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**Ethical Considerations and Practical Distinctions  
between Juvenile and Criminal Law**

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## History of Juvenile Law in Texas

The history of Texas juvenile law dates back to 1836 when the Republic of Texas established the age of eight as the age of criminal responsibility. Eighty two years would pass (1918) before that age would be raised to the current age of seventeen. In 1943, the Texas legislature adopted special civil procedures to replace the current criminal procedures that were in place to deal with juveniles charged with a criminal offense.

It was the landmark case of *Morales v. Truman* 1971 326 F. Supp (E.D. Tex 1971), which led to sweeping changes to the Texas juvenile justice system. The case involved 15 year old Alicia Morales who was forced to work and surrender all of her income to her father. She became defiant of this practice, and in response, her father had her committed to the Texas Youth Commission. Ms. Morales never received notice of the charge against her, was never given an opportunity to be heard in court, and was never provided with legal counsel. In short, her due process rights were denied in several ways.

To gauge the extent of such violations, letters were sent to all 2,500 currently incarcerated TYC youths inquiring if they had been given the opportunity to have a hearing before their adjudication and sentencing, and if they had been represented by counsel. The majority had been given a hearing, but over 1/3 had not been represented by an attorney. The letters were followed by individual interviews of the confined youths. What the Court found was that 60% of the boys incarcerated in TYC were in custody for the offense of theft, 19% for disobedience and immoral conduct, and only 9% for violent crimes. For girls the numbers were even more staggering, 68% were confined for disobedience and immoral conduct and only 4% for violent crimes.

After years of negotiations, including a hearing before the U.S. Supreme Court, a settlement was reached in 1984. The *Morales* case prompted a number of changes in Texas. They included:

1. a separate category for juvenile court dispositions called “conduct indicating a need for supervision” CINS;
2. due process rights in juvenile court hearings and TYC administrative hearings;
3. corporal punishment prohibition;

4. the development of individualized, specialized and community based treatment programs; and
5. the appropriation of State funds to assist counties in providing probation services.

## **Juvenile vs. Criminal Law-An Overview**

The fundamentals of the two systems can be found in three different Texas codes. The juvenile system is outlined in the **Texas Family Code (FC)** and the criminal system can be found primarily in the **Texas Penal Code (PC)** and the **Texas Code of Criminal Procedure (CCP)**.

There are basic similarities that exist in the two systems which include such items as; the right to receive Miranda warnings, the right to be free from self-incrimination, the right to an attorney at the critical stages of the court process, plea bargaining, the right to a jury at the delinquent/not delinquent or guilty/not guilty stage of a trial, the requirement that the State prove its case beyond a reasonable doubt, pretrial detention, community supervision (probation), community service hour requirements, and restitution when appropriate.

Differences in the two systems largely exist because of the distinction of their purposes. The juvenile system's principal function is to protect and rehabilitate a delinquent child. While it can be argued, the main goal of the adult system is to punish the guilty.

Even the terminology created for the juvenile system is one based on civil rather than criminal standards. A juvenile is referred to as a respondent, not as a defendant and a juvenile is alleged to have committed a delinquent act rather than a criminal offense. A juvenile is generally not charged by an indictment or information, but rather; he is brought before a juvenile court by the filing of a petition. A juvenile is not arraigned in court at his first appearance, but is held to appear for a detention hearing. While a juvenile is detained and adjudicated, an adult is arrested and convicted. Age determines the jurisdiction of the juvenile court while the type of offense determines the jurisdiction of the criminal court. Juvenile court procedures are usually informal and may be held privately, while criminal court procedures are more formal and open to the public.

Identifying information about a juvenile, as a rule, cannot be released to the media while information about an accused adult offender is considered public information. In the juvenile system parents/guardians are encouraged and sometimes required to be involved in their child's rehabilitation, but not so in the adult system. A juvenile may be released into the custody of a parent/guardian while an adult will typically be required to post bail. Under most circumstances a juvenile's adjudication/disposition record will be eligible for sealing, while an adult has only limited circumstances where an Expunction or Order of Non-Disclosure may be granted. A juvenile who is certified as an adult cannot be sentenced to death for an offense which occurred before the juvenile was 18 years of age, while an adult ... this is Texas no more needs to be said. Finally, the juvenile court's main objective is to focus on the best interests of the child in determining what services or protections are needed to benefit the juvenile, while the criminal court generally focuses on invoking a punishment proportionate to the crime.

## **Pretrial Issues**

**Discovery-** The rules regarding discovery can be found under Section 51.17(b) of the Texas Family Code. *Discovery in a proceeding under this title is governed by the Code of Criminal Procedure and by case decisions in criminal cases.* Even though juvenile cases are civil in nature, the rules of criminal discovery apply. Most of the discovery rules can be found under CCP Article 39.14. Unlike in a civil action, a juvenile, as well as an adult, is not entitled to interrogatories, requests for productions or admissions, or for depositions except in rare situations (see CCP Article 39.02). One exception to the discovery rules can be found under CCP Article 39.14(b) which requires either party to disclose the name and address of each person the non-moving party intends to use at trial as an expert.

Upon a motion by the juvenile, the court will order, either before or during trial, the State to allow the inspection, copying or photographing of any designated documents, papers, written statements of the juvenile, books, accounts, letters, photographs, objects or tangible things not privileged, which are material to the case and are in the possession

of the State or its agencies. The State is not required to produce work product of the prosecutors or their investigators.

**Criminal Case Law-** This is also derived from Section 51.17(b) of the Texas Family Code.

*McBride v. State*, 38 S.W.2d 248 (Tex. Crim. App. 1975) - A child has the absolute right to an independent inspection (of physical evidence) which means “testing” of evidence “indispensable” to the State’s case. An expert for a juvenile should be procured to inspect and examine physical evidence. This may include such items as ballistics, fingerprints, drugs, weapons and bodily fluids.

*Brady v. Maryland*, 373 U.S. 83(1963) - The State has the duty to produce any exculpatory, mitigating, or impeaching evidence. **See Texas Disciplinary Rules of Professional Conduct 1.01, 3.03(a) 1-5, 3.04(a), 3.09(d), 5.01**

*Ake v. Oklahoma*, 470 U.S. 68 (1985) It is imperative for an attorney to avail his client to the assistance of an expert witness. This includes indigent juveniles. If a juvenile can make a preliminary showing for the need of an expert to assist him for an issue that appears to be significant to the case, due process requires the court to provide access to an expert. In such a case the child is entitled to his own expert as part of the defensive team and this appointment should be done ex parte. An indigent juvenile should not have to reveal his defensive strategy because he must rely on a court appointed expert.

