

NUTS AND BOLTS OF JUVENILE LAW 2004

DISPOSITIONAL POWERS AND PROCEDURES MODIFICATION OF DISPOSITION

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DISPOSITION HEARINGS
§54.04 TEXAS FAMILY CODE

This paper will cover dispositions other than those provided for by the following statutes:

| | |
|----------------|--|
| Section 54.02 | Waiver of Jurisdiction and Discretionary Transfer to Criminal Court (a.k.a. Certifications) |
| Section 53.045 | Violent or Habitual Offenders (Determinate Sentencing Provisions) |

These topics are scheduled to be covered by other presenters.

NOTE:

A Referee or Master cannot exercise jurisdiction over these types of hearings (See section 54.10(e)).

The Juvenile Justice Code is found at Title 3 of the Texas Family Code.

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Chapter 54 of the Juvenile Justice Code contains the statutes related to judicial hearings and includes the provisions for Disposition Hearings.

HEARINGS BEFORE A MASTER OR REFEREE

Texas Family Code § 54.10

Section 54.10 of the Juvenile Justice Code gives Masters and Referees authority to conduct hearings under Section 54.03, 54.04, or 54.05, by plea or by jury trial.

Under a 1999 amendment, these judicial officers may now also conduct hearings under Chapter 55 for Children with Mental Illness or Mental Retardation, including jury trials.

These judicial officers may also conduct hearings under Juvenile Justice Code, Chapter 60, Articles IV, V, and VI of the Uniform Interstate Compact on Juveniles.

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What are Referees, Masters and Associate Judges?

Referees, Masters and Associate Judges are judicial officers appointed to conduct hearings for a judge and, at the conclusion of the hearing, to make findings of fact and recommendations to the judge.

The judge, . . . is free to accept, reject or modify the referee's or master's findings and recommendations.

It is the judge who makes the decision in the case, but he or she does so on the basis of the information provided by the referee, master or associate judge.

ROBERT O. DAWSON, TEXAS JUVENILE LAW, 13 (5th Ed. 2000).

Section 54.10 provides that . . . hearings may be held by a referee appointed in accordance with Section 51.04(g) or a master appointed under Chapter 54, Government Code, provided:

- (1) the parties have been informed by the referee or master that they are entitled to have the hearing before the juvenile court judge, and
- (2) after each party is given an opportunity to object, no party objects to holding the hearing before the referee or master.

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What are the limitations on the jurisdiction of these judicial officers?

Section 54.10(a) starts out with the following language:

"Except as provided by Subsection (e), a hearing . . . may be held by a referee . . . , or a master . . . " (emphasis added).

Section 54.10(e) states that the hearings provided for by Sections 54.03, 54.04, and 54.05 may not be held before a referee if the grand jury has approved the petition and the child is subject to a determinate sentence.

Statutory References:

- Section 54.03: Adjudication Hearing
- Section 54.04: Disposition Hearing
- Section 54.05: Hearing to Modify Disposition

REMEMBER:

A Master or Referee does not have jurisdiction if the state is seeking determinate sentencing under §53.045 for Violent or Habitual Offenders, or where the state is seeking to have the child certified to stand trial as an adult pursuant to section 54.02.

* * * * *

DOUBLE JEOPARDY

[Section 54.10] contemplates that the referee/master will cause his or her findings and recommendations to be forwarded to the judge without request by either the State or the juvenile. The statute is silent on whether the judge may consider information beyond that contained in the referee's report in making the decision in the matter.

The Supreme Court addressed this issue in *Swisher v. Brady*, 438 U.S. 204, 98 S.Ct. 2699 (1978).

This was a Maryland case in which the use of juvenile court masters was challenged. The use of masters in their juvenile system functioned much like the system of referees and masters utilized in the state of Texas.

The state in *Swisher* filed exceptions in several cases where the master found that the respondents had not engaged in delinquent conduct. The State of Maryland argued that the respondents had not been placed in jeopardy in proceedings before the master because ***the master did not make final decisions*** (emphasis added), [but rather], only recommendations to the juvenile court judge.

The Supreme Court did not agree with this argument. The court concluded that the respondents were placed in jeopardy when the trial began before the master. However, they were not *twice* placed in jeopardy by the juvenile court judge's review of the master's findings because ***the entire process was but a single proceeding "which begins with a master's hearing and culminates with an adjudication by a judge."*** (emphasis added) 438 U.S. at 215, 98 S.Ct. at 2706.

The Supreme Court in *Swisher* implied that their approval of the Maryland master system did have a limitation. Maryland law prohibited either the State or the respondent from introducing new evidence before the juvenile court without the consent of the other side.

The juvenile court was limited to reviewing the record made before the master and deciding on the basis of it (emphasis added).

ROBERT O. DAWSON, TEXAS JUVENILE LAW, 17 (5th Ed. 2000).

