions may cause harm to Movant and deprive Movant of a fair and impartial trial, and the failure to abide by such instructions may constitute contempt of court.

The matters to be prohibited by this Motion and the Court's Order In Limine are:

1. Any statement, evidence or offer of same suggesting or implying to the jury that Movant has wrongfully and improperly or in any other way moved to prohibit proof.

2. Any statement suggesting, implying or stating that Respondent is a member of any gang; or that Respondent is hanging around or associating with any specific gangs or gang members.

3. Any statement relative to Respondent obtained from any writings which were outside the scope of the search warrant but which were reviewed by the police.

4. Any statement suggesting, implying or stating that Respondent has been accused of, or adjudicated of any other crime or act of delinquent conduct, at any time before or after the incident which is the subject of this trial.

5. Any and all statements of Respondent secured, used and/or maintained in violation of the Texas Family Code.

6. The contents of the Motion in Limine or the Court's ruling thereon.

7. That the Motion in Limine was filed.

Movant prays the Court grant this Motion in Limine.

Respectfully submitted,

WILLIAM B. CONNOLLY & ASSOCIATES

William B. Connolly
2930 Revere, Suite 300
Houston, Texas 77098
Telephone (713) 520-5757
Facsimile (713) 520-6644
State Bar No. 04702400

ATTORNEY FOR MOVANT

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Respondent's Motion in Limine was forwarded to _____, mother of Respondent, ADDRESS, CITY, Texas _____; _____, sister of Respondent, ADDRESS, CITY, Texas _____ and _____, Assistant District Attorney, ADDRESS, Houston, Texas 77002, via certified mail, postage prepaid, messenger delivery or facsimile transmission, return receipt requested on this the ____ day of October, ____.

B. Connolly William

APPENDIX

N

CAUSE NO. _____

IN THE MATTER OF

CHILD

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

____th JUDICIAL DISTRICT

MOTION IN LIMINE

TO THE HONORABLE JUDGE OF SAID COURT:

This Motion in Limine is brought by _____, Movant. Movant requests the Court:

1. To instruct the attorneys not to mention, refer to, or bring before the jury, directly or indirectly, upon voir dire examination, reading of the pleadings, statement of the case, interrogation of the witnesses, argument, objections before the jury, or in any other manner any of the matters set forth below, unless and until such matters have first been called to the Court's attention out of the presence and hearing of the jury and a favorable ruling received on the admissibility and relevance of such matters.

2. To instruct the attorneys for the State to inform all witnesses called by the State to refrain from mentioning or referring to, in any way, in the presence of hearing of the jury, any of the matters enumerated below, unless specifically permitted to do so by ruling of the Court.

3. To instruct the attorneys for the State that violation of any of these instructions may cause harm to Movant and deprive Movant of a fair and impartial trial, and the failure to abide by such instructions may constitute contempt of court.

The matters to be prohibited by this Motion and the Court's Order In Limine are:

1. That Respondent engaged in any other criminal activity or delinquent conduct during or surrounding the allegation of sexual assault as alleged in the Petition.

2. That Respondent engaged in any other uncharged criminal activity or uncharged delinquent conduct subsequent to the alleged sexual assault, but related to the alleged sexual assault in any way.

3. That Respondent engaged in any unadjudicated offense.

4. Any and all statements that Respondent “confessed,” “gave a confession,” “admitted,” or otherwise made an incriminating statement of any kind, without first establishing compliance with §§ 51.09, 51.095, 52.02 and 52.025 of the Texas Family Code, the Texas and/or U.S. Constitution. 5.

Any and all inflammatory and/or prejudicial hearsay statements made by any third persons that amount to a “confession”, “admission” or other incriminating statement of any kind.

6. Any comment, statement or evidence that states or implies that a witness testimony is believable or credible. This is not intended to apply to counsel examinations or argument. However, it specifically applies to police officers, doctors, caseworkers, investigators or other witnesses who might testify that the testimony or statements of someone else are believable or credible. ;

7. The interjection by the District Attorney of his/her personal opinions as to the Respondent, his family or any other adjudication or disposition;

8. Any comment, statement or evidence relative to _____ and his adjudication for aggravated sexual assault;

9. The filing of this motion, or any ruling by the Court on this motion, or any statement, evidence or offer of same suggesting or implying to the jury that Movant has wrongfully and improperly or in any other way moved to prohibit proof; or,

10. The contents of the Motion in Limine or the Court’s ruling thereon.

Movant prays the Court grant this Motion in Limine.

WILLIAM B. CONNOLLY & ASSOCIATES

William B. Connolly
2930 Revere, Suite 300
Houston, Texas 77098
Telephone (713) 520-5757
Facsimile (713) 520-6644
State Bar No. 04702400

ATTORNEY FOR RESPONDENT

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Respondent's Motion In Limine was forwarded to _____, Assistant District Attorney, ADDRESS, Houston, Texas 77002 via certified mail, postage prepaid, messenger delivery or facsimile transmission, return receipt requested on this the ____ day of February, ____.