Specifically for juveniles, an indigent child is entitled to expert assistance at the release/transfer hearing in accordance with due process. Failure to seek the assistance of a mental health provider amounted to ineffective assistance of counsel. *In the Matter of R.D.B.*, 20 S.W.3<sup>rd</sup> 255 (Tex. App-Texarkana 2000)

*Ex parte Briggs*, 187 S.W.3d 458 (Tex. Crim. App. 2010) In response to *Ake*, Texas has expanded the right to expert assistance to include retained defendants. The court in *Briggs* stated that, “If any reasonable attorney appointed to represent an indigent defendant would be expected to investigate and request expert assistance to determine a

deceased infant's cause of death, a privately retained attorney should be held to no lower standard." As the Supreme Court has explained, "The vital guarantee of the Sixth Amendment would stand for little if the uninformed decision to retain a particular lawyer could reduce or forfeit the defendant's entitlement to constitutional protection... [We] see no basis for drawing a distinction between retained and appointed counsel that would deny equal justice to defendants who must choose their own lawyers." **See Texas Disciplinary Rules of Professional Conduct 1.01, 1.04**

**Rules of Evidence-** The rules regarding evidence can be found under Family Code Section 51.17(c). *The Texas Rules of Evidence apply to criminal cases and Article 33.03(Presence of Respondent) and 37.07(Prior Criminal Record, Reputation, and Character) and Chapter 38(Evidence in Criminal Actions) Code of Criminal Procedure, apply in a judicial proceeding under this title.*

Family Code Section 51.17(c) gives rise to several other areas of discovery which include:

**1.Rules of Evidence 404(b) Character Evidence Not Admissible To Prove Conduct; Exceptions; Other Crimes-** Upon request, the State must give the accused reasonable pretrial notice of the State's intent to offer an extraneous offense in its case in chief. The accused should request notice from the State in the form of a written request, rather than filing a motion. A request that is made directly to the State is self-executing and automatically invokes the notice obligation. However, if a discovery motion is filed, the accused must obtain a ruling from the court to prompt the notice requirement. This can be critical for two reasons. First, pretrial notice gives the accused a chance to investigate the allegations prior to trial, allowing the accused to try to eliminate, or at the very least, reduce the misconduct's detrimental effect. Second, if the State fails to provide the accused with notice of the other crimes, wrongs, or acts, the State should be prohibited from introducing them into evidence. An open file policy does not satisfy the notice requirement. Also, remember to ask for a limiting instruction to the jury concerning extraneous offenses, it should be granted at the time the evidence was admitted and in the jury charge.

**2. Rules of Evidence 609(d) (f) Impeachment by Evidence of Conviction of Crime-** For the purpose of attacking the credibility of a witness, evidence that the witness has been convicted of a crime shall be admitted if elicited from a witness or established by public record, but only if the crime was a felony or involved moral turpitude, regardless of punishment. Evidence of a juvenile adjudication is not admissible, except for proceedings conducted pursuant to Title III Family Code, in which the witness is a party. Additionally, evidence of a conviction is not admissible if after timely written request by the accused specifying the witness or witnesses, the State fails to give the accused sufficient advance written notice of its intent to use the prior conviction(s) against the named witness.

**3. Family Code Section 54.031 Outcry Witnesses-** This section is patterned after CCP Article 38.072 and authorizes under limited situations the outcry statement of a child to be admitted into evidence over a hearsay objection. The State must provide the outcry witnesses' name and a written summary of the victim's statement at least 14 days prior to the date the jury is sworn and jeopardy attaches. An untimely notice does not automatically create reversible error and a respondent must show harm from the delay of proper notice. The family code section applies to a child **12 years of age or younger** or a person with a disability (*means a person 13 years of age or older who because of age or physical or mental disease, disability, or injury is substantially unable to protect the person's self from harm or to provide food, shelter, or medical care for the person's self*). Code of Criminal Procedure Article 38.072 applies to a child **younger than 14 years of age** or a person with a disability. Here the definition of disabled is the same. While the covered offenses listed are the same under both sections, CCP Article 33.072 includes Penal Code Section 15.01 criminal attempts of the listed offenses. Be aware that the offenses listed under these sections are not strictly sexual offenses and include assaultive-type charges.

**Jurisdiction-Age-** Objection to juvenile court jurisdiction because of a juvenile's age is found under Family Code Section 51.042. *A child who objects to the jurisdiction of the juvenile court over the child, because of the age of the child, must raise the objection at*

*the adjudication hearing or discretionary transfer hearing. A child who does not object waives any right to object to the jurisdiction of the juvenile court because of the age of the child at a later hearing or on appeal.*

The objection to criminal district court jurisdiction, because of age, is found under Texas Code of Criminal Procedure Article 4.18. *A claim that a district court or criminal district court does not have jurisdiction over a person because jurisdiction is exclusively in the juvenile court ... must be made by written motion in bar of prosecution filed with the court in which criminal charges against the person are filed. This must be done before a plea is entered, **before jury selection begins**, or in the case of a bench trial before the first witness is sworn. The burden is on the moving party by a preponderance of the evidence and the court will rule on the motion. If the court finds that it lacks jurisdiction the case shall be transferred to the appropriate juvenile court.*

**Notice-** The Supreme Court has held that notice (in the form of a petition) of the charges against a juvenile must be given in detail and sufficiently in advance of the court proceedings so that the juvenile and his attorney are given a reasonable opportunity to prepare for a proper defense. This notice should be done by a summons directed at the parties involved. It should set out the time, date and place where the hearing will be held. The petition must accompany the summons and it must be served personally to the juvenile. Service on a parent does not comply as personal service and a child cannot waive this service. Additionally, if the summons is for a transfer hearing, then it must be stated accordingly. See *In Re Gault*, 387 U.S. 1 (1967)

An attorney in a juvenile case is given a minimum of ten days to prepare for any adjudication or transfer hearing under Family Code Section 51.10(h).

In a criminal matter an **appointed** counsel is entitled to ten days to prepare for a proceeding, but may waive the preparation time with the consent of the defendant in writing or on the record in open court. CCP Article 1.051(e)

Under FC Section 54.01(q) if a juvenile is held in detention and a petition has not been filed concerning the child, the Court shall order the child released from detention not later than the 30<sup>th</sup> working day after the date the initial detention hearing is held, if the alleged conduct is a capital felony, aggravated controlled substance felony, or a first



degree felony. The State has 15 days to file a petition against a detained juvenile for any other offense or probation violation. The remedy for failure to file the petition is a release of the child from detention but it does not dismiss the case.

For adults, Code of Criminal Procedure Article 17.151 sets out the method of release pending a trial delay. A defendant who is detained in jail pending trial of an accusation against him must be released either on personal bond or by reducing the amount of bail required, if the State is not ready for trial on the criminal charge for which the defendant is being held within 90 days from detention in a felony case, 30 days for a Class A misdemeanor, 15 days for a Class B misdemeanor or 5 days for a Class C misdemeanor.