The Texas referee statute is silent on whether the juvenile court judge may take new evidence when considering whether to accept, reject or modify the recommendations of the referee. ***As long as the juvenile court avoids taking new evidence when reviewing a case in which the referee has found in favor of the respondent, the Texas referee system should present no double jeopardy problems*** (emphasis added).

ROBERT O. DAWSON, TEXAS JUVENILE LAW, 17 (5th Ed. 2000).

BEWARE:

The referring juvenile court should exercise care in reviewing the findings of referees and masters so as not to inadvertently to invoke double jeopardy protections.

In *A.R. v. State, 678 S.W.2d 177* (Tex.App.-Tyler 1984), the juvenile court granted a motion for new trial based on the argument that the evidence before the referee was insufficient

The motion for new trial was granted and the child was again adjudicated and found to have engaged in CINS.

On appeal, the respondent successfully argued that because the juvenile court granted the motion for new trial based on insufficient evidence, the double jeopardy protections of both the Texas and U.S. Constitutions prohibit re-trial for the same conduct.

NOTE:

Had the motion for new trial been granted on any ground except sufficiency of evidence, jeopardy would not have attached.

DEFERRED PROSECUTION

Texas Family Code § 53.03

This section provides for a period of informal supervision without the filing of a petition by the state. Through the application of this statute, the state, probation department (and the court, if a Petition is filed) have the ability to dispose of cases without the requirement of an adjudication and disposition hearing.

Texas Family Code § 59.005

This section is the statutory reference to Deferred Prosecution as a sanction level as set out in section 59.003(a)(2).

Section 59.005(a) provides:

For a child at progressive sanction level two, the juvenile court, the prosecuting attorney, or the probation department may, as provided by Section 53.03:

- (1) place the child on deferred prosecution for not less than three months or more than six months;
- (2) require the child to make restitution to the victim of the child's conduct or perform community service restitution. . . .
- (7) if appropriate, impose additional conditions of probation.

* * * * *

Is the period of deferred strictly limited to six months?

Effective September 1, 2003, section 53.03(j) grants the court authority to add to the period of deferred prosecution ordered under section 53.03(i), to a previous order of deferred prosecution for a combined period of not longer than one year.

Section 53.03 was amended by the 78th Legislature in 2003 to include subsections (i) and (j) and applies only to conduct occurring on or after the effective date (Sept. 1, 2003).

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Who has authority to grant deferred prosecution?

Probation officers:

Section 53.03(e)(1) provides that a probation officer **may not** defer prosecution for a child for a case that is required to be forwarded to the prosecuting attorney under Section 53.01(d).

If a child is pending new charges, **but has previously been adjudicated for a felony**, section 53.03(e)(2) requires the probation officer to **obtain the prosecuting attorneys consent in writing, before making an offer of deferred prosecution to that child.**

Prosecuting Attorneys:

Section 53.03(e) states:

A prosecuting attorney may defer prosecution for any child.

This seemingly broad scope of authority given the state is reeled in by the prohibitions set out in section 53.03(g) forbidding deferred prosecution for certain offenses.

DEFERRED PROSECUTION IS PROHIBITED FOR THE FOLLOWING OFFENSES:
DWI and related offenses
Third offense for Consumption of Alcohol by a Minor
Third offense for Driving By a Minor Under the Influence of Alcohol
Section 53.03(g), Texas Family Cod

The Court:

Pursuant to Section 53.03(i) the court may defer prosecution for a child at any time, so long as jeopardy has not attached.

The court cannot defer prosecution for one of the alcohol-related offenses enumerated in Section 53.03(g). These offenses are strictly prohibited from deferred prosecution.

When does jeopardy attach?

Section 53.03(i) is one of the new subsections added to this statute effective September 1, 2003.

The phrasing of this subsection is enough to give anyone a migraine!!

Brass Tacks:
What this subsection boils down to is that the court *cannot* grant deferred if:
1) the court has already accepted the child's plea
2) the jury has already been sworn at a jury trial of the state's petition, or
3) the first witness has already been sworn at a bench trial on the state's petition

* * * * *

Assessment of Fees

Section 53.03(d) contains the provisions for assessment of a fee schedule on deferred prosecution cases. The maximum supervision fee is \$15 a month.

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What happens when there is a violation of deferred prosecution condition?

As long as the child is abiding by the terms of deferred prosecution, the state cannot proceed on petition.

Section 53.03(f) requires the probation officer or other officer . . . to report any violations of the deferred prosecution program.

The state may proceed on the charges against the child through a new petition or by requesting a hearing date on a petition that has already been filed.

If the state intends to proceed on the charges that were originally deferred based on violations of the agreement, the violation must have occurred during the period of deferral.

ROBERT O. DAWSON, TEXAS JUVENILE LAW, 59 (5th Ed. 2000).

[A] prosecutor [can]not proceed to court on the original charge [as a result] of a law violation that occur[s] . . . after the child ha[s] successfully completed six months of deferred prosecution. The law violation [is] not a violation of the deferred prosecution agreement [if] it did not occur within the deferred prosecution period.

