

Dispositions Powers and Procedures Modification of Disposition

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Biographical Information

Robert E. Thomas received a B.B.A., with honors, from Baylor University in 1985 and his J.D., with honors, from Baylor in 1988. He began his formative legal training at the Houston office of Fulbright & Jaworski, L.L.P. and later served as an Assistant District Attorney in the Harris County District Attorney's Office. In 1992 and 1993, he served as a Concurrent Chief Prosecutor in the Juvenile Division of the Harris County District Attorney's Office with the primary responsibility of handling certification and determinate sentencing cases in all three Harris County Juvenile District Courts.

Since entering the private practice of law in 1994, Robert has handled a wide variety of trial matters, including both civil and criminal matters. In recent years, he has dedicated his practice to the representation of young people. He is Board Certified in the field of Juvenile Law by the Texas Board of Legal Specialization. He is a member of the Juvenile Law Section of both the Houston Bar Association and the Texas Bar Association. He currently serves as the CLE Program Director of the Juvenile Law Section of the Houston Bar Association. He also serves on the Advisory Council to the Harris County Juvenile Board.

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DISPOSITION HEARING

I. Texas Family Code § 54.04(a)

"The disposition hearing shall be separate, distinct and subsequent to the adjudication hearing."

The juvenile court in its discretion may schedule the disposition hearing for immediately after the adjudication hearing or on a different day.

A. Disposition and Adjudication -- Two Distinct Issues

1. Issue regarding adjudication is whether the juvenile engaged in delinquent conduct.
2. Issue regarding disposition is what to do with the juvenile who has been adjudicated.

In the Matter of C.L., 930 S.W. 2d 935 (Tex. App.-Houston [14th Dist.] 1996)

Held reversible error for trial court to allow prosecutor to argue to the jury at the adjudication that they should adjudicate juvenile for her own good and to remove her from an abusive home.

B. Rules of Judicial Administration adopted by the Texas Supreme Court

Rule 6. Time Standards for the Disposition of Cases.

Section 3. Disposition Hearing: No later than 15 days following the adjudication hearing; complex cases may necessitate more time.

Section 4. These rules are guidelines and the juvenile judge is free to recess a hearing at any stage when the parties are agreeable or when in the opinion of the judge the best interest of the child or society shall be served without incurring any penalties.

C. Transfer to Another County for Disposition

1. Texas Family Code § 51.07(a)

Following an adjudication pursuant to Texas Family Code § 54.03, permits the transfer of a juvenile case and transcripts of records and documents with consent of the child pursuant to Texas Family Code § 51.09 to a county where a child will reside.

2. Opinion Texas Attorney General Letter No. 95-030 (1995)

Consent by the receiving court is not required.

II. Evidence at the Disposition

A. Social History Report

1. Who contributes to the Social History Report?

a. 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.

- b. When is the Social History Report admissible?

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.

2. a. Violation of Due Process?

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. 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. Concluded that Texas Family Code § 54.04 is not unconstitutional as denying due process.

- b. The Social History Report is hearsay 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.

- c. No, 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.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.

- d. Privilege Against Self-incrimination is implicated in preparation of the Social History Report to be used in the Disposition Hearing.

In the Matter of J.S.S., 20 S.W.3d 837 (Tex. App.-El Paso 2000)

Held that respondent had Fifth Amendment privilege against self-incrimination in the disposition hearing. Use of information obtained in an interview conducted to prepare the social history report while respondent was in custody violated this privilege because he was not first advised of his rights and informed that the statements could be used against him.

- B. Texas Family Code § 54.04(b)

This section draws from a large pool of information.

1. Adjudication Hearing:

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).

2. Detention Center Documents:

Texas Family Code § 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. Consequently, the court is at liberty to review the information not specifically prepared for disposition.

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. Interestingly, neither the state nor the defense counsel offered this information into evidence, but 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 came under Texas Family Code § 54.04(b) list of individuals contributing to the court's decision.

C. Safeguard:

Texas Family Code § 54.04(b)

Also provides: "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."

As pointed out in J.A.W. above, the court afforded the defense counsel an opportunity to review the information they relied upon. A request to review any such documents should be made on the record with a ruling to preserve any possible appellate issues.

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 available for an attorney to review. Thus 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.

D. How much time to review these reports?

Texas Family Code § 54.04(b)

Does not state a mandatory time in which an attorney has to review a document prior to the disposition hearing. Consequently, this could be the same day of the hearing.

III. The Requirement of a Need for Disposition

A. This is the first finding that must be made in every case:

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.

1. Violation of Due Process? (U.S. Const. amends V, XIV; Tex. Const. Ann. art. 1, § 19,29)

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.

2. Violation of Equal Protection Clause? (U.S. Const. amend XIV; Tex. Const. art. 1, § 3, 29)

Juvenile also argued that the finding of a 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 the juveniles at a disadvantage compared to the 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.

3. If written, the finding need not be stated by the Court orally.

In the Matter of A.P., 59 S.W.3d 387 (Tex. App.-Fort Worth 2001)

Held that where juvenile court made written findings that there was a need for disposition, the failure to also state the finding orally did not require reversal.

B. The second finding that must be made when applicable:

The finding regarding home conditions.

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.

This finding becomes applicable whenever a disposition requires placement of the child on probation outside of his/her home.

ROBERT O. DAWSON, TEXAS JUVENILE LAW, 198 (6th Ed. 2004)

C. The third finding that must be made when applicable:

1. 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:

- a. It is in the child's best interest to be placed outside of the child's home;
- b. reasonable efforts were made to prevent or eliminate the need for the child's removal from the home and to make it possible for the child to return to the child's home; and
- c. the child, in the child's home, cannot be provided the quality of care and level of support and supervision that the child needs to meet the conditions of probation.

These 3 findings become applicable whenever the child is removed from his/her home by probation placement or TYC commitment. It is the court alone that makes these findings.

2. Oral findings alone appear to be adequate.

In the Matter of M.R.L., UNPUBLISHED, No. 14-00-00797-CV, Juvenile Law Newsletter SS 01-4-38 (Tex. App.-Houston [14th Dist.] 2001)

Held appellate court could reform lower court judgment where the three findings were made on the record but only one was recited in the court's written order of commitment.

3. Notice Texas Family Code § 54.04(c) and § 54.04(i)(3) are nearly identical with the major exception being that only the court can make the § 54.04(i)(3) findings, whereas § 54.04(c) findings can be made by either the judge or a jury.

Also, in a Determinate Sentence case, Texas Family Code § 54.04(i)(3) can again only be made by the court, even if the juvenile opts for a jury to sentence him/her.

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

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

- (A) it is in the child's best interests to be placed outside the child's home;
- (B) reasonable efforts were made to prevent or eliminate the need for the child's removal from the home and to make it possible for the child to return to the child's home; and
- (C) the child, in the child's home, cannot be provided the quality of care and level of support and supervision that the child needs to meet the conditions of probation; and

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

This now allows the juvenile court to appoint an administrative body to conduct annual permanency hearings that may be required by Title IV-E federal funds that are used to pay for foster care placement of children. Previously, the court was required to conduct these hearings.

4. Appellate review of the three Texas Family Code § 54.04(i) Required Findings

When a dispositional order under challenge is one that removes a child from his/her home, the special findings of fact required by § 54.04 to authorize that action will be the focus of attack.

ROBERT O. DAWSON, TEXAS JUVENILE LAW, 199 (6th Ed. 2004)

The following cases demonstrate a fact specific sufficiency or lack thereof in removal.

- a. In the Matter of A.S., 954 S.W. 2d 855 (Tex. App.-El Paso 1997)
TYC commitment was set aside as an abuse of discretion, evidence showed that the juvenile's family had moved from El Paso to Midland, where the crime was committed, because the juvenile was involved in an El Paso street gang. The court went on to state "Other than A.S.'s commission of this state jail felony offense and the violation of his mother's curfew on this occasion, there is no evidence to establish the M.M. cannot provide the quality of care and level of support and supervision that A.S. needs to meet the conditions of probation".
- b. In the Matter of K.L.C., 972 S.W. 2d 203 (Tex. App.-Beaumont 1998)
Court held that factual insufficiency to support efforts to keep the child at home. The Court of Appeals also interpreted "reasonable doubt" as a mandate that evidence in the record shows what the dispositional alternatives were to removal and why they were not considered or were unsuitable. Id. at 206.