**Contact with Police/Detention-** If a juvenile makes contact with a law enforcement officer pursuant to Family Code Section 52.02 the police officer who takes the juvenile into custody must without unnecessary delay and without first taking the juvenile to any place other than a juvenile processing office (DWI/DUI exception) do one of the following;

1. release the child to his parents or other responsible adult;
2. bring the child before an official designated by the juvenile court if probable cause for an offense is present;
3. bring the child to a detention facility designated by the juvenile board;
4. bring the child to a secure detention facility designated under Family Code Section 51.12(j);
5. bring the child to a medical facility if the child is believed to be suffering from a serious physical condition or illness that requires prompt treatment;
6. dispose of the case under Family Code Section 52.03 (disposition without referral);
7. take the child back to school, if school is in session;
8. take the child to a place to obtain a specimen of the child's breath or blood and perform intoxilyzer processing and videotaping of the child in an adult processing office of a law enforcement agency. A child taken into custody may

submit or refuse to submit to the taking of a breath specimen without the concurrence of an attorney, but only if the request and response is videotaped.

Additionally, a person taking a juvenile into custody shall promptly give notice and a statement of the “legal reason” for the child’s detention to the juvenile’s parent, guardian or custodian and to an official designated by the juvenile board. The police are not required to inform the parent before questioning the juvenile. FC Section 52.02(b) Some courts utilize four factors to determine whether the notification was prompt under the circumstances in an individual case. They include;

1. the length of time the juvenile was in custody before the statement was obtained;
2. whether the notification occurred after the police acquired the statement;
3. the ease of contacting the appropriate adult; and
4. what law enforcement was doing during the period of delay. See *In the Matter of J.B.J.*, 86 S.W. 3<sup>rd</sup> 810 (Tex. App.- Beaumont 2002)

Once a juvenile has been brought to the juvenile processing office (JPO) he cannot be left unattended, for any length of time, or detained for longer than six hours. FC Section 52.025(c), (d)

For adult DWI offenders it is not required that videotaping be done at all. The only requirement is that in a county of 25,000 people or greater, the county must purchase and maintain electronic devices capable of visually recording a person arrested within the county for certain offenses.

If a juvenile is not released, then a detention hearing must be held no later than the second working day after the child is detained, unless the detention starts on a Friday or Saturday and then the hearing would be required on the first working day after the child’s detention. Family Code Section 54.01(a)

No statement made by the juvenile at a detention hearing shall be admissible against the child at any other hearing. Family Code Section 54.01(g)

At the end of the detention hearing the court shall order the child released from detention unless it finds that:

1. the juvenile is likely to abscond or be removed from the jurisdiction of the court;
2. suitable supervision, care, or protection for the juvenile is not being provided by a parent or other person;
3. the juvenile has no parent or other person who is able to return him to court when required;
4. the juvenile may be dangerous to himself or may threaten the safety of the public if released; or
5. the juvenile has previously been found to be a delinquent child or has previously been convicted of a penal offense punishable by a term in jail or prison and is likely to commit an offense if released.

**Examining Trial-Adults-** The equivalent of a detention hearing for an adult is an examining trial. The requirements for an examining trial are found under Code of Criminal Procedure Article 16.01. When the accused has been brought before a magistrate, the magistrate shall proceed to examine into the truth of the accusation made. The accused in any felony case shall have the right to an examining trial prior to indictment in the county having jurisdiction for the offense, whether the accused is in custody or has been released on bail. If the accused has been transferred under Family Code Section 54.02 (Certification), the accused may be granted an examining trial at the discretion of the court.

The accused has the right to make a statement relative to the accusation brought against him, but that he cannot be compelled to do so. However, if he does make a statement it can be used against him. Code of Criminal Procedure Article 16.03

After the examining trial has been completed the magistrate shall make an order committing the accused to the jail of the proper county, discharging him, or admitting him to bail, as the law and the case may require. Failure of the court to make or enter an order within 48 hours after the examining trial has been completed operates as a finding

of no probable cause and the accused shall be discharged. Code of Criminal Procedure 16.17

**Search and Seizure-** Under both the U.S. Constitution (4<sup>th</sup> Amendment) and Article I Section 9 Of the Texas Constitution, juveniles and adults are protected from unreasonable searches and seizures. Specifically, these provisions can be found under CCP Article 38.23 and FC Section 54.03(e).

**School search and seizure requirements.** For juvenile cases can all be traced back to the case of *New Jersey v. T.L.O.*, 469 U.S. 325, 105 S.Ct. 733, 83 L.Ed.2<sup>nd</sup> 720 (1984).

The Supreme Court held the following:

1. that school children do have a legitimate expectation of privacy;
2. a school has an equally legitimate need to maintain an environment where learning can take place;
3. balancing these two needs means that school officials do not need to obtain a warrant before searching a student; and
4. school officials are not held to the standard of probable cause.

The Supreme Court declared the test for a proper school search would be one of reasonableness under all circumstances. So what determines reasonableness? Reasonableness is established by two factors:

1. whether the search was justified at its inception; and
2. whether, as conducted, it was reasonably related in scope to the circumstance that justified the intrusion initially.

Texas, in the case of *Irby v. State*, 751 S.W.2d 670 (Tex App.—Eastland 1988), has followed the *T.L.O.* standard for school searches even under the circumstances where the student searched was older than 16 years of age.

Generally, a distinction between a permissible and impermissible search hinges on whether the search becomes excessively intrusive. Furthermore, the exclusionary rule does apply to juvenile adjudications in Texas. The primary purpose of the exclusionary rule is to deter future unlawful police misconduct. It was reasoned by the court that if this provision was not enforced in juvenile proceedings, some members of law

enforcement might view this as a declaration that all police restraints on juveniles have been eliminated. See FC Section 54.03(e). So what standard proof is necessary when it concerns a school search? Russell v. State, 74 S.W.3<sup>rd</sup> 887 (Tex. App-Waco 2002), acknowledged three different types of school searches which include:

1. those where school officials initiate a search;
2. those where the school police or liaison officers act on their own authority;  
and
3. those searches where outside police officers start a search (includes where school officials act on behalf of the police).

Categories one and two only require reasonable suspicion for the search, while category three will require probable cause.

An anonymous tip by a fellow student, under *ordinary* circumstances, does not provide reasonable suspicion needed to justify a search of the alleged law breaking student. See In the Matter of K.C.B., 141 S.W.3<sup>rd</sup> 303 (Tex App.-Austin 2004). This case involved an anonymous tip that K.C.B. had hidden marijuana in his underwear. Bowser, the hall monitor, escorted K.C.B. to the assistant principal who performed a search of K.C.B. by extending the elastic waistband in K.C.B.'s shorts exposing a baggie of marijuana. The court ruled that this was an improper search and the marijuana was suppressed. However, the court also stated that had the tip involved the possession of a weapon by K.C.B. the school may have had a compelling interest to search the student under these *extraordinary* circumstances.