William B. Connolly

APPENDIX

O

CAUSE NO. _____

IN THE MATTER OF

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

CHILD

____th JUDICIAL DISTRICT

ORDER ON MOTION IN LIMINE

On the ____ day of February ____ came on to be heard Movant _____ Motion in Limine.

The Court finds that violation of any of these instructions may cause harm to Movant and deprive Movant of a fair and impartial trial, and the failure to abide by such instructions may constitute contempt of court.

The Court finds that the Motion In Limine should be granted or denied as follows:

Item No. 1: GRANTED/DENIED

Item No. 2: GRANTED/DENIED

Item No. 3: GRANTED/DENIED

Item No. 4: GRANTED/DENIED

Item No. 5: GRANTED/DENIED

Item No. 6: GRANTED/DENIED

Item No. 7: GRANTED/DENIED

Item No. 8: GRANTED/DENIED

Item No. 9: GRANTED/DENIED

Item No. 10: GRANTED/DENIED

IT IS ORDERED that the attorneys are not to mention, refer to, or bring before the jury, directly or indirectly, upon voir dire examination, reading of the pleadings, statement of the case, interrogation of the witnesses, argument, objections before the jury, or in any other manner any of the matters set forth below,

unless and until such matters have first been called to the Court's attention out of the presence and hearing of the jury and a favorable ruling received on the admissibility and relevance of such matters.

IT IS ORDERED that the attorneys for the Petitioner are to inform the Petitioner and all witnesses called by that party to refrain from mentioning or referring to, in any way, in the presence of hearing of the jury, any of the matters enumerated below, unless specifically permitted to do so by ruling of the Court:

1. That Respondent engaged in any other criminal activity or delinquent conduct during or surrounding the allegation of sexual assault as alleged in the Petition.
2. That Respondent engaged in any other criminal activity or delinquent conduct subsequent to the alleged sexual assault, but related to the alleged sexual assault or prosecution thereof.
3. That Respondent engaged in any unadjudicated offense.
4. Any and all statements that Respondent “confessed,” “gave a confession,” “admitted,” or otherwise made an incriminating statement of any kind, first establishing compliance with § 51.09 Texas Family Code, the Texas and/or U.S. Constitution.
5. Any and all inflammatory and/or prejudicial hearsay statements made by any third persons that amounts to a “confession”, “admission” or other incriminating statement of any kind without first establishing the requisite corroboration or other legal requirements of the Texas Family Code relative to adjudication of a Respondent on the testimony of a third persons.
- f. Any and all statements direct or indirect to expressions or gestures that state or imply that a witness testimony is believable or not believable;
7. The interjection by the District Attorney of his/her personal opinions as to the Respondent, his family, adjudication, disposition or;
8. Any comment, statement or evidence relative to _____ and his adjudication for aggravated sexual assault;
9. The filing of this motion, or any ruling by the Court on this motion, or any statement, evidence or offer of same suggesting or implying to the jury that Movant has wrongfully and improperly or in any other way moved to prohibit proof.
10. The contents of the Motion in Limine or the Court’s ruling thereon.

SIGNED this the ____ day of February, ____.

Judge Presiding

APPROVED:

WILLIAM B. CONNOLLY & ASSOCIATES

William B. Connolly
2930 Revere, Suite 300
Houston, Texas 77098
Telephone: (713) 520-5757
Facsimile: (713) 520-6644
State Bar No. 04702400

ATTORNEY FOR RESPONDENT

Assistant District Attorney

Houston, Texas 77002
Telephone: _____
Facsimile: _____
State Bar No. _____

ASSISTANT DISTRICT ATTORNEY

APPENDIX

P

NO. _____

IN THE MATTER OF:

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

MINOR CHILD

___TH JUDICIAL DISTRICT

REQUESTED SPECIAL CHARGE

_____ requests that the Court submit to the jury the instructions attached to and made a part of this request. This request is made before the Court has given the charge to the jury.

Respectfully submitted,

WILLIAM B.

CONNOLLY & ASSOCIATES

William B. Connolly
2930 Revere, Suite 300
Houston, Texas 77098
Telephone (713) 520-5757
Facsimile (713) 520-6644
State Bar No. 04702400
ATTORNEY FOR RESPONDENT

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Respondent's Requested Special Charge was forwarded to _____, Assistant District Attorney, ADDRESS, Houston, Texas 77002 via certified mail, postage prepaid, messenger delivery or facsimile transmission, return receipt requested on this the ____ day of February, ____.

William B. Connolly

SPECIAL INSTRUCTION 1

To find a person criminally responsible for an offense committed by the conduct of another that person must act with intent to promote or assist the commission of the offense, solicit, encourage, direct, aid, or attempt to aid the other person to commit the offense.

The foregoing special charge was duly and timely requested and is GIVEN/REFUSED, and it is so ORDERED.