- c. In the Matter of J.S., 993 S.W. 2d 370 (Tex. App.-San Antonio 1999)
Court held abuse of discretion in TYC commitment. After the offense was committed, the child had been sent to live with the father in New Mexico and was undergoing therapy for a year prior to adjudication and disposition proceedings.
- d. In the Matter of T.K.E., 5 S.W. 3d 782 (Tex. App.-San Antonio 1999)
Court held that juvenile court did not abuse discretion in committing juvenile to TYC for 6 years for aggravated assault, given the serious and repeated nature of the juvenile's conduct as well as a highly rated sex offender program at TYC.
- e. In the Matter of M.A.C., 999 S.W. 2d 442 (Tex. App.-El Paso 1999)
Court held no equal protection violation to commit Mexican National to TYC due to probation limitations. There was no control in the home and the child did not qualify for placement in the Mexican National Children's Program.
- f. In the Matter of B.M., 1 S.W. 3d 204 (Tex. App.-Tyler 1999)
Court held that the juvenile could not be provided quality of care and level of supervision necessary to meet the conditions of home probation and thus ordered the child placed in a boot camp.

Any dispositional order removing a child from his/her home must be supported by the 3 required findings which must be based upon evidence.

- 5. Appellate standard of review: legal and factual sufficiency or abuse of discretion ?
In the Matter of K.T., 107 S.W.3d 65 (Tex. App.-San Antonio 2003)
Held that sufficiency standard of review would no longer be used in evaluating the three findings. Instead the court applied an abuse of discretion standard in finding support for the lower court's dispositional determination.

One noted commentator has expressed some question concerning the rationale of rejecting the sufficiency standard of review in this setting.

ROBERT O. DAWSON, TEXAS JUVENILE LAW 202 (6th Ed. 2004)

IV. Dispositional Powers of the Court

A. Probation

A child may be placed on probation if he/she was adjudicated for delinquent conduct or CINS.

Texas Family Code § 54.04(d)(1)

Specifies 3 types of probation placements:

- 1. in his own home or in the custody of a relative or other fit person;
- 2. subject to the finding under Subsection (c) of this section on the placement of the child outside of the child's home, in:
 - a. a suitable foster home; or
 - b. a suitable public or private institution or agency, except for the Texas Youth Commission.

Basically, the child can be placed at home or any place else, except TYC.

Recall, the court must make findings pursuant to Texas Family Code §54.04(i) in order to remove a child and place him/her on probation outside of the child's home.

There are two restrictions regarding the use of a secure confinement as a condition of probation.

- Texas Family Code Section 54.04 (o) (2) Prohibits the placement of a status offender (Defined under Section 51.02(15)) in a post-adjudication secure correctional facility unless authorized by Section 54.04(n). and,
- Texas Family Code Section 54.04(o)(3) Prohibits the placement of a child adjudicated delinquent for contempt of a county, justice, or municipal court (Section 51.03(a)(2)) in a post-adjudication secure correctional facility.

ROBERT O. DAWSON, TEXAS JUVENILE LAW 202 (6th Ed. 2004)

B. Loss of Jurisdiction

The primary legal difference between placement of a child on probation in a public institution and commitment to TYC is that the court retains jurisdiction and can modify the placement just as any other probation condition.

Commitment to TYC relinquishes jurisdiction of the case exclusively to TYC.

ROBERT O. DAWSON, TEXAS JUVENILE LAW 202 (6th Ed. 2004)

C. Terms of Probation

Texas Family Code § 54.04(1)

A court or jury 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.

D. Sex Offender Registration

1. Texas Family Code § 54.04(p)
Requires a minimum 2 year probationary term for a child placed on probation for conduct described in §54.0405(b) and punishable as a felony.
2. §54.0405(b) states that this section applies to a child placed on probation for conduct constituting an offense **for which the child is required to register as a sex offender under Chapter 62, Code of Criminal Procedure.**
3. 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.

E. Determinate Sentence Probation

In 1999 the state legislature created Section 54.04(q), 54.05(j) and 54.051 to create a new type of juvenile probation.

In Determinate Sentencing cases, if the judge or a jury assess a sentence of 10 years or less, it may place the respondent on probation. The court may then impose a probation term that may be as long as 10 years.

ROBERT O. DAWSON, TEXAS JUVENILE LAW, 203 (6th Ed. 2004)

F. Conditions of Probation

1. Texas Family Code § 54.04(d)(1)

The court is authorized to place the child on probation "on such reasonable and lawful terms as the court may determine."

2. Texas Family Code § 54.04(f)

Provides that the "terms of probation shall be written" and shall provide a copy of the order to the child.

3. Two Limits on Court's Discretion in Setting Conditions of Probation:

a. Vagueness Doctrine:

In the Matter of R.A.B., 525 S.W.2d 892 (Tex. Civ. App.-Corpus Christi 1975)

Court held that probation condition was not vague. The order placing the child on delinquency probation read "contingent upon the proper and lawful comportment of said child". The child was modified on a possession of marijuana (over 4 ounces), a felony offense. "While it is true that the language used in the ... order is colloquial rather than legal, we cannot agree with the juvenile that he did not know that the commission of a felony was not prohibited under the terms of his probation." Id. at 897.

b. No Delegation Doctrine:

In K.K.B. v State, 609 S.W. 2d 824 (Tex. Civ. App.-Texarkana 1980)

The Appellate Court held that the juvenile court did not unlawfully delegate to the foster parent the authority to set the conditions of probation: the conditions read "reside in the home of the person or persons to whom you are released and obey all of their instructions". A petition had been filed alleging "although specifically instructed to do so, [the child] on two occasions refused to do her homework. . ." The trial court committed the child to TYC on an adjudication for refusing to do her homework.

The Appellate Court went on to state that an order cannot spell out every minute detail, but that sufficient general conduct spelled out in terms sufficiently clear for the juvenile to understand is sufficient.

A certain amount of discretion vested in the custodian is necessary if the home or facility is to be successful in its rehabilitative efforts. Id. at 825-26.

G. Other Probationary Conditions

1. Freedom of Speech:

Opinion Texas Attorney General No. LO. 93-95 (1993)

Dress and hair probation conditions may violate a juvenile's right to free expression. While the Attorney General cannot categorically decide that such conditions would or would not always be unconstitutional, it would depend upon the relationship of the condition to the rehabilitation of the probationer or protection of the public.

2. School Attendance:

Texas Family Code § 54.043

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.

3. Monetary Conditions:

There are 3 monetary conditions of probation:

- a. Texas Family Code 54.041(b)
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.
- b. Texas Family Code § 54.0411
Requires a twenty-dollar payment of costs of court; if child, parent or other person is financially able to do so.
- c. Texas Family Code § 54.061
Requires the juvenile court under certain circumstances to order the child, parent or other person (if financially able to do so) to pay up to \$ 15.00 per month in probation supervision fees.

4. Texas Family Code § 54.048 to clarify that a restitution order may apply to both the child and the child's parents and may be ordered whether or not the petition included a plea for restitution. Effective September 1, 2001.

5. Amending Probation Conditions:

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

See In the Matter of M.A.W., 55 S.W. 3d 101 (Tex. App.-Amarillo 2001)
Approving a modification changing the term of probation supervision.

ROBERT O. DAWSON, TEXAS JUVENILE LAW 205 (6th Ed. 2004)

H. Community Service

Texas Family Code § 54.044(a)

Mandates the court to "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 probation department."

1. Community Service Excuses

Texas Family Code § 54.044(a)

The court may excuse the requirement of community service if the court determines and enters a finding that:

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

2. Parental Community Service

Texas Family Code § 54.044(b) allows the court but does not mandate the court to order "the child's parent [to] perform community service with the child."

Community service excused for good conduct of parents/guardians

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.

3. Limit to total number of community service hours

a. Texas Family Code § 54.044(c)

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

b. Procedures:

1) Texas Family Code § 54.044(f)

A person subject to an order under Subsection (a) or (b) is entitled to a hearing on the order before the order is entered by the court.

NOTICE:

Notice should be consistent with that provided for in Texas Family Code § 54.041(a) Orders Affecting Parents and Others, which states that the court's action be "on notice by any reasonable method to all persons affected."

2) Host Agencies and Projects:

Texas Family Code § 54.044(e)
Permits flexibility in the selection of community service sites.