So how does the level of expectation of privacy differ in an adult case? The Supreme Court held in Florida V. J.L., 120 S.Ct. 1375, 529 U.S. 266 (2000), that an anonymous tip that a person had possession of a weapon was not sufficient for the police to perform a stop and frisk. Even though a school official may be allowed to perform a search under these circumstances, this does not hold true for the search of a person in a public setting. Each setting has its own expectation of privacy. The expectation of privacy in a school is set at a lower threshold.

**Dog Sniff.** Many school boards have relied on trained dogs to sniff, or detect, the presence of contraband in school settings. In Texas, the sniffing of a student's locker or car, found on school property, is not a search within the meaning of the Fourth Amendment. However, subsequent individualized searching of the locker or car does invoke the rights found under the Fourth Amendment. For the State to justify the individualized search the school must show that the canine has a history of reliability.

The use of a dog sniff to search a student is not permissible. The Court stated in *Jones v. Latexo Indep. Sch. Dist.*, 499 F. Sopp.223 (E.D. Tex. 1980) that school officials lacked individualized reasonable suspicion and that having a dog place its nose directly on a student was particularly intimidating and invasive of the student's privacy. In this same case the Court did add, in dicta, that if a school official sniffed the hands of a student this would also be considered a search.

**Warrantless Searches-** The State has the burden to provide justification for a warrantless search. There are three exceptions:

1. **Consent-** Parents may give a valid consent to search premises that are individually or jointly possessed by the consenting party, and evidence that is discovered may be admissible against the juvenile. However, before a child can waive any constitutional or statutory right given to him the requirements of FC Section 51.09 must be met. Arguably, a child should only be able to consent to a search after he has been informed of his rights, and along with his attorney, signs a voluntary written waiver. Also, be aware of the Doctrine of Reasonable Apparent Authority.

From a practical standpoint how does FC Section 51.09 apply? In a case where a child has been arrested for the offense of DWI, he may be taken in for the purpose of obtaining a breath/blood sample. However, when an officer takes a juvenile into custody for a Class B misdemeanor or higher, the officer must follow the requirements set out in FC Section 52.02(a). The child must be, without any unnecessary delay, be taken to, or disposed of, in one of the eight acceptable provisions set out in Family Code Section 52.02(a) or taken to a JPO. As noted before, the legislature created an exception to the requirements of FC Section

52.02(a) for DWI/DUI offenses. (Note however, that it does not include BWI or FWI offenses.) There is also an exception to FC Section 51.09, Waiver of Rights. Family Code Section 52.02(d) which provides that a child can submit or refuse to submit to the taking of a breath sample without his attorney's concurrence. This section does not include the request for a **blood** test. It would appear that the child's attorney would need to be present and agree, in writing, with the child's waiver or consent to the submitting of a blood test. This makes it extremely likely that a blood sample would be inadmissible because of the failure to comply with Family Code Section 51.09.

Additionally, even though an in-car video should be admissible just like an adult, any questions or responses after the onset of "custody" will likely be suppressed unless they comply with Family Code Sections 51.09 and 51.095. The next question, which is sure to be asked, is what about blood warrants? Code of Criminal Procedure Article 18.01(j) states any magistrate who is an attorney may issue a search warrant to collect a blood specimen from a person who is arrested for a DWI-type offense and refuses to submit to a breath or blood test. Because a blood specimen obtained by warrant is not obtained pursuant to Transportation Code Chapter 724, the exception of taking the juvenile to a place to obtain a blood sample does not apply. Nor may the officer take the juvenile to a hospital or other medical facility unless the juvenile is believed to be seriously ill and requires prompt attention. Therefore, before executing a search warrant for blood, for a child in police custody, the officer will have to release the child to his parent, take the juvenile to a detention facility, or take the child to school. The officer must also give notice to the juvenile's parent and juvenile board designee and after all this has been completed the officer should be able to execute the search warrant.

2. **Plain View, Touch, or Smell-** The "plain" rules, apply to juveniles and hold that objects appearing in plain view, touch or smell, are not the products of a search, are subject to seizure and may be introduced into evidence. The officer must have a legal right to be in the position to see, touch, or smell the item. In the case of plain touch, the touch may not go beyond that which is necessary to determine if the item is a weapon. Also related to this area of law is the automobile exception.

3. **Exigent Circumstances-** This allows warrantless searches when the search is conducted to render emergency aid for those in distress, to prevent the destruction of evidence or contraband, or to protect the officer from other suspects who may be present and armed and dangerous.

**Custody and Confessions-** The determination of whether a juvenile is in custody differs from that of an adult. Custody for a juvenile occurs when a child is either: confined in detention of some type; in the custody of a police officer; or in the legal custody of the Department of Family and Protective Services; and is a suspect.

The definition of custody for an adult is, “if under the circumstances a reasonable *person* would believe that his freedom of movement was restrained to the degree associated with a formal arrest.” While for a juvenile, in regards to the custody by a police officer, a juvenile is considered to be in custody, “if a reasonable *child* based on objective circumstances, would believe his liberty was restrained to the degree associated with a formal arrest.” Each case must be reviewed on a case by case determination and under the totality of the circumstances. See *Martinez v. State*, 131 S.W.3<sup>rd</sup> 22 (Tex. App-San Antonio 2003). Factors to be considered by the court include:

1. the juvenile’s age;
2. maturity;
3. experience;
4. background;
5. intelligence;
6. education;
7. ability to understand; and
8. all of the circumstances surrounding the giving of the statement.

Factors which tend to show the juvenile was not in custody include:

1. being told by the officer that he was not in custody;
2. he is free to leave at any time; and
3. when the questioning is finished the juvenile is actually released.



The admissibility of a statement made by a juvenile is governed generally by Family Code Section 51.095. Any statement made by a juvenile out of court without meeting the requirements of the Family Code, or the Texas or United States' constitution may not be used at an adjudication hearing. A statement made by the child out of court is insufficient to support a finding of delinquent conduct or CINS unless it is corroborated in whole or in part by other evidence. Additionally, an adjudication of delinquent conduct or CINS cannot be established upon the testimony of an accomplice unless corroborated by other evidence tending to connect the child with the alleged conduct; and the corroboration is not sufficient if it merely shows the commission of the offense. Evidence which is illegally seized or obtained is not admissible in an adjudication hearing. Family Code Section 54.03(e)

**Juvenile Confession-** Once a juvenile has been brought into custody, has been taken to a JPO without unnecessary delay, has not been left unattended, has been allowed to talk with his parents/attorney (if requested), and has been detained less than six hours, it is time to conduct an interview based on the requirements of Family Code Section 51.095.