ROBERT O. DAWSON, TEXAS JUVENILE LAW, 59 (5th Ed. 2000) citing Attorney General Letter Opinion No. 98-069, 1998 WL 532963, 1998 Tex.Ag.Lexis 81, Juvenile Law Newsletter ¶ 98-4-02 (1998)

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Can a Child on Deferred be detained?

Section 53.03 b) provides that *except as otherwise permitted by this title*, the child may not be detained during or as a result of the deferred prosecution process.

This provision does not prohibit taking a child into custody who is reasonably believed to have committed a *new offense* while on deferred prosecution. This provision is also not intended to prohibit taking a child into custody who is *believed to have violated a condition of the deferred prosecution*.

A directive to apprehend pursuant to section 52.015 may be issued to bring the child into custody, as a result of a new offense or a violation of conditions of deferred, with the state filing a new petition or requesting a setting on an existing petition that was deferred.

A child brought into custody under these circumstances has the rights afforded pursuant to section 54.01 relating to detention hearings.

ROBERT O. DAWSON, TEXAS JUVENILE LAW, 60 (5th Ed. 2000).

THE DISPOSITION HEARING

Texas Family Code § 54.04(a)

This section states that the disposition hearing shall be separate, distinct and subsequent to the adjudication hearing.

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Reaching the disposition phase of a juvenile proceeding presumes that the findings required by section 54.03 are met.

Section 54.03(f) provides:

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.

[N]o 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.

Section 54.03(g) provides:

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* (emphasis added).

Section 54.03(h) provides:

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 *[and] the court shall also set a date and time for the disposition hearing* (emphasis added).

Section 54.03(j) provides:

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 parties].

The court shall inform the child that the court is not required to accept the agreement.

If the court rejects the plea agreement, this section provides safeguards for the juvenile by requiring that the judge give the child the opportunity to withdraw the plea (See limitations on subsequent use of previously admitted evidence in 54.03(j)).

THE REQUIREMENT OF A NEED FOR DISPOSITION

Texas Family Code § 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 the disposition be made. ***If the court or a jury do not so find***, the court shall dismiss the child and enter a final judgment without any disposition (emphasis added).

What is the burden of proof?

In the Matter of J.T.H., 779 S.W. 2d 954 (Tex. App.-Austin 1989)

Juvenile argued that Texas Family Code § 54.04(c) violated due process of law because it does not state whether burden of proof in the need for disposition is beyond a reasonable doubt, by clear and convincing evidence, or preponderance of the evidence.

The court held that due process is satisfied in the disposition hearing when the juvenile is represented by counsel, has full opportunity to cross-examine and present witnesses and is fully aware of the nature of the proceedings. None of these elements is denied by Texas Family Code § 54.04(c). Additionally, the findings made under Texas Family Code §54.04(c) are subject to review for sufficient evidence to support them.

Is the required finding a violation of the Equal Protection Clause?

In the Matter of J.T.H., the juvenile argued that the finding of need for disposition violates the Equal Protection Clause because no such finding is required in adult criminal trials.

The court held that rather than placing juveniles at a disadvantage compared to adult criminal defendants, the statute places an extra burden on the state when seeking disposition of juveniles. In the criminal justice system a finding of guilt automatically leads to sentencing. However, in the juvenile justice system, an adjudication of delinquency does not lead to disposition unless the court or a jury first makes the necessary findings. ***In the Matter of J.T.H., 779 S.W. 2d at 957.***

REMEMBER:

The court or jury must find that the child is in need of rehabilitation or that the protection of the public requires disposition. If this finding is not made, the court is required to dismiss the child and enter a final judgment without any disposition.

TRANSFER TO ANOTHER COUNTY FOR DISPOSITION

Texas Family Code § 51.07

A child may be adjudicated one county and have his or her case transferred to another county for disposition. This allows the jurisdiction in which the child has moved to, to assess the child's needs and to make a recommendation to the receiving court for disposition.

* * * * *

Section 51.07 provides:

(a) When a child has been found to have engaged in delinquent conduct or conduct indicating a need for supervision under Section 54.03 of this code, ***the juvenile court***, with the consent of the child and appropriate adult given in accordance with Section 51.09 of this code, ***may transfer the case*** and transcripts of records and documents ***to the juvenile court of the county where the child resides for disposition of the case under Section 54.04 of this code*** (emphasis added).

(b) ***When a child who is on probation moves*** with his family from one county to another, the juvenile court may transfer the case to the juvenile court in the county of the child's new residence (emphasis added).

Subsection (a) deals with a situation in which the offense was committed in one county but the child resides in another. It permits the adjudication hearing to be held in the county where the offense was committed but the disposition hearing to be held in the county in which the child resides.

Subsection (b) deals with the transfer of a child who is [already] on probation to a different county for supervision. This is different than "courtesy supervision" in that full power to adjudicate the matter of revocation is transferred under this subsection.