4. 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, 206 (6th Ed. 2004)

5. Parental Contempt Enforcement

Texas Family Code § 54.044(h)

An order under this section is enforceable by Section 54.07 (Contempt)

6. Legal liability

Texas Family Code § 54.044(d)

Limits the liability of a municipality or county for injuries or damages caused by a child or parent while performing community service.

7. Opinion Attorney General No. JM-898 (1998)

The Attorney General opined that neither the County Judge nor the County would be liable for injuries inflicted by or on a juvenile while performing court ordered community service.

8. Mandatory Disclosure of Handgun Source
 - a. Texas Family Code § 54.0406
Requires a child placed on probation for an offense involving a handgun to inform his probation officer of how he obtained the handgun.
 - b. Texas Family Code § 54.0406(c)
Ensures that any information provided by the child to the probation officer cannot be used against the child in later juvenile or adult criminal proceedings.

9. Treatment Conditions for Sex Offender Probation

- a. 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. If the court requires sex offender registration, the statute further mandates that the child submit a blood sample for DNA analysis. The blood sample is not applicable when registration is excused or deferred to await treatment outcomes. There is no longer any restriction on the age of victim in order for an adjudicated sex offender to qualify for these conditions. 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, 206 (6th Ed. 2004)

- b. Self-Incrimination regarding the Polygraph Test? (U.S. Const. amend V, VI)

Opinion Texas Attorney General No. JC-0070 (1999)
Whether submission to the polygraph violates the juvenile's 5th Amendment right to remain silent. The Attorney General opined that the juvenile does have the right to invoke his/her privilege against self-incrimination if an answer may lead to incriminating evidence.

The state may not revoke probation or parole for invoking his/her right. Should the state wish to compel the juvenile to answer the question after invoking his/her right, the state must provide immunity. A court probably would find that a juvenile is not entitled to counsel (6th Amendment) during the course of the polygraph examination.

- c. Texas Family Code § 54.0405(g)
Authorize the court to order parents/guardians to attend counseling sessions.

Notice must be provided as per Texas Family Code § 54.041(a).

I. Mandatory Child Abuse Reporting

1. Texas Family Code § 261.101(b)

Requires a professional who has cause to believe that a child has been abused or neglected or may be abused or neglected or that a child has been a victim of an offense under Section § 21.11 of the Texas Penal Code is required to report the incident within 48 hours.
2. Opinion Texas Attorney General No. DM-458 (1997)

Opined a registered sex offender treatment provider must report all information, even if dated or incomplete, regarding child abuse.

J. Probation Conditions for Graffiti Offenses

Texas Family Code § 54.046

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.

K. Alcohol Violations

Texas Family Code § 54.047

This section references Section 106.071(d) of the Alcoholic Beverage Code. This section requires the court to impose 8-12 hours of community service for first offenses and 20-40 hours for subsequent offenses and mandates the court to order driver's license suspension.

L. Probation Condition for Cruelty to Animals

Texas Family code Section 54.0407 provides:

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

M. Commitment to the Texas Youth Commission

1. Texas Family Code § 54.04(d)(2)

If the court or jury found 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 (s) and (t) are met, of the grade of misdemeanor, . . . the court may commit the child to the Texas Youth Commission without a Determinate Sentence.

a. Texas Family Code § 54.04(s).

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

- (1) the child has been adjudicated as having engaged in delinquent conduct violating a penal law of the grade of misdemeanor on at least two previous occasions;
- (2) of the previous adjudications, the conduct that was the basis for one of the adjudications occurred after the date of another previous adjudication; and
- (3) the conduct that is the basis of the current adjudication occurred after the date of at least two previous adjudications.

Net Effect: Need 2 prior misdemeanor adjudications before the third misdemeanor adjudication will qualify a child for indeterminate commitment to TYC.

Example:

Misdemeanor A or B offense→adjudication Misdemeanor A or B offense→Misdemeanor A or B offense→adjudication of Misdemeanor A or B offense→Misdemeanor A or B offense→commitment to TYC.

b. Texas Family Code § 54.04(t)

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

- (1) the child has been adjudicated as having engaged in delinquent conduct violating a penal law of the grade of felony on at least one previous occasion; and
- (2) the conduct that is the basis of the current adjudication occurred after the date of that previous adjudication.

Net Effect: A child qualifies for indeterminate commitment to TYC for one Misdemeanor A or B adjudication following only one previous felony adjudication. This is consistent with current law allowing for indeterminate TYC commitment for a single felony adjudication.

Example: Felony offense→adjudication of felony offense→Misdemeanor A or B offense→adjudication of Misdemeanor A or B→TYC commitment.

2. Offenses that **DO NOT** qualify as offenses for indeterminate commitment to TYC.

a. Texas Family Code § 54.04(u)

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

Net Effect: Prohibition from commitment to TYC for contempt of county, justice, municipal or juvenile court.

b. Class C Misdemeanors are not delinquent conduct.

Texas Family Code § 51.03(a)(1)
". . . is punishable by confinement in jail."

c. Cases transferred to juvenile court pursuant to Texas Family Code § 51.08 as they are CINS cases under Texas Family Code § 51.03(b).

d. A child on CINS probation for a status offense pursuant to Texas Family Code § 51.02(15) may never be committed to TYC due to Texas Family Code §54.04(o) which states a status offender may not be committed to TYC for engaging in conduct that would not under state or local law, be a crime if committed by an adult.

3. Indeterminate Commitment

a. All commitments to TYC, with the exception of determinate sentencing cases, are for an indeterminate term not to extend beyond the child's 21st birthday.

In the Matter of A.N.M., 542 S.W. 2d 916 (Tex. Civ. App.-Dallas 1976)
The juvenile court committed the child to TYC for a one year period. the appellate court set the commitment order aside. The appellate court held that once a court commits a child to TYC, discretion as to further disposition is vested in TYC and the court cannot invade this discretion by committing the juvenile for a definite period of time. No provision of the code authorizes the court to make a commitment for a definite period.

b. Age limit to Indeterminate Commitment

1. Texas Family Code § 54.04(e)

TYC shall accept a person properly committed to it by a juvenile court, even though the person may be 17 years of age or older at the time of commitment.

2. Indeterminate commitment to TYC-Minimum length of stay

A child is granted conditional release from TYC on indeterminate commitments before age 21 based on the child serving the minimum length of stay attached to his/her "classifying offense". The classifying offense is the most serious of the relevant offenses. Upon commitment from a juvenile court, the relevant offenses are the committing offenses and any offenses for which the youth was on probation at the time of committing the offense.

3. TYC aggregate classifying offenses in to 4 broad categories for determining minimum length of stay:

a. Type A violent offender has a 24 month minimum length of stay.

Example: Murder, Capital Murder, Sexual Assault, Aggravated Sexual Assault, Attempt to Commit, Solicitation of Minor to Commit, Engaging in Organized Criminal Activity to Commit the Included Offenses.

b. Type B violent offender has a 12 month minimum length of stay.

Example: Manslaughter, Criminally Negligent Homicide, Felony Unlawful Restraint, Kidnapping, Aggravated Kidnapping, Felony Assault, Indecency with a Child, Aggravated Assault, Injury to Child, Elderly or Disable Individual, Abandoning or endangering a child, Felony Deadly Conduct, Felony Terroristic Threat, Felony Aiding Suicide, Tampering with Consumer Product, Harassment by persons in secure correctional facilities, Felony coercing, soliciting o-1.2 gi(onditinOrging)ITJg
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Controlled Substance Offender-Youth whose classifying offense is any felony grade offense of manufacture or delivery under the Texas Controlled Substances Act.

Firearms Offender-Youth whose classifying offense involved a finding by a court or TYC hearing examiner that the youth possessed a firearm during the offense.

- d. General Offender has a 9 month minimum length of stay and is a youth who is not eligible for any other classification.

Texas Youth Commission General Administrative Policy Manual GAP 85.25.

ROBERT O. DAWSON, TEXAS JUVENILE LAW 211 (6TH Ed. 2004)

V. Determinate Sentence Statutory Minimum Length of Stay

Determinate Sentences for adjudicated covered offenses carry their own statutory minimum length of stay.

- A. 10 years minimum for Capital Murder
- B. 3 years for Aggravated Controlled Substance Felony, First Degree Felony
- C. 2 years for Second Degree Felony
- D. 1 year for Third Degree Felony

Texas Human Resources Code § 61.081(f)

VI. Mentally Ill or Retarded Children

- A. Human Resources Code § 61.077(b)

Unless a child is committed to the commission under a Determinate Sentence . . . the commission shall discharge a child who is mentally ill or mentally retarded from its custody if:

- 1. the child has completed the minimum length of stay for the child's committing offense; and
- 2. the commission determines that the child is unable to progress in the commission's rehabilitation programs because of the child's mental illness or mental retardation.