SIGNED on the ___ day of _____, YEAR

JUDGE PRESIDING

SPECIAL INSTRUCTION 1 (COURT'S COPY)

To find a person criminally responsible for an offense committed by the conduct of another that person must act with intent to promote or assist the commission of the offense, solicit, encourage, direct, aid, or attempt to aid the other person to commit the offense. **§ 7.02(a)(2) TEXAS PENAL CODE.**

SPECIAL INSTRUCTION 2

The mere presence at the scene of the crime is not enough for an adjudication under the law of parties--there must be some evidence of an affirmative act on the Respondent's part to assist in the commission of the offense. Where the Respondent is physically present at the commission of the offense, the Respondent must encourage the commission of the offense either by words or other agreement, to support an adjudication under the law of parties.

The foregoing special charge was duly and timely requested and is GIVEN/REFUSED, and it is so ORDERED.

SIGNED on the ____ day of _____, YEAR

JUDGE PRESIDING

SPECIAL INSTRUCTION 2 (COURT'S COPY)

The mere presence at the scene of the crime is not enough for an adjudication under the law of parties--there must be some evidence of an affirmative act on the Respondent's part to assist in the commission of the offense. **Blake v. State, 971 S.W.2d 451, 454 (Tex. Crim. App. 1998); Kunkle v. State, 771 S.w.2d 435, 440 (Tex. Crim. App. 1986)**. Where the Respondent is physically present at the commission of the offense, the Respondent must encourage the commission of the offense either by words or other agreement, to support an adjudication under the law of parties. **Ransom v. State, 920 S.W.2d 288, 302 (Tex. Crim. App. 1994)**.

SPECIAL INSTRUCTION 3

In order to find the Respondent engaged in delinquent conduct as a party to the aggravated robbery, you must find that the Respondent personally used or exhibited a deadly weapon during the commission of the aggravated robbery.

The foregoing special charge was duly and timely requested and is GIVEN/REFUSED, and it is so ORDERED.

SIGNED on the ____ day of _____, YEAR

JUDGE PRESIDING

SPECIAL INSTRUCTION 3 (COURT'S COPY)

In order to find the Respondent engaged in delinquent conduct as a party to the aggravated robbery, you must find that the Respondent personally used or exhibited a deadly weapon during the commission of the aggravated robbery. **In the Matter of A.F., 895 S.W.2d 481, 486 (Tex. App.– Austin 1995, no writ); Robert O. Dawson, *The Third Justice System: The New Juvenile-Criminal System of Determinate Sentencing for the Youthful Violent Offender in Texas*, 19 ST. MARY'S L.J. 943, 997-98 (1988).**

APPENDIX

Q

CAUSE NO. _____

IN THE MATTER OF

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

CHILD

___TH JUDICIAL DISTRICT

**RESPONDENT’S REQUESTED INSTRUCTIONS
ON POSSESSION AND KNOWLEDGE**

COMES NOW, _____, Respondent and files this her Respondent’s Requested Instructions on Possession and Knowledge and requests the Court to include the attached instructions in the Court’s Charge.

Respectfully submitted,

WILLIAM B. CONNOLLY & ASSOCIATES

William B. Connolly
2930 Revere, Suite 300
Houston, Texas 77098
Telephone: (713) 520-5757
Facsimile: (713) 520-6644
State Bar No. 04702400

ATTORNEY FOR RESPONDENT

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Respondent’s Requested Instructions on Possession and Knowledge was forwarded to **NAME**, Mother of Respondent, ADDRESS, Houston, Texas 77___; **NAME**, Sister of Respondent, ADDRESS, Houston, Texas 77__ and **NAME**, Assistant District Attorney, ADDRESS, _____, Houston, Texas 77002, via certified mail, postage prepaid, messenger delivery or facsimile transmission, return receipt requested on this the ___ day of October, ____.

William B. Connolly

RESPONDENT'S REQUESTED INSTRUCTION REGARDING POSSESSION

MEMBERS OF THE JURY

You are instructed that the term “possession” refers to the actual care, custody, control, or management of the substance involved. Further, possession is considered to be a voluntary act when the possessor knowingly obtains or receives the substance possessed or is aware of his/her control of the substance for a sufficient period of time to permit him/her to terminate that control. An affirmative link between the Respondent and the controlled substance must be made in such a manner and to such an extent that it may be reasonably inferred the defendant knew of the existence of the controlled substance and exercised control over it. An awareness of the whereabouts of the controlled substance is an essential ingredient of the culpable act of possession. Mere presence of Respondent at the location where a controlled substance was found is by itself insufficient to establish that Respondent possessed the controlled substance. Respondent’s mere connection to the residence which was occupied and used by others is, by itself, not sufficient to support an adjudication.

Therefore, if you find from the evidence beyond a reasonable doubt that on or about April 20, _____, in Harris County, Texas, cocaine was found at ADDRESS/LOCATION; but you further find from the evidence that the Respondent did not voluntarily possess the cocaine, or if the prosecution has failed to persuade you beyond a reasonable doubt that the Respondent did voluntarily and knowingly possess the cocaine, as that term has been previously defined, you will acquit the Respondent and say by your verdict that she “did not” engage in the delinquent conduct of possession of cocaine.