**Written Statements-** Prior to interviewing the juvenile, he must be taken to a magistrate located inside the Juvenile Processing Office, and without the presence of law enforcement or prosecutors, the juvenile must be given the appropriate statutory warnings, then a written statement may be taken in the JPO, but it is not signed. The juvenile is then returned to the JPO magistrate, once again outside the presence of law enforcement or prosecutors, where the magistrate makes an inquiry determining if the juvenile, knowingly, intelligently and voluntarily waived his rights and, it is then, the juvenile signs his statement in the magistrate's presence. The magistrate then certifies in writing that he has examined the juvenile free of any law enforcement or prosecuting personal and has determined that the juvenile has knowingly, intelligently and voluntarily waived his rights.

**Oral Statements-** These statements are covered by the provisions found under FC Section 51.095(a) (5), (c), (f). For a custodial oral statement to be admissible it has to be voluntary and be recorded either by auditory or audio/visual means. It is required that

when taking an oral statement from a juvenile that the statement must be recorded and the magistrate's warnings and the child's waiver under FC Section 51.095 are on the recording prior to the statement. Additionally, all voices must be identified.

Furthermore, if the magistrate requests on the recording that the officer return the juvenile and the recording to the magistrate at the end of questioning, for the purpose of determining if the statement was given voluntarily, the officer's failure to abide by the request will make the statement inadmissible. Moreover, the magistrate's failure to reduce his voluntary findings in writing may also make the statement inadmissible.

For *adults*, tape-recorded oral statements are authorized to be admitted into evidence, as they have been for a number of years under CCP Article 38.22. The difference being that a magistrate is required to give the warnings in a juvenile case while law enforcement may give the warnings for an adult oral statement.

So what is the result of a violation of a Family Code provision concerning a juvenile's statement? The determination of admissibility is still not complete. If a statement has been obtained in violation of the Family Code provisions, the juvenile bears the burden of establishing a causal connection between the violation and the evidence sought to be suppressed.

Family Code Section 52.02(b) is not an independent exclusionary statute but is derived from CCP Article 38.23(a) which states that no evidence obtained by an officer or other person in violation of any provisions of the Constitution or laws of Texas shall be admitted into evidence. However, evidence is not obtained in violation of a provision of law unless there is a causal connection between the illegal conduct and the acquisition of the evidence. *Gonzales v. State*, 67 S.W. 3<sup>rd</sup> 910 (Tex. Crim. App. 2002) If the juvenile produces a causal connection between the illegal conduct and the acquisition of the evidence, the State may then attempt to disprove the connection or may make an attenuation-of-taint argument, meaning that the taint of the violation is so far removed from the acquiring of the evidence that the causal chain has been broken. *Pham and Gonzales v. State*, 776 S.W. 3<sup>rd</sup> 746 (Tex. Crim. App. 2005)

If a juvenile is not in custody then any statement given is admissible regardless of the compliance of Family Code Sections 51.09 and 51.095, as long as the statement was

given voluntarily. In addition, even if the juvenile is in custody, his statement will be admissible if it is not the result of interrogation.

## **Trial/Post Trial Issues**

**Jury Trial-** A jury trial is not required under the U.S. Constitution, however Texas requires that juvenile adjudication hearings shall be before a jury unless waived in accordance with Family Code Section 51.09. If the case is tried under the Determinate Sentencing guidelines (Family Code Section 53.045) then a 12 person jury is required. A juvenile is only entitled to a jury at a disposition hearing if the case is tried under the Determinate Sentencing proceedings. A juvenile must elect in writing prior to the beginning of voir dire of his desire to have the jury assess disposition. FC Section 54.04(a).

**Parental Attendance-** Family Code Section 51.115. The parents of a juvenile are required to attend all hearings which involve the juvenile. This can be waived by the court for good cause, but generally as long as a parent is a resident of Texas, has not been exempted, or has not had a managing conservator appointed, then both parents must attend all hearings. This provision is intended to encourage greater parental responsibility. If a parent who is required to attend does not, he or she may be punished by the court for contempt. This can include punishment of a fine of between \$100 and \$1,000 and the requirement to attend parenting classes.

**Court Admonishments-** In order to preserve error because of improper or incomplete admonishments the attorney for the juvenile is required under Rule 33.1 Texas Rules of Appellate Procedure to contemporaneously object to the improper admonishment(s). The attorney must clarify what is missing or stated incorrectly.

1. Lesser included offenses- While it may be better practice to admonish for lesser included offenses it is not required.

2. Collateral consequences- Even though both immigration and sex registration are both set out in CCP Article 26.13, the court does not generally have a duty to admonish on collateral consequences.
3. Dispositions- The court should inform the juvenile of his possibility of probation until the age of 18 or commitment to TYC until the age of 19 (when applicable). Additionally, if the case involves a determinate sentence possibility, this should be explained.
4. Use of Juvenile Record- The potential use of the juvenile's record in adult court should also be included in the court's admonishments.

**Judges-** An associate judge or referee may preside over adjudication hearings, including jury trials, except when the case involves a Determinate Sentence. An associate judge must inform the juvenile of his right to have a hearing before the elected juvenile court judge.

Since juvenile cases are considered civil, Texas Government Code Section 74.053 allows a juvenile to object to a visiting judge assigned to hear the case. An objection is timely if it is made before the first hearing or trial over which the assigned judge is to proceed.

**Closing Argument-** *In Dang v. State*, 154 S.W. 3<sup>rd</sup> 616 (Tex Crim. App. 2005) the court set out five factors to be considered when evaluating the appropriateness of closing argument time limits. These include;

1. the quantity of evidence;
2. the duration of the trial;
3. conflicts in testimony;
4. the seriousness of the offense; and
5. the complexity of the case.

(Also note that it is improper for a prosecutor to argue to the jury that it should render a verdict against that child because of a bad or dangerous household, without regards to

whether the child actually committed the alleged offense. *In the Matter of C.L.*, 930 S.W. 2d 935 (Tex. App.-Houston [14<sup>th</sup> Dist.] 1996))

**Plea in Bar-** In both the juvenile and adult systems an accused may admit to unadjudicated conduct and request that the court take the admitted conduct into consideration in determining the proper sentence for the offense for which he stands before the court. The prosecuting attorney must agree in writing, and if the conduct admitted to has venue in another county, the court must obtain the written permission from the prosecuting attorney of that county to consider the unadjudicated conduct.

If the court lawfully takes into account an unadjudicated admitted offense, further prosecution of that offense is barred. Family Code Section 54.045 and Penal Code Section 12.45.

Unadjudicated extraneous admitted offenses under Penal Code Section 12.45 do not constitute prior convictions that are available for impeachment under Texas Rules of Evidence 609. These are not considered convictions or adjudications.

**Disposition-** Under Family Code Section 54.04(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.

**Probation Conditions-** If a child is found in need of rehabilitation the court or jury may, in addition to any order required or authorized under FC Section 54.041 (Orders Affecting Parents and Others) or 54.042 (License Suspensions) place the child on probation on such reasonable and lawful terms as the court may decide.