Sampson & Tindall's Texas Family Code Annotated, *Comment.* 195 (August 2003 Ed.)

Pursuant to Texas Attorney General Opinion, Letter No. 95-030 (1995), in a transfer under Subsection (a), consent by the receiving court is not required.

EVIDENCE AT THE DISPOSITION

Social History Report

Texas Family Code § 54.04(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 (emphasis added).

At what point in the proceedings is the Social History Report admissible?

Pursuant to Texas Family Code § 54.03(d), 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.

Once an adjudication decision has been made, the court may consider the information in the Social History Report.

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Is there a due process violation when a psychologist's report is included as part of the Social History Report?

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Section 54.04(b) gives the court a wide degree of latitude to consider all relevant factors in deciding the appropriate disposition.

In *Tyler v. State*, 512 S.W. 2d 46 (Tex. Civ. App.-Beaumont 1974), a Social History Report was introduced at disposition, which contained a psychological report wherein the psychologist never testified. The court held that in the disposition hearing, there is good reason to give the judge the latitude afforded by Texas Family Code § 54.04(b) to consider all factors in deciding what disposition to make.

The court reasoned any possible danger to the child is removed by the requirement that the court provide the attorney for the child with all written matter to be considered by the court in disposition as provided in § 54.04(b)

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Section 54.04(b) provides that 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.

In the Matter of L.T.F., 656 S.W. 2d 179 (Tex. App.-San Antonio 1983)
Defense attorney provided with a case history report containing within it, reference to a psychiatric report. Defense counsel was **not** provided with a copy of the psychiatric report and the court used this report in making its decision. The San Antonio Court of Appeals held that Texas Family Code § 54.04(b) does not require a court to force counsel to examine a particular document. To "provide access" to records is to have the records necessary for an attorney to review. Counsel was deemed to have been placed on notice of the psychiatric report and counsel's statement that he had previously only examined part of it does not amount to a denial of access.

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Can an objection be made that the Social History Report is inadmissible hearsay?

The Social History Report is not subject to Texas Rules of Evidence; Rules 402, 404 or 405, and yes it is admissible.

In the Matter of A.A.A., 528 S.W.2d 337 (Tex.Civ.App-Corpus Christi 1975)
Held all of the information in a Social History Report is hearsay, but it is admissible in evidence because the legislature has authorized its use in order to provide a broad informational basis for dispositional decisions.

In the Matter of A.F., 895 S.W. 2d 481 (Tex. App.-Austin 1995)
Held the Social History Report in Texas Family Code § 54.04(b) is not subject to the rules of civil evidence. Thus, there was no abuse of discretion when the trial court refused to exclude portions of the report based upon the rules of evidence.

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What else can be considered in a disposition hearing under § 54.04(b)?

Evidence from the adjudication hearing is admissible, as a court must consider a broad pool of information when making its decision. To hold otherwise would, to an extent, become redundant, as witnesses would be forced to reappear and repeat any evidence from the adjudication hearing, which would have a bearing on the disposition. *In the Matter of A.N.M.*, 542 S.W. 2d 916 (Tex. Civ. App.-Dallas 1976).

Section 54.04(b) allows a court to consider all written reports from probation officers, professional court employees, or professional consultants in addition to witness testimony. The court may review information not specifically prepared for the disposition hearing

In *In the Matter of J.A.W.*, 976 S.W. 2d 260 (Tex. App.-San Antonio 1998), the court reviewed the child's detention center records leading up to trial. The court did permit defense counsel a recess to review the documents. The San Antonio Court of Appeals reasoned that the trial court was entitled to consider the detention reports to assess the juvenile's behavior while in detention. The court further reasoned that juvenile detention officers fall within those persons listed in § 54.04(b) who may provide information to the court in making its decision regarding the appropriate disposition.



MORE TO COME!!!

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REMOVAL FROM THE HOME

Title 3 / Juvenile Justice Code has the following as its purpose:

Texas Family Code § 51.01 – Purpose and Interpretation

- (1) . . .
- (2) consistent with the protection of the public and public safety;
 - (A) to promote the concept of punishment for criminal acts;
 - (B) . . . ;
 - (C) to provide treatment, training, and rehabilitation . . . ;
- (3) . . . ;
- (4) . . . ;
- (5) ***to achieve the foregoing purposes in a family environment whenever possible, separating the child from the child's parents only when necessary for the child's welfare or in the interest of public safety . . .*** (emphasis added).

Sampson & Tindall's Texas Family Code Annotated, 185 (August 2003 Ed.)

Texas Family Code § 54.04(c)

No disposition placing the child on probation outside of the child's home may be made under this section, unless the court or jury find 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 probation.

Texas Family Code § 54.04(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 shall include in its order its determination that:

- 1). it is in the child's best interest to be placed outside of the child's home;
- 2). 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
- 3). 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.