RESPONDENT'S REQUESTED INSTRUCTION REGARDING KNOWLEDGE

MEMBERS OF THE JURY

You are instructed that if you find from the evidence that the Respondent did not know that the cocaine introduced into evidence by the State was at ADDRESS/LOCATION at the time of its seizure, and that such cocaine was not otherwise the Respondent's personal property, or if the prosecution has failed to persuade you beyond a reasonable doubt that the Respondent did have this knowledge, you will acquit the Respondent and say by your verdict that Respondent did not engage in the delinquent conduct of possession of cocaine.

APPENDIX

R

CAUSE NO. _____

IN THE MATTER OF

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

CHILD

___TH JUDICIAL DISTRICT

**ORDER ON RESPONDENT’S REQUESTED INSTRUCTIONS
ON POSSESSION AND KNOWLEDGE**

On this the ____ day of MONTH, YEAR, the Court reviewed Respondent’s Requested Instructions on Possession and Knowledge. After hearing arguments of counsel, the Court finds that Respondent’s Requested Instructions on Possession is:

ACCEPTED

REFUSED

Respondent’s Requested Instructions on Knowledge is

ACCEPTED

REFUSED

Signed on this the ____ day of MONTH, YEAR.

JUDGE PRESIDING

NO. _____

IN THE MATTER OF:

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

MINOR CHILD

___TH JUDICIAL DISTRICT

MOTION FOR NEW TRIAL

COMES NOW, _____, Respondent (hereinafter referred to as “Respondent”), and files this his Motion for New Trial and in support thereof would respectfully show the Court the following:

I.

Judgment and Grounds in Support of New Trial

On November 17, ____ this Court entered Judgment on the Jury Verdict. A true and correct copy of the Order and Judgment of the Court are attached hereto as Exhibit(s) ‘A’ and ‘B’ and are incorporated herein for all purposes. Respondent would show that in addition to any other grounds which may be raised in his Appellant’s Brief, he is entitled to a new trial on each of the following separate grounds individually, and on all grounds collectively:

8. The Trial Court erred in denying Respondent’s Motion to Suppress because the uncontroverted testimony revealed that Respondent was “**in custody**” when the statement was made and taken, and;

1. Respondent, in writing, refused to waive (and thereby invoked) his rights;
2. Even assuming Respondent said that he wanted to make a statement, once he refused to waive his rights, it was the exclusive province of counsel to decide with him whether or not he should make a statement. **Minnick v. Mississippi, 498 U.S. 146, 153 (1990); Dinkins v. State, 894 S.W.2d 330, 350 (Tex. Crim. App. 1995).**

Neither the magistrate nor the police should have spoken to Respondent about any contradictory statements or desires. Respondent was entitled to counsel as a matter

of law. In the alternative, under the totality of the circumstances, Respondent was entitled to counsel. Accordingly, the Motion to Suppress should have been granted; and,

3. Respondent's parents were not notified that he was in custody before Respondent gave his statement. **TEX. FAM. CODE §§ 52.02 (a)(1), 52.025 (c);**
9. The evidence was legally and factually insufficient to support the verdict of the jury. In this regard, without corroboration, the testimony of _____ was insufficient, as a matter of law, to support the adjudication. **TEX. FAM. CODE § 54.03 (e).** The victim, _____ could not identify Respondent as even being present during the aggravated robbery committed by _____. The only legally and factually sufficient evidence supporting this judgment is Respondent's statement which should have been suppressed. If Respondent's statement is ruled inadmissible, the evidence would be both legally and factually insufficient to support the findings of the jury and the Judgment of the Court. Accordingly, the case should be reversed and rendered or alternatively, reversed and remanded for a new trial;
10. The Trial Court erred in denying Respondent's objection to the charge and request for a jury instruction (in the disposition phase of the trial), that any extraneous offenses must be proven beyond a reasonable doubt. **TEX. CODE CRIM. P. Art. 37.07 § 3(a).** While some of the extraneous offenses amounted to nothing more than suggestion, specific testimony was made by one of the officers of an aggravated assault. However, the victim of the alleged aggravated assault specifically denied, under oath, at least one of the essential elements of the offense of aggravated assault. The absence of such a charge instruction allowed the jury to improperly consider this evidence in assessing the disposition. Accordingly, the case should be reversed and remanded for a new trial;

11. The Trial Court erred in refusing Respondent's request for a jury finding on whether his statement was given voluntarily; and,
12. The Trial Court erred in denying Respondent's Motion for Mistrial when the bailiff of the Court kept Respondent in the hallway in front of the jurors, in detention clothes, for a substantial length of time, without sufficient cause. In this regard, the holdover has a restroom and no evidence was provided that it was at all necessary to have Respondent in front of the jury dressed in his detention clothes. Furthermore, Respondent was kept in the hallway for longer than was necessary to use a restroom. Such actions on behalf of the bailiff were extremely prejudicial to the Respondent and infringed upon his constitutional rights.