TYC cannot discharge a child from Determinate Sentence because these children can only be paroled.

Due to public safety concerns, Human Resources Code § 61.0772 was enacted to require TYC to examine such children and initiate proceedings for mental health or mental retardation commitments of children who meet statutory standards.

- B. Committing Foreign Nationals to TYC

Opinion Texas Attorney General No. H-521 (1975)

TYC cannot refuse to accept a properly committed child because the child is a foreign national.

In the Matter of M.A.C., 999 S.W. 2d 442 (Tex. App.-El Paso 1999)

Juvenile challenged a TYC commitment based on Equal Protection grounds, stating had he been a United States citizen he would have been given probation. The court held that probation was not available to the juvenile because the juvenile probation department lacks jurisdiction to supervise in Mexico. The child did not qualify for the Mexican National Program due to an unstable home and there were not other alternatives available. The state has a legitimate interest in taking steps to rehabilitate the child and protect the public, commitment to TYC is an appropriate sanction that is rationally related to these interests.

VII. Driver's License Suspension

A. Two Provisions in Texas Family Code § 54.042 for suspending driver's licenses, one mandatory and one discretionary.

1. Mandatory Suspension -- There are two categories of Mandatory Suspension:

a. Texas Family Code §54.042(a)(1) – First category of mandatory suspension relates to violations of Section 521.342(a), Transportation Code. Offenses listed under this section include driving while intoxicated by use of alcohol, jailable violations of the Alcoholic Beverage Code, misdemeanor violations of Dangerous Drugs Act and violations of the Chemicals Act. Sections 54.042(c) provides that the mandatory suspension under this provision is for 365 days.

b. Texas Family Code § 54.042(a)(2) - Second category of mandatory suspension relates to violations of Section 521.372(a), Transportation Code. Offenses under this section include of violations of the Federal Controlled Substances Act, "the possession, distribution, manufacture, cultivation, sale, transfer, or the attempt or conspiracy to possess, distribute, manufacture, cultivation, sale, or transfer any substance the possession of which is prohibited under the Controlled Substance Act," driving while intoxicated by use of a controlled substance and a felony violation of the Texas Controlled Substance Act. The period of suspension under this section is a minimum of 180 days and can become indefinite if the respondent does not complete the mandated educational program approved by the Texas Department of State Health Services. Transportation Code Sections 521.372(c) and 521.374(b).

1. Under the second category of mandatory suspension, the juvenile court must notify the Department of Public Safety (DPS) of the adjudication. The juvenile court also has the discretion of ordering suspension pursuant to a period listed in the first mandatory category. In the Matter of C.E.M., 981 S.W. 2d 771 (Tex. App.-Houston [1st Dist.] 1998)

2. In the Matter of R.S.J., 999 S. W. 2d 871 (Tex. App.-Tyler 1999)
Second mandatory suspension category applicable to possession of less than 2 oz. of marijuana in a drug free zone because this offense is covered by federal law.

3. What if child has no driver's license? Texas Family Code §54.042

This section allows for a denial of a driver's license during the period for which a license could have been suspended.

4. What if child needs a driver's license to work? Texas Family Code §54.042(e)

Provides that if a child qualifies for a driver's license pursuant to Chapter 521 of the Transportation Code, the court may grant the child permission to obtain an occupational license.

2. Discretionary Suspension

a. Texas Family Code § 54.042(f)

The juvenile court has discretion to order suspension or denial of a license for a child adjudicated for any delinquency act or CINS not previously covered under mandatory provisions.

- b. The period of suspension shall not exceed 12 months.

Texas Family Code § 54.042(h)

Allows the court to state as a reasonable term of probation (i.e., Notice) that if probation is violated, the court will order suspension or deny issuance of the license for a period not to exceed 12 months. This order can be issued in addition or in lieu of revocation. Suspension upon violation of probation can be ordered even if the court previously suspended the license upon initial probation.

- c. Texas Family Code § 54.042(e)

Regarding court permission to apply for a occupational driver's license if the child qualifies is also applicable.

B. Graffiti Suspension

Texas Family Code § 54.042(b) and (d)

Grant discretion to a court to order suspension or denial of a license if child adjudicated for Texas Penal Code § 28.08 (Graffiti). The period of suspension for a first offense is up to 365 days. For a subsequent offense the period of suspension is mandated at 365 days.

C. Overlapping Suspension

Texas Family Code § 54.042(g)

Provides that credit shall be given for period of suspension ordered when a child refuses to take an intoxilizer test or fails an intoxilizer test, for suspension ordered on first time adjudications for driving while under the influence, intoxication assault or intoxication manslaughter.

- Suspension beyond 18 years of age

Texas Family Code § 54.042 allows for suspension beyond a respondent's 18th birthday despite Texas Family Code §54.05(b) which states "all dispositions automatically terminate when the child reaches his 18th birthday." This is possibly due to the specificity of suspension over 18 years of age which controls over the general provision.

Texas Government Code § 311.026

VIII. Orders Affecting Persons Other Than the Child

There are six areas where the juvenile court has authority over people in addition to the adjudicated child:

A. Child Support

1. Texas Family Code § 54.06(a)

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.

2. 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.

3. 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.

4. 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.

5. 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.

6. Public Agency Not Liable

In the Matter of D.H., 556 S.W.2d 628 (Tex. Civ. App.-Waco, 1977 writ ref'd n.r.e.)

The juvenile court ordered a child placed in the custody of the Deveraux Foundation and ordered the county to pay \$ 180 per month child support and also ordered the Department of Human Services (DHS), the child's managing conservator to pay \$1020 per month child support. DHS appealed and the appellate court held that under the Texas Constitution and DHS Appropriations Bill, the juvenile court was prohibited from ordering DHS to pay Deveraux.

B. Injunctive Orders

1. Texas Family Code §54.041(a)

Authorizes the juvenile court to issue 4 types of injunctions once a juvenile has been adjudicated.

Texas Family Code §54.041: Orders Affecting Parents and Others

(a) 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;

(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; or

- (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.

2. Due Process: Notice and an Opportunity to be Heard

a. 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.

b. 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.

C. Truancy Classes

1. Texas Family Code § 54.041(f)

Provides a court in a case where a child has been adjudicated of CINS for truancy the authority to order a parent or guardian to attend a program described by Section 25.093(f), Education Code, if one is available. These programs provide instruction designed to assist those parents in identifying problems that contribute to the students' unexcused absences and in developing strategies for resolving those problems. The programs may be offered by the school district or by other entities.

2. Due Process: Notice and an Opportunity to be Heard

Though not stated in this section, it should be given pursuant to Texas Family Code §54.041(a).

D. Probation Supervision Fees

1. Texas Family Code § 54.061(a)

The juvenile court is required to order payment of probation supervision fees:

If a child is placed on probation . . . , the juvenile court, after giving the child, parent, or other person responsible for the child's support a reasonable opportunity to be heard, shall order the child, parent, or other person, if financially able to do so, to pay the court a fee of not more than \$ 15.00 a month during the period that the child continues on probation.

2. Finding of Inability to Pay

Texas Family Code § 54.061(d)

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 is done the court may waive the probation fees.

E. Costs of Court

1. Texas Family Code § 54.0411(a)

If a disposition hearing is held under Section 54.04 of this code, the juvenile court after giving the child, parent or other person responsible for the child's support a reasonable opportunity to be heard, shall order the child, parent or other person, if financially able to do so, to pay a fee as costs of court of \$ 20.00.

2. Enforcement

Texas Family Code § 54.0411(b)

Texas Family Code § 61.002(a)(5) 78th Legislature Session (2003) H.B. 2319

Opinion Texas Attorney General No. LO 97-074 (1997)

The Attorney General has stated that a modification of disposition in which a hearing has been waived under Section 54.05(h) is not covered by the cost of court statute.

3. Cost of summons

Opinion Texas Attorney General No. GA-0017 (2003)

The Attorney General has stated that the juvenile court may order the parent, guardian, custodian, or guardian ad litem to reimburse the county for the cost associated with the service of summons if the respondent is adjudicated.