1. **Sexual Offenses** Family Code Section 54.0405- If a court or jury makes a disposition placing a child on probation for a sexual offense the court, as a condition of probation, may require a child to: attendance of psychological counseling sessions, polygraph examinations for the purpose of treatment, registration as a sex offender under CCP Chapter 62, submit a blood sample for DNA purposes, attend sex offender treatment counseling along with other lawful

conditions. A court that requires psychological counseling may before the probation ends extend the probation for an additional period to complete the required counseling but this extension cannot go beyond the child's 18<sup>th</sup> birthday.

Other provisions concerning juvenile sex offender registration can be found under;

Code of Criminal Procedure Article 62.054 Notice to School- Provides that local law enforcement is required to notify a school superintendent of a sex offender's release or change of address.

Code of Criminal Procedure Article 62.101- Expiration of a juvenile's duty to register ends 10 years from the date the juvenile is released from TYC or released from probation. The 10 year limit includes juveniles who were certified as an adult under Family Code Section 54.02.

Article 62.102 CCP Failure to Register- For a juvenile offender failure to register as a sex offender will be punished as a state jail felony, unless the person has been previously convicted of this offense then it would be a third degree felony.

2. ***Conduct Involving a Handgun*** FC Section 54.0406- If the court or jury places a child on probation for an offense which included the possession, carrying, using, or exhibition of a handgun the court shall require as a condition of probation that the child, not later than 30 days after the start of probation, notify the juvenile probation officer who is supervising the child, how he acquired the handgun including the date and place, and any person involved in the acquisition. This information cannot be used against the child in a subsequent juvenile proceeding.
3. ***Orders Affecting Parents and Others*** FC Section 54.041- When a juvenile has been found to have engaged in delinquent conduct or CINS and rehabilitation is necessary, the court may order any person who by willful act or omission contributed, caused or encouraged the conduct to refrain from doing anymore acts of encouragement or may prohibiting contact with the juvenile. In addition, the Court may order the parents to pay restitution on behalf of the juvenile, but parental restitution responsibility cannot go beyond the juvenile's 18<sup>th</sup> birthday.

4. ***Driver's License Suspensions*** Section 54.042 FC- A juvenile court in a disposition hearing shall order DPS to suspend a child's driver's license (one year) for DWI offenses or a controlled substance violation. The court may order the suspension of a juvenile's driver's license (up to one year) if the child is adjudicated for an offense under Penal Code 28.08 (Graffiti). A court may also suspend a child's driver's license for up to one year if the juvenile is adjudicated for any delinquent conduct or CINS violation. Family Code Section 54.04(f). A child may apply for an occupational license.

**Punishment and Enhancements-** The enhancement provisions for juveniles can be found under Penal Code Section 12.42(f). An adjudication by a Juvenile Court under Family Code Section 54.03, for conduct committed on or after January 1, 1996, constituting a felony for which the child was committed to TYC is a final felony conviction for enhancement purposes. Therefore a qualifying felony may be used to enhance: a SJF to a 3<sup>rd</sup> degree felony, SJF to a 2<sup>nd</sup> degree felony, 3<sup>rd</sup> degree felony to a 2<sup>nd</sup> degree felony, 2<sup>nd</sup> degree felony to a 1<sup>st</sup> degree felony and a 1<sup>st</sup> degree felony enhanced to a minimum of 15 years. A prior juvenile adjudication cannot be used to enhance a charge to a minimum of 25 year sentence (Habitual offender).

A prior juvenile felony adjudication does not prevent an adult from applying for probation, but if the new adult charge is a 1<sup>st</sup> degree felony and a prior juvenile felony is used to enhance the conviction, the jury is prevented from recommending probation because the punishment range would be 15 to life.

**Criminal Record Cleaning-** If all has gone well (defense attorney's point of view) then your client will undoubtedly want to have his records cleaned. For juveniles this is referred to as sealing, while an adult would desire to either expunge or non-disclose his criminal record.

**Family Code Section 58.003, Sealing of Records-** On the application of a person who has been found to engage in delinquent conduct or CINS violation, or on the Juvenile

Court's own motion the Court *shall* order the sealing of the records in the case if the Court finds that two years have elapsed since the final discharge of the person or since the last official action in the person's case if there was no adjudication and the person has not been convicted of a felony or a misdemeanor involving moral turpitude and no proceeding is pending. A Court *may* order the sealing of records concerning a person who was adjudicated of delinquent conduct of the grade of felony if the person is now 21, was not certified to adult court, the records to be sealed have not been used for evidence in the punishment phase of a criminal trial and the person has not been convicted of a felony offense after becoming 17.

A Court may not order the sealing of the records of a person who has received a determinate sentence for engaging in delinquent conduct that violated a penal law listed in FC Section 53.045 (basically 3(g) offenses) or engaging in habitual felony conduct. FC Section 51.031

A child has the immediate right to have his records sealed if the child is found not delinquent of each offense alleged in the petition of his case.

***Code of Criminal Procedure Article 45.0216, Expunctions of Certain Conviction Records of Children-*** A child 10 to 16 years of age who has not been convicted of more than one Class C misdemeanor offense or one penal ordinance violation, may after his 17<sup>th</sup> birthday, apply to the court in which the child was convicted to have the conviction expunged. The child must make a written request, under oath, to have the records expunged.

***Code of Criminal Procedure Article 45.051 Suspension of Sentence and Deferral of Final Disposition-*** On a plea of guilty or no contest for a misdemeanor case punishable by fine only, the court may defer entering an adjudication of guilt and place a person on probation for a term not to exceed 180 days. The Court may include reasonable conditions of probation. Records relating to a complaint dismissed may be expunged under Code of Criminal Procedure Article 55.01.



***Code of Criminal Procedure Chapter 55, Expunction of Criminal Records-*** A person who has been placed under custodial or non-custodial arrest for the commission of either a felony or misdemeanor is entitled to have all records and files relating to the arrest expunged if he has been:

1. acquitted;
2. convicted and pardoned;
3. dismissed or no billed and the statute of limitations has run or if the presentment of the information or indictment was dismissed or quashed because of mistake, false information, or other reason showing lack of probable cause. Also required for an expunction is that the person has not been convicted of a felony in the five years preceding the date of the arrest sought to be expunged.

A person is not allowed to have criminal records expunged for offenses which result in a county jail sentence, Class C fines (not deferred), prison sentences, or straight probation.

***Government Code Article 411.01, Orders of Non-Disclosure-*** If a person successfully completes deferred adjudication probation, a person may be eligible to have his criminal records made non discoverable by the general public. Some offense are not eligible for non disclosure and some misdemeanor offenses require a two year waiting period, while all eligible felony offenses require a five year waiting period. Crimes involving family violence and generally Code of Criminal Procedure Article 42.12 Section (3) (g) offense are not eligible for non disclosure.