The court must make these three findings to justify removal and the reasons for removal should be set out in the court's judgment.

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WHAT TYPE OF DISPOSITION ORDER SHOULD THE COURT ENTER?

Texas Family Code § 54.04(d)(1) provides the court with alternatives regarding the type of probation ordered.

The court, taking into consideration the nature of the offense, prior criminal history of the child, the evidence presented at the hearing, among other things, may order that the child be placed on probation as follows:

- 1) in his own home or in the custody of a relative or other fit person; or

If the court makes a finding under 54.04(c) that the child, in his own home, cannot be provided with the quality of care or level of support or supervision that he needs to meet the conditions of his probation, the court may order the child removed from the home and placed either:

- 1) in a suitable foster home; or
- 2) in a suitable public or private institution or agency, except for the Texas Youth Commission.

LENGTH OF PROBATION

Texas Family Code § 54.04(1)

A court . . . may place a child on probation under Subsection (d)(1) of this Section for any period of time, except that probation may not continue on or after the child's 18th birthday. The court may, before the period of probation ends, extend the probation for any period of time, except that the probation may not extend to or after the child's 18th birthday.

The Progressive Sanctions Model in Chapter 59 provides the court with a framework regarding the length and conditions of probation that should be imposed.

This statute was amended by the legislature in 2003 to make this a *model* rather than a *mandated guideline* that required a formal reporting of each deviation from the then existing statutes.

Texas Family Code §59.001

The purposes of the progressive sanctions **model** [guidelines] are to:

- (1) ensure that juvenile offenders face uniform and consistent consequences and punishments that correspond to the seriousness of each offender's current offense, prior delinquent history, special treatment or training needs, and effectiveness of prior interventions;
- (2) balance public protection and rehabilitation while holding juvenile offenders accountable;
- (3) permit flexibility in the decisions made in relation to the juvenile offender to the extent allowed by law;

- (4) consider the juvenile offender's circumstances; [and]
- (5) **recognize that departure of a disposition from this model is not necessarily undesirable and in some cases is highly desirable; and**
- (6) improve juvenile justice planning and resource allocation by ensuring uniform and consistent reporting of disposition decisions at all levels.

Amended by the 78th Legis., Reg. Sess. (2003), H.B. 888, eff. Sept. 1, 2003. Applies only to conduct occurring on or after effective date.

Sampson & Tindall's Texas Family Code Annotated, 347 (August 2003 Ed.)

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CONDITIONS OF PROBATION

The court is authorized to place the child on probation "on such reasonable and lawful terms as the court may determine" pursuant to Texas Family Code §54.04(d)(1)

Texas Family Code § 54.04(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.

Sampson & Tindall's Texas Family Code Annotated, 261 (August 2003 Ed.)

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Texas Family Code § 54.043 / School Attendance

If the court places a child on probation under Section 54.04(d) and requires as a condition of probation that the child attend school, the probation officer charged with supervising the child shall monitor the child's school attendance and report to the court if the child is voluntarily absent.

Texas Family Code §54.041(b) / Restitution

The court is authorized to require a child on probation or child's parent to make full or partial restitution to the victim of the offense.

Texas Family Code § 54.0411 and §54.061 / Court Costs and Probation Supervision Fees

These statutes give the court the authority to assess a one time court cost of \$20 and up to \$15 per month in probation supervision fees, if the child, parent or other person is financially able to make such payments.

Texas Family Code § 54.061(d) / Finding of Inability to Pay

The court is required to enter a statement of its finding into the record that the child, parent or other person responsible for the child's support is financially unable to pay the probation fees. Once this finding is made, the court may waive the court costs and probation fees.

Texas Family Code § 54.044(a) / Community Service

The court may require, as a condition of probation, that the child work a specified number of hours at a community service project approved by the court and designated by the juvenile board.

Pursuant to Texas Family Code § 54.044(a), the court may excuse the requirement of community service if the court determines and enters a finding that:

- (1) the child is physically or mentally incapable of participating in the project;
- (2) participating in the project will be a hardship on the child or the family of the child; or
- (3) the child has shown good cause that community service should not be required.

Texas Family Code §54.044(b) / Parental Community Service

This statute gives the court the authority to order that the child's parent perform community service with the child. However, Texas Family Code § 54.044(g) prohibits the court from requiring community service from a parent if the court finds that the child's parents or guardians have made a reasonable good faith effort to prevent the child from engaging in delinquent conduct or CINS, and that despite the parent's or guardian's efforts, the child continues to engage in such conduct.

Texas Family Code § 54.044(c) / Limitation on # of Hours Ordered

This section limits the total number of hours to be performed by the child and parent to no more than 500 hours together.

The idea behind community service is for an offender to return to the community at large, some value that was taken from it by the offense. Projects should be those that benefit the community at large. Consequently, the projects should be limited to those governmental or non-profit organizations.