F. Juvenile Delinquency Prevention Fee

Section 54.0461. Payment of Juvenile Delinquency Prevention Fees.

- (a) If a child is adjudicated as having engaged in delinquent conduct that violates Section 28.08, Penal Code, the juvenile court shall order the child, parent, or other person responsible for the child's support to pay the court a \$5 juvenile delinquency prevention fee as a cost of court.
- (b) The court shall deposit fees received under this section to the credit of the county juvenile delinquency prevention fund provided for under Article 102.0171. Code of Criminal Procedure.
- (c) If the court finds that a child, parent, or other person responsible for the child's support is unable to pay the juvenile delinquent prevention fee required under Subsection (a), the court shall enter into the child's case records a statement of that finding. The court may waive a fee under this section only if the court makes the finding under this subsection.
- (d) This Act applies to a fee ordered by a juvenile court for a violation of Section 28.08, Penal code, 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.

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.

IX. Orders of Restitution

A. Three Types of Restitution

- 1. Ordering the child to pay restitution as a condition of probation.
- 2. Ordering the child to pay restitution independently of probation.

3. Ordering a parent to pay restitution.

B. Texas Family Code § 54.041(b) provides:

If a child is found to have engaged in delinquent conduct or CINS arising from the commission of an offense in which property damage or loss or personal injury occurred, the juvenile court, on notice to all persons affected, may order the child or a parent to make full or partial restitution to the victim of the offense.

There is nothing in this section limiting its applicability to cases involving probation. Thus, a restitution order can be entered, even if a child is committed to TYC.

As a reasonable and lawful condition of probation, the restitution order must "promote the rehabilitation of the child, be appropriate to the age and physical, emotional and mental abilities of the child and not conflict with the child's schooling". Texas Family Code § 54.041(b).

C. Texas Family Code § 54.04(d)(1)

The restitution can be made a reasonable and lawful condition of probation. There is no restriction regarding any children on probation being held accountable.

D. Factual Basis for a Restitution Order

1. Texas Family Code § 54.041(b)

Authorizes the court to order "full or partial restitution to the victim of the offense".

2. Texas Family Code § 54.041(c)

Does however limit the restitution that can be ordered with the requirement that "a victim of an offense is not entitled to receive more than actual damages under a juvenile court order."

In the Matter of J.R., 907 S.W. 2d 107 (Tex. App.-Austin 1995)

Juvenile placed on probation for assault and ordered to pay \$ 4,000.00 as a condition of probation to the victim for injuries caused by the juvenile. Juvenile appealed the restitution order claiming that the state was required to prove the bills were reasonable.

The appeals court held that there is no additional requirement of showing that a bill is reasonable.

Rationale: The appellate court relied on adult criminal proceedings to find that "the amount of restitution is required to be 'just', that is, supported by sufficient factual evidence in the record that the expense was incurred. . . The amount of expense incurred need not be supported by proof that it was reasonable. . ."

"Similarly, we construe the term 'actual damages' consistently with the approach to restitution in criminal cases. The trial court therefore correctly admitted the statements of expense actually incurred for [the victim's] medical case without proof that the amounts charged were reasonable." The juvenile and/or parent must be given the opportunity in judicial proceedings under criminal procedural rules to dispute the amount of loss claimed by the victim.

E. Restitution to Insurance Company

1. In the Matter of M.S., 985 S.W. 2d 278 (Tex. App.-Corpus Christi 1999)

Juvenile stole victim's car and wrecked it. The restitution order also named the insurance company for the amount it paid to the victim.

The appellate court upheld the order in concluding that there was no abuse of discretion by determining that the victim's actual damages included the amount paid by the insurance company for the loss of the car.

2. The court of appeals relied upon Code of Criminal Procedure Article 42.037(f)(1) which provides:

The court may not order restitution for a loss for which the victim has received or will receive compensation. The court may in the interest of justice, order restitution to any person who has compensated the victim for the loss to the extent the person paid compensation. An order of restitution shall require that all restitution to a victim be made before any restitution to another person is made under the order.

F. Order Must Relate to Adjudicated Offense

In the Matter of D.S., 921 S.W. 2d 860 (Tex. App.-San Antonio 1996)

Juvenile originally charged with Burglary of Habitation with intent to commit theft. The petition was amended to add Criminal Trespass. The juvenile plead true to the trespass and was placed on probation and ordered to pay restitution. The appellate court struck the restitution order holding that there may have been property loss from the burglary, with intent to commit theft, but there was no property loss from a criminal trespass.

In the Matter of C.T., 43 S.W. 3d 600 (Texas App.- Corpus Christi 2001)

Child adjudicated of Failure to Stop and Give Information and the juvenile court ordered \$2000.00 in restitution for the resulting car accident and damage. Held-Restitution Order was related to the adjudicated offense because had there been no accident and had there been no damages to a vehicle, there would be no crime in Failing to Stop and Give Information. 43 S.W.3d at 603.

G. Pleadings for Restitution

Texas Family Code § 54.08 Restitution

(a) A juvenile court, in a disposition hearing under Section 54.04, may order restitution to be made by the child and the child's parents.

(b) This section applies without regard to whether the petition in the case contains a plea for restitution.

The previous split of authority in appellate case

J. Deferred Prosecution

Texas Family Code § 59.005(a)

"the juvenile court, prosecuting attorney or probation department may . . . (2) require the child to make restitution to the victim of the child's conduct or perform community service restitution."

K. Community Service

Texas Family Code § 54.041(b)

Restitution and community service are separate dispositional powers. If a child is placed on probation, community service is a mandatory condition and parents can also be ordered to participate in the child's community service.

X. HIV Testing

Texas Family Code § 54.033

Mandates HIV testing of juveniles adjudicated for Indecency with a Child by Sexual Contact [Texas Penal Code § 21.11(a)(1)], Sexual Assault [Texas Penal Code § 22.011] or Aggravated Sexual Assault [Texas Penal Code § 22.021].

The court can compel the juvenile to submit to testing and the test results are given to the victim and respondent only.

XI. Order to Protect Victim From Juvenile

Texas Family Code § 57.008

Authorizes the juvenile court to enter an order to protect the victim from harm from the juvenile. These are similar to injunctive orders for adults. Due process requires notice and an opportunity to be heard both at issuance of the order and enforcement.

XII. 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."

Two separate matters must be distinguished:

A. Whether the dispositional order recites reasons with sufficient specificity.

1. 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.

Specificity is also required by the appellate court 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 that constrained entry of the order" of disposition.

2. In the Matter of F.L.J. v. State, 577 S.W.2d 532 (Tex. Civ. App.-Waco 1979)
The dispositional order contained 4 recitations. The first only recited the child was adjudicated for burglary of habitation. The last 3 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 requires commitment does satisfy the specificity requirement.

3. Remedies When Statement is Inadequate:

In the Matter of K.K.H. v State, 612 S.W. 2d 657(Tex. Civ. App.-Dallas 1981)
If the appellate court finds the juvenile court did not comply with § 54.04(f) in stating dispositional reason with specificity, it should abate the appeal and remand the case to the juvenile court for entry of a new statement.

4. Findings of Fact:

In the Matter of J.R., 907 S.W. 2d 107 (Tex. App.-Austin 1995)
The Family Code requirement of a specific statement of reasons for disposition replaces any requirements of the Rules of Civil Procedure that the trial court must upon request, make findings of fact. The statements of reasons serve the same purpose as findings of facts.

- B. Whether there was evidence in the record to support the reasons specified.

1. In the Matter of N.S.D., 555 S.W. 2d 807 (Tex. Civ. App.-El Paso 1977)
The juvenile court gave three reasons for commitment to TYC.

The appellate court held two of them insufficient. The appellate court found that the second reason, "b) there are no services, which have not been used in the past, within the community to effectuate the juvenile's rehabilitation."

To be sufficient, however, there was no evidence to support the findings in recital b). The testimony showed that local services were available and they had not been used in the past and the child could have been rehabilitated locally.

2. In the Matter of L.G., 728 S.W. 2d 939 (Tex. App.-Austin 1987, writ ref. of n.r.e.)
Child committed to TYC for cocaine use. The appellate court remanded the case for a fuller statement of reasons. Basically, the juvenile court stated both the community and school had a drug problem and in the best interest of society required removing the child rather than placing the child on probation.