WHEREFORE PREMISES CONSIDERED, Respondent prays that the Court grant his Motion for New Trial and for such other relief as is just.

Respectfully submitted,

WILLIAM B. CONNOLLY & ASSOCIATES

William B. Connolly
2930 Revere, Suite 300
Houston, Texas 77098
Telephone (713) 520-5757
Facsimile (713) 520-6644
State Bar No. 04702400

ATTORNEY FOR RESPONDENT

NOTICE OF HEARING

A hearing on the foregoing Motion New Trial has been set on the ____ day of January, _____, at 9:00 o'clock a.m., in the ____th Judicial District Court, Harris County, Texas.

William B. Connolly

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Respondent's Motion for New Trial was forwarded to _____, Assistant District Attorney, ADDRESS, Houston, TX 77002 via certified mail, postage prepaid, messenger delivery or facsimile transmission, return receipt requested on this the ____ day of December, ____.

William B. Connolly

NO. _____

IN THE MATTER OF:

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

MINOR CHILD

___TH JUDICIAL DISTRICT

NOTICE OF APPEAL

COMES NOW, _____, Respondent, and gives this his notice of his desire to appeal the judgment in this case to either the First or Fourteenth Court of Appeals. This Court rendered Judgment against Respondent and in favor of Petitioners, The State of Texas, on November 17, _____. A Motion for New Trial was filed on December 17, _____, and denied January 10, _____. The deadline for filing this notice of appeal is February 15, _____. A true and correct copy of this Court's Judgment is attached hereto as Exhibit "A" and is incorporated herein by reference for all purposes.

Respectfully submitted,

WILLIAM B. CONNOLLY & ASSOCIATES

William B. Connolly
2930 Revere, Suite 300
Houston, Texas 77098
Telephone (713) 520-5757
Facsimile (713) 520-6644
State Bar No. 04702400
ATTORNEY FOR RESPONDENT

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Notice of Appeal was served upon _____, Assistant District Attorney, ADDRESS, Texas 77002, and _____, Chief Appellate Assistant District Attorney, _____, _____, Houston, Texas 77002 via certified mail, facsimile transmission or messenger delivery, return receipt requested on this the ____ day of February, _____.

William B. Connolly

APPENDIX

U

CAUSE NO. _____

IN THE MATTER OF

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

CHILD

____th JUDICIAL DISTRICT

MOTION TO MODIFY DISPOSITION

COMES NOW, _____, a Juvenile who has been adjudicated as having engaged in delinquent conduct and files this his Motion to Modify Disposition, and in support thereof, respectfully shows the Court the following:

13. On the March 25, _____, _____ was adjudicated for the delinquent conduct of Indecency with a Child.

14. Since the time of the incident, _____ has been engaged in counseling with two(2) separate Mental Health Professionals, including completing the sex offender program at _____. _____ has never tried to deny this offense; never tried to avoid responsibility for his conduct; has acknowledged it to be wrong ; has sought assistance to re-establish his trustworthiness. He presents no behavior problems at home, has had no subsequent referrals to the authorities for delinquent conduct and has been an exemplary student without any disciplinary referrals at school.

15. Respondent turns 18 years old on April 30, _____.

WHEREFORE, PREMISES CONSIDERED, _____ prays this Court discharge him from the sentence of probation on or before his 18th birthday.

Respectfully submitted,

WILLIAM B. CONNOLLY & ASSOCIATES

William B. Connolly
State Bar No. 04702400
2930 Revere, Suite 300
Houston, Texas 77098
Telephone (713) 520-5757

Facsimile (713) 520-6644

ATTORNEY FOR MOVANT

NOTICE OF HEARING

A hearing on the foregoing Motion to Modify Disposition has been set on the ___ day of April, 200_, at 9:00 o'clock a.m., in the —_Judicial District Court, Harris County, Texas.

William B. Connolly

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Motion to Modify Disposition was forwarded to _____, Assistant District Attorney, ADDRESS, Houston, Texas 77002, via certified mail, postage prepaid, messenger delivery or facsimile transmission, return receipt requested on this the ___ day of April, ____.

William B. Connolly

APPENDIX

V

CAUSE NO. _____

IN THE MATTER OF

CHILD

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

____th JUDICIAL DISTRICT

RESPONDENT'S BRIEF

COMES NOW, _____, Respondent and files his Respondent's Brief on the question of the Court' authority to reduce a probation term prior to transferring a case to adult supervision.

I.

INITIAL TERMS, EXTENSION AND DISCHARGE

If a Court places a child adjudicated for a felony sexual offense on probation, the probation period must be set at a minimum 2 year term. §54.04(p) The Court may, before the period of probation ends or the child turns 18, extend the probation or discharge the child from the sentence of probation. §54.04(q) It makes little sense that the Court is given two extremes to work with, completely discharging the child from probation or extending the probation up to 10 years, but is somehow prohibited from working on middle ground and reducing a term of probation. Provided the Court remains in the parameters of §54.04(p), there is no language or case law prohibiting the Court from reducing the term of probation to some period of time less than the term originally set, if the Court feels the circumstances allow for a different disposition to be entered in the case.