ROBERT O. DAWSON, TEXAS JUVENILE LAW, 186 (5TH ED. 2000)

Texas Family Code § 54.0406 / Mandatory Disclosure of Handgun Source

This section requires a child placed on probation for an offense involving a handgun to inform his probation officer of how he obtained the handgun.

Texas Family Code § 54.046 / Probation Conditions for Graffiti Offenses

This section authorizes the juvenile court upon adjudication for graffiti under Penal Code Section 28.08, to order the child to restore damaged property and attend classes in self-responsibility and empathy for victims. This section is not mandatory upon the court.

Texas Family code Section 54.0407 / Probation Condition for Cruelty to Animals

If A child is found to have engaged in delinquent conduct constituting an offense under Section 42.09 of the Texas Penal Code, the juvenile court shall order the child to participate in psychological counseling for a period to be determined by the court.

Texas Family Code § 54.0461 / Juvenile Delinquency Prevention Fee

Section 54.0461, Family Code, is amended to read as follows:

SECTION 4. (a) this Act takes effect September 1, 2003.

This Act applies to a fee ordered by a juvenile court for a violation of Penal Code Section 28.08 (Graffiti), on or after the effective date of this Act, without regard to whether the conduct that is the basis of the violation occurred before, on, or after that date.

78th Legislature Regular Session (2003) H.B. 1828, Section 3

The net affect of this change now authorizes an expanded use of the funds collected rather than repair property damaged by Graffiti and general prevention programs. This change in conjunction with Article 102.0171 of the Code of Criminal Procedure, which was similarly amended now allows for the funding of such programs as teen court or recreation programs.

DRIVER'S LICENSE SUSPENSION
TEXAS FAMILY CODE § 54.04

Texas Family Code Sections 54.042 (c) and (d) were amended to more closely track the provisions relating to the suspension of a driver's license of an adult.

The juvenile court is required to order the suspension of the driver's license of a juvenile who has been adjudicated for DWI or a controlled substance violation. Pursuant to subsection (f) the juvenile court may order the suspension of the juvenile's driver's license for any other offense. Furthermore, pursuant to subsection (h), the court may impose a license suspension for a child who violates the conditions of probation, for a period not to exceed one year.

Subsection (b) authorizes, but does not require, a juvenile court to order suspension or denial of driver's license upon adjudication of the offense of graffiti under Penal Code §28.08.

Texas Family Code §54.042(e) / Occupational License

If a child qualifies for a commercial driver's license pursuant to Chapter 521 of the Transportation Code, the court may grant the child permission to obtain one.

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SEX OFFENDERS

Texas Family Code § 54.04(p)

This statute mandates a minimum two year probation term for a child placed on probation for a felony level sex offense as enumerated in §54.0405(b).

Texas Family Code § 54.04(l)

The two-year requirement is subject to the limitation that the juvenile's probation will automatically expire upon the probationer's 18th birthday.

The Registration Requirement

If anything is going to hang up a plea on a sexual offense, its going to be the requirement of the child to register as a sex offender as required under Chapter 62 of the Code of Criminal Procedure.

§54.0405(b) applies to a child placed on probation for conduct constituting an offense **for which the child required to register as a sex offender under Chapter 62, Code of Criminal Procedure.**

Article 62.13 / Hearing to Determine Need for Registration by Juvenile

This addition to Article 62 of the Code of Criminal Procedure essentially removes the mandate of registration under certain circumstances.

Pursuant to subsection (a), the court may excuse the registration requirement.

Pursuant to subsection (f), the prosecuting attorney may waive the state's right to a hearing under this article and agree that registration is not required.

Treatment Conditions for Sex Offender Probation

Texas Family Code § 54.0405

This statute though not mandatory, provides for sex offender treatment involving counseling and regular polygraph examinations. The court can make participation in such a condition of probation.

Texas Family Code § 54.0405(g)

Authorizes the court to order parents/guardians to attend counseling sessions.

This section also mandates that if an adjudicated sex offender is required to register pursuant to Code of Criminal Procedure Article 62.13, then the child must also submit a blood sample for DNA analysis.

The blood sample is only mandated when the child is required to register as a sex offender. The blood sample is not applicable when registration is excused or deferred to await treatment outcomes.

The DNA sampling is retroactive to all children ordered to register as a sex offender regardless of when they were adjudicated.

ROBERT O. DAWSON, TEXAS JUVENILE LAW 187 (5TH ED. SUPP. 2001)

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COMMITMENT TO THE TEXAS YOUTH COMMISSION

Texas Family Code § 54.04(d)(2)

If the court or jury find at the conclusion of the adjudication hearing, 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 requirement of Subsection (q) are met of the grade of misdemeanor, . . . the court may commit the child to the Texas Youth Commission without a Determinate Sentence.

So, who can be committed to TYC on a straight juvenile petition (non certification and non determinate sentence petition)?