Law enforcement agencies and prosecutors will still have access to the records along with certain non criminal justice agencies. Generally these are agencies which requiring licensing from the State.

Advanced Juvenile Law Seminar  
February 21-23, 2011  
Corpus Christi, Texas

Ethical Considerations and  
Practical Distinctions between  
Juvenile and Criminal Law

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- Originally the term juvenile delinquent was not meant to be derogatory. Its literal meaning is a failure of parents and society to raise a child. Not a failure of the child.

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### History of Juvenile Law in Texas

- In 1836 Republic of Texas established the age of 8 as the age of criminal responsibility
- In 1918 the age of responsibility was raised to 17
- In 1943 civil procedures replaced criminal procedures

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Morales v. Truman, 1971 326 F.  
Supp (E.D. Tex 1971)

Alicia Morales 15 years old

- Forced to work and give income to father
- Refused to do so
- Father had her committed to TYC

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Morales v. Truman, 1971 326 F.  
Supp (E.D. Tex 1971)

- No notice of the charges against her
- Never had a hearing in court
- Never provided with an attorney

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Morales v. Truman, 1971 326 F.  
Supp (E.D. Tex 1971)

- Court investigated incarcerated TYC youths
- Majority had been given a hearing
- 1/3 had not been represented by counsel

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Morales v. Truman, 1971 326 F.  
Supp (E.D. Tex 1971)

Boys in custody:

60% for theft

19% for disobedience and immoral conduct

9% for violent crimes

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Morales v. Truman, 1971 326 F.  
Supp (E.D. Tex 1971)

Girls in custody:

68% for disobedience and immoral conduct

4% for violent crimes

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Morales v. Truman, 1971 326 F.  
Supp (E.D. Tex 1971)

- Settled in 1984
- Separate category for "conduct indicating a need for supervision" CINS
- Due process at court and TYC hearings
- Eliminated corporal punishment
- Development of community based treatment programs
- State funds for probation services

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## Juvenile vs. Criminal Overview

Distinction in systems based on purposes

Juvenile- protect and rehabilitate

Criminal- punish the guilty

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## Discovery

Family Code Section 51.17(b) use criminal procedures generally under CCP 39.14

Exception

CCP 39.14(b)- expert witnesses

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## Case Law

Family Code 51.17(b) use criminal case law for juveniles

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McBride v. State, 38 S.W.2d 248  
(Tex Crim. App. 1975)

- Child has absolute right to independent inspection of physical evidence by an expert
- Includes ballistics, fingerprints, drugs, weapons and bodily fluids

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Brady v. Maryland, 373 U.S. 83  
(1963)

- The State has the duty to produce any exculpatory, mitigating or impeaching evidence

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Brady v. Maryland, 373 U.S. 83  
(1963)

Texas Disciplinary Rules of Professional Conduct - 3.03(a) 1-5, 3.04(a), 3.09(d) and 5.01

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**Texas Disciplinary Rules of  
Professional Conduct**

Rule 303 Candor towards the Tribunal-

1. Duty not to make false statement of material fact or law;
2. Duty to disclose a fact when it is necessary to avoid assisting a criminal or fraudulent act;

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3. Duty to disclose, in an ex parte proceeding, unprivileged fact which lawyer should reasonable know Court would want to know to make an informed decision;
4. Duty to disclose controlling authority in jurisdiction; and
5. Duty not to offer false evidence and correct or withdraw evidence if possible

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**Texas Disciplinary Rules of  
Professional Conduct**

Rule 3.04 Fairness in Adjudicatory Proceedings

1. Duty not to unlawfully obstruct access to evidence, or destroy or conceal documents or other materials;
2. Duty not to falsify evidence or assist others in doing so; and
3. Duty not to request or assist a witness to testify falsely

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## Texas Disciplinary Rules of Professional Conduct

### Rule 3.09(d) Responsibilities of Prosecutors

A prosecutor must make a timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense, and in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal.

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## Texas Disciplinary Rules of Professional Conduct

### Rule 5.01 Supervisory Lawyer

A lawyer who is in a position of authority over another lawyer, and who knows that the other lawyer has committed a violation, must take reasonable remedial actions to avoid or mitigate the consequences of the other lawyer's violation.

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## Ake v. Oklahoma, 373 U.S. 68 (1985)

- Indigent juveniles entitled to experts;
- Must show need;
- Ex parte hearing.

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Ex parte Briggs, 187 S.W.3d  
(Tex. Crim. App. 2010)

- Expert assistance retained clients
- No distinction on duty of appointed v. retained

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Ex parte Briggs, 187 S.W.3d  
(Tex. Crim. App. 2010)

- TDRPC 1.01- A lawyer shall not accept or continue employment in a legal matter which the lawyer knows or should know is beyond the lawyer's competency

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Ex parte Briggs, 187 S.W.3d  
(Tex. Crim. App. 2010)

- TDRPC 1.04- A lawyer shall not enter into an arrangement for, charge, or collect an illegal fee, an unconscionable fee, or an unreasonable amount for expenses

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### Rules of Evidence

The rules regarding evidence are found under Family Code 51.17(c)

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### Family Code Section 54.031 Outcry Witnesses

The State must provide outcry witnesses' name and a written summary of victim's statement at least 14 days prior to jury being sworn

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### Family Code 54.031 Outcry Witnesses

Applies to child 12 years of age or younger or a person with a disability

Includes assaultive offenses

If untimely, still must show harm

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### CCP 38.072 Outcry Witnesses

Applies to a child younger than 14 years of age

Includes attempted offenses

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### FC 54.031 and CCP 38.072

- Disabled person means a person 13 years of age or older who because of age or physical or mental disease, disability, or injury is substantially unable to protect the person's self from harm or to provide food, shelter, or medical care for the person's self

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### Objection to Jurisdiction

- Juvenile FC 51.042- must be raised at adjudication hearing or transfer hearing
- Adult CCP 4.18- must be made by written motion, before plea, before jury selection, in a trial before the court before first witness is sworn

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### Notice

- Any juvenile attorney is given a minimum of 10 days to prepare for any adjudication or transfer hearing FC 51.10(h)
- In adult court, an appointed attorney is entitled to 10 days to prepare for a proceeding CCP 1.051(e)

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### Detention

- Juvenile FC 54.01(q) if held in detention w/o a petition filed
- 30 working days from initial detention for capital, aggravated drug or 1<sup>st</sup> degree
- 15 working days for other offenses or probation violations

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### Detention

- Adult CCP 17.151- if held and State is not ready
- released on either personal bond or bail reduction
- 90 days felony  
30 days Class A  
15 days Class B  
5 days Class C

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### Detention

Juvenile- If a juvenile is not released, then a detention hearing must be held no later than the second working day after the child is detained, unless detention starts on a Friday or Saturday and then it would be the first working day FC 54.01(a)

- Statements made at a detention hearing are *inadmissible* in other hearings FC 54.01(g)

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### Detention

Adult Examining Trial CCP 16.01-

- in a felony case
- prior to indictment
- inquiry into truth of accusation

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### Detention

- can make a statement and it *is admissible*
- failure to make or enter a finding within 48 hours operates as a finding of no probable cause CCP 16.03

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### Search and Seizure CCP 38.23 and FC 54.03(e)

- School -New Jersey v. T.L.O., 469 U.S. 325
- 1. School children have legitimate expectation of privacy.
- 2. School has equal legitimate need for learning environment.
- 3. No need for warrant before search of student.
- 4. School needs only reasonable suspicion.