The appellate court affirmed the delinquency, but set aside the TYC commitment. Rationale was a reliance upon § 51.01(1-2) which was construed to effectuate the purposes of providing care, protection and the wholesome, mental and physical development of children along with the protection of the community. Texas Family Code § 51.01(4) provides that these purposes are to be achieved whenever possible in a family environment and the child is to be separated from his parents only when necessary for his welfare or in the interest of public safety.

3. In the Matter of R.W., 694 S.W. 2d 578 (Tex. App.-Corpus Christi 1985)
The appellate court affirmed a commitment to TYC when the evidence showed the child was problematic at school and at home as well as possibly influenced by a relative in the home who did drugs and was involved in shootings.

XIII. Section 54.07. Enforcement of Order

- (a) Except as provided by Subsection (b) or a juvenile court child support order, any order of the juvenile court may be enforced as provided by Chapter 61.
- (b) A violation of any of the following orders of the juvenile court may not be enforced by contempt of court proceedings against the child:
 - (1) an order setting conditions of probation;
 - (2) an order setting conditions of deferred prosecution; and
 - (3) an order setting conditions of release from detention.
- (c) This section and Chapter 61 do not preclude a juvenile court from summarily finding a child or other person in direct contempt of the juvenile court for conduct occurring in the presence of the judge of the court. Direct contempt of the juvenile court by a child is punishable by a maximum of 10 days confinement in a secure juvenile detention facility or by a maximum of 40 hours of community service, or both. The juvenile court may not impose a fine on a child for direct contempt.
- (d) This section and Chapter 61 do not preclude a juvenile court in an appropriate case from using a civil or coercive contempt proceeding to enforce an order.

Contempt of court proceedings may not be used against the child for violation of any of the 3 orders below:

- (1) An order setting probation condition. Why not? We have enforcement through Modification Texas Family Code §54.05
- (2) An order of deferred prosecution. Why not? We have Petitions Texas Family Code 54.03 to take the juvenile to court.
- (3) Order of Conditional release from Detention. Why not? Directive to Apprehend Texas Family Code §52.015.

Direct Contempt is always an option should the Court observe the child doing something he/she shouldn't in the Court's presence.

Punishment: 10 days in Detention or 40 hours of community service or both. But NO fine on the child!

XIV. Miscellaneous

Texas Family Code § 54.04(j), provides for the requirement of a thumbprint being affixed and allow a photograph to be attached to an order for both felonies and jailable misdemeanors since both can now be used in the punishment phase of adult proceedings.

Texas Family Code § 54.041(b) and Subsection (h) requires restitution orders to follow the juvenile from the juvenile court to the criminal court when probation is transferred at age 18 in a Determinate Sentence case. The parents' liability for restitution may not be extended by this transfer.

XV. Progressive Sanction Model:

A. Texas Family Code § Section 59.001 -- Purposes

The purposes of the progressive sanctions model 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;
- (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.

There are 7 sanction levels starting with supervisory caution and ending with determinate or certification as an adult.

Two main features of this system are the seven program descriptions and the models for assigning cases to each sanction level.

B. Texas Family Code § 59.001 -- Rationale

Following its amendment in 2003, this section provides six objectives. From the outset, this statutory scheme was intended to serve two main purposes. Those are to encourage uniformity of disposition of juvenile offenders by providing non-mandatory models for disposition, §59.001(1) and to encourage uniform reporting of all dispositions to enable intelligent planning and resource allocation to be made by public officials, § 59.001(5).

To promote these objectives, the statutory scheme creates a non-binding model of progressive sanctions divided into seven sanction levels. Each sanction level has associated dispositional program descriptions coupled with guidelines for assigning cases to the sanction levels. In general, this format is intended to provide a starting point toward accomplishing dispositional results that balance public protection and rehabilitation while holding juvenile offenders accountable, § 59.001(2).

It was clear from the beginning that the statutory scheme should allow for and even promote discretion and flexibility in the court's disposition decisions, §59.001(3) and encourage considerations of circumstances specific to each juvenile offender when reaching dispositional conclusions (4).

Finally, the 2003 amendments to this provision underscore the discretionary nature of the scheme. § 59.001(5) was added to make it clear that departure from model disposition should not be considered negatively. In fact, the added provision champions the notion that the particular circumstances of some cases make departure from the model essential to a just dispositional outcome. To further dispel any negative connotation associated with deviation from the statutory scheme established, the legislature altered its name from progressive sanctions guidelines to progressive sanctions model.

ROBERT O. DAWSON, TEXAS JUVENILE LAW 234, 235 (6th Ed. 2004)

C. Appellate Review of Dispositions Under the Guidelines

1. Texas Family Code § 59.014

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

A child may not bring an appeal or post conviction writ of habeas corpus based upon:

- a. the failure or inability of any person to provide a service listed under sections 59.004-59.010;
- b. the failure of a court or of any person to make a sanction level assignment as provided in section 59.002 or 59.003; or

- c. a departure from the sanction level assignment model provided by this chapter; or
- d. the failure of a juvenile court or probation department to report a departure from the models.

2. 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 to refuse guidelines review but the court did find inadequate evidence to support removal from home.

D. Written Report of Departures Eliminated

Originally, the scheme required written reporting when the disposition in a particular matter deviated from the guidelines. The requirement of reporting departure from the model was eliminated in 2003 with the repeal of the relevant portion of § 59.003(e) and § 53.013(b).

- E. There is no 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 236 (6TH Ed. 2004)

SANCTION LEVELS: Following is a chart of the progressive sanction model levels and corresponding sanctions.

Along with these primary sanctions are some standard sanctions common to all levels:

- Require child or parent(s) to participate in program or services as appropriate.
- Additional sanctions as required
- Require restitution to victim or community service (levels 2-7)

JUVENILE SANCTION LEVELS

SANCTION LEVEL	FAMILY CODE SECTION	OFFENSES COVERED	SANCTIONS
1	59.004	C.I.N.S. (excluding expulsion from an AEP for serious or persistent misbehavior Texas Education Code §37.007(c)); or Class A or B Misdemeanor].	Admonish and counsel the child and parent. Referrals to community-based intervention programs. Discharge upon completion.
2	59.005	Misdemeanor "A" or "B" (No firearm) ·Expulsion from an AEP for serious or persistent misbehavior [Texas Education Code §37.007(c)] ·Contempt of JP or Municipal Court(Texas Family Code §51.03(a)(2)	Deferred Prosecution (3-6 months) Discharge upon completion (or) at 18.
3	59.006	Misdemeanor with firearm State Jail Felony 3 rd Degree Felony	Court Ordered Probation, not less than 6 months. Discharge upon completion (or) at 18.
4	59.007	2nd Degree Felony	Intensive Supervision Probation (3-12 months) plus Court Ordered Probation. Discharge upon completion (or) at 18. The juvenile court may require the child to participate as a condition of probation for not less than 3 months or more than 12 months in an intensive services probation that emphasizes frequent contact and reporting with a probation officer, discipline, intensive supervision services, social responsibility and productive work.
5	59.008	1st Degree Felony, excluding a felony involving the use of a deadly weapon or causing serious bodily injury.	Placement in Post-Adjudication Secure Correctional Facility (6-12 months) plus Court Ordered Probation. Discharge upon completion (or) 18.
6	59.009	1st Degree Felony with deadly weapon or with serious bodily injury; Aggravated Controlled Substance Offense; Capital Felonies	TYC 9-24 mos., subject to extensions. Parole for not less than injury or 6 months. Discharge upon completion (or) at 19.
7	59.010	Either Determinate Sentencing §53.045 (or) Transfer to Adult Court §54.02 for Level 6 Offenses	Determinate Commitment to TYC for 12 months – 10 years. Parole of not less than 12 months (or) transfer to Adult Court.

- Model Level (ML) Recommended Level of sanction that should be assigned to juvenile based upon offense classification of the adjudicated offense.
- Assigned Level (AL) Level (1-7) of sanction actually given to juvenile upon disposition by juvenile court, probation department or prosecuting attorney.
- Departure (D) Result which occurs when the juvenile court, JPD or prosecutor assigns (at Disposition) a Progressive Sanction Assigned Level (AL) that is higher or lower than the Progressive Sanction Model Level (ML) than should be assigned.
- Subsequent Offense (SQO) Offense committed by juvenile subsequent to (after) the disposition of prior offense for which juvenile was assigned a progressive sanction level.

INITIAL OFFENSE:

How to determine Progressive Sanction Model Level (ML) for initial disposition offense (DO), (either a judicial disposition or administrative disposition).