- (1) A child who has been adjudicated on a felony.
- (2) If the child does not have a felony adjudication, there must have been two adjudications for misdemeanors, on separate dates, and upon a violation of the second misdemeanor, the child becomes eligible for commitment to TYC (for now).

This issue has been debated since the change in eligibility requirements for commitment to TYC in 1999. The 2001 amendment in subsection (d) eliminates reference to the procedure for revoking CINS probation that was made obsolete by changes in 1999 in TYC commitment requirements.

Texas Family Code §54.05(k) now provides as follows:

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

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

Sampson & Tindall's Texas Family Code Annotated, 276 (August 2003 Ed.)

Subsection (k) restricts TYC commitments to revocation of felony probation or revocation of misdemeanor probation if the child has two previous misdemeanor adjudications. The 2003 amendments make it clear that a child who violates misdemeanor probation can be committed to TYC if the State proves at least one felony or misdemeanor adjudication prior to the adjudication that resulted in placing the child on probation. A total of two, not three, adjudications is required.

Sampson & Tindall's Texas Family Code Annotated, *Comment* at 276, 277 (August 2003 Ed.)

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Orders Affecting Persons Other Than the Child

Texas Family Code § 54.06(a) / Child Support

At any stage of the proceeding, when a child has been placed outside of the child's home, the juvenile court after giving the parent or other person responsible for the child's support a reasonable opportunity to be heard, shall order the parent or other person to pay in a manner directed by the court a reasonable sum for support in whole or in part of the child or the court shall waive the payment by order.

"At any stage in the proceeding. . . could allow a court to order support for a child prior to adjudication or disposition placed outside of the home at such time."

Existing support orders issued pursuant to Title 5 of the Family Code may be modified pursuant to Texas Family Code § 54.06(b) which directs a court to order the original obligee of the Title 5 support to assign this right to support to a juvenile probation department or TYC when appropriate.

Texas Family Code § 54.06(e)

Requires the juvenile court to use the Family Code Chapter 154 child support guidelines in creating support orders. The juvenile court must also include the medical support provisions of Chapter 154.

Texas Family Code § 54.06(f)

Provides that a child support order pursuant to this section prevails over any previous child support order to the extent of conflict.

Enforcement: Texas Family Code § 54.06(c)

Allows Title 3 support order to be enforced through garnishment of wages. Also available are any means available to enforce a child support order under Title 5 of the Family Code and perhaps even interest accrued pursuant to Texas Family Code §157.265.

Texas Family Code § 54.06(d)

Also provides for enforcement by civil contempt proceedings of § 54.07(b) provided the defaulting party is given 10 days notice of the failure to pay or refusal to carry out the terms of the order.

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Texas Family Code § 54.041(a) / Injunctive Orders

This section authorizes the juvenile court to issue three types of injunctions once a juvenile has been adjudicated:

Texas Family Code § 54.041 / Orders Affecting Parents and Others

When a child has been found to have engaged in delinquent conduct or conduct indicating a need for supervision and the juvenile court has made a finding that the child is in need of rehabilitation or that the protection of the public or the child requires that disposition be made, the juvenile court, on notice by any reasonable method to all persons affected, may:

- (1) order any person found by the juvenile court to have, by willful act or omission, contributed to, caused, or encouraged the child's delinquent conduct or conduct indicating a need for supervision to do any act that the juvenile court determines to be reasonable and necessary for the welfare of the child or to refrain from doing any act that the juvenile court determines to be injurious to the welfare of the child;
- (2) enjoin all contact between the child and a person who is found to be a contributing cause of the child's delinquent conduct or conduct indicating a need for supervision; or
- (3) after notice and a hearing of all persons affected order any person living in the same household with the child to participate in social or psychological counseling to assist in the rehabilitation of the child and to strengthen the child's family environment.
- (4) After notice and a hearing of all persons affected order the child's parent or other person responsible for the child's support to pay all or part of the reasonable costs of treatment programs in which the child is required to participate during the period of probation if the court finds the child's parent or person responsible for the child's support is able to pay the costs.

The court is authorized to order parents or other persons responsible for a child's support to pay all or part of treatment costs depending on financial ability.

78th Legislature Regular Session (2003) H. B. 2319, Section 19.

Due Process: Notice and an Opportunity to be Heard

Texas Family Code § 54.041(d)

A person subject to an order under Subsection (a) of this section is entitled to a hearing on the order prior to the entering of the order by the court.

Enforcement:

Texas Family Code § 54.041(e)

An order under this section may be enforced by contempt of court proceedings under Texas Family Code § 54.07.

SPECIFIC STATEMENT OF REASONS

Texas Family Code § 54.04(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."

Sufficient specificity:

In the Matter of T.R.W., 533 S.W. 2d 139 (Tex. Civ. App.-Dallas 1981)

Overruled on other grounds K.K.H. v. State, 612 S.W. 2d 657 (Tex. App.-Dallas 1981)

Juvenile committed to TYC with dispositional language, which read "for the protection of the public and to rehabilitate said child". Held not sufficient.