II.
MODIFICATION

Section 54.05 allows for *any disposition* to be modified by the juvenile court until the child reaches his 18th birthday. A hearing to modify the disposition shall be held on the petition of the *child* and his parent, guardian, or attorney, the probation officer, the state or the Court itself. §54.05(d) While modification can include an extension or termination of probation, there is no limiting language in the

statute that prevents the court from *reducing* the term of probation. Furthermore, the fact that **§54.05(d)** allows for the child himself to bring the petition to modify suggests that the idea of reduction of a term of probation was anticipated. Respondent seeks a discharge from probation. Alternatively, Respondent requests that the probation term be reduced from 4 years to 18 months. Respondent further requests that the Court requires Respondent to complete the _____ treatment program and otherwise impose the conditions of a juvenile probation rather than allowing the District Court to set the terms of community supervision.

WHEREFORE PREMISES CONSIDERED, Respondent prays that the Court discharge him from probation before his 18th birthday. Alternatively, Respondent prays the Court to modify the term of probation from 4 years to 18 months and specify the terms of such probation. Respondent prays for general relief.

Respectfully submitted,

WILLIAM B. CONNOLLY & ASSOCIATES

William B. Connolly
2930 Revere, Suite 300
Houston, Texas 77098
Telephone (713) 520-5757
Facsimile (713) 520-6644
State Bar No. 04702400

ATTORNEY FOR RESPONDENT

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Respondent's Brief was forwarded to _____, Assistant District Attorney, ADDRESS, Houston, Texas 77002, via certified mail, postage prepaid, messenger delivery or facsimile transmission, return receipt requested on this the 29th day of April, _____.

William B. Connolly

APPENDIX

W

CAUSE NO. _____

IN THE MATTER OF

CHILD

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

____th JUDICIAL DISTRICT

**MOTION TO EXCUSE COMPLIANCE WITH SEX
OFFENDER REGISTRATION REQUIREMENTS**

COMES NOW, _____, a Juvenile who has been adjudicated as having engaged in delinquent conduct as a sex offender and files this his Motion to Excuse Compliance with Sex Offender Registration Requirements, and in support thereof, respectfully shows the Court the following:

16. On the March 25,2002, _____ was adjudicated for the delinquent conduct of Indecency with a Child. Pursuant to the requirements set forth in the Chapter 62 of the Texas Code of Criminal Procedure, _____ would ordinarily be required to register as a sex offender. However, as a result of a plea agreement, registration was deferred until Respondent fulfilled the ADAPT counseling program. Accordingly, by the time this Motion is heard, Respondent has completed the program and Respondent would show the following facts, among other facts, support this motion. This offense took nearly two (2) years to prosecute. Since the time of the incident, ____ has been engaged in counseling with two(2) separate Mental Health Professionals. ____ has never tried to deny this offense; never tried to avoid responsibility for his conduct; has acknowledged it to be wrong ; has sought assistance to re-establish his trustworthiness. He presents no behavior problems at home, has had no subsequent referrals to the authorities for delinquent conduct and has been an exemplary student without any disciplinary referrals at school.

17. The protection of the public would not be increased by the registration of _____ under Chapter 62 of the Texas Code of Criminal Procedure;

18. Any potential increase in protection of the public resulting from registration is clearly outweighed by the substantial harm to _____ and _____'s family that would result from continued registration under Chapter 62 of the Texas Code of Criminal Procedure;

19. In the alternative, _____'s registration as a sex offender should be made nonpublic and restricted to use by law enforcement and criminal justice agencies.

WHEREFORE, PREMISES CONSIDERED, _____ prays this Court excuse him from compliance with the sex offender registration requirement or, in the alternative, order his registration be made nonpublic.

Respectfully submitted,

APPENDIX

X

CAUSE NO. _____

IN THE MATTER OF

CHILD

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

____th JUDICIAL DISTRICT

ORDER EXCUSING SEX OFFENDER REGISTRATION

On this the 28th day of April, _____, come on to be heard Respondent, _____'s Motion requesting that sex offender registration be excused.

After due notice had been served on all parties, came and appeared _____, Respondent and his Attorney, William B. Connolly and Respondent's parents as well as _____, Assistant District Attorney. All parties announced ready; and thereupon the court, after hearing the pleadings of all parties and hearing the evidence and argument of counsel, makes the following finding:

- d. The interests of the public do not require registration under Chapter 62 of the Texas Code of Criminal Procedure; and
- e. The protection of the public would not be increased by registration of the Respondent under Chapter 62 of the Texas Code of Criminal Procedure; or
- f. Any potential increase in protection of the public resulting from registration is clearly outweighed by any anticipated substantial harm to the Respondent and the Respondent's family that would result from registration under Chapter 62 of the Texas Code of Criminal Procedure.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Respondent shall be excused from all registration that would otherwise be required under Chapter 62 of the Texas Code of Criminal Procedure as a result of any adjudication in this cause.