TWO STEP PROCESS:

1. Determine penal code classification level of Disposition Offense (DO).
2. Determine Progressive Sanctions Model Level (ML) based upon offense classification listed under Texas Family Code § 59.003.

DETERMINE MODEL LEVEL (ML) FOR SUBSEQUENT OFFENSE (SQO) WITH OR WITHOUT PREVIOUS DEPARTURE

Key: The previous Assigned Level (AL) is the starting point for any progression that may be allowed by Progressive Sanction Model.

RULE #1: LESS SEVERE OFFENSE

IF the penal classification of the Subsequent Offense (SQO) is of less severity than the initial or prior offense, then the Assigned Level (AL) will be the greater of:

1. The current Assigned Level or
2. The level corresponding to the penal classification of the Subsequent Offense (SQO). Texas Family Code § 59.003(c).

UNLESS:

The juvenile's initial or prior offense resulted in an Assigned (AL) of 4 or 5 and the juvenile commits any felony grade offense (i.e., Capital Felony, First Degree Felony, Second Degree Felony, Third Degree Felony, State Jail Felony) in which case the level is increased by one level: Texas Family Code § 59.003(d).

OR UNLESS

The juvenile is found to have engaged in delinquent conduct on 2 separate occasions (either pursuant to (1) an adjudication hearing pursuant to Texas Family Code § 54.03 (OR) (2) a modification disposition hearing pursuant to Texas Family Code § 54.05) that were each a violation of a penal law of a classification that is less than the classification of the juvenile's previous Assigned Level (AL) in which case the level is increased one level: Texas Family Code § 59.003(b).

RULE #2: SAME OR EQUAL OFFENSE SEVERITY

If the penal code classification of the Subsequent Offense (SQO) is of the SAME severity (i.e., prior offense Class A Misdemeanor Assault and (SQO) Class A Misdemeanor Assault) or EQUAL severity (i.e., prior offense Class A Misdemeanor Assault and (SQO) Class A Misdemeanor Burglary of Vehicle) to the initial or prior offense, then the sanction level is increased by one level. Texas Family Code § 59.003(c).

UNLESS:

The juvenile's previous Assigned Level (AL) is 5 and the juvenile has not been adjudicated for delinquent conduct (i.e., CINS alone can never be used to commit a juvenile to TYC). Texas Family Code § 59.003(c)(1).

OR UNLESS:

The juvenile's previous Assigned Level (AL) is 6 and the subsequent violation is not a listed Determinate Sentence, Texas Family Code § 53.045) offense NOR a Certification to Criminal Court, Texas Family Code § 54.02, offense (i.e., Need Determinate Sentence or Certification Case to get to GL7). Texas Family Code § 59.003(c)(2).

RULE #3: GREATER OFFENSE SEVERITY

If the penal classification of the Subsequent Offense (SQO) is of greater severity than the initial or prior offense, then the Model Level (ML) will be the greater (higher) of:

- The level corresponding to the penal classification of the Subsequent Offense (SQO); or
- The next higher level from the previously Assigned Level (AL).

If the child's subsequent commission of delinquent conduct or conduct indicating a need for supervision involves a violation of a penal law of a classification that is the same as or greater than the classification of the child's previous conduct, the juvenile court may assign the child a sanction level authorized by law that is one level higher than the previously assigned sanction level.

This clarifies that a child may not be assigned a higher sanction level under Progressive Sanction Model, if it is not authorized by law. It also eliminates the 2 exceptions in the application of Rule #2: Same of Equal Offense Severity.

MODIFICATION OF DISPOSITION

Texas Family Code § 54.05 Hearing to Modify Disposition

I. Texas Family Code 54.05(d)

A hearing to modify disposition shall be held on the petition of the child and his parent(s), guardian(s), guardian ad litem or attorney or on the petition of the State, a probation officer, or the court itself. Reasonable notice of a hearing to modify disposition shall be given to all parties.

Four issues are presented:

A. When must notice of the hearing be given?

1. There currently remains a split of authority in Texas between two courts of appeals.

In the Matter of J.C., 556 S.W. 2d 119 (Tex. Civ. App.-Waco 1977)

Held that a Revocation Hearing held eight (8) days following the filing of the Petition to Modify was sufficient.

In the Matter of M.L.S., 590 S.W. 2d 626 (Tex. Civ. App.-San Antonio 1979)

Held that a Revocation Hearing held six (6) days following the service of the Petition to Modify was insufficient. The juvenile's attorney must be given ten (10) days to prepare for a Revocation Hearing.

2. Texas Family Code § 54.05(d)
Simply requires notice to be "reasonable".

Texas Family Code § 51.10(h)

Starts out promising, but then appears to limit ten (10) days to prepare for Adjudication and Transfer Hearings only.

In the Matter of J.C., 556 S.W. 2d 119 (Tex. Civ. App.-Waco 1977)

The safest course of action would be to provide defense counsel with at least ten (10) days from the date the juvenile is served and thus provided with notice of the obligations being made.

B. How must notice be given?

1. Texas Family Code § 54.05(d)
". . . Reasonable Notice of hearing to modify disposition shall be given to all parties."

Texas Family Code § 51.02(10)

Defines "party" as "the state, a child who is the subject of proceedings under this subtitle, or the child's parent, spouse guardian, or guardian ad litem."

2. Franks v. State, 498 S.W.2d 516 (Tex.Civ.App. – Texarkana 1973) In this pre Texas Family Code enactment case dealing with a declaration of juvenile delinquency, the Texas Supreme Court held notice must be personally served as process is required to revoke the probation of one already declared to be a juvenile delinquent. No one should be deprived of liberty without due process of law. State v. Casanova, 494 S.W. 2d 812 (Tex. 1973).

C. Who must receive notice?

Section 54.05(d) states that "notice shall be given to all parties." A party is defined in Section 51.02(10) as "the state, a child who is the subject of proceedings under this subtitle, or the child's parent, spouse, guardian, or guardian ad litem."

D. What must the petition to modify disposition state?

1. Texas Family Code § 54.03

Provides specific information regarding information for a petition. At a minimum, the petition to modify disposition should contain the following:

- a. the name, age and residence address of the child; the names and residence addresses of the parent, guardian or custodian of the child and the child's spouse, if any;
- b. the fact that the child was adjudicated delinquent and was placed on probation, including the dates of adjudication and disposition and the court that conducted the adjudication and disposition proceedings;
- c. a verbatim recitation from the probation order of those conditions of probation the child is believed to have violated;
- d. with reasonable particularity, the time, place and manner of the child's acts believed to have violated those conditions must be set out;
- e. if the child is on probation for a misdemeanor adjudication, the prior misdemeanor or felony adjudication that would enable a TYC commitment upon revocation of probation; and
- f. a prayer for relief, such as a request that the juvenile court revoke the child's probation and commit him or her to the custody of the Texas Youth Commission.

2. Texas Family Code § 54.05

Does not state what language is required

ROBERT O. DAWSON, TEXAS JUVENILE LAW 245 (6TH Ed. 2004)

II. Procedural Matters

A. Amending a Petition for Modification

Texas Family Code § 54.05 does not specify when such circumstances present themselves, however, the general principle is that the petition can be amended if that can be done without substantial prejudice to the juvenile.

B. Appointment of Counsel

Texas Family Code § 51.101 (e) provides:

The Juvenile court shall determine whether the child's family is indigent if a motion or petition is filed under Section 54.05 seeking to modify disposition by committing the child to the Texas Youth Commission or placing the child in a secure correctional facility. A court that makes a finding of indigence shall appoint an attorney to represent the child on or before the fifth working day after the date the petition or motion has been filed. An attorney appointed under this subsection shall continue to represent the child until the court rules on the motion or petition, the family retains an attorney, or a new attorney is appointed.

C. Burden of Proof for Probation Violation

Texas Family Code § 54.05(f)

Proof by preponderance of the evidence is the standard since January 1, 1996. Consequently, many courts may rely on adult revocation case history for assistance.

1. Reasonable Probation Conditions:

Texas Family Code 54.05(f)

The juvenile court is authorized to revoke probation if the court finds that the child violated "a reasonable and lawful order of the court".

In the Matter of D.E.P., 512 S.W. 2d 789 (Tex. Civ. App.-Houston 14th District 1974)
Held that although the probation conditions were reasonable when imposed, subsequent events **beyond** the control of the juvenile caused them to become unreasonable.