Rationale:

Texas Family Code § 54.04(f) requires specificity in order to advise the child and the family of the reasons for commitment and allow the juvenile an opportunity to challenge those specific reasons on appeal.

The appellate court also requires specificity in order to review the reasons recited and determine if the evidence supports the reasons and are sufficient to justify the disposition.

The standard adopted was that the juvenile court in its statement of reasons must "set out the rationale of its order, and that is, the rationale basis for the court's conclusion or motive constrained entry of the order of disposition."

In the Matter of F.L.J. v. State, 577 S.W. 2d 532 (Tex. Civ. App.-Waco 1979)

The dispositional order contained four recitations. The first only recited the child was adjudicated for burglary of habitation. The last three combined, satisfied §54.04(f). The appellate court held that while simply describing the details of the offense and tracking the findings required by § 54.04 do not constitute a specific statement of reasons, a statement that the offense is so serious that protection of the public does satisfy the specificity requirement.

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Texas Family Code § 59.014 / Appellate Review of Dispositions Under the Guidelines

This section prohibits an appellate court from reviewing a disposition to determine whether it was made in conformity with the models.

In the Matter of A.S., 954 S.W. 2d 855 (Tex. App.-El Paso 1997)

The appellate court retains the right to determine whether there is sufficient evidence to support mandatory removal from the home findings and set the disposition aside if there is not or to set aside a disposition on abuse of discretion grounds. Holding in A.S. was refusing guidelines review but finding inadequate evidence to support removal from home.

There is not requirement that all of the programs described at any sanction level must be used in each disposition at that sanction level. However, for a disposition to qualify as a disposition at any given sanction level, at least the primary sanction described in that sanction level must be included in the disposition.

ROBERT O. DAWSON, TEXAS JUVENILE LAW 207 (5TH ED. 2000)

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TEXAS FAMILY CODE § 54.04(J) / FINGERPRINT REQUIREMENT

This section requires that a thumbprint be affixed and allows a photograph to be attached to an order for jailable misdemeanors since both can now be used in the punishment phase of adult proceedings.

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PLENARY POWER TO CHANGE PROBATION CONDITIONS

The Court maintains plenary power to change the conditions previously ordered for thirty days after the judgment has been signed.

Texas Rules of Civil Procedure 329b(d) gives a juvenile court plenary power for 30 days following the signing of an order setting probation conditions. Any party may request or the court on its own volition can change the probationary terms. There is no need for a formal motion or petition.

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MOTIONS TO MODIFY DISPOSITION Section 54.05

Texas Family Code §54.05(a) provides:

Any disposition, ***except a commitment to the Texas Youth Commission***, may be modified by the juvenile court as provided in this section until: (emphasis added)

- (1) the child reaches his 18th birthday; or
- (2) the child is earlier discharged by the court or operation of law.

This section specifically excludes TYC commitments from those dispositions that can be modified. TYC commitments cannot be modified since the court loses jurisdiction over the child upon commitment.

ROBERT O. DAWSON, TEXAS JUVENILE LAW at 182 (5th ED. 2000)

Texas Family Code §51.03 / Violations of Probation – A change in how they are classified

In 2001, the legislature amended section 51.03 and eliminated subsection 51.03(a)(2). This change was made because restrictions in section 54.04 regarding TYC commitments made it obsolete. Thus, effective September 1, 2003, violations of a lawful court order are no longer considered delinquent conduct, but rather fall under the category of conduct indicating a need for supervision.

CINS violations under Texas Family Code §51.03(a)(2) was rendered "inoperable" by Texas Family Code § 54.04(q) in 1999 which restricts indeterminate TYC commitments felony or third jailable misdemeanors. As of September 1, 1999 this section has not been used.

OK – So what's the skinny? Is it one, two, or three strikes (adjudications for misdemeanors) that make a child eligible for commitment to TYC?

THIS INFORMATION HAS ALREADY BEEN INCLUDED ABOVE UNDER THE HEADING OF TYC COMMITMENTS. BUT, IT IS WELL MENTIONING IT AGAIN SINCE THIS HAS BEEN A HOTLY CONTESTED ISSUE!

Texas Family Code §54.05(k) now provides as follows:

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

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

Sampson & Tindall's Texas Family Code Annotated, 276 (August 2003 Ed.)

Subsection (k) restricts TYC commitments to revocation of felony probation or revocation of misdemeanor probation if the child has two previous misdemeanor adjudications. The 2003 amendments make it clear that a child who violates misdemeanor probation can be committed to TYC if the State proves at least one felony or misdemeanor adjudication prior to the adjudication that resulted in placing the child on probation. A total of two, not three, adjudications is required.

Sampson & Tindall's Texas Family Code Annotated, *Comment* at 276, 277 (August 2003 Ed.)

The burden of proof on Motions to Modify is preponderance and the child is not entitled to a jury trial at the time of the hearing.