SIGNED this the ____ day of April, 200__.

JUDGE PRESIDING

APPROVED:

WILLIAM B. CONNOLLY & ASSOCIATES

William B. Connolly
State Bar No. 04702400
2930 Revere, Suite 300
Houston, Texas 77098
Telephone (713) 520-5757
Facsimile (713) 520-6644

ATTORNEY FOR RESPONDENT

Assistant District Attorney

Houston, Texas 77002
Telephone (713) _____
Facsimile (713) _____

ATTORNEY FOR PETITIONER

APPENDIX

Y

NO. _____

IN THE MATTER OF:

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

MINOR CHILD

___TH JUDICIAL DISTRICT

MOTION TO SEAL FILES AND RECORDS

This Motion is being brought by _____ (Respondent in this case, but for purposes of this Motion, Respondent will be called Movant).

I.

FACTS AUTHORIZING SEALING OF RECORDS

This Motion is being brought pursuant to the provision of § 58.003(a) and (d) of the Texas Family Code. In support of this Motion, Movant would show the Court the following:

1. Movant is ___ years of age, having been born on December 9, _____;
2. Movant’s Juvenile Number is _____ and Afis # is _____;
3. Movant was charged by Petition with Aggravated Robbery which was alleged to have occurred on November 24, _____;
4. On the 14th day of May, _____, the Court entered an Order of Nonsuit in the cause at the request of the Harris County District Attorney because of insufficient evidence and advised Movant of his right to seal the records of his cause; and,
5. Movant is now eligible to have his records sealed under the provisions of § 58.003(a) and (d) of the Texas Family Code.

II.

OFFICIALS, PUBLIC, AND PRIVATE ENTITIES AND AGENCIES WITH RECORDS

Movant has reason to believe that the following entities have records pertaining to Movant, his detention, custody, charge, investigation and trial and/or repercussions stemming from same:

1. Houston Police Department
Custodian of Records
1200 Travis Street, 23rd Floor
Houston, Texas 77002

2. Harris County Juvenile Probation Department
Custodian of the Records
3540 West Dallas
Houston, Texas 77002

3. Harris County District Attorney's Office
_____, Assistant District Attorney
1201 Franklin Street
Houston, Texas 77002

4. T.C.I.C.
c/o Texas Department of Public Safety
c/o Crime Records Service
5805 North Lamar
Austin, Texas 78765
Re: AFIS # _____

5. N.C.I.C.
c/o Federal Bureau of Investigation
2500 East T.C. Jester #200
Houston, Texas 77008
Re: AFIS # _____

6. Harris County Sheriff's Department
Criminal Records Division
1301 Franklin
Houston, Texas 77002
Re: AFIS # _____

7. Brown School Excel Academy
Custodian of Records
2525 Murworth
Houston, Texas 77054
re: JUV# _____
Cause No. _____

8. Harris County District Clerk's Office
Hon. Charles Bacarisse
District Clerk
Juvenile Trial Division
1115 Congress, 4th Floor
Houston, Texas 77002

9. ___th Judicial District Court
Hon. Charles Bacarisse
District Clerk
Juvenile Trial Division
1115 Congress
Houston, Texas 77002

Movant requests that notice issue to the above entities and agencies and that, after a hearing, all of the records be sealed.

WHEREFORE, PREMISES CONSIDERED, Movant prays that all files and records pertaining to him and this case be sealed.

Respectfully submitted,

WILLIAM B. CONNOLLY & ASSOCIATES

William B. Connolly
2930 Revere, Suite 300
Houston, Texas 77098
Telephone (713) 520-5757
Facsimile (713) 520-6644
State Bar No. 04702400

ATTORNEY FOR MOVANT

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Notice of Appeal was served upon **NAME**, Assistant District Attorney, 1201 Franklin, 6th Floor, Houston, Texas 77002; **NAME**, Houston Police Department, 1200 Travis Street, 23rd Floor, Houston, Texas 77002; **NAME**, Harris County Juvenile Probation, 3540 West Dallas, Houston, Texas 77019; T.C.I.C., c/o Texas Department of Public Safety, c/o Crime Records Service, 5805 North Lamar, Austin, Texas 78765; N.C.I.C., c/o Federal Bureau of Investigation, 2500 East T.C. Jester #200, Houston, Texas 77008; Harris County Sheriff's Department, Criminal Records Division, 1301 Franklin, Houston, Texas 77002; Brown School Excel Academy, **NAME**, Custodian of Records, 2525 Murworth, Houston, Texas 77054; Hon. Charles Bacarrise, Harris County District Clerk, Juvenile Trial Division, 1115 Congress, 4th Floor, Houston, Texas 77002; and, ___th District Court, c/o Hon. Charles Bacarrise, District Clerk, 1115 Congress, 4th Floor, Houston, Texas 77002, via certified mail, facsimile transmission or messenger delivery, return receipt requested on this the _____ day of February, _____.