In the Matter of Rodriguez, 687 S.W.2d 421 (Tex. App. – Houston [14th Dist.] 1985)
Upheld revocation based on violation of curfew requirement.

In the Matter of B.J., 100 S.W.3d 448 (Tex. App. – Texarkana 2003)
Held that a revocation based on association with persons on probation requires proof that respondent knew the persons were on probation.

2. Revocation for Failure to Pay

Probationers required to make periodic payments (such as Texas Family Code § 54.041(b) Restitution, Texas Family Code § 541.0411 Juvenile Probation Diversion Fund, or Texas Family Code § 54.061 Payment of Probation Fees) may be subject to revocation if it can be shown that the juvenile had the ability to pay and deliberately refused to do so.

In the Matter of M.H., 662 S.W. 2d 764 (Tex. App.-Corpus Christi 1983)
The 13th Court of Appeals used the standard established in Article 42.12, Section 21(c), of the Texas Code of Criminal Procedure. The court held that the State must prove a condition of probation required payment of money and that the juvenile intentionally failed to make a required payment.

Once this is established, probation will be revoked unless juvenile can prove by a preponderance of the evidence that he/she was unable to make the payment.

3. Extension of the Probation Term

When the modification involves only an extension of the term of probation, the hearing may be waived in accordance with Texas Family Code § 51.09.

Texas Family Code § 54.05(l)

The court may extend a period of probation under this section at any time during the period of probation or, if a motion for revocation or modification of probation is filed before the period of supervision ends, before the first anniversary of the date on which the period of probation expires.

4. Modification for previous violation prohibited

In the Matter of J.L.D., 74 S.W.3d 166 (Tex. App. – Texarkana 2002)
Held that stipulation of an assault that resulted in an extension of respondent's probation could not be used in a subsequent modification hearing to support a revocation.

5. Appeal of Revocation

Texas Family Code § 56.01(c)(1)(c)

To successfully appeal, juvenile must show that there was insufficient evidence to sustain each (if more than one) violation.

D. No TYC Commitments for CINS Modifications.

Texas Family Code §54.05(g)

Except as provided by Subsection (j), a disposition based solely on a finding that the child engaged in conduct indicating a need for supervision may not be modified to commit the child to the Texas Youth Commission. A new finding in compliance with section 54.03 must be made that the child engaged in delinquent conduct that meets the requirements for commitment under Section 54.04.

E. Restrictions on TYC Commitments for Misdemeanors

Texas Family Code § 54.05(k)

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

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

This change is made in hopes of clarifying that in order to modify a disposition and commit a child to TYC for a violation of a Class A or B Misdemeanor Probation, there need be only one adjudication for either a felony or a class A or B Misdemeanor prior to the adjudication that is now being modified.

F. Modification Hearing

Texas Family Code § 54.05(c)

1. There is no right to a jury at a hearing to modify disposition.

In the Matter of A.M.B., 676 S.W. 2d 448 (Tex. App.-Houston [1st District] 1984)

The court held there was no violation of Article 5, Section 10 of the Texas Constitution as this court extrapolated from similar findings in adult criminal cases that a revocation hearing is not a "trial" as the term is used by the Constitution because the defendant does not go to the penitentiary for probation violations, but due to the original conviction. Id. 450-1.

2. All rules of evidence are applicable in revocation proceedings.

In the Matter of R.A.B., 525 S.W. 2d 892 (Tex. Civ. App.-Corpus Christi 1975)

The court held illegally seized evidence inadmissible in a probation revocation hearing.

G. Not all Modification Hearing Can be Waived

Texas Family Code §54.05(h):

A hearing shall be held prior to placement in a post-adjudication secure correctional facility for a period longer than 30 days or commitment to the Texas Youth Commission as a modified disposition. In other disposition modifications, the child and the child's parent, guardian, guardian ad litem, or attorney may waive hearing in accordance with Section 51.09.

H. Two Step Process Regarding Modification Hearings and Social History Reports

Texas Family Code § 54.05(e)

After the hearing on the merits or facts, the court may consider written reports from probation officers, professional court employees or professional consultants in addition to the testimony of the other witnesses.

The first question to be considered is whether the juvenile court finds a violation of probation by a preponderance of the evidence. Secondly, the court may consider a social history report to determine what to do about the violation(s).

ROBERT O. DAWSON, TEXAS JUVENILE LAW, 255, 256 (6TH Ed. 2004)

I. If it Walks Like a Duck. . .

Procedural protections are guaranteed under Texas Family Code § 54.05 regardless of what a court may label its type of community supervision (i.e., probation).

In the Matter of M.A.S., 679 S.W. 2d 548 (Tex. App.-San Antonio 1984)

The court held that the child was entitled to notice and a hearing prior to termination of the modified conditional liberty granted by the trial court which it called "delayed disposition". The "delayed disposition" carried with it the conditions of an otherwise formal disposition.

J. Removal From Home or TYC Placement Findings Required?

Unlike Texas Family Code § 54.04(i), there is no language in Texas Family Code §54.05 which indicates such findings are required under that section. Consequently, most appellate courts have found that no such findings are required.

In the Matter of H.C., 993 S.W. 2d 211 (Tex. App.-San Antonio 1999)

Texas Family Code § 54.05(f) allows a trial court to modify a disposition by ordering commitment if it finds "that a child violated a reasonable and lawful order of the court." *See also*, In the Matter of M.A.L., 995 S.W.2d 322 (Tex. App. – Waco 1999); In the Matter of D.R.A., 47 S.W.3d 813 (Tex. App. – Fort Worth 2001), reaching a similar result.

However, in In the Matter of L.R., 67 S.W.3d 332 (Tex. App. – El Paso 2001) the El Paso Court of Appeals declined to follow these cases and held that the three findings are required in modification resulting in TYC commitment.

K. Statement of Reasons:

Texas Family Code § 54.05(i)

"The court shall specifically state in the order its reasons for modifying the disposition and shall furnish a copy of the order to the child."

In the Matter of K.W.H. v. State, 596 S.W. 2d 248 (Tex. Civ. App. -- Texarkana 1980)

The court held Section 54.05(i) contemplates more than merely reciting the statutory language or using general terms.

L. Revocation of Probation Following its Expiration

1. In the Matter of R.G., 687 S.W. 2d 774 (Tex. App.-Amarillo 1985)

Court of Appeals affirmed trial court's revocation of probation based upon a petition to modify filed within the probationary term, even though the hearing on modification was held following the expiration of the probationary term.

It was held that when a petition to modify disposition is filed within the probationary term for an alleged violation of the terms and conditions of probation which occurred within the probationary period and the court proceeds to orderly disposition of that petition within a

reasonable time with full regard for the procedural and substantive rights of the child, the court has authority to modify the prior disposition specified by the prior order. *See also, In the Matter of P.L.*, 106 S.W.3d 334 (Tex. App. – Dallas 2003), reaching a similar result.

2. In the Matter of J.A.D. 31 S.W. 3d 668 (Tex. App. – Waco 2000)

- Child's probation term expired
- Motion to revoke probation not filed until after probation expired
- Juvenile court granted the revocation
- Appellate Court reversed the juvenile court
- Rationale: The juvenile court lacked jurisdiction to revoke probation because the motion was filed too late

3. In the Matter of D.C., 49 S.W. 3d 26 (Tex. App. – San Antonio 2001)

- Child is on probation
- Motion to Revoke filed while child is on probation
- Revocation Hearing is held following the expiration of probation at age 18
- Juvenile court granted the revocation
- Appellate Court reversed
- Rationale: Since the hearing was held after the 18th birthday, the juvenile court had no authority to modify.

4. Legislative Solution

Texas Family Code § 51.0412. Jurisdiction Over Incomplete Proceedings.

The court retains jurisdiction over a person, without regard to the age of the person, who is a respondent in an adjudication proceeding, a disposition proceeding, or a proceeding to modify disposition if:

- (2) the petition or motion to modify was filed while the respondent was younger than 18 years of age;
- (3) the proceeding is not complete before the respondent becomes 18 years of age; and
- (4) the court enters a finding in the proceeding that the prosecuting attorney exercised due diligence in an attempt to complete the proceeding before the respondent became 18 years of age.

This section now enables a court to extend its jurisdiction long enough to complete either its adjudication, disposition, or modification of disposition.

ROBERT O. DAWSON TEXAS JUVENILE LAW 255 (6TH Ed. 2004)