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### Search and Seizure

Proper school search is based on reasonableness under all circumstances

1. Was search justified at inception; and
2. Whether, as conducted, was it reasonably related in scope to the circumstances justifying initial intrusion

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### Search and Seizure

- Types of Searches
- 1. School officials initiate;
- 2. School police or liaison officers;
- 3. Outside police (and where school acts on behalf of police).

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## Search and Seizure

- Standard of Review
  1. Reasonable Suspicion
  2. Reasonable Suspicion
  3. Probable Cause

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## Search and Seizure

- Anonymous Tip Juvenile- under *ordinary* circumstances does not provide reasonable suspicion
- In the Matter of K.C.B., 141 S.W. 3d 303 (Tex. App-Austin 2004)

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## Search and Seizure

- Anonymous Tip Adult- an anonymous tip that a person possessed a weapon was not sufficient to perform stop and frisk
- Each setting has its own expectation of privacy.

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## Search and Seizure

Dog Sniff- to detect presence of contraband

- locker or car on school property not a search
- sniff of a person search, need independent reasonable suspicion besides dog

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## Search and Seizure

- Warrantless-
  - 1.Consent- parents can give consent for child, but . . .
- Child can only consent if comply with FC 51.09

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## Search and Seizure

2. Plain View, Touch or Smell- not the products of a search

-officer must have the legal right to be in the position to see, touch, smell

-also automobile exception

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## Search and Seizure

3. Exigent Circumstances- search conducted to:

- Render emergency aid,
- Prevent destruction of evidence or contraband,
- Protect the officer

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## Custody

Juvenile-

1. Child is confined in detention;
2. In the custody of a police officer;
3. In the custody of Dept. of Family and Protective services; and
4. Is a suspect

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## Custody

Factors to show not in custody:

1. Being told not in custody;
2. Being told he is free to leave at any time;
3. When questions finished he is actually released

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## Custody

Adult-

In custody if under the circumstances a reasonable person would believe that his freedom of movement was restrained to the degree associated with a formal arrest

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## Custody

Each case is reviewed on a case by case basis under the totality of the circumstances

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## Confessions

Juvenile FC 51.095-

-need corroboration by other evidence

-more than accomplice evidence to connect child to conduct

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## Confessions

Written

1. Prior to interview taken in front of magistrate for warnings
2. Take statement, but not signed
3. Magistrate makes inquiry if statement made knowingly, intelligently and voluntarily

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## Confessions

4. Juvenile signs the statement
5. Magistrate certifies in writing statement was made knowingly, intelligently and voluntarily

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## Confessions

Oral FC 51.095(a)(5)(c)(f)

The statement has to be voluntary and recorded

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## Confessions

Oral

1. Recorded with warnings and child's waiver prior to statement;
2. If requested on the recording , juvenile is to be returned at end of questioning, for the purpose if statement was voluntarily
3. Failure to do so, or magistrate's failure to make written voluntary findings makes statement inadmissible

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## Confessions

Adult Oral CCP 38.22-

For adults law enforcement may give warnings for juvenile magistrate must give warning

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## Trial Issues

Jury- jury unless waived under 51.09

Determinate Sentence- 12 person jury with possible disposition if elected prior to beginning of voir dire FC 54.04(a)

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### Trial Issues

#### Parental Attendance-

1. Required to attend all hearings
2. Can be waived for good cause

Punished by contempt \$100 to \$1,000 and parenting classes

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### Trial Issues

Judges- Only District Judge for Determinate Sentence cases

Texas Government Code 74.053- can object to visiting judge for juvenile case

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### Trial Issues

#### Closing Arguments

Improper to argue to jury that it should render a verdict against a child because he lives in a dangerous or bad home, without regards to whether he actually committed the offense. In the Matter of C.L., 930 S.W.2d 935 (Tex. App-Houston [14<sup>th</sup> Dist.] 1996)

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### Plea in Bar

In both Juvenile FC 54.045 and Adult PC 12.45- may admit unadjudicated conduct for proper sentence

Cannot be used for impeachment under Rules of Evidence 609

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### Disposition

FC 54.04(c)- if no need for rehabilitation or protection of public, judge or jury shall dismiss the child and enter a final judgment without a disposition

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### Probation Conditions

1. Sex offenders- counseling, polygraphs, registration, DNA sample

-duty to register 10 years after release from TYC or probation, failure to do so State Jail Felony (1<sup>st</sup> offense)

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### Probation Conditions

2. Handgun- required as a condition of probation to notify within 30 days probation officer, how, when, place and person who provided the handgun

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### Probation Conditions

3. Orders Affecting Parents and Others-

Court may prohibit acts or contact by people with are a bad influence on the child

Can order the parent to pay restitution up until juvenile's 18<sup>th</sup> birthday

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### Probation Conditions

License Suspensions-

1. DWI or Drugs- one year
2. Graffiti- up to one year
3. Any adjudication *may* suspend for one year

Can apply for occupational/essential needs license

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## Enhancements

PC 12.42(f) Conduct after 1-1-96, felony committed to TYC

Can't be used for 25-life habitual

Can't be used to prevent probation, unless enhanced to low habitual 15-life

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## Sealing

FC 58.003-

Misdemeanors- two years since final discharge, no felony or misdemeanor (moral turpitude) convictions no pending cases

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## Sealing

Felonies-*may* be sealed at age 21, not certified, records not used in punishment phase of trial, and no felony convictions after turned 17

Immediate seal finding of not delinquent

No sealing for Determinate Sentencing

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## Expunctions

CCP 55.01- expunged if acquitted, convicted and pardoned, dismissed or no-billed and statute of limitations has run and no felony conviction in 5 years preceding date of arrest for offense sought to be expunged

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## Expunctions

CCP 45.051- Class C deferred adjudications can be expunged

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## Orders of Non-Disclosure

Government Code 411.01- If successfully completes deferred adjudication probation

Not all offenses are eligible

Two year wait for some misdemeanors

Five year wait all eligible felonies

State and some agencies still have access

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