William B. Connolly

APPENDIX

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NO. _____

IN THE MATTER OF:

MINOR CHILD

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IN THE DISTRICT COURT

HARRIS COUNTY, TEXAS

___TH JUDICIAL DISTRICT

ORDER SEALING FILES AND RECORDS

On this the ____ day of June, ____, came to be heard Movant’s Motion to Seal Files and Records.

The Court finds that Movant was taken into custody and was charged with delinquent conduct for the offense of Deadly Conduct, said offense having allegedly occurred on or about November 25, _____. The Court further find that on May 14, ____, the Court entered an Order on the District Attorney’s Motion to Non-Suit for insufficient evidence. Accordingly, the Court finds this Motion should be GRANTED.

THEREFORE IT IS ORDERED THAT:

- 23. All of the files and records in the case of _____, date of birth December 8, ____, Juvenile Number _____, AFIS # _____ that relate to allegations that Movant was accused, detained, questioned, disciplined, and/or taken into custody concerning the offense of Deadly Conduct which allegedly occurred on or about November 25, ____, should be sealed.
- 24. Each agency or official listed below shall send to this Court all files and records ordered sealed within 61 days of the date that this order is received.
- 25. Each agency or official listed on Exhibit “A” attached hereto shall delete from its records all index references to the files and records ordered sealed before the sixty-first (61st) day after the receipt of this order.
- 26. IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Official Custodian of all such files and records, including fingerprints and/or photographs with respect to _____ shall honor in all respects this Order and shall provide written confirmation of compliance with this Order Sealing Files and Records by filing same among the papers in this cause within sixty-one (61) days of the receipt of this Order and simultaneously to William B. Connolly, Attorney at Law, 2930 Revere, Suite 300, Houston, Texas 77098 by Certified Mail, Return Receipt Requested.
- 27. Each agency that has forwarded any records covered by this Order shall notify all such persons or agencies to whom the recors were sent of this sealing Order and shall request return of all such records and deletion of all computer records relating to the subject of this sealing Order. The notification set forth above shall request that each such agency confirm,

in writing, the deletion of all computer records and the return of all such written records on or before the sixty-first (61st) day after such notice is received.

28. The Texas Department of Public Safety shall request the FBI to return any and all records and confirm the deletion of all computer records relating tot he subject matter of this sealing Order.
29. Each agency shall reply on inquiry that no record exists with respect to _____, Movant.
30. In the event the above and foregoing public or private agency, institution, or officials cannot seal the records because there is insufficient or incorrect information as sated in the Order, they are hereby ORDERED to noitify the Clerk of this Court and the Movant's attorney, William B. Connolly, at 2930 Revere, Suite 300, Houston, Texas 77098 before the sixty-first (61st) day after the public or private agency, institution, or official receives this Order of their inability to comply with the Court's Order.
31. The clerk of the court shall send a certified copy of this Order to each agency named in the Application to Seal Records.
32. A non-suit order has been entered by the ___th Judicial District Court of Harris County, Texas, in response to the District Attorney's Motion that there was insufficient evidence to proceed against Movant. All prior orders are hereby vacated, and the prior proceedings herein are hereby dismissed and are to be treated for all purposes as if they never occurred.

SIGNED AND ENTERED on this the ___ day of June, ____.

JUDGE PRESIDING

APPROVED:

WILLIAM B. CONNOLLY & ASSOCIATES HARRIS COUNTY DISTRICT ATTORNEY

William B. Connolly
2930 Revere, Suite 300
Houston, Texas 77098
Telephone (713) 520-5757
Facsimile (713) 520-6644
State Bar No. 04702400

ATTORNEY FOR MOVANT

NAME OF DA
Assistant District Attorney
ADDRESS
Houston, Texas 77002
Telephone:
Facsimile:
State Bar No.
ATTORNEY FOR STATE OF TEXAS

EXHIBIT "A"

1. Houston Police Department
Custodian of Records
1200 Travis Street, 23rd Floor
Houston, Texas 77002
2. Harris County Juvenile Probation Department
Custodian of the Records
3540 West Dallas
Houston, Texas 77002
3. Harris County District Attorney's Office
_____, Assistant District Attorney
1201 Franklin Street
Houston, Texas 77002
4. T.C.I.C
c/o Texas Department of Public Safety
c/o Crime Records Service
5805 North Lamar
Austin, Texas 78765
Re: AFIS # _____
5. N.C.I.C.
c/o Federal Bureau of Investigation
2500 East T.C. Jester #200
Houston, Texas 77008
Re: AFIS # _____
6. Harris County Sheriff's Department
Criminal Records Division
1301 Franklin
Houston, Texas 77002
Re: AFIS # _____
7. Brown School Excel Academy
Custodian of Records
2525 Murworth
Houston, Texas 77054
re: JUV# _____
Cause No. _____
8. Harris County District Clerk's Office
Hon. Charles Bacarisse
District Clerk
Juvenile Trial Division
1115 Congress, 4th Floor
Houston, Texas 77002

9. ____th Judicial District Court
Hon. Charles Bacarisse
District Clerk
Juvenile Trial Division
1115 Congress
Houston, Texas 77002